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Monday
August 13, 1979

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47408 **Regional Adoption Resource Centers Demonstration Program** HEW/HDSO announces availability of grant funds; apply by 8-31-79

47336 **Condominiums** VA amends rules to incorporate basic criteria for project approval; effective 7-1-79, comments by 10-9-79

47512 **Rehabilitation Loan Program** HUD/CPD revises requirements applying to a displaced tenant as a result of Section 312 or is permitted to continue occupancy of the property; effective 9-26-79, comments by 10-12-79 (Part IV of this issue)

47348 **Natural Gas Pipeline Construction** DOE/FERC invites comments on applicable fees; comments by 8-31-79

47264 **Public Utility Regulatory Policies** Energy/ERA issues requirements for submission of annual reports by State regulatory authorities and certain nonregulated electric and gas utilities; effective 9-12-79

47444 **Campus-Based Programs** HEW/OE revises and republishes rules regarding certain programs (Part II of this issue)

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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

Agricultural Marketing Service

7 CFR Part 1124

[Milk Order No. 124]

Milk in the Oregon-Washington Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain order provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to manufacturing plants and still be priced under the order. The suspension removes the limit on such movements of milk during the months of July and August 1979. The suspension was requested by four cooperative associations to assure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for their dairy farmer members regularly associated with the market.

EFFECTIVE DATE: August 13, 1979.

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 document in this proceeding: Notice of proposed suspension—issued July 20, 1979, published July 25, 1979 (44 FR 43479).

This order of suspension is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Oregon-Washington marketing area.

Notice of proposed rulemaking was published in the Federal Register (44 FR 43479) concerning a proposed suspension of certain provisions of the order. Interested persons had an opportunity to comment in writing on the proposed suspension. Only the proponents of the suspension filed comments concerning the suspension. Their comments supported the suspension.

After considering all relevant material, including the proposal in the notice, the comments received and other available information, it is found and determined that for the months of July and August 1979 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the third sentence of paragraphs (a) and (b) of § 1124.11, the word "not".

Statement of Consideration

This action removes the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants during the months of July and August 1979. The order now provides that during any month a cooperative association may divert a total quantity of producer milk not in excess of the total quantity received during the month from all member producers at pool plants. Similarly, the operator of a pool plant may divert a total quantity of producer milk not in excess of the total quantity received from producers (for which the operator of such plant is the handler during the month) at such pool plant.

The suspension was requested by four cooperative associations who represent a substantial number of producers on the market. The basis for the request is that current marketing conditions require the four associations to handle an increasing quantity of reserve milk supplies during July and August because the demand for milk supplies by their regular fluid outlets this summer is substantially below normal. They indicated that this situation is aggravated by the fact that milk production of their member producers is heavier than normal this summer.

The cooperatives state that their reserve milk supplies are customarily moved directly from member farms to nonpool manufacturing plants. However, because of current marketing conditions, they expect their reserve milk supplies during July and August 1979 to exceed the quantity of producer milk that may be diverted to nonpool manufacturing plants under the order's present diversion limitations. The cooperatives indicated that without the suspension, a substantial part of the milk of their member producers who have regularly supplied the fluid market would have to be moved uneconomically first to pool plants and then to the nonpool manufacturing plants in order to still maintain producer status for such milk in July and August 1979.

On the basis of the data, views and arguments filed, it is concluded that the suspension is necessary because it will facilitate the efficient disposition of reserve milk supplies and thus avoid the need for the cooperatives to make uneconomic movements of milk for the purpose of maintaining pool status for their member producers involved. The need for the suspension is temporary since the marketing conditions that require it are expected to return to a more normal situation beginning in September 1979.

It is hereby found and determined that 30 days' notice of the effective date thereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that the most efficient method of handling milk not needed for the fluid market is by direct movement from producers' farms to manufacturing outlets. This suspension allows for such economical movements while the dairy farmers involved retain producer status;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date;

(c) Notice of proposed rulemaking was given to interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No views were received in opposition to the proposed suspension.

Therefore, good cause exists for making this order effective August 13, 1979.

It is therefore ordered, That the aforesaid provisions of the order are

hereby suspended for the months of July and August 1979.

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

Signed at Washington, D.C., on August 7, 1979.

Jerry C. Hill,

Deputy Assistant Secretary.

[FR Doc. 79-24829 Filed 8-10-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 463

[Docket No. ERA-R-79-19]

Annual Reports From States and Nonregulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing a rule setting forth the requirements for submission of annual reports to DOE by State regulatory authorities and certain nonregulated electric and gas utilities. Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain nonregulated electric and gas utilities to report on progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. The reports required by the rule must be submitted on Form ERA-166: PURPA Annual Report on Electric and Gas Utilities, by November 9 of each year 1979 through 1988. A copy of Form ERA-166 is appended to the preamble to the rule.

EFFECTIVE DATE: September 12, 1979.

FOR FURTHER INFORMATION CONTACT:

William G. Smith, Office of Utility Systems, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, NW., Room 4016E, Washington, D.C. 20461, (202) 254-8209.

William L. Webb, Office of Public Information, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Mary Ann Masterson, Office of General Counsel, U.S. Department of Energy, 20 Massachusetts Avenue, NW., Room 3224, Washington, D.C. 20461, (202) 376-9469.

SUPPLEMENTARY INFORMATION:

I. Background

On April 10, 1979, (44 FR 22974, April 17, 1979) the Economic Regulatory Administration (ERA) issued a proposed rule setting forth the manner in which State regulatory authorities and certain nonregulated electric and gas utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b) and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) (44 FR 22974, April 17, 1979). Sections 116 and 309 of PURPA require that such reports be submitted to the Department of Energy (DOE) annually for 10 years.

Public hearings on the proposed rule were held in Washington, D.C. and Denver, Colorado. ERA received and considered 45 written and 5 oral comments on the proposed rule. A number of commenters made suggestions which have resulted in changes in the regulations issued today, as well as to the reporting form which will be used pursuant to these regulations.

II. Discussion of Comments and ERA Response

The following is a discussion of comments received and ERA's response to these comments. The discussion is organized according to the general areas of concern expressed by the commenters.

It should be noted that the report required by this final rule, ERA-166: PURPA Annual Report on Electric and Gas Utilities is being published today as Appendix A to this preamble.

A. Statutory Requirement

Many commenters criticized the proposed rule as exceeding the statutory authority of sections 116 and 309 of PURPA by requiring more than a "summary" of determinations made and actions taken regarding the standards. Sections 116(a) and 309(a) of PURPA state, in part: "Such report shall include a summary of the determinations made and actions taken with respect to each * * * standard on a utility-by-utility basis." ERA does not agree with the commenters' assertion that, on the basis of this statutory provision, the reporting requirement is limited to a summary of determinations made and actions taken. While the report must "include" a summary, it is not restricted merely to a summary.

The Conference Report on PURPA reveals that Congress expected the annual reports to be a vehicle for accurately measuring the progress of the States in order to provide a basis for legislative oversight by the Congress (House Report No. 95-1750, p. 81). The type of information required by Form ERA-166 is essential to an accurate assessment of the progress being made by State regulatory authorities and nonregulated utilities in considering and making determinations with respect to the ratemaking and other regulatory standards established by PURPA.

The proposed rule solicited comments regarding the extent to which the rule should address the State regulatory authority's or covered nonregulated utility's involvement, if any, in complying with the cost-of-service rule promulgated by the Federal Energy Regulatory Commission (FERC) pursuant to section 133 of PURPA (44 FR 33847, June 13, 1979). Some comments which addressed this subject objected to using the PURPA annual report to monitor compliance with FERC's cost-of-service rule. One commenter, however, expressed the view that use of the annual report to solicit information regarding involvement, if any, in complying with the FERC rule would be acceptable if the inquiries were limited in scope and number.

ERA has included two sets of questions in Schedule 2 of Form ERA-166 addressing the subject of actions taken pursuant to the FERC cost-of-service rule. ERA believes these limited inquiries are necessary to make an accurate and complete assessment of the status of the consideration process with respect to the cost-of-service standard. The purpose of these questions is not to monitor compliance with the FERC rule.

It should be noted that the final rule does not include a summary of the statutory requirements of PURPA Titles I and III as did the proposed rule. ERA has determined that such a summary is inappropriate within the context of this rule. The purpose of this rule is to prescribe the manner in which State regulatory authorities and nonregulated utilities are to report on matters set forth in PURPA. Those PURPA provisions describing the ratemaking and other regulatory standards are included, where appropriate in identifying the standard, in Form ERA-166.

B. Reporting Burden

In carrying out DOE's responsibilities under sections 116 and 309 of PURPA, ERA recognizes the importance of minimizing the reporting burden on State regulatory authorities and nonregulated utilities. Many commenters expressed concern,

however, as to the burden the proposed reporting requirement would impose on those responsible for completing and submitting the reporting forms. ERA has reviewed the proposed rule in view of these comments and has made several changes in the reporting form in order further to minimize the reporting burden imposed by the final rule. The comments and the changes made to the rule and the reporting form in response to them are discussed below according to three general areas: the reporting period, the report format and the substance of the report.

1. Reporting Period. A number of commenters were concerned that the proposed reporting period (October 1–September 30) would not provide sufficient time to complete and submit the report by the proposed reporting date of November 1. In response to this concern, the reporting period has been changed to the year ending June 30 of the year in which the report is due. In addition, the report is due on November 9 of each year, not November 1 as proposed. After the first year report, this change will allow approximately four months for preparation of the report. ERA believes that the annual report must be submitted by November 9 of each reporting year in order to ensure compliance with the requirements of PURPA, with respect to both the annual reports from State regulatory authorities and nonregulated utilities as well as the subsequent report which DOE is required to submit to Congress.

2. Report Format. The reporting format set forth in the proposed rule was intended to minimize the reporting burden as much as possible while still soliciting the data necessary for meaningful congressional oversight. The "yes"/"no" type of questionnaire for the report, rather than an extensive narrative, was proposed in the belief that it would greatly simplify the annual report task for all parties. Though this format results in numerous questions, the questions are designed to be easily and readily answered.

The response of the commenters to this "yes"/"no" format was mixed: some agreed that it is a useful method for miminizing the reporting burden, while others expressed concern that such an approach would not provide addquate summaries of determinations made by State regulatory authorities and nonregulated utilities. ERA agrees that narrative material is often necessary to provide a complete and accurate response to certain questions. Accordingly, with respect to several areas of inquiry, Form ERA–166 requires a narrative response and, in all areas of inquiry, provides that the State regulatory authority or nonregulated utility can append a narrative response if necessary to supplement an answer.

ERA has retained the "yes"/"no" type of questionnaire but the format has been simplified. Questions have been designed to ascertain, on a utility specific and standard specific basis, *either:* (1) the quality of information and data utilized in making the determination whether to adopt or implement the standard; *or* (2) whether the standard which has been adopted or implemented contains certain characteristics. ERA believes that this approach is simpler than that proposed because it avoids the use of a single question to ascertain whether specified characteristics were considered as well as whether they were adopted or implemented. This resulted in unnecessary and sometimes confusing questions.

Three additional revisions to the proposed questionnaire format have been made in response to comments received. Form ERA–166 provides a "generic" option, whereby a State regulatory authority is not required to respond repeatedly to the same question for each utility for which a particular standard has been considered on a generic basis. The form has also been designed to allow the listing of up to 15 utilities on one form. This reduces the number of forms to be completed and alleviates repetitious reading of the same questions.

Finally, an instruction has been included with Form ERA–166 providing that the form does not necessarily have to be completed in its entirety in each year following the initial reporting year. The form now provides that, after the initial report, State regulatory authorities and nonregulated utilities must respond only to those questions for which the preceding year's answer is no longer correct.

3. Substance of the Report. A number of commenters offered suggestions, specific and general, intended to improve upon or clarify the questions proposed to be included in the reporting form. Several commenters urged ERA to define exactly the technical utility and economic terms used in the reporting form (such as "demand cost," "long-run" and "marginal cost"). ERA has carefully considered these comments and has determined that, in most instances, such precise definitions would not improve the accuracy of the annual reports. Titles I and III of PURPA, while setting forth ratemaking and other regulatory standards for consideration, do not limit consideration of such standards by prescribing precise technical definitions. ERA, in turn, believes that the annual reports should be vehicles for State regulatory authorities and nonregulated utilities to report on their consideration of the various standards. Such reports should not limit consideration of the standards in any way. Narrative material submitted as part of the report, particularly copies of determinations and orders, should serve to document how technical utility or economic terms are understood and used by the reporting entity.

Several commenters objected to those questions in the proposed report relating to cost/benefit analysis. Questions 8.0 and 9.0 of Schedules 2 through 12 solicited anticipated cost impact and savings information for the implementation of each standard. ERA recognizes that PURPA requires cost/benefit analysis only with respect to three of the standards (Load Management Techniques, Master Metering and Time-of-Day Rates). However, PURPA does not preclude such an ananlysis for the other standards. ERA has decided to retain cost/benefit questions as part of Form ERA–166, but has responded to the concerns of the commenters by not requiring a cost/benefit analysis of each standard as part of the annual report requirement and by revising the scope of the questions asked. Specifically, ERA has determined that requesting cost/benefit information for a 10-year period is unnecessary and burdensome. Questions 5.0 and 6.0, Schedules 2 through 12, of Form ERA–166 seek merely to establish whether a cost/benefit analysis was performed for the particular standard and, if so, whether the cost/benefit method utilized determined cost to the utility and to the consumer. A narrative summary of the analysis is to be appended to the appropriate schedule. Additional cost/benefit information is requested only with respect to the three standards mentioned above. In further attempting to minimize the reporting burden, ERA has reviewed each question to determine whether it is necessary to provide a complete and accurate report of consideration of the PURPA standards. As a result, the number of questions contained in Form ERA–166 is considerably less than the number proposed, and consequently, Form ERA–166 reporting schedules are less complex in terms of the level of detail of the questions.

C. Function of the Report

Some commenters criticized the proposed rule, asserting that the

proposed reporting form, in effect, provided a set of DOE guidelines as to how to consider and adopt or implement each of the standards. The commenters contended that the level of detail of the questions and the type of questions asked (have you considered/have you adopted) implied that the consideration process followed by State regulatory authorities and nonregulated utilities should include those elements specified in the questions. ERA did not intend the proposed rule and reporting form to carry out such a function. The purpose of the annual report is to ascertain what *has* been done toward complying with the requirements of Titles I and III of PURPA, as opposed to prescribing the manner in which this *is to be* done. ERA's ultimate objective is to provide the Congress with a means for overseeing what progress has been made by the State regulatory authorities and nonregulated utilities in considering each of the standards established by Titles I and III of PURPA. ERA has reviewed the proposed report in order to remove any implication that the annual reporting rule is a vehicle for issuing guidelines for consideration of the standards.

III. Other Matters

DOE has determined that this rulemaking is significant as that term is used in Executive Order 12044 and DOE Order 2030, but is not likely to have a major impact as defined in these two documents. The rule is considered significant because it implements a reporting requirement established by national energy legislation. The rule is not considered likely to have a major impact as defined by Executive Order 12044 and as amplified in DOE Order 2030. Accordingly, no regulatory analysis has been performed.

(Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617 (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*))

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing Part 463 as set forth below.

Issued in Washington, D.C. on August 1, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Appendix A to the Preamble

Form ERA-166 is reproduced below to assist State regulatory authorities and nonregulated utilities in understanding the changes made in the proposed rule and reporting form.

U.S. Department of Energy, Economic Regulatory Administration, Washington, D.C. 20461

PURPA Annual Report on Electric and Gas Utilities

This report is mandatory under Pub. L. 95-617 (PURPA) sections 116 and 309: "Information and General Instructions for Completing PURPA Annual Report on Electric and Gas Utilities."

I. General

The PURPA Annual Report on Electric and Gas Utilities must be completed by each State regulatory authority (with respect to each covered electric and gas utility for which it has ratemaking authority) and each covered nonregulated electric and gas utility consistent with these instructions. All information shall be provided in a clear and concise manner. Information required regarding the consideration process for each standard shall, to the maximum extent practical, be summarized from the written determinations and orders issued. ERA reserves the right to request any supplementary information from the State regulatory authority or covered nonregulated utility as may be needed to fully understand the report.

II. Coverage

A. *Electric utilities.* The electric utilities and nonregulated electric utilities covered by this report are those whose total sales of electric energy for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. For example, in the case of the first report (due November 9, 1979) the applicable years for determining the threshold are 1976 and 1977.

B. *Gas utilities.* The gas utilities and nonregulated gas utilities covered by this report are those whose total sales of natural gas for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. (See example in paragraph A, above.)

C. *Exclusion of wholesale sales.* The requirements of this report do not apply to the operation of an electric or gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy or natural gas for purposes of resale.

D. *List of covered utilities.* ERA will publish in the Federal Register a list of utilities covered under PURPA for each reporting year (i.e., for 1979, 44 FR 17448, March 21, 1979). The inclusion or exclusion of any utility on the list does not affect the legal obligation to report by such utility or the responsible State regulatory authority under PURPA.

III. Schedule

A. *Due date.* The report shall be submitted not later than November 9, 1979, and annually thereafter for 10 years.

B. *Reporting period.* The reporting period for the first PURPA Annual Report on Electric and Gas Utilities shall be November 9, 1978 to June 30, 1979. For each subsequent report, the reporting period shall be July 1 of the previous year to June 30 of the year in which the report is due.

IV. Address; Number of Copies

Each reporting entity shall send the original and two copies of the PURPA Annual Report on Electric and Gas Utilities to the following address: PURPA Annual Report on Electric and Gas Utilities, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 4016, Washington, D.C. 20461.

V. Inclusion of Annual Report on Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting

The State regulatory authority may submit to ERA, with the PURPA Annual Report on Electric and Gas Utilities, the Annual Report on the Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting (Gaslight Report), if required pursuant to section 402 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) and applicable regulations (10 CFR Part 516).

VI. Definitions

Unless otherwise expressly provided, for the purposes of this reporting requirement—

(A) The term "adopt" means, with respect to the standards established by sections 113 and 303 of PURPA, to put into effect.

(B) The term "class" means, with respect to electric and gas consumers, any group of such consumers who have similar characteristics of electric or gas energy use, respectively.

(C) The term "consideration process" means, with respect to any of the standards established by sections 111, 113 or 303 of PURPA, the set of appropriate procedures carried out by a State regulatory authority or nonregulated utility culminating in a determination as to whether or not to adopt or implement such standard.

(D) The term "electric consumer" means any person, State agency, or Federal agency, to which electric energy is sold other than for purposes of resale.

(E) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(F) The term "evidence" means any testimony, data, staff reports, technical analyses, briefs, or any other statements, documents or information admitted into the record of the proceedings respecting the consideration of the standards.

(G) The term "Federal agency" means an executive agency (as defined in section 105 of the United States Code).

(H) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(I) The term "gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(J) The term "implement" means, with respect to the standards established by section 111 of PURPA, to put into effect.

(K) The term "load management technique" means any technique (other than a time-of-day or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including ripple or radio control mechanisms, and other types of interruptible electric service, energy storage devices, and load-limiting devices.

(L) The term "nonregulated electric utility" means any electric utility with respect to which neither the Tennessee Valley Authority (TVA) nor any State regulatory authority has ratemaking authority.

(M) The term "nonregulated gas utility" means any gas utility with respect to which no State regulatory authority has ratemaking authority.

(N) The term "person" means an individual, partnership, corporation, unincorporated association or any group, organization or entity.

(O) The term "rate" means:

(1) Any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of electric energy by an electric utility to an electric consumer or the sale of natural gas to a gas consumer.

(2) Any rule, regulation, or practice respecting any such rate, charge, or classification; and

(3) Any contract pertaining to the sale of electric energy to an electric consumer or the sale of natural gas to a gas consumer.

(P) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(Q) The term "sale" means a transfer to a purchaser for consideration and:

(1) when used with respect to electric energy, includes any exchange of electric energy; or

(2) when used with respect to natural gas, includes any exchange of natural gas.

(R) The term "State" means a State, the District of Columbia, and Puerto Rico.

(S) The term "State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

(T) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to:

(1) The sale of electric energy by any electric utility (other than by such State agency), and in the case of an electric utility with respect to which the TVA has ratemaking authority, such term means the TVA; or

(2) The sale of natural gas by any gas utility (other than by such State agency).

VII. General Instructions for Completing Schedules

A. *Schedules.* The PURPA Annual Report on Electric and Gas Utilities consists of the following 12 schedules:

Schedule 1—General Information on the State Regulatory Authority or Covered Nonregulated Utility
Schedule 2—Cost-of-Service Standard
Schedule 3—Declining Block Rates Standard
Schedule 4—Time-of-Day Rates Standard
Schedule 5—Seasonal Rates Standard
Schedule 6—Interruptiable Rates Standard
Schedule 7—Load Management Techniques Standard
Schedule 8—Master Metering Standard
Schedule 9—Automatic Adjustment Clauses Standard
Schedule 10—Information to Consumers Standard
Schedule 11—Procedures for Termination of Electric (Gas) Service Standard
Schedule 12—Advertising Standard

Schedules 1–12 are to be completed for each electric utility listed in section 3.1(a) of Schedule 1. Only Schedules 1, 11, and 12 are to be completed for each gas utility listed in section 3.1(b) of Schedule 1.

B. *Attachments.* Space in addition to that provided may be necessary for supplementing the answers to some questions. In such a case, please provide a numbered attachment to the appropriate schedule and indicate the attachment number next to the answer. The use of an attachment does not void the requirement that all questions be answered and tables completed. Attachments should be designated by using the schedule number followed by a dash followed by a sequential number starting with 1 for each schedule. (For example, attachment "3–1" would be the first attachment to schedule 3; attachment "2–5" would be the fifth attachment to schedule 2.)

C. *Utility designations.* The completion of sections 3.1(a) and (b) of Schedule 1 will provide a list of all covered electric and gas utilities, respectively. When completing these sections, please designate each by a sequential number starting with 1, as illustrated in the example below. A combination utility (i.e., one that sells both electricity and gas) must be listed and numbered twice—once for each in the spaces provided for sections 3.1(a) and (b). For each utility listed indicate the corresponding utility code from the attached list of codes. If no code is listed, please contact person specified in paragraph VIII for assignment of a code number.

	Name	Utility No.	Utility code
3.1(a)	E1 Elec. Utility A	1	12345
	E2 Elec. Utility B	2	56789
	E3 Elec. Utility C	3	90123
	E4 Elec. Utility D	4	34567
	E5		
	E20		
3.1(b)	G1 Gas Utility A	5	78901
	G2 Gas Utility B	6	56789
	G3		
	G4		
	G15		

(D) *Generic option.* The tables in Schedules 2–12 are designed to allow one report for two or more utilities for which the consideration process was conducted on a generic basis for the applicable standard. Please use the space provided at the beginning of Schedules 2–12 to indicate which utilities are included in the "generic" category for that standard. Answers to questions for utilities included under the generic category should only be placed in the "Generic" column which has been provided, and not redundantly under each utility's column.

(E) *Omission of information.* Requested information and responses shall be omitted only if, and to the extent that, such information is identical to the information submitted in the previous year's PURPA Annual Report on Electric and Gas Utilities.

(F) *Additional utilities.* The tables in Schedules 2–12 are designed to accommodate a maximum of 15 utilities. If there are more than 15 utilities that need to be listed on the tables, use extra forms and renumber the columns as needed.

VIII. Additional Information and Assistance

If additional information or assistance is needed in completing the form, please contact:

William G. (Bill) Smith, Office of Utility Systems, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, N.W. (Room 4016E), Washington, D.C. 20461, (202) 254–8209.

IX. Certification

Section 2.0 of Schedule 1 shall be completed by the chairman of the State regulatory authority or the chief executive officer of the nonregulated utility or other commissioner or officer authorized to file this report on behalf of the authority or utility.

BILLING CODE 6450-01-M

Schedule 1

General Information on State Regulatory Authority
or Covered Nonregulated Utility

Instructions

Please complete the following questions. For questions soliciting information on both electric and gas utilities, please distinguish, as indicated. For questions which are not applicable to either the electric or gas utility or State regulatory authority, indicate by N/A.

1.0 IDENTIFICATION DATA

1.1 What is the name, address and code of your State regulatory authority (or covered nonregulated utility)? See attached list for code designations. Please insert this code at the top of each page of this report as indicated.

Name _____

Street _____

City _____ State _____ Zip Code _____

Regulatory (or Utility) Code _____

1.2 What is the name, title, address and phone number of the person(s) designated as a point of contact:

(a) for the electric utility portions of this report?

(1)

Name _____ Title _____

Street _____

City _____ State _____ Zip Code _____

( )
Phone Number

(2)

Name _____ Title _____

Street _____

City _____ State _____ Zip Code _____

( )
Phone Number

(b) for the gas utility portion of this report? (If same as 1.2(a), write "SAME" under 1.2(b)(1).)

(1)

Name _____ Title _____

Street _____

City _____ State _____ Zip Code _____

( )
Phone Number

(2)

Name _____ Title _____

Street _____

City _____ State _____ Zip Code _____

( )
Phone Number

Regulatory (or Utility) Code _____

Schedule 1
General Information

2.0 CERTIFICATION

I certify that the information and data presented in this report (Schedules 1 through 12 and attachments) are true, accurate and complete to the best of my knowledge, and I hereby authorize its release for the purpose of complying with sections 116 and 309 of the Public Utility Regulatory Policies Act, Pub. L. 95-617.

Name & Title	Signature	Date

Title 18 U.S.C. 1001, makes it a crime for any person knowingly and willfully to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within his or her jurisdiction.

3.0 LEGAL RESPONSIBILITIES

3.1(a) List the covered electric utilities for which you have ratemaking authority. (If none, write "NONE" in (E1)). Covered nonregulated electric utilities should enter name on line (E1). In the case of combination utilities, i.e., those that sell both electricity and natural gas (for regulated and nonregulated utilities), list the utility twice - once each in spaces provided for question 3.1(a) and (b). For each utility listed, please assign numbers sequentially starting with 1 and enter each number under the "Utility Number" column. Each utility will be reported on by this number in subsequent schedules. For each utility listed, also indicate the corresponding utility code from the attached list of utilities.

	Name	Utility Number	Utility Code
(E1)			
(E2)			
(E3)			
(E4)			
(E5)			
(E6)			

Regulatory (or Utility) Code _____

Schedule 1

General Information

3.0 LEGAL RESPONSIBILITIES (continued)

3.1(a) continued

	Name	Utility Number	Utility Code
(E7)			
(E8)			
(E9)			
(E10)			
(E11)			
(E12)			
(E13)			
(E14)			
(E15)			
(E16)			
(E17)			
(E18)			
(E19)			
(E20)			

3.1(b) List the covered gas utilities for which you have ratemaking authority. (If none, write "NONE" in (G1).) Covered nonregulated gas utilities should enter name on line (G1). For each utility listed, assign numbers sequentially starting with the next number in the series which ended utility numbers in 3.1(a) and enter each number under the "Utility Number" column. If no utilities are listed in 3.1(a), begin numbering sequence with 1. For each utility listed, also indicate the corresponding utility code from the attached list of utilities.

	Name	Utility Number	Utility Code
(G1)			
(G2)			
(G3)			
(G4)			

Regulatory (or Utility) Code _____

Schedule 1

General Information

3.0 LEGAL RESPONSIBILITIES (continued)

3.1(b) continued

	Name	Utility Number	Utility Code
(G5)			
(G6)			
(G7)			
(G8)			
(G9)			
(G10)			
(G11)			
(GI2)			
(G13)			
(G14)			
(G15)			
(G16)			
(G17)			
(G18)			
(G19)			
(G20)			

3.2(a) List the additional electric utilities to be covered by next year's annual report. (If none, write "NONE" in space 3.2(a)(1).)

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

Regulatory (or Utility) Code _____

Schedule 1

General Information

3.0 LEGAL RESPONSIBILITIES (continued)

3.2(b) List the additional gas utilities to be covered by next year's annual report. (If none, write "NONE" in space 3.2(b)(1).)

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

3.3(a) List (by name and citation) applicable State laws and regulations which provide ratemaking authority with respect to the covered electric utilities listed in 3.1(a). Please include a list (by citation) of applicable administrative laws and procedures.

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

(b) List (by name and citation) applicable State laws and regulations which provide ratemaking authority with respect to the covered gas utilities listed in 3.1(b). Please include a list (by citation) of applicable administrative laws and procedures. (If same as 3.3(a), write "SAME" in 3.3(b)(1).)

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

Regulatory (or Utility) Code _____

Schedule 1

General Information

3.0 LEGAL RESPONSIBILITIES (continued)

3.4(a) List (by name and citation) any State laws and regulations which restrict or limit your authority to consider any standard established by PURPA sections 111(d) and 113(b). Also, describe such restrictions or limitations.

(1) _____

(2) _____

3.4(b) List (by name and citation) any State laws and regulations which restrict your authority to consider any standard established by PURPA section 303(b). Also, describe such restrictions or limitations.

(1) _____

(2) _____

Regulatory (or Utility) Code _____

Schedule 1

General Information

3.0 LEGAL RESPONSIBILITIES (continued)

3.5 Please describe the evidentiary standard applied in State judicial review of your regulatory decisions (e.g., substantial evidence, preponderance evidence, etc.).

4.0 PURPA IMPLEMENTATION PLAN

Please describe briefly your overall plan for considering the standards set forth in sections 111(d), 113(b) and 303(b) of PURPA. Please describe the plan in a general way, but include the following elements:

(1) A schedule of the anticipated commencement and completion dates for the PURPA consideration process, delineated by standard and by utility.

(2) Resources to be allocated, including budget and personnel.

(3) Procedures for satisfying requirements of sections 121 and 122 of PURPA.

Regulatory (or Utility) Code _____

Schedule 1

General Information

5.0 PLEASE COMPLETE THE FOLLOWING TABLE FOR EACH UTILITY LISTED IN QUESTIONS 3.1(a) and (b):

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
5.1	Total number of customers by class (in thousands) o Residential																
	o Industrial																
	o Commercial																
	o Other (specify) (a) _____																
	(b) _____																
5.2	kWh (Mcf) consumption of all customers for preceding calendar year (CY) o Residential																
	o Industrial																
	o Commercial																
	o Other (specify) (a) _____																
	(b) _____																

Regulatory (or Utility) Code_____

COMMON ELEMENTS FOR SCHEDULES 2-12*

(Schedule Number)

(Name of Standard)

Introduction

- For Schedule 2 - Cost-of-Service Standard

Section 111(d)(1) of PURPA establishes the Cost-of-Service Standard which states: "Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115(a)."

Section 115(a) states: "In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111(d)(1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a non-regulated electric utility). Such methods shall to the maximum extent practicable--

"(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

"(2) permit identification of differences in cost-incurrence attributable to differences in customer demand, and energy components of cost. In prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if--

"(A) additional capacity is added to meet peak demand relative to base demand; and

"(B) additional kilowatt-hours of electric energy are delivered to electric consumers."

- For Schedule 3 - Declining Block Rates Standard

Section 111(d)(2) of PURPA establishes the Declining Block Rates Standard which states: "The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period."

- For Schedule 4 - Time-of-Day Rates Standard

Section 111(d)(3) of PURPA establishes the Time-of-Day Rates Standard which states: "The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115(b)."

Section 115(b) states: "In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates."

* The Introduction for each schedule and common questions 1.0-9.5 are presented only once in this Federal Register Notice to save space. Questions 1.0 through 9.5 are required to be answered for each of the schedules 2 through 12 and will appear in each schedule 2 though 12 of Form ERA-166, when distributed for completion by State Regulatory Authorities and covered nonregulated utilities.

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

(Name of Standard)

Regulatory (or Utility) Code_____

- For Schedule 5 - Seasonal Rates Standard

Section 111(d)(4) of PURPA establishes the Seasonal Rates Standard which states: "The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility."

- For Schedule 6 - Interruptible Rates Standard

Section 111(d)(5) of PURPA establishes the Interruptible Rates Standard which states: "Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member."

- For Schedule 7 - Load Management Techniques Standard

Section 111(d)(6) of PURPA establishes the Load Management Techniques Standard which states: "Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will--

"(A) be practicable and cost-effective, as determined under section 115(c),

"(B) be reliable, and

"(C) provide useful energy or capacity management advantages to the electric utility."

Section 115(c) states: "In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if--

"(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

"(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique."

- For Schedule 8 - Master Metering Standard

Section 113(b)(1) of PURPA establishes the Master Metering Standard which states: "To the extent determined appropriate under section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this title."

Section 115(d) states: "Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if--

"(1) there is more than one unit in such building,

"(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

"(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building."

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

(Name of Standard)

Regulatory (or Utility) Code_____

- For Schedule 9 - Automatic Adjustment Clauses Standard

Section 113(b)(2) of PURPA establishes the Automatic Adjustment Clauses Standard which states: "No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e)."

Section 115(e) states:

"(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if--

"(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

"(B) such clause is reviewed not less often than every two years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies.

"(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other items).

"(3) As used in this subsection and section 113(b), the term 'automatic adjustment clause' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate."

- For Schedule 10 - Information to Consumers Standard

Section 113(b)(3) of PURPA establishes the Information to Consumers Standard which states: "Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f)."

Section 115(f) states:

"(1) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer--

"(A) not later than sixty days after the date of commencement of service to such consumer or ninety days after the standard established by section 113(b)(3) is adopted with respect to such electric utility, whichever last occurs, and

"(B) not later than thirty days (sixty days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility).

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

Regulatory (or Utility) Code_____

(Schedule Number)

(Name of Standard)

"(2) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year--

"(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

"(B) an identification of any classes whose rates are not summarized.

"Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate.

"(3) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility)."

- For Schedule 11 - Procedures for Termination of Electric (Gas) Service Standard

Section 113(b)(4) (for electric) and section 303(b)(1) (for natural gas) of PURPA establish the Termination of Service Standard which states: "No electric (gas) utility may terminate electric (natural gas) service to any electric (gas) consumer except pursuant to procedures described in section 115(g)/304(a)."

Sections 115(g)/304(a) state: "The procedures for termination of service referred to in section 113(b)(4)/303(b)(1) are procedures prescribed by the State regulatory authority (with respect to electric (gas) utilities for which it has ratemaking authority) or by the nonregulated utility which provide that--

"(1) no electric (gas) service to an electric (gas) consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

"(2) during any period when termination of service to an electric (gas) consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric (gas) utility for which it has ratemaking authority) or nonregulated electric (gas) utility, and such consumer establishes that--

"(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

"(B) he is able to pay for such service but only in installments,

"such service may not be terminated.

"Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers."

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

(Name of Standard)

Regulatory (or Utility) Code_____

- For Schedule 12 - Advertising Standard

Section 113(b)(5) (for electric) and section 303(b)(2) (for natural gas) of PURPA establish the Advertising Standard which states: "No electric (gas) utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h)/304(b)."

Sections 115(h)/304(b) state:

"(1) For purposes of this section and section 113(b)(5)/303--

"(A) The term 'advertising' means the commercial use, by an electric (gas) utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric (gas) consumers.

"(B) The term 'political advertising' means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

"(C) The term 'promotional advertising' means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric (gas) utility or the selection or installation of any appliance or equipment designed to use such utility's service.

"(2) For purposes of this subsection and section 113(b)(5)/303, the terms 'political advertising' and 'promotional advertising' do not include--

"(A) advertising which informs electric (natural gas) consumers how they can conserve energy (natural gas) or can reduce peak demand for electric (natural gas) energy,

"(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

"(C) advertising regarding service interruptions, safety measures, or emergency conditions,

"(D) advertising concerning employment opportunities with such utility,

"(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

"(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon."

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

Regulatory (or Utility) Code_____

(Name of Standard)

INSTRUCTIONS FOR COMPLETING THIS SCHEDULE

Please complete the following questions regarding the consideration and determination of this standard. These questions are to be answered for each covered utility listed in 3.1 of Schedule 1. A "GENERIC" option has been provided to allow for reporting on multiple utilities covered in a generic consideration process for this standard. In the following space list the utility number of each utility covered under such a generic process.

- Utilities covered in a single generic consideration process for this standard:

1_____	6_____
2_____	7_____
3_____	8_____
4_____	9_____
5_____	10_____

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

Regulatory (or Utility) Code _____

(Schedule Number)

(Name of Standard)

INSTRUCTIONS FOR COMPLETING QUESTION 1.0

A. Insert in the appropriate space for questions 1.1 and 1.2, the number from among the status codes provided below which most correctly reflects the status of each utility for this standard.

Status Codes:

0. Consideration process not begun.
1. Hearing scheduled.
2. Consideration process started but hearing not completed
3. Hearing completed
4. Official determination made to adopt or implement standard.
5. Official determination made to not adopt or implement standard.
6. Judicial review of determination to adopt or implement standard is pending.
7. Judicial review of determination to not adopt or implement standard is pending.
8. Standard put into effect by utility(ies).
9. Standard implemented and subsequently discontinued.

B. If the status code for any utility is designated as 0, 1 or 2 in question 1.1, complete only 1.1 and 1.2 of this schedule for such utility.

C. If the status code for any utility is designated as 3 in question 1.1, answer only questions 1.1, 1.2, 4.1, 4.2, 4.3, 4.4 and 4.5 of this schedule for such utility.

D. Complete question 1.3 by attaching a copy of each determination made and/or order issued and by designating the number of the attachment provided.

1.0 What is the status of your consideration process for each utility listed in questions 3.1 (a) and (b) of schedule 1: (a) as of the end of the reporting period, and (b) as of November 9, 1978?

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.1	Status as of end of reporting period																
1.2	Status as of Nov. 9, 1978																
1.3	Attachment Number																
1.4	Number of customers covered by order (in thousands): • Residential																
	• Industrial																
	• Commercial																
	• Other (Specify) _____																

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't) Regulatory (or Utility) Code _____

(Schedule Number)

(Name of Standard)

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.5	Sales in preceding year of customers covered by this order (in thousands of dollars) • Residential																
	• Industrial																
	• Commercial																
	Other (specify) _____																

INSTRUCTIONS FOR COMPLETING QUESTION 2.0

A. Answer question 2.0 for each utility whose status code is:

1. 4-9 for the answer to question 1.1 of this schedule; and

2. 4-9 for the answer to question 1.2 of this schedule.

B. Answer question 2.0 by using the following code:

Y = yes N = no

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
2.0	In your opinion, have your proceedings and actions substantially conformed to the requirements of Title I (or III) of PURPA for this standard																

INSTRUCTIONS FOR COMPLETING QUESTION 3.0

A. Answer question 3.0 for each utility whose status is:

1. 4-9 for the answer to question 1.1 of this schedule; and

2. 1, 2, or 3 for the answer to question 1.2 of this schedule

B. Answer question 3.0 by using the following code:

Y = yes N = no

Regulatory (or Utility) Code _____

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)
(Schedule Number)

(Name of Standard)

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
3.0	In your opinion, have your proceedings and actions satisfied the requirements of PURPA Title I (or II) to the maximum extent practicable for the portion of the consideration process conducted after Nov. 9,1978?																

INSTRUCTIONS FOR COMPLETING QUESTION 4.0

A. Answer questions 4.1 through 4.11 by using the following code:

Y = yes N = no

B. Answer questions 4.12 and 4.13 for each utility that offered opportunity for intervenor compensation (i.e., answer to question 4.4 is "Y") by filling in the appropriate number.

C. Answer questions 4.14, 4.15 and 4.16 for each utility for which a determination of appropriate impact was made (i.e., answer to question 4.6 is "Y").

D. In questions 4.14, 4.15 and 4.16 please indicate the type of effect this standard is expected to have on the items listed by using the following code:

P = Positive effect N = Negative effect Z = No effect

4.0 In your consideration process, which of the following steps have you taken?

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
4.1	Prior public notice of hearing(s)																
4.2	Hearing(s) open to the public																
4.3	Opportunity for Intervenor Participation																
4.4	Opportunity for intervenor compensation																

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't) Regulatory (or Utility) Code _____

(Schedule Number)

(Name of Standard)

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
4.5	Testimony or other evidence taken																
4.6	Determination made that it is appropriate to implement this standard to carry out the 3 purposes of PURPA																
4.7	Determination made that it is appropriate not to implement this standard to carry out the 3 purposes of PURPA																
4.8	Decision rendered based upon findings included in such determination and evidence presented during hearing																
4.9	Proposed or interim written determination																
4.10	Final written determination																
4.11	Determination made available to public																
4.12	Total No. of intervenors compensated *																
4.13	Total dollar amount paid to intervenors *																
4.14	Conservation of energy supplied by electric or gas utility **																
4.15	Optimization of the efficiency of use of facilities and resources by electric or gas utility **																
4.16	Equitable rates to electric or gas consumers **																

* See instruction "C" to this question
** See instruction "D" to this question

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number) Regulatory (or Utility) Code_____

(Name of Standard)

INSTRUCTIONS FOR COMPLETING QUESTION 5.0

A. Answer question 5.0 by using the following code:

Y = yes N = no

B. For each utility whose answer to 5.0 is "Y" complete question 5.1 by designating the number of the attachment provided which briefly describes the method(s) utilized for determining the cost-benefits for this standard and any estimated savings and costs for any time period used.

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
5.0	Was a cost-benefit analysis performed for this standard?																
5.1	Attachment number																

INSTRUCTIONS FOR COMPLETING QUESTION 6.0

A. Answer question 6.0 for each utility for which the answer to question 5.0 is "y".

B. Answer question 6.0 by using the following code:

Y = yes N = no

6.0 Do the cost-benefit methods utilized determine cost:

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
6.1	To the utility?																
6.2	To the consumer?																

Regulatory (or Utility) Code _____

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

(Name of Standard)

INSTRUCTIONS FOR COMPLETING QUESTION 7.0

A. Answer question 7.1 for each utility whose:

1. Status code is 4-9 for the answer to question 1.1 of this schedule; and

2. Answer to question 4.14 is "P", "N" or "Z".

B. Answer question 7.2 for each utility whose:

1. Status code is 4-9 for the answer to question 1.1 of this schedule; and

2. Answer to question 4.15 is "P", "N" or "Z".

C. Answer question 7.3 for each utility whose:

1. Status code is 4-9 for the answer to question 1.1 of this schedule; and

2. Answer to question 4.16 is "P", "N" or "Z".

D. Answer question 7.0 by using the following code:

C = conclusive evidence

I = inconclusive evidence

N - minimal or no evidence

E. For each utility whose answer to 7.1, 7.2 or 7.3 is "C", "I", or "N", complete question 7.4 by designating the number of the attachment which briefly describes the type of evidence presented about the impacts of this standard.

7.0 What was the quality of the evidence presented about the impact of the standard on each of the following:

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
7.1	Conservation of energy supplied by electric (or gas) utility																
7.2	Optimization of the efficiency of use of facilities and resources by electric (or gas) utility																
7.3	Equitable rates to electric (or gas) consumers																
7.4	Attachment No.																

Regulatory (or Utility) Code _____

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

(Name of Standard)

INSTRUCTIONS FOR COMPLETING QUESTION 8.0

A. Answer question 8.0 for each utility whose status code is 4,6, 8 or 9 for the answer to question 1.1 of this schedule.

B. Answer question 8.0 by using the following code:

Y = yes N = no

C. For each utility whose answer is "Y" to question 8.3 please indicate next to each of the "Y" answers the time period (in months) over which phased implementation will be (has been) completed.

8.0 Which methods of implementation are to be (were) utilized for this standard?

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
8.1	Mandatory • Residential																
	• Commercial																
	• Industrial																
	• Other (specify) (a) _____																
	(b) _____																
8.2	Voluntary • Residential																
	• Commercial																
	• Industrial																

Regulatory (or Utility) Code _____

COMMON ELEMENTS FOR SCHEDULES 2-12 (con't)

(Schedule Number)

(Name of Standard)

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	• Other (specify) (a) _____																
	(b) _____																
8.3	Phased																

INSTRUCTIONS FOR COMPLETING QUESTION 9.0

A. Answer question 9.0 for each utility whose status code is 4,6,8 or 9 for the answer to question 1.1 of this schedule.

B. Answer question 9.0 by using the following code:

Y = yes N = no

9.0 Which methods of monitoring impact of this standard are to be (were) utilized?

		Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
9.1	Consumer Questionnaire																
9.2	Follow-up public hearings																
9.3	Changes in system characteristics																
9.4	Revenue levels																
9.5	Other (specify): (a) _____																
	(b) _____																

Regulatory (or Utility) Code_____

Schedule 2 (con't)

Cost-of-Service Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4-9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the quality of the evidence considered when the determination was made either to implement or not to implement this standard.

B. Answer question 10.0 using the following code:

C = conclusive evidence
I = inconclusive evidence
N = minimal or no evidence

C. Complete question 10.4 by designating the number of the attachment provided which briefly describes the type(s) of costing methods permitted for developing cost-of-service estimates.

10.0 What was the quality of the evidence regarding this standard with respect to the following:

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Class load data from:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.11	Utility's own system																
10.12	Another utility system, i.e., transferred load data																
10.2	Marginal costs for utilities using:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.21	Long-run costs (including capacity costs)																
10.22	Short-run costs (operating and fuel costs)																
10.3	Causes of Capacity Expansion:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.31	Need to maintain system reliability																
10.32	Opportunity to reduce total costs of electricity service																
10.33	Need to replace existing capacity																
10.4	Attachment number																

Regulatory (or Utility) Code _____

Schedule 2 (con't)

Cost-of-Service Standard

INSTRUCTIONS FOR COMPLETING QUESTION 11.0

A. Answer question 11.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 11.0 solicits information regarding the characteristics of the Cost-of-Service Standard you implemented.

B. Answer question 11.0 using the following code:

Y = yes N = no

C. For each utility whose answer is "Y" to question 11.12 please indicate next to each of the "Y" answers the time horizon (in months) over which future costs will be calculated.

11.0 Does your Cost-of-Service Standard require the following?

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.1	The use of any of the following types of cost data in determining cost-of-service:																
11.11	Embedded costs																
11.12	Future costs (specify time horizon)																
11.13	Marginal costs																
11.14	Other (specify) (a) _____																
	(b) _____																
11.2	Use of residential load data of the following types:																
11.21	Actual usage (individually metered)																
11.22	Statistical sample																
11.23	Transfer data from other utility(ies)																

Regulatory (or Utility) Code _____

Schedule 2 (con't)

Cost-of-Service Standard

	Characteristic	Utility															
		Generic.	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.
11.24	Other (specify) (a) _____																
	(b) _____																
11.3	Use of load data for all classes other than residential of the following types:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.31	Actual usage (individually metered)																
11.32	Statistical Sample																
11.33	Transfer data from other Utility(ies)																
11.34	Other (specify) (a) _____																
	(b) _____																
11.4	Allocation of cost-of-service to major customer classes																
11.5	That the following factors be taken into account in determining class cost-of-service:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.51	Total System load curve																

Regulatory (or Utility) Code _____

Schedule 2 (con't)

Cost-of-Service Standard

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.52	Class load curve																
11.53	Utility reserve margin																
11.54	Class kilowatt-hour usage																
11.55	Share of total costs which are capacity related																
11.56	Share of total costs which are energy related																
11.57	Effect of more or less peak kilowatt demand on need for construction of additional capacity																
11.58	Effect of more or less kilowatt-hour usage on need for construction of additional capacity																
11.59	Coincidence of class loads with system loads																
11.6	Specific procedures for calculating return which include:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.61	The calculation of rate base by class																

Regulatory (or Utility) Code _____

Schedule 2 (con't)

Cost-of-Service Standard

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.62	Requirement that the same rate of return be used for each class																
11.63	Use of different rate of returns for each customer class																
11.7	Provisions which require that class cost-of-service be used to determine:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.71	Customer charges																
11.72	Energy charges																
11.73	Demand charges																

INSTRUCTIONS FOR COMPLETING QUESTION 12.0

A. Answer question 12.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule.

B. Answer question 12.0 using the following code:
Y = yes N = no

12.0 Have you specified a method for the development of calculations to be used by the utility for the following subsections of CFR Title 18, Chapter I, Subchapter K, Part 290 (which addresses section 133 of PURPA):

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
12.1	307(a)(1) - Carrying charge rate																
12.2	501(a) - Accounting cost calculations																
12.3	502(a)(2) - Marginal cost calculations																

Regulatory (or Utility) Code _____

Schedule 2 (con't)

Cost-of-Service Standard

INSTRUCTIONS FOR COMPLETING QUESTION 13.0

A. Answer question 13.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule.

B. Answer question 13.0 using the following code:

Y = yes N = no

13.0 With respect to section 133 of PURPA regarding exemptions and extensions for covered utilities (CFR, Title 18, Chapter I, Subchapter K, Part 290, Subpart F), have you:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
13.1	Established a procedure for commenting or concurring on a request by the utility?																
13.2	Established a procedure for requesting an exemption or extension on the utility's behalf?																
13.3	Planned for such a request or concurred in the utility's request in:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
13.31	This reporting year?																
13.32	The next reporting year?																

Regulatory (or Utility) Code _____

Schedule 3 (con't)

Declining Block Rates Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4-9 for questions 1.1 of this schedule. Question 10.0 solicits information regarding the quality of the evidence considered when the determination was made either to implement or not to implement this standard.

B. Answer question 10.0 using the following code:

C = conclusive evidence
I = inconclusive evidence
N - minimal or no evidence

10.0 What was the quality of the evidence regarding this standard with respect to the following:

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Extent to which demand costs are included in energy charge for:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.11	Residential class																
10.12	Commercial class																
10.13	Industrial class																
10.2	The change in load curve characteristics arising from a change in the way demand costs are billed for the:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.21	Residential class																
10.22	Commercial class																
10.23	Industrial class																
10.3	The impact of declining block rates on kilowatt-hour usage for the:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.31	Residential class																
10.32	Commercial class																
10.33	Industrial class																

Regulatory (or Utility) Code _____

Schedule 3 (con't)

Declining Block Rates Standard

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.4	The impact of declining block rates on kilowatt demand for the:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.41	Residential class																
10.42	Commercial class																
10.43	Industrial class																

INSTRUCTIONS FOR COMPLETING QUESTION 11.0

A. Answer question 11.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 11.0 solicits information regarding the characteristics of the Declining Block Rates Standard you implemented.

B. Answer question 11.0 using the following code:

Y = yes N = no

11.0 Does your Declining Block Rates Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.1	Recovery of the following costs through the energy component of the declining block rate:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.11	Fuel and purchased power																
11.12	Production operation expenses (other than fuel costs and purchased power)																
11.13	Production maintenance expenses																

Regulatory (or Utility) Code _____

Schedule 3 (con't)

Declining Block Rates Standard

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.14	Operation and maintenance expenses (other than production)																
11.15	Capacity costs (generation and transmission)																
11.16	Property taxes																
11.17	Return and associated income taxes																
11.18	Taxes (other than income on property taxes)																
11.19	Special facilities costs																
11.2	Separate demand and customer charges used for:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.21	Residential rates																
11.22	Commercial rates																
11.23	Industrial rates																
11.24	Other (specify) (a) _____																
	(b) _____																

Regulatory (or Utility) Code_____

Schedule 3 (con't)

Declining Block Rates Standard

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.3	An energy rate which is based on changes in energy costs alone for:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.31	Residential class																
11.32	Commercial class																
11.33	Industrial class																
11.34	Other (specify) (a)_____																
	(b)_____																

Regulatory (or Utility) Code_____

Schedule 4 (con't)

Time-of-Day Rates

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4-9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the quality of the evidence considered when the determination was made either to implement or not to implement this standard.

B. Answer question 10.0 using the following code:

C = conclusive evidence
I = inconclusive evidence
N = minimal or no evidence

10.0 What was the quality of the evidence regarding this standard with respect to the following:

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Time-related variation in cost-of-service assessment utilizing:																
10.11	System lambda																
10.12	Class demand elasticity*																
10.13	Long-term incremental operating cost																
10.2	Identification of periods where system lambda was higher than its daily average																
10.3	Adequacy of procedure to identify hours of the day and days of the week where system lambda was higher than its daily (weekly) average																
10.4	Assessment of both capacity and energy costs of providing service for:																
10.41	An increase in peak demand																
10.42	An increase in kilowatt-hours of service																

*Elasticity of demand is the ratio of the percentage change in the quantity demanded to the percentage change in price.

Regulatory (or Utility) Code_____

Schedule 4 (con't)

Time-of-Day Rates

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.43	Adequacy of procedures used to determine the capacity and energy costs of providing service to an increase in peak demand																
10.44	Adequacy of procedures used to determine the capacity and energy costs of providing service to an increase in kilowatt-hours of service																
10.5	Costs and benefits:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.51	Benefits in generation fuel savings																
10.52	Benefits in total generation cost savings																
10.53	Benefits in shift from scarce fuel usage																
10.54	Benefits in future capacity requirements																
10.55	Costs of metering and billing																
10.6	Benefits exceeded costs of implementing standard																
10.7	Resolution of possible over or under collection of revenue requirements																

Regulatory (or Utility) Code_____

Schedule 4 (con't)

Time-of-Day Rates

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.8	Causes of capacity expansion:																
10.81	Need to maintain system reliability																
10.82	Opportunity to reduce total costs of electricity service																
10.83	Need to replace existing capacity																

INSTRUCTIONS FOR COMPLETING QUESTION 11.0

A. Answer question 11.0 for each utility whose status is 4, 6, 8 or 9. for question 1.1 of this schedule. Question 11.0 solicits information regarding the characteristics of the Time-of-Day Rates Standard you implemented.

B. Answer question 11.0 using the following code:

Y = yes N = no

11.0 Does your Time-of-Day Rates Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.1	A demand charge for:																
11.11	One period																
11.12	Two periods																
11.13	Three periods or more																
11.2	An energy charge for:																
11.21	One period																
11.22	Two periods																
11.23	Three periods or more																
11.3	A customer charge																

Regulatory (or Utility) Code_____

Schedule 5 (con't)

Seasonal Rates Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4-9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the quality of the evidence considered when the determination was made either to implement or not to implement this standard.

B. Answer question 10.0 using the following code:

C = conclusive evidence
I = inconclusive evidence
N = minimal or no evidence

10.0 What was the quality of the evidence regarding this standard with respect to the following:

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Cost data:																
10.11	Monthly peak period system lambda is higher than its annual average																
10.12	Adequacy of the method used to identify the months for which the peak value of system lambda is above its annual average																
10.13	The capacity and energy costs of providing service to an increase in peak demand																
10.14	Adequacy of procedures used to determine the capacity and energy costs of providing service to an increase in peak demand																
10.15	Capacity and energy costs of providing service to an increase in kilowatt-hours of service																
10.16	Adequacy of procedures used to determine the capacity and energy costs of providing an increase in kilowatt-hours of service																

Regulatory (or Utility) Code_____

Schedule 5 (con't)

Seasonal Rates Standard

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.17	The months of the year for which average system operating cost was above annual average operating cost																
10.2	Effects:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.21	Benefits in generator fuel savings																
10.22	Benefits in total operating cost savings																
10.23	Benefits in capacity																
10.24	Cost of billing																
10.3	Class demand elasticity*																
10.4	Causes of capacity expansion:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.41	Need to maintain system reliability																
10.42	Opportunity to reduce total costs of electricity service																
10.43	Need to replace existing service																

*Elasticity of demand is the ratio of the percentage change in the quantity demanded to the percentage change in price.

Regulatory (or Utility) Code_____

Schedule 6 (con't)

Interruptible Rates Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4-9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the quality of the evidence considered when the determination was made either to implement or not to implement this standard.

B. Answer question 10.0 using the following code:

C = conclusive evidence
I = inconclusive evidence
N = minimal or no evidence

10.0 What was the quality of the evidence regarding this standard with respect to the following:

	Type of Evidence	Generic	Utility 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Costs:																
10.11	Demand costs associated with providing firm service by rating period																
10.12	Energy costs associated with providing firm service by rating period																
10.13	Customer costs associated with providing firm service by rating period																
10.14	Energy costs associated with providing interruptible service by rating period																
10.15	Customer costs associated with providing interruptible service by rating period																
10.2	Impacts:																
10.21	On potential industrial customers																
10.22	On potential commercial customers																

Regulatory (or Utility) Code _____

Schedule 6 (con't)

Interruptible Rates Standard

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.23	On utility expansion plans																
10.24	On customer rates																
10.3	Other:																
10.31	Optimal amount of interruptible load																
10.32	Potential magnitude of interruptible load																
10.33	Coincidence of interruptible class peak load with system peak																
10.4	Causes of Capacity Expansion:																
10.41	Need to maintain system reliability																
10.42	Opportunity to reduce total costs of electricity service																
10.43	Need to replace existing capacity																

Regulatory (or Utility) Code_____

Schedule 6 (con't)

Interruptible Rates Standard

INSTRUCTIONS FOR COMPLETING QUESTION 11.0

A. Answer question 11.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 11.0 solicits information regarding the characteristics of the Interruptible Rates Standard you implemented.

B. Answer question 11.0 using the following code:

Y = yes N = no

11.0 Does your Interruptible Rates Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.1	Criteria for initiating interruption which take into account the following:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.11	System peak exceeding critical level																
11.12	Reserve margin falling below predetermined level																
11.13	Peaking energy which is constrained																

Regulatory (or Utility) Code_____

Schedule 7 (con't)

Load Management Techniques Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4-9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the quality of the evidence considered when the determination was made either to implement or not to implement this standard.

B. Answer question 10.0 using the following code:

C = conclusive evidence
I = inconclusive evidence
N = minimal or no evidence

10.0 What was the quality of the evidence regarding this standard with respect to the following:

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Utility costs associated with implementation of load management techniques:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.11	Installed costs																
10.12	Operating and maintenance costs																
10.2	Reliability of load management techniques:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.21	Life Expectancy																
10.22	Frequency of failure																
10,23	Duration of failure																
10.3	Cost savings to the utility in terms of:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.31	Capacity																
10.32	Energy																
10.33	Scarce fuels																

Regulatory (or Utility) Code_____

Schedule 7 (con't)

Load Management Techniques Standard

	Type of Evidence	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.4	Benefits to customers:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.41	When special load management rates are in place																
10.42	In the absence of load management rates																
10.5	Customer acceptability:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.51	Residential																
10.52	Commercial																
10.53	Industrial																

INSTRUCTIONS FOR COMPLETING QUESTION 11.0

A. Answer question 11.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 11.0 solicits information regarding the characteristics of the Load Management Techniques Standard you implemented.

B. Answer question 11.0 using the following code:

Y = yes N = no

11.0 Does your Load Management Techniques Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.1	The utility to offer any of the following:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.11	Time switches																
11.12	Load limiters to control the maximum electric demand of an appliance																

Regulatory (or Utility) Code__ ____

Schedule 7 (con't)

Load Management Techniques Standard

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
11.13	Utility load controlled devices for customer appliances																
11.14	Energy storage systems with solar																
11.15	Energy storage systems without solar																
11.2	The utility to offer such load management devices as are shown to:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.21	Reduce maximum kilowatt-hour demand on the utility																
11.22	Provide long-run cost savings which will exceed the long-run costs of implementation																
11.3	Load management rates:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
11.31	Load control rates for utility controlled devices																
11.32	Load control rates without utility control																
11.33	Rates with separate demand charge																
11.34	Solar rates for customers with storage																

Regulatory (or Utility) Code_____

Schedule 8 (con't)

Master Metering Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the characteristics of the Master Metering Standard you adopted.

B. Answer question 10.0 using the following code:

Y = yes N = no

10.0 Does your Master Metering Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Restriction or prohibition of master metering for a new building whenever:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.11	There is more than one unit in the building																
10.12	The occupant of each unit has control over a portion of the electric energy used in such unit																
10.13	The long-run benefits to the electric consumer in the building exceed the costs of purchasing and installing separate meters																
10.2	That costs other than those of purchasing and installing separate meters must be considered in determining applicability of standard																
10.3	Special exclusions for:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.31	Publicly-owned buildings																
10.32	Residential buildings																
10.33	Commercial buildings																

Regulatory (or Utility) Code_____

Schedule 9 (con't)

Automatic Adjustment Clauses Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the characteristics of the Automatic Adjustment Clauses Standard you adopted.

B. Answer question 10.0 using the following code:

Y = yes N = no

10.0 Does your Automatic Adjustment Clauses Standard require or permit the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Provisions which permit automatic adjustments for the following types of costs:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.11	Oil																
10.12	Natural gas																
10.13	Purchased power																
10.14	Power purchases during emergencies (e.g., oil embargo, coal strike)																
10.2	A review process for automatic adjustment clauses which:	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
10.21	Specifies full evidentiary hearings to be held not less often than every 2 years to insure maximum economies in operations and purchases which affect automatic adjustment clause rates																
10.22	Specifies full evidentiary hearings to be held not less often than every 4 years on efficiency incentives for use of scarce fuels																

Regulatory (or Utility) Code _____

Schedule 9 (con't)

Automatic Adjustment Clauses Standard

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.23	Addresses general utility management practices																
10.24	Addresses audit of automatic adjustment clause billings																

Regulatory (or Utility) Code _____

Schedule 10 (con't)

Information to Consumers Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the characteristics of the Information to Consumers Standard you adopted.

B. Answer question 10.0 using the following code:

Y = yes N = no

10.0 Does your Information to Consumers Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Transmittal of information to consumers of existing rate schedule and any rate schedule applied for:																
10.11	Not later than 60 days after commencement of service to consumers or 90 days after standard adopted, whichever occurs last																
10.12	Not later than 30 days (60 days in case of utility which uses a bimonthly billing system) after utility's application for any change in rate schedule applicable to consumers																
10.2	Transmittal to consumers not less frequently than once each year of:																
10.21	A summary of the existing rate schedules applicable to each of the major consumer classes for which there is a separate rate																
10.22	Identification of any classes whose rates are not summarized																
10.3	Transmittal to consumers, upon request, of statement of actual consumption (or degree-day adjusted consumption) for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility)																

Regulatory (or Utility) Code _____

Schedule 11 (con't)

Termination of Service Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4, 6, 8 or 9 for question 1.1 of this schedule. Question 10.0 solicits information regarding the characteristics of the Termination of Service Standard you adopted.

B. Answer question 10.0 using the following code:

Y = yes N = no

10.0 Does your Termination of Service Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Prior notice of termination with:																
10.11	Two or more such notices to be issued																
10.12	The last such notice to be issued 7 or more days prior to termination date																
10.13	Notification to individual occupants of master metered building if service is to be shut off																
10.14	Special procedures for notifying elderly and handicapped consumers																
10.2	A notice of rights and remedies be provided to the consumer with all termination notices																
10.3	Identification to customers of procedures and individuals for handling disputes																
10.4	Providing repayment information to customers																

Regulatory (or Utility) Code _____

Schedule 11 (con't)

Termination of Service Standard

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.5	That specifically-defined procedures for considering possible dangers to customer health be adhered to before service is terminated																
10.6	Service not be terminated when:																
10.61	Consumer has not received notice (including notice of rights and remedies) at least 7 days prior to termination date																
10.62	Consumer has not had at least 7 days to dispute the reasons for termination																
10.63	Consumer health exists and consumer is unable to pay in accordance with requirements of utility's billing																
10.64	Consumer health danger exists and consumer can only afford to pay in installments																

Regulatory (or Utility) Code _____

Schedule 12 (con't)

Advertising Standard

INSTRUCTIONS FOR COMPLETING QUESTION 10.0

A. Answer question 10.0 for each utility whose status is 4, 6, 8 or 9 or question 1.1 of this schedule. Question 10.0 solicits information regarding the characteristics of the Advertising Standard you adopted.

B. Answer question 10.0 using the following code:

Y = yes N = no

10.0 Does your Advertising Standard require the following:

	Characteristic	Utility															
		Generic	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
10.1	Definitions of political and promotional advertising which conform with those given in section 115(h) or 304(b) of PURPA																
10.2	Prohibitions on the recovery of political and promotional advertising expenses from rate-payers																
10.3	Requirements that political and promotional advertising expenses be recovered from shareholders or other owners																

BILLING CODE 6450-01-C

List of Utility Codes

Electric Utilities—Investor-Owned

Name of Company and Code

Alabama Power Company—000195
Appalachian Power Company (VA)—000733
Appalachian Power Company (WV)—000722
Arizona Public Service Company—000803
Arkansas-Missouri Power Company (AR)—000821
Arkansas-Missouri Power Company (MO)—000815
Arkansas Power & Light Company—000814
Atlantic City Electric Company—000963
Baltimore Gas & Electric Company—001167
Bangor Hydro-Electric Company—001179
Black Hills Power & Light Company (SD)—019545
Black Hills Power & Light Company (WY)—001415
Blackstone Valley Electric Company—001796
Boston Edison Company—001998
Brockton Edison Company—002267
Cambridge Electric Light Company—002886
Carolina Power & Light Company (NC)—003046
Carolina Power & Light Company (SC)—003059
Central Hudson Gas & Electric Corporation—003249
Central Illinois Light Company—003252
Central Illinois Public Service Company—003253
Central Louisiana Electric Company—003265
Central Maine Power Company—003266
Central Power & Light Company—003278
Central Telephone & Utilities Corporation (CO)—003286
Central Telephone & Utilities Corporation (KS)—003285
Central Vermont Public Service Corporation—003292
Cincinnati Gas & Electric Company—003542
Cleveland Electric Illuminating Company—003755
Columbus and Southern Ohio Electric Company—004062
Commonwealth Edison Company (IL)—004110
Community Public Service Company—004116
Connecticut Light & Power Company—004176
Consolidated Edison Company of New York—004226
Consumers Power Company—004254
CP National Corporation (CA)—002837
CP National Corporation (NV)—002845
CP National Corporation (OR)—002846
CP National Corporation (UT)—002847
Dallas Power & Light Company—004737
Dayton Power & Light Company—004922
Delmarva Power & Light Company (DE)—005027
Delmarva Power & Light Company of Maryland—005029
Delmarva Power & Light Company of Virginia—005032
Detroit Edison Company—005109
Duke Power Company (NC)—005416
Duke Power Company (SC)—005447
Duquesne Light Company—005475
El Paso Electric Company (NM)—005657
El Paso Electric Company (TX)—005701
Empire District Electric Company (KS)—005907
Empire District Electric Company (MS)—005860
Empire District Electric Company (OK)—005917
Fall River Electric Light Company—006166
Florida Power Corporation—006455
Florida Power & Light Company—006452
Georgia Power Company—007140
Green Mountain Power Corporation—007601
Gulf Power Company—007801
Gulf States Utilities Company (LA)—007807
Gulf States Utilities Company (TX)—007806
Hartford Electric Light Company—008211
Hawaiian Electric Company, Inc.—008287
Houston Lighting & Power Company—008901
Idaho Power Company (ID)—009191
Idaho Power Company (OR)—009205
Illinois Power Company—009208
Indiana & Michigan Electric Company (IN)—009249
Indiana & Michigan Electric Company (MI)—009271
Indianapolis Power & Light Company—009273
Interstate Power Company (IA)—009392
Interstate Power Company (IL)—009332
Iowa Electric Light & Power Company—009423
Iowa-Illinois Gas & Electric Company (IA)—009438
Iowa-Illinois Gas & Electric Company (IL)—009437
Iowa Power & Light Company—009429
Iowa Public Service Company—009435
Iowa Southern Utilities Company—009432
Jersey Central Power & Light Company—009726
Kansas City Power & Light Company (KS)—010011
Kansas City Power & Light Company (MO)—010000
Kansas Gas & Electric Company—010005
Kansas Power & Light Company—010015
Kentucky Power Company—022053
Kentucky Utilities Company—010171
Kingsport Power Company—010334
Lake Superior District Power Company (MI)—010591
Lake Superior District Power Company (WI)—010615
Long Island Lighting Company—011172
Louisiana Power & Light Company—011241
Louisville Gas & Electric Company—011249
Madison Gas & Electric Company—011479
Massachusetts Electric Company—011804
Metropolitan Edison Company—012390
Minnesota Power & Light Company—012647
Mississippi Power Company—012686
Mississippi Power & Light Company—012685
Missouri Edison Company—012693
Missouri Power & Light Company—012696
Missouri Public Service Company—012698
Missouri Utilities Company—012701
Monongahela Power Company (OH)—012791
Monongahela Power Company (WV)—012796
Montana-Dakota Utilities Company (MT)—012820
Montana-Dakota Utilities Company (ND)—012819
Montana-Dakota Utilities Company (SD)—012823
Montana-Dakota Utilities Company (WY)—012824
Montana Power Company—012825
Narragansett Electric Company—013212
Nevada Power Company—013407
New Bedford Gas & Edison Light Company—013415
New Mexico Electric Service Company—013474
New Orleans Public Service, Inc.—013478
New York State Electric & Gas Corporation—013511
Niagara Mohawk Power Corporation—013573
Northern Indiana Public Service Company—013756
Northern States Power Company (MN)—013781
Northern States Power Company (ND)—013778
Northern States Power Company (SD)—013779
Northern States Power Company (WI)—013780
Northwestern Public Service Company—013809
Ohio Edison Company—013998
Ohio Power Company—014006
Oklahoma Gas & Electric Company—014003
Old Dominion Power Company—014084
Orange & Rockland Utilities—014154
Otter Tail Power Company—014232
Pacific Gas & Electric Company—014328
Pacific Power & Light Company (CA)—014326
Pacific Power & Light Company (ID)—014327
Pacific Power & Light Company (MT)—014329
Pacific Power & Light Company (OR)—014350
Pacific Power & Light Company (WA)—014331
Pacific Power & Light Company (WY)—014332
Pennsylvania Electric Company—014711
Pennsylvania Power & Light Company—014715
Pennsylvania Power Company—014716
Philadelphia Electric Company—014940
Portland General Electric Company—015248
Potomac Edison Company (MD)—015263
Potomac Edison Company (VA)—015266
Potomac Edison Company (WV)—015265
Potomac Electric Power Company (DC)—015270
Potomac Electric Power Company (MD)—015268
Public Service Company of Colorado—015466
Public Service Company of Indiana—015470
Public Service Company of New Hampshire—015475
Public Service Company of New Mexico—015473
Public Service Company of Oklahoma—015474
Public Service Electric and Gas Company—015478
Puget Sound Power & Light Company—015500
Rochester Gas & Electric Corporation—016183
Rockland Electric Company—016213
St. Joseph Light & Power Company—017881
San Diego Gas & Electric Company—016609
Savannah Electric & Power Company—016687
Sierra Pacific Power Company (CA)—017161
Sierra Pacific Power Company (NV)—017160
South Carolina Electric & Gas Company—017539
Southern California Edison Company—017609

Southern Indiana Gas & Electric Company—017633
Southwestern Electric Power Company (AR)—017676
Southwestern Electric Power Company (LA)—017698
Southwestern Electric Power Company (TX)—017735
Southwestern Electric Service Company—017699
Southwestern Public Service Company (NM)—017528
Southwestern Public Service Company (OK)—017536
Southwestern Public Service Company (TX)—017718
Tampa Electric Company—018454
Texas Electric Service Company—018729
Texas Power & Light Company—018763
Toledo Edison Company—018997
Tucson Gas & Electric Company—019259
UGI-Luzerne Electric Division—019452
Union Electric Company (IA)—019656
Union Electric Company (IL)—019655
Union Electric Company (MO)—019436
Union Light, Heat & Power Company—019946
United Illuminating Company—019497
Upper Peninsula Power Company—019578
Utah Power & Light Company (ID)—019666
Utah Power & Light Company (UT)—019659
Utah Power & Light Company (WY)—019661
Virginia Electric & Power Company (NC)—019868
Virginia Electric & Power Company (VA)—019876
Virginia Electric & Power Company (WV)—019875
Washington Water Power Company (ID)—020145
Washington Water Power Company (WA)—020169
West Penn Power Company—020387
West Texas Utilities Company—020404
Western Massachusetts Electric Company—020455
Wheeling Electric Company—020521
Wisconsin Electric Power Company (MI)—020161
Wisconsin Electric Power Company (WI)—020847
Wisconsin Power & Light Company—020856
Wisconsin Public Service Corporation (MI)—020166
Wisconsin Public Service Corporation (WI)—020860

Electric Utilities—Publicly-Owned

Name of Company and Code

Albany Water, Gas & Light Commission—000230
Anaheim-Electrical Division—000590
Austin Electric Department—001015
Bristol Electric System (TN)—002247
Burbank Public Service Department—002507
Central Lincoln People's Utility District (OR)—003264
Chattanooga Electric Power Board—003408
Clarksville Department of Electricity (TN)—003704
Clatskanie People's Utility District (OR)—028541
Cleveland Division of Light & Power (OH)—003762
Cleveland Utilities (TN)—003758
Colorado Springs Department of Public Utilities—003989
Decatur Electric Department (AL)—004958
Detroit Public Lighting Department—005107
Eugene Water & Electric Board (OR)—006022
Fayetteville Public Works Commission (NC)—006235
Florence Electricity Department (AL)—006422
Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Board (FL)—006909
Garland Electric Department—006958
Glendale Public Service Department (CA)—007294
Greeneville Light & Power System (TN)—007625
Greenville Utilities Commission (NC)—007639
Huntsville Utilities (AL)—009094
Imperial Irrigation District (CA)—009216
Independence Power & Light Department (MO)—009231
Jackson Utility Division-Electric Department (TN)—009612
Jacksonville Electric Authority (FL)—009617
Johnson City Power Board (TN)—009777
Kansas City Board of Public Utilities (KS)—009996
Knoxville Utility Board (TN)—010421
Lafayette Utility System (LA)—009006
Lakeland Department of Electricity and Water (FL)—010623
Lansing Board of Water & Light (MI)—010704
Lincoln Electric System (NB)—011018
Los Angeles Department of Water and Power—011208
Lower Colorado River Authority—011269
Lubbock Power & Light (TX)—011292
Memphis Light, Gas & Water Division (TN)—012293
Modesto Irrigation District (CA)—012745
Muscatine Power & Water (IA)—013143
Nashville Electric Service (TN)—013216
Nebraska Public Power District—013337
Omaha Public Power Districtg—014123
Orlando Utilities Commission (FL)—014186
Palo Alto Electric Utility (CA)—014401
Pasadena Water & Power Department (CA)—014524
Power Authority of New York—015296
Port Angeles Light & Water Department (WA)—015231
Public Utility District No. 1 of Benton County (WA)—001579
Public Utility District No. 1 of Chelan County (WA)—003413
Public Utility District No. 1 of Clark County (WA)—003660
Public Utility District No. 1 of Cowlitz County (WA)—004442
Public Utility District of Franklin County (WA)—006716
Public Utility District of Grant County (WA)—007504
Public Utility District No. 1 of Grays Harbor County (WA)—007548
Public Utility District No. 1 of Lewis County (WA)—010944
Public Utility District No. 1 of Snohomish County (WA)—017470
Puerto Rico Water Resources Authority—015497
Richmond Power & Light (IN)—015989
Riverside Public Utilities (CA)—016088
Rocky Mount Public Utilities (NC)—016226
Sacramento Municipal Utility District (CA)—016534
Salt River Project Agricultural Improvement and Power District (AZ)—016572
San Antonio Public Service Board (TX)—016604
San Francisco Public Utilities Commission—016614
Santa Clara Electric Department (CA)—016655
Seattle City Light Department (WA)—016868
South Carolina Public Service Authority—017541
Springfield City Utilities (MO)—017833
Springfield Utilities Board (OR)—017839
Springfield Water, Light & Power Department (IL)—017828
Tacoma Public Utilities-Light Division (WA)—018429
Taunton Municipal Lighting Plant (MA)—018488
Tallahassee, City of (FL)—018445
Turlock Irrigation District (CA)—019281
Vernon Municipal Light Department (CA)—019798
Wilson Utilities Department (NC)—020785

Gas Utilities—Investor-Owned

Name of Company and Code

Alabama Gas Corporation—000190
Alaska Gas & Service Company—028542
Anadarko Production Company—000587
Arizona Public Service Company—000803
Arkansas-Louisiana Gas Company—000810
Arkansas-Oklahoma Gas Company—000813
Arkansas Western Gas Company—000819
Atlanta Gas Light Company—000959
Baltimore Gas & Electric Company—001167
Bay State Gas Company—028543
Boston Gas Company—001999
Brooklyn Union Gas Company—002288
Cabot Corporation Utility Division—002733
Carnegie Natural Gas Company—008042
Carolina Pipeline Company—028544
Cascade Natural Gas Corporation—003139
Central Illinois Light Company—003252
Central Illinois Public Service Company—003253
Chattanooga Gas Company—003409
Cheyenne Light, Fuel and Power Company—003461
Cincinnati Gas and Electric Company—003542
Cities Service Gas Company (covered by NECPA only)—003575
City Gas Company of Florida—003628
Columbia Gas of Kentucky, Inc.—004017
Columbia Gas of New York, Inc.—004019
Columbia Gas of Ohio, Inc.—004020
Columbia Gas of Pennsylvania, Inc.—004022
Columbia Gas of Virginia, Inc.—004023
Columbia Gas of West Virginia, Inc.—004025
Connecticut Light & Power Company—004176
Connecticut Natural Gas Corporation—004181
Consolidated Edison Company of New York, Inc.—004226
Consolidated Gas Supply Corporation—004226
Consumers Power Company—004254
CP National Corporation (NV)—002845
CP National Corporation (OR)—002846
Dayton Power & Light Company—004922
Delmarva Power & Light Company (DE)—005027

East Ohio Gas Company—005579
Elizabethtown Gas Company—005765
Entex, Inc.—005922
Equitable Gas Company—005939
Florida Gas Company—006435
Gas Company of New Mexico—017655
Gas Light Company of Columbus—007003
Gas Service Company—028545
Greeley Gas Company—028546
Illinois Power Company—009208
Indiana Gas Company—009256
Inland Gas Company—009301
Inter City Gas Limited—009321
Intermountain Gas Company—028547
Interstate Power Company—009392
Iowa Electric Light & Power Company—009423
Iowa-Illinois Gas & Electric Company (IA)—009438
Iowa-Illinois Gas & Electric Company (IL)—009437
Iowa Power & Light Company—009429
Iowa Public Service Company—009435
Iowa Southern Utilities Company—009432
Kansas-Nebraska Natural Gas Company—010022
Kansas Power & Light Company—010011
Kokomo Gas & Fuel Company—010439
Laclede Gas Company Consolidated—010554
Lone Star Gas Company—001157
Long Island Lighting Company—011172
Louisiana Gas Service Company—011233
Louisville Gas & Electric Company—011249
Lowell Gas Company—011267
Madison Gas & Electric Company—011479
Michigan Consolidated Gas Company—021531
Michigan Gas Utilties Company—012430
Michigan Power Company—012433
Minnesota Gas Company—012643
Mississippi Valley Gas Company—012691
Missouri Public Service Company—012698
Mobile Gas Service Corporation—012739
Montana-Dakota Utilties Company—012820
Montana Power Company—012825
Mountain Fuel Supply Company—013043
Nashville Gas Company—013217
National Fuel Gas Distribution Corporation—013247
National Gas and Oil Company—013262
New Jersey Natural Gas Company—013459
New Orleans Public Service, Inc.—013478
New York State Electric & Gas Corporation—013511
Niagara Mohawk Power Corporation—013573
North Carolina Natural Gas Corporation—028548
North Central Public Service Company—013698
North Shore Gas Company—013729
Northern Illinois Gas Company—013755
Northern Indiana Public Service Company—013756
Northern Natural Gas Company—013767
Northern States Power Company (MN)—013781
Northern States Power Company (ND)—013778
Northern States Power Company (WI)—013780
North Penn Gas Company—013723
Northwest Natural Gas Company—013796
Northwestern Public Service Company—013809
Oklahoma Natural Gas Company—014070
Orange & Rockland Utilities—014157
Pacific Gas & Electric Company—014328
Panhandle Eastern Pipeline Company—014423
Pennsylvania Gas & Water Company—014713
Peoples Gas, Light and Coke Company—014767
Peoples Gas System—014770
Peoples Natural Gas Company—014772
Peoples Natural Gas Division of Northern Natural Gas Company—014774
Penn Fuel Gas, Inc.—014684
Philadelphia Electric Company—014940
Piedmont Natural Gas Company—015024
Pioneer Natural Gas Company—015080
Providence Gas Company—015442
Public Service Company of Colorado—015466
Public Service Company, Inc. of North Carolina—028549
Public Service Electric and Gas Company—015478
Rochester Gas & Electric Corporation—016183
San Diego Gas & Electric Company—016609
South Carolina Electric & Gas Company—017539
South Jersey Gas Company—028550
Southeastern Michigan Gas Company—017601
Southern California Gas Company—028551
Southern Connecticut Gas Company—028552
Southern Indiana Gas & Electric Company—017633
Southern Union Gas Company—031874
Southwest Gas Corporation—017677
Terre Haute Gas Corporation—028553
Tucson Gas & Electric Company—019259
T.W. Phillips Gas and Oil Company—028554
UGI Corporation—019390
Union Gas System—019442
Union Light, Heat & Power Company—019446
United Cities Gas Company—028555
Virginia Electric & Power Company—019876
Washington Gas Light Company—020149
Washington Natural Gas Company—020156
Washington Water Power Company (ID)—020145
Washington Water Power Company (WA)—020169
West Ohio Gas Company—020384
Western Kentucky Gas Company—020454
Wisconsin Fuel & Light Company—028556
Wisconsin Gas Company—020850
Wisconsin Natural Gas Company—020853
Wisconsin Power & Light Company—020856
Wisconsin Public Service Corporation (MI)—020166
Wisconsin Public Service Corporation (WI)—020860

Gas Utilities—Publicly-Owned

Name of Company and Code

Citizens Gas & Coke Utility (IN)—003602
City of Richmond, Virginia, Department of Public Utilities—015984
City Public Service Board (San Antonio)—016604
Colorado Springs Department of Public Utilities—003989
Long Beach Gas Department—028557
Memphis Light, Gas & Water Division—012293
Metropolitan Utilities District of Omaha—014127
Philadelphia Gas Works—014943
Springfield City Utilities (MO)—017833

Rural Electric Cooperatives

Name of Company and Code

Appalachian Electric Cooperative—000727
Chugach Electric Association—003522
Clay Electric Cooperative—003757
Cumberland Electric Membership Corporation—004624
Duck River Electric Membership Corporation—005399
First Electric Cooperative Corporation—006342
Flint Electrical Membership Corporation—006411
Four County Electric Power Association—006641
Gibson County Electric Membership Corporation—007174
Green River Electric Corporation—007572
Henderson-Union Rural Electric Cooperative Corporation—008400
Jackson Electric Membership Corporation—009601
Lee County Electric Cooperative—010817
Meriwether Lewis Electric Cooperative—012330
Middle Tennessee Electric Membership Corporation—012470
Moon Lake Electric Association—012860
North Georgia Electric Membership Corporation—013716
Pendernales Electric Cooperative—014026
Pennyrile Rural Electric Cooperative Corporation—014724
Singing River Electric Power Association—017252
South Central Power Company—017548
Southern Maryland Electric Cooperative, Inc.—017637
Southern Pine Electric Power Association—017647
Southwest Louisiana Electric Membership Corporation—017684
Southwest Tennessee Electric Membership Corporation—017694
Tri-County Electric Membership Corporation—019162
Umatilla Electric Cooperative Association—019325
Upper Cumberland Electric Membership Corporation—019574
Volunteer Electric Cooperative—019898
Warren Rural Electric Cooperative—020130
West Kentucky Rural Electric Cooperative Cooperation—020377

Federal Agencies

Name of Company and Code

Bonneville Power Administration—001738
Tennessee Valley Authority—018642
Western Area Power Administration—028501

Code and Public Utility Commissions

1. Alabama Public Service Commission
2. Alaska Public Utilities Commission
3. Arizona Corporation Commission
4. Arkansas Public Service Commission
5. California Public Utilities Commission
6. Colorado Public Utilities Commission
7. Connecticut Public Utilities Control Authority
8. Delaware Public Service Commission

9. Public Service Commission of the District of Columbia
10. Florida Public Service Commission
11. Georgia Public Service Commission
12. Hawaii Public Utilities Commission
13. Idaho Public Utilities Commission
14. Illinois Commerce Commission
15. Indiana Public Service Commission
16. Iowa Commerce Commission
17. Kansas State Corporation Commission
18. Kentucky Public Service Commission
19. Louisiana Public Service Commission
20. Maine Public Utilities Commission
21. Maryland Public Service Commission
22. Massachusetts Department of Public Utilities
23. Michigan Public Service Commission
24. Minnesota Department of Public Service
25. Mississippi Public Service Commission
26. Missouri Public Service Commission
27. Montana Public Service Commission
28. Nevada Public Service Commission
29. New Hampshire Public Utilities Commission
30. New Jersey Department of Energy, Board of Public Utilities
31. New Mexico Public Service Commission
32. New York Public Service Commission
33. North Carolina Utilities Commission
34. North Dakota Public Service Commission
35. Ohio Public Utilities Commission
36. Oklahoma Corporation Commission
37. Public Utility Commissioner of Oregon
38. Pennsylvania Public Utility Commission
39. Puerto Rico Public Service Commission
40. Rhode Island Public Utilities Commission
41. South Carolina Public Service Commission
42. South Dakota Public Utilities Commission
43. Tennessee Public Service Commission
44. Tennessee Valley Authority
45. Railroad Commission of Texas
46. Texas Public Utility Commission
47. Utah Public Service Commission
48. Virginia State Corporation Commission
49. Washington Utilities and Transportation Corporation
50. West Virginia Public Service Commission
51. Wisconsin Public Service Comission
52. Wyoming Public Service Commission

Chapter II of Title 10, Code of Federal Regulations, is amended by establishing Part 463 as follows:

PART 463—ANNUAL REPORTS FROM STATES AND NONREGULATED UTILITIES ON PROGRESS IN CONSIDERING THE RATEMAKING AND OTHER REGULATORY STANDARDS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

Sec.
463.1 Purpose and scope.
463.2 Definitions.
463.3 Reporting requirement.

Authority: Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617 (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*).

§ 463.1 Purpose and scope.

This part establishes the manner in which State regulatory authorities and certain nonregulated electric and gas utilities shall report to DOE under sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) Pub. L. 95-617, 92 Stat. 3117 *et seq.*, with respect to their progress in considering the ratemaking and other regulatory standards established by sections 111(d), 113(b) and 303(b) of PURPA.

§ 463.2 Definitions.

As used in this part—

"Covered electric utilities" and "covered nonregulated electric utilities" mean those electric utilities whose total sales of electric energy for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

"Covered gas utilities" and "covered nonregulated gas utilities" mean those gas utilities whose total sales of natural gas for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

"DOE" means the Department of Energy.

"Electric utility" means any person, State agency or federal agency which sells electric energy.

"Federal agency" means an executive agency (as defined in section 105 of Title 5 of the United States Code).

"Gas utility" means any person, State agency or Federal agency engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas.

"Nonregulated electric utility" means any electric utility with respect to which no State regulatory authority has ratemaking authority.

"Nonregulated gas utility" means any gas utility with respect to which no State regulatory authority has ratemaking authority.

"Person" means an individual, partnership, corporation, unincorporated association or any other group, organization or entity.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.*

"Rate" means (a) any price, rate, charge or classification made, demanded, observed, or received with respect to the sale of electric energy by an electric utility to an electric consumer or the sale of natural gas to a gas consumer, (b) any rule, regulation, or practice respecting any such rate, charge or classification, and (c) any contract pertaining to the sale of electric energy to an electric consumer or the sale of natural gas to a gas consumer.

"Ratemaking authority" means authority to fix, modify, approve or disapprove rates.

"Sale" means a transfer to a purchaser for consideration, and when used with respect to electric energy includes any exchange of electric energy, and when used with respect to natural gas includes any exchange of natural gas.

"State" means a State, the District of Columbia, and Puerto Rico.

"State agency" means a State agency, political subdivision thereof, and any agency or instrumentality of either.

"State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility, or the sale of natural gas by any gas utility, other than by such State agency, and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

§ 463.3 Reporting requirement.

(a) Each State regulatory authority, with respect to each covered electric and gas utility for which it has ratemaking authority, and each covered nonregulated electric and gas utility shall report to DOE by November 9 of each year from 1979 through 1988 on their progress in considering the ratemaking and other regulatory standards established by sections 111(d), 113(b) and 303(b) of PURPA.

(b) The requirements of paragraph (a) of this section do not apply to the operations of an electric or gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy or natural gas for purposes of resale.

(c) The reporting period for the report required by paragraph (a) shall be the 12 month period ending June 30 of the year in which the report is due, except that the reporting period for the first report shall be November 9, 1978 to June 30, 1979.

(d) The report required by paragraph (a) must be submitted on Form ERA-166: PURPA Annual Report on Electric and Gas Utilities, as it may be revised from time to time.

[FR Doc. 79-24570 Filed 8-10-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-GL-9-AD; Amdt. 39-3527]

Detroit Diesel Allison Model 250-C28B and 250-C30 Series Engines; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacement of certain power and accessory gearbox gearshafts. The replacement substitutes gearshafts with shaft sections that increase the reliability and service life of these engine parts. This AD was prompted by a test cell engine failure during a test that was being conducted by the manufacturer.

DATES: Effective date is August 15, 1979.

ADDRESSES: The applicable engine bulletin may be obtained from Detroit Diesel Allison, Division of General Motors Corporation, Indianapolis, Indiana 46206. Copies of the service information referenced in this AD are contained in the Rules Docket, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois 60018; and at FAA Headquarters, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Don Eckert, Engineering and Manufacturing Branch, Flight Standards Division, AGL-214, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone number (312) 694-4500, extension 308.

SUPPLEMENTARY INFORMATION: There has been one instance of engine power loss due to a power and accessory drive gearbox gearshaft failure on a Detroit Diesel Allison 250-C30 engine. This failure occurred during ground testing. The cause of this failure was attributed to metal fatigue fracture resulting from high stresses in the shaft section occurring at maximum allowable starter torque. Since this condition may occur on other engines of this type design, including the 250-C28 series engines, an airworthiness directive is being issued. This AD requires parts replacement prior to an engine exceeding a finite number of attempted or completed starts.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure are impracticable and contrary to the public interest and good cause exists for making the AD effective immediately to all known operators of Bell Model 206L-1 and Sikorsky S-76 rotorcraft with Detroit Diesel Allison Model 250-C28 and 250-C30 series engines installed.

This AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 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, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following airworthiness directive:

Detroit Diesel Allison

Applies to all Model 250-C28 and 250-C30 series engines equipped with generator idler gearshaft P/N 6898980, or 6898591, or 77 tooth spur idler gearshaft P/N 6898652 installed in, but not limited to Bell 206L-1 and Sikorsky S-76 rotorcraft certificated in all categories.

Compliance required as indicated unless previously accomplished. To preclude engine power loss as a result of an accessory drive gearbox failure, remove the referenced gearshafts from service prior to reaching 9000 cycles if installed in a 250-C28 series engine and prior to reaching 2000 cycles if installed in a 250-C30 engine. For those gearshafts that are within 50 cycles of the appropriate limit on the effective date of ths AD, compliance is required within 100 cycles. A cycle is defined as an attempted or completed start. (Commercial Engine Bulletins CEB 72-2003 for the 250—C28B and CEB 72-3003 for the 250-C30 also pertain to this subject.)

This amendment becomes effective August 15, 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)); and 14 CFR 11.89.)

The Federal Aviation Administration 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 Don Eckert, Engineering and Manufacturing Branch, AGL-214, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Issued in Des Plaines, Illinois on July 31, 1979.

Wm. S. Dalton,

Acting Director, Great Lakes Region.

[FR Doc. 79-24730 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ASW-22]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area: Del Rio, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at Del Rio, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Del Rio International Airport. The circumstances which created the need for the action are the relocation of the existent nondirectional radio beacon (NDB) to 6.29 miles northwest of the airport, and the establishment of a partial instrument landing system (ILSP) to Runway 13.

EFFECTIVE DATE: 0901 G.m.t. October 4, 1979.

FOR FURTHER INFORMATION CONTACT: Manuel R. Hugonnet, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1979, a notice of proposed rule making was published in the Federal Register (44 FR 38566) stating that the Federal Aviation Administration proposed to alter the Del Rio, Tex., transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. No objections were received to the proposal. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) alters the Del Rio, Tex., transition area. This action provides controlled airspace from 700 feet above

the ground for the protection of aircraft executing instrument approach procedures to the Del Rio International Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., October 4, 1979, as follows:

In Subpart G, 71.181 (44 FR 442) the Del Rio, Tex., transition area is altered by adding the following:

Del Rio, Tex.

. . . and 2 miles each side of the 331° bearing from the LOM (Latitude 29°26'43.37" N., Longitude 100°59'20.13" W.), extending from the LOM to 8.5 miles northwest of the LOM.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

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). 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 Fort Worth, Texas, on August 2, 1979.

Paul J. Baker,

Acting Director, Southwest Region.

[FR Doc. 79-24731 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-ASW-16]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area: Wichita Falls, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at Wichita Falls, Tex. The intended effect of the action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Kickapoo Downtown Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) 3.8 miles south of the airport.

EFFECTIVE DATE: 0901 G.m.t., October 4, 1979.

FOR FURTHER INFORMATION CONTACT: Manuel R. Hugonnett, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On June 14, 1979, a notice of proposed rulemaking was published in the Federal Register (44 FR 34152) stating that the Federal Aviation Administration proposed to alter the Wichita Falls, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. We received no objections to the proposal. Except for editorial changes, this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) alters the Wichita Falls, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing established and proposed instrument approach procedures to the Kickapoo Downtown Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.m.t., October 4, 1979, as follows:

In Subpart G, 71.181 (44 FR 442), the following transition area is altered by adding the following:

Wichita Falls, Tex.

. . . and 3 miles each side of the 177° bearing from the Scotland RBN (latitude 33°47'24"N., longitude 98°29'10"W.) extending from the 20-mile radius area to 8.5 miles south of the RBN.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

The FAA 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). 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 Fort Worth, Tex., on August 1, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-24732 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-EA-14]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area & Control Zone: Rochester, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will alter the Rochester, N.Y., Transition Area and Rochester-Monroe County Airport, N.Y., Control Zone. A review of the subject controlled airspace indicates a need to increase controlled airspace. This increase will provide protection to aircraft executing the instrument approaches by increasing the controlled airspace. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 G.m.t. October 4, 1979

FOR FURTHER INFORMATION CONTACT: Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making was published in the Federal Register on Thursday, May 10, 1979, on page 27433, so as to provide additional controlled airspace protection for IFR arrivals into the Rochester, N.Y., Transition Area and Control Zone. Interested parties were given an opportunity to submit comments on the proposal. There were no objections.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subparts F & G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. October 9, 1979, as published.

(Sec. 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Issued in Jamaica, New York, on July 27, 1979.

L. J. Cardinali,

Acting Director, Eastern Region.

1. Amend § 71.171 Part 71 of the Federal Aviation Regulations (44 FR 353) in its entirety the description of the Rochester-Monroe County Airport, N.Y. control zone and substitute the following:

Within a 5.5-mile radius of the Rochester-Monroe County Airport, N.Y. (Latitude 43°07'11"N., Longitude 77°40'18"W); within 3.5 miles each side of the Rochester VORTAC 214° radial extending from the 5.5-mile radius zone to 9 miles southwest of the VORTAC; within 3 miles each side of the Rochester VORTAC 280° radial, extending from the 5.5-mile radius zone to 8.5 miles west of the VORTAC; within 2 miles each side of the Rochester ILS Localizer east course, extending from the 5.5-mile radius Zone of the LOM.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations (FR 44-442) in its entirety the description of the Rochester, New York 700 foot floor transition area and substitute the following:

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Rochester-Monroe County Airport, N.Y. (latitude 43°07'11"N., longitude 77°40'18"W.); within 3.5 miles each side of the Rochester ILS Localizer east course, extending from the 9.5-mile radius area to 11.5 miles east of the LOM; within 5 miles each side of the 141° bearing from the Briet LOM, extending from the 9.5-mile radius area to 13 miles southeast of the LOM; within 4 miles each side of the Rochester VORTAC 214° radial extending from the 9.5-mile radius area to 10.5 miles southwest of the VORTAC; within 4 miles each side of the VORTAC 280° radial extending from the 9.5-mile radius area to 10 miles west of the VORTAC; within a 5-mile radius of the Ledgedale Airpark; Brockport, N.Y. (latitude 43°10'52"N., longitude 77°54'50"W.); excluding that airspace which overlies the Rochester, N.Y. 700 foot transition area.

[FR Doc. 79-24756 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 79-CE-12]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area, Maryville, Mo.

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: The nature of this Federal aciton is to designate a 700-foot transition area at Maryville, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Maryville, Missouri Memorial Airport, utilizing the St. Joseph, Missouri VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: October 4, 1979.

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: An instrument approach procedure to the Maryville, Missouri Memorial Airport is being established utilizing the St. Joseph, Missouri VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Maryville, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 34152 of the Federal Register dated June 14, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Maryville, Missouri. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442), is amended effective 0901 G.m.t. October 4, 1979, by adding the following new transition area:

Maryville, Mo.

That airspace extending upwards from 700 feet above the surface, within a 5-mile radius of the Maryville Memorial Airport (latitude 40°21'00" N. longitude 94°54'45" W.).

(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. 11.69, Federal Aviation Regulations (14 CFR 11.69))

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 nesessary 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 August 2, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-24755 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 79-CE-11]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area, Albia, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Albia, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Albia, Iowa Municipal Airport, utilizing the Ottumwa, Iowa VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: October 4, 1979.

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: An instrument approach procedure to the Albia, Iowa Municipal Airport is being established utilizing the Ottumwa, Iowa VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Albia, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 34151 and 34152 of the Federal Register dated June 14, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Albia, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442), is amended effective 0901 G.m.t. October 4, 1979, by adding the following new transition area:

Albia, Iowa

That airspace extending upward from 700 feet above the surface, within a six (6) mile radius of the Albia Municipal Airport (latitude 40°59'40" N., longitude 92°45'46" W.).

(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. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

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 August 2, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-24734 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 79-WE-11]

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Restricted Area R-2501 by changing the internal boundaries of its four subdivisions in order to better accommodate military training missions. There are no changes to the current lateral and vertical limits of R-2501.

EFFECTIVE DATE: October 4, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch, (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to redescribe the four subdivisions of Restricted Area R-2501. This alteration does not change the current lateral and vertical limits of R-2501, however, the new subdivisions will better accommodate military operational and training objectives. Subpart B of Part 73 of the Federal Aviation Regulations was republished in the Federal Register on January 2, 1979 (44 FR 675).

Since this amendment is a minor matter on which the public would have no particular desire to comment and the FAA has determined there are immediate benefits to the Department of Defense for maintaining our National Security, I find therefore, notice and public procedure are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 675) is amended, effective 0901 G.m.t., October 4, 1979, as follows:

Under § 73.25 California R-2501N Bullion Mountains North, Calif., the boundaries are redescribed as follows:

Boundaries. Beginning at 34°30'00"N; 116°26'20"W; to 34°36'00"N; 116°28'00"W; to 34°40'30"N; 116°29'40"W; to 34°43'00"N; 116°26'20"W; to 34°43'00"N; 116°17'00"W; to 34°41'15"N; 116°04'30"W; to 34°35'30"N; 115°58'00"W; to 34°34'40"N; 115°54'55"W; to 34°34'00"N; 115°58'00"W; to 34°29'40"N; 115°58'12"W; to 34°27'30"N; 116°04'13"W; to 34°28'13"N; 116°12'20"W; to 34°32'00"N; 116°17'34"W; to the point of beginning.

R-2501S Bullion Mountains South, Calif., the boundaries are redescribed as follows:

Boundaries. Beginning at 34°28'13"N; 116°12'20"W; to 34°27'30"N; 116°04'13"W; to 34°20'09"N; 115°59'03"W; to 34°14'00"N; 115°57'00"W; to 34°14'00"N; 116°17'00"W; to 34°19'30"N; 116°20'26"W; to 34°19'30"N; 116°15'47"W; to 34°24'54"N; 116°17'52"W; to the point of beginning.

R-2501E Bullion Mountains East, Calif., the boundaries are redescribed as follows:

Boundaries. Beginning at 34°34'40"N; 115°54'55"W; to 34°33'00"N; 115°47'00"W; to 34°25'00"N; 115°47'00"W; to 34°25'00"N; 115°44'00"W; to 34°14'00"N; 115°44'00"W; to 34°14'00"N; 115°57'00"W; to 34°20'09"N; 115°59'03"W; to 34°27'30"N; 116°04'13"W; to 34°29'40"N; 115°58'12"W; to 34°34'00"N; 115°58'00"W; to the point of beginning.

R-2501 Bullion Mountains West, Calif., the boundaries are redescribed as follows:

Boundaries. Beginning at 34°30'00"N; 116°26'20"W; to 34°32'00"N; 116°17'34"W; to 34°28'13"N; 116°12'20"W; to 34°24'54"N; 116°17'52"W; to 34°19'30"N; 116°15'47"W; to 34°19'30"N; 116°20'26"W; to the point of beginning.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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). 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 Washington, D.C., on August 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-24815 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 79-WA-10]

Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of several jet routes in the vicinity of Ontario, Calif., because the Ontario VORTAC has been renamed "Paradise." This action corrects the description of several jet routes that have "Ontario, Calif." in their text.

EFFECTIVE DATE: October 4, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart B of Part 75 is to correct the description of Jet Routes J—50, J-60, J-64, J-74, J-93, J-96, J-107 and J-128 due to the renaming of the Ontario, Calif., VORTAC to Paradise (Airspace Docket No. 79-AWE-4-NR). Subpart B of Part 75 of the Federal Aviation Regulations was republished in the Federal Register on Januray 2, 1979 (44 FR 722). In order to affect that action before the next aeronautical charting date on October 4, 1979, it is necessary to immediately adopt this rule change. Accordingly, I find good cause that notice and public procedure thereon are impracticable and unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart B of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (44 FR 722) and amended (44 FR 23208) (44 FR 31169) is further amended, effective 0901 GMT, October 4, 1979, as follows:

Under § 75.100, Jet Route 50, "via Ontario, Calif.; intersection Ontario 093° and Blythe, Calif., 282° radials;" is deleted and "via Paradise, Calif.; intersection Paradise 093° and Blythe, Calif., 282° radials;" is substituted therefor.

Jet Route 60, "via Ontario, Calif.;" is deleted and "via Paradise, Calif.;" is substituted therefor.

Jet Route 64, "via Ontario, Calif.;" is deleted and "via Paradise, Calif.;" is substituted therefor.

Jet Route 74, "via Ontario, Calif.; INT of the Ontario 093°" is deleted and "via Paradise, Calif.; INT of the Paradise 093°" is substituted therefor.

Jet Route 93, "Ontario, Calif.;" is deleted and "via Paradise, Calif.;" is substituted therefor.

Jet Route 96, "via Ontario, Calif.; INT Ontario 093°" is deleted and "via Paradise, Calif.; INT Paradise 093°" is substituted therefor.

Jet Route 107, "via Ontario, Calif.;" is deleted and "via Paradise, Calif.;" is substituted therefor.

Jet Route 128, "via Ontario, Calif.;" is deleted and "via Paradise, Calif.;" is substituted therefor.

(Secs. 307(a) and 313(a)), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 655(c)); and 14 CFR 11.69).

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). 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 Washington, D.C., on August 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-24814 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 19431; Amdt. No. 1144]

14 CFR Part 97

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further,

airmen do not use the regulatory text of the SIAPs but refer to the graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective in the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised critieria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective October 4, 1979*

Aurora, IL—Arora Muni, VOR Rwy 36, Amdt. 2
Pittsfield, IL—Pittsfield Penstone Municipal, VOR/DME Rwy 13, Original Madisonville, KY—Madisonville Muni, VOR Rwy 23, Amdt. 5
Coldwater, MI—Branch County Memorial, VOR Rwy 3, Original
Coldwater, MI—Branch County Memorial, VOR Rwy 21, Amdt. 4
Niles, MI—Jerry Tyler Meml, VOR Rwy 21, Original
Morris, MN—Morris Muni, VOR Rwy 32, Amdt. 1
Columbia, MO—E.W. Cotton Woods Memorial, VOR-A, Amdt. 4
Columbia, MO—E.W. Cotton Woods Memorial, VOR-B, Amdt. 1
Hartford, WI—Hartford Muni, VOR-A, Amdt. 3
Cheyenne, WY—Cheyenne Muni, VOR-A, Amdt. 6

** * * Effective September 20, 1979*

Peru, IN—Peru Muni, VOR Rwy 36, Amdt. 1
Richmond, IN—Richmond Muni, VOR Rwy 5, Amdt. 8
Richmond, IN—Richmond Muni, VOR Rwy 23, Amdt. 8
Shelbyville, IN—Shelbyville Muni, VOR Rwy 18, Amdt. 5
Topeka, KS—Forbes Field, VOR/DME or TACAN Rwy 3, Amdt. 3
Topeka, KS—Forbes Field, VOR/DME or TACAN Rwy 21, Amdt. 3
Flint, MI—Bishop, VOR Rwy 36, Amdt. 8
Linden, MI—Prices, VOR-A, Amdt. 2
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR Rwy 11, Original
New York, NY—LaGuardia, VOR Rwy 4, Original
New York, NY—LaGuardia, VOR-B, Amdt. 14, cancelled
Spartanburg, SC—Spartanburg-Downtown Memorial, VOR-A, Original
Spartanburg, SC—Spartanburg-Downtown Memorial, VOR Rwy 17, Amdt. 6, cancelled
Spartanburg, SC—Spartanburg-Downtown Memorial, VOR/DME Rwy 35, Amdt. 5, cancelled
Memphis, TN—Memphis International, VOR Rwy 9, Original, cancelled
Memphis, TN—Memphis International, VOR Rwy 35R, Amdt. 1, cancelled
Memphis, TN—Memphis International, VOR Rwy 35L, Amdt. 1, cancelled
Lone Rock, WI—Tri-County, VOR-A, Amdt. 3
West Bend, WI—West Bend Municipal, VOR Rwy 24, Original

** * * Effective September 6, 1979*

Arcata-Eureka, CA—Arcata, VOR Rwy 13, Amdt. 3
Arcata-Eureka, CA—Arcata, VOR/DME Rwy 1, Amdt. 2
Greencastle, IN—Putnam County, VOR/DME-A, Amdt. 2
McAlester, OK—McAlester Muni, VOR-A, Amdt. 12

** * * Effective July 27, 1979*

Deadhorse, AK—Deadhorse, VOR Rwy 22, Amdt. 2

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective October 4, 1979*

Provincetown, MA—Provincetown Muni, SDF Rwy 7, Amdt. 1
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/, LOC BC Rwy 11L, Amdt. 4
Latrobe, PA—Westmoreland County, LOC (BC) Rwy 5, Amdt. 5
Appleton, WI—Outagamie County, LOC BC Rwy 21, Amdt. 1

** * * Effective September 20, 1979*

Del Rio, TX—Del Rio Intl, LOC Rwy 13, Original

** * * Effective September 6, 1979*

Denver, CO—Stapleton Intl., LOC/DME BC Rwy 17R, Amdt. 14
McAlester, OK—McAlester Muni, LOC Rwy 1, Original
Sioux Falls, SD—Joe Foss Field, LOC BC Rwy 21, Amdt. 16, cancelled

** * * Effective July 27, 1979*

Deadhorse, AK—Deadhorse, LOC/DME BC Rwy 22, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective October 4, 1979*

Nenana, AK—Nénana Muni, NDB-A, Amdt. 1
Umiat, AK—Umiat, NDB-A, Amdt. 2
Umiat, AK—Umiat, NDB-C, Original
Kewanee, IL—Kewanee Muni, NDB Rwy 1, Amdt. 2
Kewanee, IL—Kewanee Muni, NDB Rwy 9, Amdt. 2
Pittsfield, IL—Pittsfield Penstone Municipal, NDB Rwy 31, Amdt. 2
Huntingburg, IN—Huntingburg, NDB Rwy 27, Amdt. 4
Rensselaer, IN—Jasper County, NDB Rwy 18, Amdt. 2
Provincetown, MA—Provincetown Muni, NDB-A, Amdt. 4
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, NDB Rwy 4, Amdt. 12
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, NDB Rwy 29L, Amdt. 20
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, NDB Rwy 29R, Amdt. 8
Boonville, MO—Jesse Viertel Memorial, NDB Rwy 18, Amdt. 3
Latrobe, PA—Westmoreland County, NDB Rwy 23, Amdt. 8
Appleton, WI—Outagamie County, NDB Rwy 11, Original
Appleton, WI—Outagamie County, NDB Rwy 29, Original
Hartford, WI—Hartford Muni, NDB Rwy 11, Amdt. 2
Cheyenne, WY—Cheyenne Muni, NDB Rwy 26, Amdt. 11

** * * Effective September 20, 1979*

Topeka, KS—Forbes Field, NDB Rwy 13, Amdt. 1
Topeka, KS—Forbes Field, NDB Rwy 31, Amdt. 3
Detroit, MI—Detroit Metropolitan Wayne County, NDB Rwy 21R, Amdt. 7
Detroit, MI—Detroit Metropolitan Wayne County, NDB Rwy 21C, Amdt. 8

Del Rio, TX—Del Rio Intl., NDB Rwy 13, Original
Del Rio, TX—Del Rio Intl., NDB Rwy 13, Original, cancelled

** * * Effective September 6, 1979*

Arcata-Eureka, CA—Arcata, NDB-A, Amdt. 4
Champaign-Urbana, IL—University of Illinois-Willard, NDB Rwy 31, Amdt. 7
McAlester, OK—McAlester Muni, NDB Rwy 1, Original
Eagle Lake, TX—Eagle Lake, NDB Rwy 17, Original, cancelled

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

** * * Effective October 4, 1979*

Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, ILS Rwy 4, Amdt. 17
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, ILS Rwy 11R, Amdt. 1
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, ILS BC Rwy 22, Amdt. 6
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, ILS Rwy 29L, Amdt. 36
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, ILS Rwy 29R, Amdt. 3
Latrobe, PA—Westmoreland County, ILS Rwy 23, Amdt. 9
Appleton, WI—Outagamie County, ILS Rwy 3, Amdt. 9
Cheyenne, WY—Cheyenne Muni, ILS Rwy 26, Amdt. 30

** * * Effective September 20, 1979*

Topeka, KS—Forbes Field, ILS Rwy 31, Amdt. 3
Detroit, MI—Detroit Metropolitan Wayne Co., ILS Rwy 21L, Amdt. 1
Detroit, MI—Detroit Metropolitan Wayne Co., ILS Rwy 21R, Amdt. 14
St. Louis, MO—Spirit of St. Louis, ILS Rwy 7, Amdt. 6
New York, NY—LaGuardia, ILS Rwy 13, Amdt. 11

** * * Effective September 6, 1979*

Arcata-Eureka, CA—Arcata, ILS Rwy 31, Amdt. 23
Denver, CO—Stapleton Intl., ILS Rwy 35L, Amdt. 22
Denver, CO—Stapleton Intl., ILS Rwy 35R, Amdt. 4
Champaign-Urbana, IL—University of Illinois-Willard, ILS Rwy 31, Amdt. 8
Sioux Falls, SD—Joe Foss Field, ILS Rwy 21, Original

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective October 4, 1979*

Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, RADAR-1, Amdt. 28

** * * Effective September 6, 1979*

Champaign-Urbana, IL—University of Illinois-Willard, RADAR-1, Amdt. 2

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective October 4, 1979*

Sparta, MI—Sparta, RNAV Rwy 24, Original
Minneapolis, MN—Minneapolis-St. Paul Intl./Wold-Chamberlain/, RNAV Rwy 29R, Amdt. 5
Appleton, WI—Outagamie County, RNAV Rwy 29, Original

** * * Effective September 20, 1979*

Topeka, KS—Forbes Field, RNAV Rwy 13, Amdt. 1
Humboldt, NE—Humboldt Muni, RNAV-B, Amdt. 1
Lone Rock, WI—Tri-County, RNAV Rwy 27, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

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). 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 Washington, D.C. on August 3, 1979.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1979.

John S. Kern,
Acting Chief, Aircraft Programs Division.

[FR Doc. 79-24753 Filed 8-10-79; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 14

Comparative Advertising; Issuance of a Policy Statement

AGENCY: Federal Trade Commission.

ACTION: Issuance of a Policy Statement.

SUMMARY: This Policy Statement articulates the Commission's position on comparative advertising. It is based on an investigation which the Commission's staff conducted of industry trade associations and the advertising media regarding their comparative advertising policies.

In essence, the Commission's Statement makes three points. First, the Commission encourages comparative advertising which names, or makes reference to, competitors. However, the Commission requires clarity and, if necessary, disclosure to avoid deception of the consumer. Second, industry codes and interpretations which prohibit certain advertising practices, such as "disparagement" or "disparagement of competitors" may operate as a restriction on comparative advertising and are subject to challenge by the Commission. Third, industry codes and interpretations which impose a higher standard of substantiation for comparative claims than for unilateral claims are inappropriate and should be revised.

The Commission issued the Policy Statement because it believed that the industry would benefit from a restatement of the agency's views on the matter.

DATES: The Policy Statement is effective on August 13, 1979.

FOR FURTHER INFORMATION CONTACT: Mitchell Paul, Staff Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. (202) 724-1471.

Accordingly, § 14.15 of title 16 is added to the Code of Federal Regulations and reads as follows.

§ 14.15 In regard to comparative advertising.

(a) *Introduction.* The Commission's staff has conducted an investigation of industry trade associations and the advertising media regarding their comparative advertising policies. In the course of this investigation, numerous industry codes, statements of policy, interpretations and standards were examined. Many of the industry codes and standards contain language that could be interpreted as discouraging the use of comparative advertising. This Policy Statement enunciates the Commission's position that industry self-regulation should not restrain the use by advertisers of truthful comparative advertising.

(b) *Policy Statement.* The Federal Trade Commission has determined that it would be of benefit to advertisers, advertising agencies, broadcasters, and self-regulation entities to restate its current policy concerning comparative advertising.[1] Commission policy in the area of comparative advertising encourages the naming of, or reference to competitors, but requires clarity, and, if necessary, disclosure to avoid deception of the consumer. Additionally, the use of truthful comparative advertising should not be restrained by broadcasters or self-regulation entities.

(c) The Commission has supported the use of brand comparisions where the

[1] For purposes of this Policy Statement, comparative advertising is defined as advertising that compares alternative brands on objectively measurable attributes or price, and identifies the alternative brand by name, illustration or other distinctive information.

bases of comparision are clearly identified. Comparative advertising, when truthful and nondeceptive, is a source of important information to consumers and assists them in making rational purchase decisions. Comparative advertising encourages product improvement and innovation, and can lead to lower prices in the marketplace. For these reasons, the Commission will continue to scrutinize carefully restraints upon its use.

(1) *Disparagement.* Some industry codes which prohibit practices such as "disparagement," "disparagement of competitors," "improper disparagement," "unfairly attaching," "discrediting," may operate as a restriction on comparative advertising. The Commission has previously held that disparaging advertising is permissible so long as it is truthful and not deceptive. In *Carter Products, Inc.*, 60 F.T.C. 782, *modified*, 323 F.2d 523 (5th Cir. 1963), the Commission narrowed an order recommended by the hearing examiner which would have prohibited respondents from disparaging competing products through the use of false or misleading pictures, depictions, or demonstrations, "or otherwise" disparaging such products. In explaining why it eliminated "or otherwise" from the final order, the Commission observed that the phrase would have prevented

> respondents from making truthful and non-deceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products. 60 F.T.C. at 796.

Industry codes which restrain comparative advertising in this manner are subject to challenge by the Federal Trade Commission.

(2) *Substantiation.* On occasion, a higher standard of substantiation by advertisers using comparative advertising has been required by self-regulation entities. The Commission evaluates comparative advertising in the same manner as it evaluates all other advertising techniques. The ultimate question is whether or not the advertising has a tendency or capacity to be false or deceptive. This is a factual issue to be determined on a case-by-case basis. However, industry codes and interpretations that impose a higher standard of substantiation for comparative claims than for unilateral claims are inappropriate and should be revised.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-24878 Filed 8-10-79; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 153

Navajo-Hopi Joint Use Area Grazing; Revision of Regulations to Allow for Grazing Permits Pending Relocation

August 8, 1979.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: Revision of grazing regulations so as to issue permits to person awaiting relocation for the grazing of a limited number of livestock.

DATE: August 13, 1979.

FOR FURTHER INFORMATION CONTACT: Lynn Montgomery, Acting Project Officer, Bureau of Indian Affairs, P.O. Box 1889, Flagstaff, AZ. 86001; 602/774-5261.

The principal author of these regulations is David E. Jones, Indian Affairs Division, Office of the Solicitor, Washington, D.C. 20240; 202/343-9331.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on August 18, 1978, 43 FR 36847, to allow for the issuance of permits to persons awaiting relocation for the grazing of a limited number of livestock.

In response to the notice, one comment was made by the Navajo Tribe, the proponents of the revision, and numerous comments were offered by the Hopi Tribe challenging the authority to promulgate such a proposal. The question of the authority of the Secretary of the Interior with respect to grazing matters in the former Joint Use Area had also been raised by the Hopi Tribe before the District Court in the supplemental proceeding, *Sekaquaptewa v. MacDonald*, Civ. No. 579 Pct (JAW), D. Az. Comparable comments made by the Hopi Tribe in the rulemaking had also been submitted to the Court in several memoranda. On November 30, 1978, the District Court handed down a decision. The decision affirmed the Secretary's authority to regulate grazing in the former Joint Use Area. Because the decision addressed points raised by the Hopi Tribe concerning the Secretary's authority, it thus dealt with the comments submitted by the Tribe within the initial comment period which challenged the exercise of such authority. Specific consideration of the Tribe's initial comments in promulgation of the revision has been foreclosed.

The Navajo Tribe's comment that the revision should not be limited to only one-half the grazing capacity being issued to persons awaiting relocation was also dealt with in the Court's decision. The Court stated that the issuance of permits to members of one tribe must be limited to one-half the grazing capacity.

Revision of the rulemaking in light of views expressed by the Court in its decision of November 30, 1978, is also required. Changes are necessitated in § 153.1(h), "persons awaiting relocation," to add another criterion that such a person shall have been grazing livestock on the date of entry of the Judgment of Partition, February 10, 1977; in § 153.20(b), to add a sentence after the second sentence to establish a limitation on the number of permitted livestock so as not to exceed the number the person was grazing on the date of the entry of the Partition Judgment; and in § 153.20(e), to add several provisions for the expiration of a permit—if and when the person discontinues grazing livestock—and reduction of the number of permitted livestock. The language added to the last subsection is taken verbatim from the decision of the Court. Because these additions are required as a matter of law, comment on them is unnecessary for publication to become effective.

Three changes were also informally proposed to the revision so as to further limit permits. Several revisions were proposed to be added to § 153.20(b): (1) to limit the number of permitted livestock to a subsistence level, (2) to clarify that the permit applicant must furnish information concerning the need for livestock and (3) that dietary and household needs are the factors, along with the previously indicated criteria, for the decision on numbers of livestock to be permitted to a person. And rather than for a five year term as initially proposed, the provisions in §§ 153.9 and 153.20(e) were proposed to be revised to limit permits to a one year term, subject to renewal. These changes were considered minor so that general public comment was unnecessry to publication to become effective. Instead of such public comment, the comments of the chairmen of the two affected tribes were sought before proceeding to final

rulemaking. Comments were received both in writing and at a meeting held in Flagstaff, Arizona on July 25, 1979, at the Flagstaff Administrative Office. The comments made by the two tribes in response to the second request for comments went beyond the limited changes being proposed. However, given the nature of those comments it is appropriate to indicate, in general, their substance and our consideration of them. The Hopi Tribe is of the view that the District Court's decision of November 30, 1978, established a precondition for the issuance of permits. In that decision in expressing its views on the then proposed revisions to the regulations the Court indicated,

". . . limitations which exist with respect to the Secretary's authority to issue grazing permits to the Navajo in parts of the Joint Use Area partitioned to the Hopi wherein livestock carrying capacity has been determined and the grazing potential has been restored."

It is their position that the grazing capacity must first be determined and the range restored before permits can be issued to persons awaiting relocation. Grazing carrying capacity has been established but the range has not, except in limited areas, been restored. However, because permits to persons awaiting relocation are only being proposed for one-half the carrying capacity, we do not view range restoration as a precondition for the issuance of permits. Stocking rates at one-half the carrying capacity will permit the restoration of the range. Given the definition of carrying capacity in § 153.1(i), even stocking rates at full capacity would also allow for range restoration.

The other comments of the two tribes with respect to the proposed revision are generally directed at the definition of persons awaiting relocation, § 153.1(h), and the new section providing for the issuance of permits to such persons, § 153.20. The Hopi Tribe would like to see the definition of a person awaiting relocation tightened so that only persons who have made a binding commitment to relocate would be eligible. The Navajo, on the other hand, advocate the deletion of the eligibility criteria in § 153.1(h) (1) and (2), the ones requiring listing on the Bureau of Indian Affairs enumeration and livestock inventory. Retention of these two criteria serves as a means of limiting eligibility. These lists have been relied on in the past by the Bureau for numbers of persons and livestock in the Joint Use Area. However, to open eligibility for a permit to only persons who have made a binding commitment to relocate would not allow the Project Officer sufficient flexibility in dealing expeditiously with the issuance of permits. The principal reason behind promulgation of this revision to the regulations is to attempt to minimize the social, economic and psychological effects faced by persons who are forced to relocate, whether those persons have voluntarily agreed to relocate or not. Thus, to adopt the Hopi proposal, although a sensible one in terms of inducing persons to voluntarily relocate, would be to unduly restrict the purpose for which the revisions are being promulgated.

One phrase is being deleted from the criterion in § 153.1(h)(3) so as to leave the criterion requiring only that the person be eligible for relocation. The deleted phrase added an unnecessary qualification to this standard.

The Hopi Tribe takes issue with the definition of "carrying capacity" in § 153.1(i), use of the enumeration in § 153.1(j) and the reliability of the livestock inventory in § 153.1(h). The carrying capacity, they contend, should be that which the District Court in the supplemental proceeding establishes. If the Secretary of the Interior under the Navajo-Hopi Settlement Act, 25 U.S.C. § 640–18, has the authority to regulate grazing on the range and to restore the range to the maximum extent feasible, then he would also have the authority to establish the carrying capacity of the range. The District Court can review that determination and can set a different one if it is to find that the one established by the Secretary is arbitrary. The other two terms that the Tribe takes issue with are ones which have been relied on by this agency in the past. Although similar information may now be available from the Navajo-Hopi Relocation Commission, it is not unreasonable to continue to rely on the information derived from the previous polling so long as there is no indication that it is clearly in error.

The Hopi Tribe also takes issue with the provisions in § 153.7 and § 153.8 which authorize the Project Officer, rather than the Tribe, to determine the type of livestock grazed by persons awaiting relocation and prohibit a tribe charging persons awaiting relocation fees different from those charged their members. They object to the preemption of their authority to specify the type of livestock on the ground that the Hopi Tribal Council may wish to establish a policy of encouraging their members to build up their herds of particular types of animals or species. The inevitable intermixing of livestock within a range unit by persons awaiting relocation would prohibit implementation of such a policy. They also contend that the requirement that fees charged be the same would also prohibit the institution of such a policy of encouraging members to improve their herds. The Secretary, under the orders of the District Court in the supplemental proceeding, is charged with ensuring that the civil rights of the persons in the former Joint Use Area are protected. The charging of different fees or allowing the Tribe to specify the type of livestock could lead to a deprivation of such rights. Furthermore, there are practical means of allowing the Hopi Tribe or its members to achieve the objectives they seek without modifying the provisions of the regulations. Thus, we are inclined not to modify the proposed revision.

The Hopi Tribe would also like to see § 153.8 modified so that a permit would not be issued or one renewed unless a person had paid all fees in advance. We believe the present provisions of the regulations are sufficient to accomplish this end.

Under the section to be added authorizing the issuance of permits to persons awaiting relocation, § 153.20, both tribes have offered comments. The Hopi Tribe believes that the number of livestock permitted a person must be limited to the lowest number the person has had, irrespective of any particular time. The regulations as revised by the comment of the District Court in its November 30, 1978 decision, specify that the person will be limited to the number owned as of February 10, 1977. Also, the Settlement Act in section 14(a), 25 U.S.C. § 640d–13(a), provides that persons affected by partitioning of the lands may not increase the livestock in their herd. We do not believe that the Hopi proposal is required as a matter of law, nor do we believe that it would be capable of effective enforcement because at any one time the Project Officer would have to know the number of livestock a person owns and such information is not that readily available.

While the Hopi Tribe takes issue with the limitation of subsistence because it is an undefined term, the report prepared at the direction of the Project Officer for the environmental impact statement for livestock reduction contains sufficient information to permit the establishment of a formula for determining subsistence. To adopt such a formula as a basic guide, allowing persons who believe that their subsistence level is in excess of that to prove otherwise, is not unreasonable in the circumstances present here.

The Hopi Tribe would also like to see only heads of households receive

permits. Under the Settlement Act, §§ 14 and 15, 25 U.S.C. §§ 640d–13 and 14, it is heads of households that are to receive benefits and reimbursement of moving expenses. We are of the view, however, that the requirement that a person be eligible for relocation, § 153.1(h)(3), is a sufficient restraint on the granting of permits so as not to warrant a change as the Tribe advocates.

The Hopi recommendation that the final paragraph of the section be revised to include persons who have discontinued grazing as well as persons that discontinue grazing would seem to be covered by the requirements of § 153.1(h). If a person during the year that they have a permit disposes of all their livestock, then that is covered by the present language of the paragraph. Thus, we see no need to revise the language.

The Navajo Tribe advocates that the period during which permits may be issued be enlarged to extend past the time provided for relocation in the Settlement Act. Their argument is that some persons will in all probability not be relocated by that time. If this should occur, it would be an appropriate matter to address at that time.

The Hopi Tribe suggests that the final phrase in the first paragraph of § 153.20(e) "unless otherwise extended" should be deleted. It is recognized that if the period provided for relocation is extended, other changes in the regulations may also be warranted at that time. Therefore, the phrase is deleted as presently unnecessary.

On August 30, 1978, the District Court entered an Interim Partition Decree re-establishing, with the exception of two relatively small areas, the same partition boundary as was set in the Judgment of Partition entered on February 10, 1977. On April 18, 1979, the Court entered a final Judgment of Partition readopting the same boundary. The District Court in the decision of November 30th makes reference to the Decree of Partition as fixing the maximum number of livestock which a person may be permitted to graze. However, the date of entry of the final Judgment of Partition is being used for these regulations. With few exceptions the number of livestock permitted to persons awaiting relocation will be the same with either date.

It has been determined that the rule revisions do not meet the criteria of significance established by Executive Order 12044 (43 FR 12661, March 23, 1978) and that a regulatory analysis is not required. *See* revision to 43 CFR Pt. 14—Departmental Proceedings, 43 FR 58292–58301 (December 13, 1978). It has also been determined that promulgation of these revisions does not constitute a major federal action having a significant effect on the human environment for which the preparation of an environmental impact statement is required.

These revisions will take effect on August 13, 1979. In order to continue with the livestock reduction and range restoration programs, the normally required 30-day effective date waiting period is being waived. The waiting period would unduly retard the issuance of permits and the continued orderly reduction of excess livestock and restoration of the range. Once persons have been issued permits they will then be on notice of the actual number of excess livestock they must dispose of and the program of purchasing livestock will be available for the acquisition of those animals.

Accordingly, the following sections of 25 CFR Pt. 153 are revised to provide as follows:

(1) Section 153.1 is amended by adding subparagraphs (h), (i), (j), (k), and (l).

§ 153.1 Definitions.

* * * * *

(h) "Person awaiting relocation" means a resident of the former Joint Use Area who meets each of the following criteria: (1) is listed on the Bureau of Indian Affairs enumeration; (2) has a livestock inventory listed with the project officer; (3) is eligible for relocation under the Settlement Act; and (4) was grazing livestock on the date of the entry of the Judgment of Partition, April 18, 1979.

(i) "Carrying capacity" means the maximum stocking rate possible without inducing damage to vegetation or related resources.

(j) "BIA enumeration" means the list of persons living on and improvements located within the former joint use area obtained by door-to-door interviews by the project officer's staff.

(k) "Livestock inventory" means the list maintained by the project officer of livestock owned by persons having customary grazing use in the former joint use area.

(l) "Settlement Act" means the Act of December 22, 1974, 88 Stat. 1712, 25 U.S.C. §§ 640d–6400d–24, in which the U.S. District Court for the District of Arizona was authorized to partition the joint use area lands equally between the Navajo and Hopi Tribes; and in which the Secretary of the Interior is directed to immediately commence the reduction of livestock grazing on the joint use area and to complete reduction to carrying capacity, to restore the range to the maximum extent feasible, and to survey, monument, and fence the partition boundary.

(2) Section 153.6, Grazing on range units authorized by permit is revised by adding references to the new final section. As revised, it will provide as follows:

§ 153.6 Grazing on range units authorized by permit.

Grazing use on range units is authorized only by a grazing permit. The project officer shall assign grazing privileges to each tribe for their respective reservation lands within the former joint use area and/or shall allocate grazing in accordance with § 153.20. Grazing use by tribal enterprises will be permitted and permits may be issued in the name of the tribe. The project officer will issue permits to persons or enterprises based on the determination by the respective tribes or pursuant to § 153.20.

(3) Section 153.7, Kind of livestock, is revised to add a reference to the new section. It would provide as follows:

§ 153.7 Kind of livestock.

Unless preempted by the project officer's action under § 153.20, each tribe may determine, subject to the carrying capacity, the kind of livestock that may be grazed on the range units within their reservation lands.

(4) Section 153.8; Grazing fees, is revised to add a reference in subsection (a) to the new final section. As revised, it would read as follows:

§ 153.8 Grazing fees.

(a) The respective tribal grazing bodies may determine whether grazing fees will be charged and the rate to be charged for the use, subject to the provisions of § 153.20.

* * * * *

(5) Section 153.9, Duration of grazing permits, is revised to add a reference to the new section. As revised, it would read as follows:

§ 153.9. Duration of grazing permits.

Each tribe may determine the maximum duration of grazing permits not to exceed one year per permit period and subject to § 153.10(b) and § 153.20.

(6) Section 153.13, Payment of tribal fees, is also proposed to be revised to add a reference to the new section which establishes a limitation on the assessment of fees in certain instances. As revised, it reads as follows:

§ 153.13 Payment of tribal fees.

Subject to the provisions of § 153.20, fees and taxes exclusive of annual grazing rental provided for in § 153.8 which may be assessed by the respective tribes in connection with grazing permits shall be billed for by the respective tribe and paid annually in advance to the designated tribal official. Failure to make payments will subject the grazing permit to cancellation and may disqualify the permittee from receiving future permits so long as he is delinquent.

(7) Finally, a new section to provide for the issuance of grazing permits to persons awaiting relocation as added. The section provides as follows:

§ 153.20 Grazing privileges of persons awaiting relocation.

Any person awaiting relocation, as defined in § 153.1(h), shall be eligible for a grazing permit for lands within the former joint use area under the following terms and conditions.

(a) The project officer shall first verify that an applicant meets the criteria of the definition, § 153.1(h).

(b) Permits will be issued by the Project Officer directly to persons awaiting relocation. The permit will not authorize the grazing of more livestock than the person was grazing at the time of the entry of the Judgment of Partition; nor will more than a subsistence number of livestock be permitted to a person. The determination of the person to whom permits will be issued and the subsistence number of livestock to be permitted to a person will be based on information provided by the permit applicant and an assessment of the following factors: (1) The number of dependents in the household and their dietary and household needs; and (2) the age, education and income prospects of the applicant.

(c) The permit shall be for a specific number and kind of animal(s) which shall not exceed the number of animal units of the Flagstaff Administrative Office's livestock inventory as of February 10, 1977. No such permits will be issued that exceed one-half the carrying capacity of a range unit.

(d) Grazing fees will be assessed and paid in accordance with the Settlement Act provision for rental of the other tribe's lands by persons who are not members, 25 U.S.C. § 640d-15. The project officer will determine the fair rental value as grazing fees and the respective tribes will be responsible for payment of the fees for their members' use. Other fees and/or taxes may be separately assessed by the tribe on whose lands the person awaiting relocation is grazing permitted livestock, but such fees and/or taxes shall not be assessed at a rate greater than that charged to members of the tribe on whose reservation lands the person grazes the livestock.

(e) Subject to the provision of § 153.10(b), permits shall expire when the person awaiting relocation is relocated pursuant to the Settlement Act or on the date a final order is entered (and any appeals concluded) requiring the person to relocate, whichever is earlier. No permit will be issued for a term greater than one year. Permits may be reissued upon application and redetermination of eligibility. All permits will expire at the end of the period provided by the Settlement Act for the completion of relocation, 25 U.S.C. § 640d-13(e). If and when a Navajo permit holder discontinues grazing animals, whether by reason of his relocating or for any other voluntary reason, his grazing permit shall be canceled and no permit shall be issued in lieu thereof; and the number of animals being grazed by the Navajo permit holders shall be reduced by the number of animals covered by the canceled permit.

Forrest J. Gerard,

Assistant Secretary-Indian Affairs.

August 8, 1979.

[FR Doc. 79-24893 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 158

[DoD Directive 5200.30] [1]

Guidelines for Systematic Review of 20-Year-Old Classified Information in Permanently Valuable DoD Records

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes Department of Defense (DoD) policies and procedures for the systematic declassification review of 20-year-old DoD classified information in permanently valuable records. It describes categories of information that are subject to declassification review and provides declassification considerations for use during such reviews. It is a requirement of Executive Order 12065, "National Security Information," June 28, 1978, that DoD establish and maintain guidelines for systematic review covering 20-year-old classified information under its classification jurisdiction.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur F. Van Cook, Director of Information Security, ODUSDP(PR), Office of the Under Secretary of Defense for Policy, The Pentagon, Washington, D.C. 20301, Telephone 202-695-2289.

Accordingly, we are amending 32 CFR Chapter I by adding a new Part 158, reading as follows:

PART 158—GUIDELINES FOR SYSTEMATIC REVIEW OF 20-YEAR-OLD CLASSIFIED INFORMATION IN PERMANENTLY VALUABLE DoD RECORDS

Sec.
158.1 Purpose.
158.2 Applicability and scope.
158.3 Definitions.
158.4 Policy and procedures.
158.5 Responsibility and authority.
Enclosure 1—Categories of Information to be Reviewed for Declassification.
Enclosure 2—Declassification Considerations.
Authority.—Executive Order 12065.

§ 158.1 Purpose.

This part reestablishes the policies contained in Secretary of Defense Memorandum, "Declassification of World War II Records," May 3, 1972 and Deputy Secretary of Defense Memorandum, "Downgrading and Declassification of Historical Records," April 12, 1974; establishes guidelines for the systematic declassification review of 20-year-old information classified under Executive Order 12065, "National Security Information," June 28, 1978, Information Security Oversight Office Directive No. 1 Concerning National Security Information, October 2, 1978 (43 FR 46280), 32 CFR Part 159, and prior orders, directives and regulations governing security classification; implements section 3-402 of Executive Order 12065; and delegates authority to implement the DoD systematic declassification review guidelines.

§ 158.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense and to activities assigned for administrative support, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

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

(b) This part applies to the systematic review of 20-year-old permanently valuable classified information, material, or records developed by or for the Department of Defense and its Components, or its predecessor components and activities, that are under the exclusive or final original classification jurisdiction of the Department of Defense. Accordingly, information that is foreign government information; Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954; or in nonpermanent records is outside the scope of this part.

§ 158.3 Definitions.

(a) *Cryptologic Information.* Information pertaining to the activities and operations involved in the production of signals intelligence or to the maintenance of communications security.

(b) *Intelligence Method.* Any human or technological method that is or may be used to collect or analyze foreign intelligence or foreign counterintelligence.

(c) *Intelligence Source.* Any human or technological source from which foreign intelligence or foreign counterintelligence is, has been, or may be derived.

(d) *Foreign Government Information.* Information that is provided to the United States by a foreign government or international organization of governments in the expectation, expressed or implied, that the information is to be kept in confidence; or produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments requiring that either the information or the arrangement, or both, be kept in confidence. Such a written-joint-arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record.

§ 158.4 Policy and procedures.

(a) DoD classified information that is permanently valuable, as defined by 44 U.S.C. 2103, shall be systematically reviewed for declassification when it is 20 years old whether the information:

(1) Has been transferred to the General Services Administration for accession into the Archives of the United States or in the possession and control of the Administrator of General Services under 44 U.S.C. 2107 or 2107 note, or

(2) Is in the possession or control of DoD Components.

(b) The transition to systematic review at 20 vice 30 years shall be implemented as rapidly as possible, and completed by December 1, 1988.

(c) When DoD classified information becomes 20 years old, it shall be:

(1) Declassified automatically if it is not within one of the categories specified in enclosure 1.

(2) Reviewed for declassification by responsible DoD reviewers in accordance with enclosure 2 if it is within any of the categories specified in enclosure 1.

(d) Systematic review for declassification shall be in accordance with procedures contained in DoD 5200.1-R. Information that falls within any of the categories in enclosure shall be declassified if the designated DoD reviewer determines, in light of the declassification considerations of enclosure, that classification is no longer required. In the absence of such a determination, the designated DoD reviewer shall recommend continued classification in accordance with the procedures of DoD 5200.1-R.

§ 158.5 Responsibility and authority.

(a) The *Deputy Under Secretary of Defense for Policy Review* shall:

(1) Exercise oversight and policy supervision over the implementation of this part;

(2) Request DoD Components to review enclosures 1 and 2 of this part every 2 years;

(3) Revise enclosures 1 and 2 to ensure they meet DoD needs; and

(4) When appropriate, authorize other departments and agencies of the Executive Branch to apply the guidelines of this part to DoD information in their possession.

(b) The *Head of each DoD Component* shall:

(1) Recommend changes to enclosures 1 and 2 of this part;

(2) Propose, with respect to specific programs, projects, and systems under their classification jurisdiction, supplements to enclosures 1 and 2 of this part;

(3) Ensure that the records of the Component that have not been accessioned by the Archivist of the United States and, upon request of the Archivist, those that have been accessioned are reviewed by DoD personnel designated for the purpose in accordance with this part; and

(4) Provide advice and assistance to the Archivist of the United States in the systematic review of records under this part.

(c) The *Director, National Security Agency* shall develop, for approval by the Secretary of Defense, special procedures for systematic review and declassification of classified cryptologic information.

(d) The *Archivist of the United States* is authorized to apply this part when reviewing 20-year-old DoD classified information that has been accessioned into the Archives of the United States.

Enclosure 1—Categories of Information To Be Reviewed for Declassification

The following categories of information shall be systematically reviewed for declassification by designated DoD reviewers in accordance with this part:

A. Nuclear propulsion information.

B. Information concerning the establishment, operation, and support of the U.S. Atomic Energy Detection System, unless otherwise specified by the Joint Department of Energy—Department of Defense Classification Guide for the Nuclear Test Detection Satellite.

C. Information concerning the safeguarding of nuclear materials or facilities.

D. Information which could affect the conduct of current or future U.S. foreign relations such as plans (whether or not executed) and programs relating to current international security affairs.

E. Information that could affect the current or future military usefulness of policies, programs, weapon systems, operations, or plans.

F. Research, development, test, and evaluation of chemical and biological weapons and defensive systems; specific identification of chemical and biological agents and munitions; and chemical and biological warfare plans.

G. Information concerning the following naval systems:

1. Conventional surface ship information:

a. Vulnerabilities of protective systems, specifically:

(1) Passive protection information concerning ballistic torpedo and underbottom protective systems.

(2) Weapon protection requirement levels for conventional, nuclear, biological, or chemical weapons.

(3) General arrangements, drawings, and booklets of general plans (applicable to carriers only).

b. Ship silencing information relative to:

(1) Signatures (acoustic, seismic, infrared, magnetic (including alternating magnetic (AM), pressure, and underwater electric potential (UEP)).

(2) Procedures and techniques for noise reduction pertaining to an individual ship's component.

(3) Vibration data relating to hull and machinery.

c. Operational characteristics related to performance as follows:

(1) Endurance and total fuel capacity.

(2) Tactical information, such as times for ship turning, zero to maximum speed, and maximum to zero speed.

2. All information that is uniquely applicable to nuclear-powered surface ships or submarines.

3. Information concerning diesel submarines as follows:

a. Ship silencing data or acoustic warfare systems relative to:

(1) Overside, platform, and sonar noise signature.

(2) Radiated noise and echo response.

(3) All vibration data.

(4) Seismic, magnetic (including AM), pressure, and UEP signature data.

b. Details of operational assignments, i.e., war plans, anti-submarine warfare (ASW), and surveillance tasks.

4. Sound Surveillance System (SOSUS) data.

5. Information concerning mine warfare, mine sweeping, and mine countermeasures.

6. Electronic countermeasures (ECM) or electronic counter-countermeasures (ECCM) features and capabilities of any electronic equipment.

7. Torpedo information as follows:

a. Torpedo countermeasures devices: T-MK6 (FANFARE) and NAE beacons.

b. Tactical performance, tactical doctrine, and vulnerability to countermeasures.

8. Design performance and functional characteristics of guided missiles, guided projectiles, sonars, radars, acoustic equipments, and fire control systems.

H. Information concerning or revealing escape, evasion, cover, or deception plans, procedures, and techniques.

I. Information that reveals sources and methods of intelligence, counterintelligence activities, identities of clandestine human agents, methods of special operations, and analytical techniques for the interpretation of intelligence data.

J. Information concerning electronic intelligence, telemetry intelligence, and electronic warfare (electronic warfare support measures, electronic countermeasures, electronic counter-countermeasures) or related activities to include:

1. Information concerning or revealing nomenclatures, functions, technical characteristics, or descriptions of foreign communications and electronic equipment, its employment/deployment, and its association with weapon systems or military operations.

2. Information concerning or revealing the processes, techniques, operations or scope of activities involved in acquiring, analyzing, and evaluating the above information, and the degree of success obtained.

K. Cryptologic information (including cryptologic sources and methods) currently in use. This includes information concerning or revealing the processes, techniques, operations, and scope of signals intelligence comprising communications intelligence, electronics intelligence, and telemetry intelligence; and the cryptosecurity and emission security components of communications security, including the communications portion of cover and deception plans.

1. Recognition of cryptologic information may not always be an easy task. There are several broad classes of cryptologic information, as follows:

a. Those that relate to communications security (COMSEC). In documentary form, they provide COMSEC guidance or information. Normally, COMSEC documents and materials are accountable under the "Communications Security Material Control System." Examples are: items bearing "TSEC" nomenclature ("TSEC" plus three letters), "Crypto Keying Material" for use in enciphering communications, Controlled COMSEC Items (CCI), and cryptographic keying devices.

b. Those that relate to signals intelligence (SIGINT). These appear as reports in various formats that bear security classification, sometimes followed by a five-letter codeword (World War II's ULTRA, for example) and often carry warning caveats such as "This document contains codeword material," "Utmost secrecy is necessary . . .". Formats will appear, for example, as messages having addressees, "from" and "to" sections, and as summaries with SIGINT content with or without other kinds of intelligence and comment.

c. Research, development, test, and evaluation reports and information that relate to either COMSEC or SIGINT.

2. Commonly used words that may help in identification of cryptologic documents and materials are "cipher," "code," "codeword," "communications intelligence" or "COMINT," "communications security" or "COMSEC," "cryptanalysis," "crypto," "cryptography," "cryptosystem," "decipher," "decode," "decrypt," "direction finding," "electronic intelligence" or "ELINT," "electronic security," "encipher," "encode," "encrypt," "intercept," "key book," "signal intelligence" or "SIGINT," "signal security," and "TEMPEST."

Enclosure 2—Declassification considerations

A. Technological developments; widespread public knowledge of the subject matter; changes in military plans, operations, systems, or equipment; changes in the foreign relations or defense commitments of the United States and similar events may bear upon the determination of whether information should be declassified. If the responsible DoD reviewer decides that, in view of such circumstances, the public disclosure of the information being reviewed would no longer result in at least identifiable damage to the national security, the information must be declassified.

B. The following are examples of considerations which may be appropriate in deciding whether information in the categories listed in enclosure 1 may be declassified when it is reviewed:

1. The information no longer provides the United States a scientific, engineering, technical, operational, intelligence, strategic, or tactical advantage over other nations.

2. The operational military capability of the United States revealed by the information no longer constitutes a limitation on the effectiveness of the armed forces.

3. Information pertinent to a system is no longer used or relied on for the defense of the United States or its allies.

4. The program, project, or system information no longer reveals a current weakness or vulnerability.

5. The information pertains to an intelligence objective or diplomatic initiative that has been abandoned or achieved, and will no longer damage the foreign relations of the United States.

6. The information reveals the fact or identity of a United States intelligence source, method, or capability that is no longer employed and that relates to no current source, method, or capability that upon disclosure could cause at least identifiable damage to national security or place a person in immediate jeopardy.

7. The information concerns foreign relations matters the disclosure of which can no longer be expected to cause or increase international tension to the detriment of the national security of the United States.

C. Declassification of information that reveals the identities of clandestine human agents shall only be accomplished in accordance with

procedures established by the Director of Central Intelligence for that purpose.

D. Special procedures of the National Security Agency apply to the review and declassification of classified cryptologic information. The following shall be observed in the review of such information:

1. *COMSEC Documents and Materials.* If records or materials in this category are found in agency or department files that are not under COMSEC control, refer them to the senior COMSEC authority of the agency or department concerned or by appropriate channels to the following address:

Director, National Security Agency/Central Security Service, Attn: D4/I, Fort George G. Meade, MD 20755.

2. *SIGINT Information.*

a. If the SIGINT information is contained in a document or record originated by a DoD cryptologic organization, such as the National Security Agency, and is in the files of a noncryptologic agency or department, such material will not be declassified if retained in accordance with an approved records disposition schedule.

b. If the SIGINT information has been incorporated by the receiving agency or department into documents it produces, referral to the National Security Agency is necessary prior to any declassification action.

H. E. Lofdahl,

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

August 8, 1979.

[FR Doc. 79-24863 Filed 8-10-79; 8:45 am]

BILLING CODE 3810-70-M

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32 CFR Part 360

[DOD Directive 5105.40]

Defense Mapping Agency

Correction

In FR Doc. 78-33889 appearing at page 56894 in the issue for Tuesday, December 5, 1978, on page 56897, first column, insert the following at the end of the document before the FR document line:

"The Director, DMA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

"This delegation of authorities is effective immediately.

C. W. Duncan, Jr.,

Deputy Secretary of Defense."

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 79-116]

Drawbridge Operation Regulations; Chehalis River, Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Union Pacific Railroad bridge across the Chehalis River at South Montesano is no longer used for train traffic and is currently being maintained in the open to navigation position pending its removal. As this regulation change merely reflects current conditions, the Coast Guard finds that notice and public procedure is unnecessary. When this bridge is removed, these regulations will be revoked.

EFFECTIVE DATE: This amendment is effective on August 13, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

Drafting Information

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.810(f)(7).

§ 117.810 Navigable waters in the State of Washington; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(7) Chehalis River, Union Pacific Railroad bridge at South Montesano. The draw shall be maintained in the open to navigation position.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).)

Dated: August 3, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-24833 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 7-79-09]

Safety Zone—Moving Safety Zone Around the U.S.S. "Simon Lake" in the St. Mary's River, Ga.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard Safety Zone Regulations establishes a moving safety zone around the USS SIMON LAKE during the period of its arrival, transit, and mooring in the waters of St. Mary's River. This zone has been instituted to provide an exceptional degree of safety and control for the period of time that the vessel is transiting the St. Mary's River on 2 July 1979.

EFFECTIVE DATE: This amendment becomes effective at 0600, 2 July 1979 and remains in effect until the vessel moors at Kings Bay Trident Sub Base or until 2400, 2 July 1979 whichever is earlier.

FOR FURTHER INFORMATION CONTACT: C. T. SCHMINCKE, Senior Port Security Officer, Captain of the Port, Jacksonville, Fl, 2831 Talleyrand Ave., Jacksonville, FL 32206, 904-791-2648.

SUPPLEMENTARY INFORMATION: This Safety Zone will be a moving safety zone enforced by representatives of the Captain of the Port, Jacksonville, FL. In addition, the USS SIMON LAKE will be escorted by the Coast Guard Patrol boat. As provided in the General Safety Zone Regulations (33 CFR 165.20) no person or vessel may enter a safety zone unless authorized by the Captain of the Port or the District Commander. These General Regulations and other regulations in 33 CFR 165 apply to the safety zone established for the navigable waters within 100 feet of the USS SIMON LAKE while it is transiting the St. Mary's River.

An opportunity to comment on this safety zone as a proposed rule has not been provided and good cause exists for making the zone effective immediately. A determination has been made that to do otherwise would be both impracticable and contrary to the public interest. In view of the arrival schedule of the USS SIMON LAKE there is not sufficient time to allow an opportunity

for public comment or provide for a delayed effective date. Following these administrative procedures would prevent timely establishment of the safety zone and this would defeat the purpose of the zone.

DRAFTING INFORMATION: The principal person involved in drafting this rule is LTJG S. D. HEATH, Port Security Officer, Captain of the Port, Jacksonville, Fl.

In consideration of the above, Part 165 of Title 33 Code of Federal Regulations is amended by adding a § 165.709 to read as follows:

§ 165.709 Seventh Coast Guard District.

(a) The navigable waters within 100 feet of the USS SIMON LAKE while it is transiting the St. Mary's River from the Sea Buoy (LLNR 499.10) to Kings Bay Trident Sub Base, Kings Bay, GA. Vessels moored or at anchor may remain so during the transit of the USS SIMON LAKE unless otherwise directed by the Captain of the Port, Jacksonville, FL.

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

Dated: June 28, 1979.

K. A. Shaw,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Jacksonville, FL.

[FR Doc. 79-24890 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD 7-79-10]

Safety Zone—Vicinity of Intracoastal Waterway at Statute Mile 849, Edgewater, Fla.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations establishes safety zone along the Intracoastal Waterway at statute mile 849 just prior to, during, and immediately after a fireworks display put on by the Edgewater Florida Volunteer Fire Department. This zone has been instituted to provide an exceptional degree of safety to the public in the vicinity of the fireworks display.

DATES: This amendment is effective at 2000, July 4, 1979 and remains effective until 15 minutes after completion of the display or at 2300, July 4, 1979.

FOR FURTHER INFORMATION CONTACT: Lt. C. T. Schmincke, c/o Commanding Officer, USCG Marine Safety Office, 2831 Talleyrand Avenue, Room 213, Jacksonville, FL 32206; tele: 904-791-2648.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and this amendment becomes effective in less than 30 days from the date of publication, because public procedures on this amendment are impractical due to the timely need for the zone to be initiated.

DRAFTING INFORMATION: The principal person involved in drafting this rule is Lt. C. T. Schmincke, Senior Port Safety Officer, USCG Marine Safety Office, Jacksonville, 2831 Talleyrand Ave., Room 213, Jacksonville, Florida 32206. In consideration of the above, Part 165 of Title 33 Code of Federal Regulations is amended by adding § 165.710 to read as follows:

§ 165.710 Edgewater Florida; safety zone.

The area described as follows is a safety zone: Edgewater, Florida statute mile 849 of the Intracoastal Waterway from marker 50 to marker 51 and that area 400 yards to the East of the channel. This zone commences at 2000 on July 4, 1979 and terminate by 2300 July 4, 1979.

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

Dated: July 3, 1979.

K. A. Shaw,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Jacksonville, Florida.

[FR Doc. 79-24889 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-14-M

VETERANS' ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Implementation of New Legislation—Condominiums

AGENCY: Veterans' Administration.

ACTION: Final Regulations with request for comments.

SUMMARY: The VA (Veterans' Administration) is amending its regulations to incorporate the basic criteria for condominium project approval into the Code of Federal Regulations. The inclusion of condominium project approval procedures into the VA Regulations was mandated by Congress in the Veterans' Housing Benefits Act of 1978. It is expected that the adoption of these amendments will assist veterans, developers, attorneys, lenders, owners' associations, etc., to better understand VA condominium program requirements and to obtain VA condominium project approval.

DATES: Effective date: July 1, 1979. Comments on or before October 9, 1979.

ADDRESSES: Comments to Administrator of Veterans' Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans' Administration, Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: The Veterans' Housing Benefits Act of 1978 (Pub. L. 95-476, 92 Stat. 1497) revised section 1810(a)(6) of title 38, United States Code, effective July 1, 1979, relating to the guaranty of condominium loans. Under previous law the VA could only guarantee loans in condominium projects which originally were built and sold as condominiums. Thus, the previous law did not authorize the VA to guarantee loans in condominium conversion projects which originally were used as rental apartment dwellings, etc. The new provision of the law authorizes the VA to guarantee loans in any project approved by the Administrator, including condominium conversion projects, and requires the Administrator to publish the criteria for condominium project approval in the Code of Federal Regulations.

The VA, therefore, is amending the § 36.4300 series of the Code of Federal Regulations to incorporate the approval criteria for condominium projects. Most of these regulations are restatements of existing VA policies for condominium project approval. Some of the regulations are based on the joint legal policies document prepared by the Condominium Task Force. The Task Force, which is made up of the Department of Housing and Urban Development, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and the VA, has been working for the past 3 years to formulate policies applicable to condominiums which could be adopted by the two agencies and two corporations. In addition, the VA also is modifying its requirements to allow lenders authorized to close loans on the automatic basis to do so in any VA approved condominium projects. (VA prior approval of the individual unit condominium loan will not be required.)

It is expected that by placing the condominium requirements in the Code of Federal Regulations, veterans, developers, attorneys, lenders, owners' associations, etc., will be able to readily

obtain the VA condominium requirements. It also is anticipated that an increasing number of condominium projects, including many conversion projects, will be submitted for VA approval in order to qualify for VA guaranteed financing for both original sponsor sales and individual resales.

Brief Explanation of Each Proposed Regulation

Section 36.4356 is a general information regulation that states the provisions of chapter 37 of title 38, United States Code and the VA Regulations which are not applicable to the condominium loan guaranty program. In addition, the regulation states the special definitions applicable to condominium loans and requires that the condominium project be approved by the VA prior to the guaranty of the first unit loan. Once a condominium project has been approved, the individual unit loans may be submitted either on the prior approval basis or on the automatic basis, provided all other requirements have been met.

Section 36.4357 explains the basic types of ownership arrangements which will be acceptable for condominium processing, sets forth the legal estate (fee simple, leasehold) which must be obtained by each unit owner, and requires that condominium legal documentation must comply with applicable local law. The legal documentation must be properly recorded, and be available to parties or prospective parties in interest. Section 36.4357(d) sets forth the requirement for proper real property descriptions, and the requirement that the developmental plan be included in the declaration for proposed condominiums.

Section 36.4358(a) sets forth the basic rights and restrictions which the declarant may retain and those rights or restrictions the declarant is prohibited from retaining. Any rights reserved by the declarant must be clearly set forth in the declaration.

Section 36.4358(b) sets forth the owners' association's rights and restrictions which must be included in the declaration. A change in VA policy is the requirement for a reserve fund for periodic maintenance, repair, and replacement of common elements in both new and proposed projects.

Section 36.4358(c) sets forth the unit owners' rights and restrictions which must be included in the declaration including voting rights, right of first refusal, and leasing restrictions.

Section 36.4358(d) sets forth the recommendation for the owners' association and unit owners to be granted a right of legal action for necessary enforcement of the provisions of the declaration, bylaws, and other appropriate documentation.

Section 36.4359(a) establishes the requirements for developer transfer of control of the owners' association to the unit owners.

Section 36.4359(b) explains the VA policy toward real estate taxes.

Section 36.4359(c) requires declarants to furnish prospective purchasers with an information brochure (not applicable to resales).

Section 36.4359(d) sets forth the general requirement for condominium bylaws.

Section 36.4359(e) sets forth VA insurance requirements and recommendations. The regulation also sets forth the recommendations and requirements for fidelity bond coverage and professional management.

Section 36.4360 sets forth VA requirements for flexible condominiums including both expandable and series developments and describes VA policies when a condominium project has an offsite facility owned by an owners' association with mandatory membership by condominium unit owners.

Section 36.4360a(a) sets forth the appraisal requirements for resales of existing condominium units including conversions, which section 36.4360a(b) sets forth the appraisal requirements for new and proposed condominiums including conversions.

Section 36.4360a(c) explains the VA presale requirements which must be met prior to the guaranty of the first individual unit loan in a project.

Section 36.4360a(d) establishes the VA requirements for a warranty both for the individual unit and the common elements in certain projects.

Perfecting amendments also are adopted to sections 36.4301(i), (aa), (ff), (hh), 36.4312(d)(1)(vi), 36.4350 (b)(5)(iii), and 36.4362.

Compliance with the provisions of section 1.12 of this chapter which requires publication of proposed regulations prior to final adoption is waived in this instance. These regulations are largely a restatement in regulatory form of existing VA policies which are contained in Department of Veterans Benefits Circular 20-75-46. New policies included in these regulations are primarily for the purpose of incorporating requirements for approval of condominium conversion projects into the VA loan guaranty regulations. Since the regulations are largely a restatement of existing policies, we have determined that these regulations are nonsignificant pusuant to Executive Order 12044 [43 FR 12661] and the VA Final Report implementing E.O. 12044 published in the Federal Register (44 FR 7026). In addition, we have determined that publication of these regulations in proposed form would not be in the public interest because such publication for comment would unnecessarily delay the implementation of liberalizing amendments.

These amendments are adopted under authority granted the Administrator by sections 210(c), 1803(c)(1), and 1810(a)(6) of title 38, United States Code.

Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the regulations to the Administrator of Veterans' Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All material received will be considered. A discussion of the comments received and necessary regulatory revisions will be published after the close of the 60-day comment period (October 9, 1979); however, these amendments shall remain effective until further amended. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until October 19, 1979. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: August 2, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

1. Section 36.4301 is amended as follows:

(a) By deleting "§ 36.4358" and inserting "§ 36.4356 through 36.4360a" in paragraph (i), the last sentence of paragraph (aa), and the first sentence of paragraph (ff).

(b) By revising paragraph (hh) as follows:

§ 36.4301 Definitions.

* * * * *

(hh) *Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest

or share in the ownership of common elements.

* * * * *

§ 36.4312 [Amended]

2. Section 36.4312 is amended by deleting "§ 36.4358" and inserting "§§ 36.4356 through 36.4360a" in paragraph (d)(1)(vi).

§ § 36.4350 [Amended]

3. Section 36.4350 is amended by deleting the words "limited to periods of less than 6 months" and inserting the words "in accordance with § 36.4358(c)" in paragraph (b)(5)(iii).

4. Sections 36.4356 and 36.4357 are added to read as follows:

§ 36.4356 Condominium loans—general.

(a) *Authority—applicability of other loan guaranty regulations, 38 CFR part 36.* A loan to an eligible veteran to purchase a one-family residential unit in a condominium housing development or project shall be eligible for guaranty or insurance to the same extent and on the same terms as other loans under 38 U.S.C. 1810 provided the loan conforms to the provisions of chapter 37, title 38, United States Code, except for sections 1811 (direct loans), and 1827 (structural defects). The loan must also conform to the otherwise applicable provisions of the regulations concerning the guaranty or insurance of loans to veterans. Sections 36.4353, 36.4355, and 36.4364 shall not be applicable.

(b) *Definitions.* On and after July 1, 1979, the following definitions shall be applicable to each condominium loan entitled to be guaranteed or insured, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired. Wherever used in 38 U.S.C., ch. 37 or the § 36.4300 series of the Code of Federal Regulations, unless the context otherwise requires, the terms defined in this paragraph shall have the meaning herein stated.

(1) *Affiliate of declarant.* Affiliate of declarant means any person or entity which controls, is controlled by, or is under common control with, a declarant.

(i) A person or entity shall be considered to control a declarant if that person or entity is a general partner, officer, director, or employee of the declarant who:

(*a*) Directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the declarant;

(*b*) Controls in any manner the election of a majority of the directors of the declarant; or

(*c*) Has contributed more than 20 percent of the capital of the declarant.

(ii) A person or entity shall be considered to be controlled by a declarant if the declarant is a general partner, officer, director, or employee of that person or entity who:

(*a*) Directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of that person or entity;

(*b*) Controls in any manner the election of a majority of the directors of that person or entity; or

(*c*) Has contributed more than 20 percent of the capital of that person or entity.

(2) *Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements (restatement of § 36.4301.(hh)).

(3) *Conversion condominium.* Condominium projects not originally built and sold as condominiums but subsequently converted to condominium use.

(4) *Declarant.* Any person who has executed a declaration or an amendment to a declaration to add additional real estate to the project or any successors or assigns of the declarant who offers to sell or sells units in the condominium project and who assumes declarant rights in the project including the right to: add, convert or withdraw real estate from the condominium project; maintain sales offices, management offices and rental units; exercise easements through the common elements for the purpose of making improvements within the condominium; or exercise control of the owner's association. Declarant is further defined as any sponsor of a project or affiliate of the declarant who is acting on behalf of or exercising the rights of the declarant.

(5) *Existing—declarant in control or marketing units.* A condominium in which all onsite or offsite improvements were completed or the conversion was completed prior to appraisal by the Veterans Administration, but the declarant is in control of the owners' association and/or is currently marketing units for initial transfer to individual unit owners.

(6) *Existing—resale.* A condominium in which all onsite or offsite improvements were completed, or the conversion was completed prior to appraisal by the Veterans Administration, and the declarant is no longer in control of the owners' association and /or marketing units for initial transfer to individual unit owners.

(7) *Expandable condominium.* A project which may be increased in size by the declarant. An expandable condominium is constructed in phases (or stages). After each phase is completed and constituted, the common estates are merged. Each unit owner, thereby, gains an individual interest in all of the facilities of the common estate.

(8) *Foreclosure.* Foreclosure shall mean the termination of a lien by either judicial or nonjudicial procedures in accordance with local law or the voluntary transfer of property by a deed-in-lieu of foreclosure or similar procedures.

(9) *High rise condominium.* A condominium project which is a multi-story elevator building.

(10) *Horizontal condominium.* A condominium project in which generally no part of a living unit extends over or under another living unit.

(11) *Low rise condominium.* A condominium project in which all or part of a living unit extends over or under another living unit.

(12) *Proposed condominium.* A condominium project that is to be constructed or is under construction. In the case of a condominium conversion, the declarant proposes to convert a building or buildings to the condominium form of ownership, or the declarant is in the process of converting the building or buildings to the condominium form of ownership.

(13) *Series condominium.* A number of adjoining but separately constituted condominiums that are constructed for the purpose of limiting the size of the common estate and number of units. An association of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

(c) *Project approval.* Prior to Veterans Administration guaranty of an individual unit loan in a condominium, the legal documentation establishing the condominium project or development must be approved by the Administrator. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

§ 36.4357 Acceptable ownership arrangements and documentation.

(a) *Types of condominium ownership.* The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the applicable condominium law of the jurisdiction(s) in which the condominium is located:

(1) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(2) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements. The Administrator will consider for approval, individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, with mandatory membership by unit owners. Any such arrangements must be submitted for prior approval and must not be precluded by applicable State law. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(b) *Estate of unit owner.* The legal estate of each unit owner must comply with the provisions of § 36.4350. The declaration or equivalent document shall allocate an undivided interest in the common elements to each unit. Such interest may be allocated equally to each unit, may be proportionate to that unit's relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonsable for that condominium. (38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) *Condominium documentation*—(1) *Compliance with applicable law.* The declaration, bylaws and other enabling documentation shall conform to the laws governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to the condominium.

(2) *Recordation.* The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, or bylaws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the bylaws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the declaration or equivalent document.

(3) *Availability.* The owner's association shall be required to make available to unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any unit, current copies of the declaration, bylaws and other rules governing the condominium, and other books, records and financial statements of the owners' association. The owners' association also shall be required to make available to prospective purchasers current copies of the declaration, bylaws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Real property descriptions in the declaration*—(1) *Clarity—conformity with the law of the jurisdiction.* The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be clearly set forth.

(2) *Developmental plan—proposed condominiums.* The declaration or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units. Under the applicable provisions of the declaration or such other legally enforceable and binding, document, the development of the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right, the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

5. Section 36.4358 is revised and §§ 36.4359, 36.4360 and 36.4360a are added so that the revised and added material reads as follows:

§ 36.4358 Rights and restrictions.

(a) *Declarant's rights and restrictions*—(1) *Disclosure and reasonableness of reserved rights.* Any right reserved by the declarant must be reasonable and set forth in the declaration.

(2) *Examples of reserved rights of declarant, sponsor, or affiliate of declarant which are usually unacceptable.* Binding the owners' association either directly or indirectly to any of the following agreements is not acceptable unless the owner's association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities;

(ii) Any contract or lease, including franchises and licenses, to which a declarant is a party.

The requirements of paragraph (a)(2) (i) and (ii) of this section do not apply to acceptable ground leases.

(3) *Examples of reserved rights which are usually acceptable.* The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time, subject to a concomitant obligation to restore:

(i) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.

(ii) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

(iii) Right to maintain facilities in the common areas which are identified in the declaration and which are reasonably necessary to market the units. These may include sales and management offices, model units, parking areas, and advertising signs. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6)).

(b) *Owners' association's rights and restrictions*—(1) *Right of entry upon units and limited common elements.* The owners' association shall be granted a right of entry upon unit premises and any limited common elements to effect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance as necessary.

(2) *Power to grant rights and restrictions in common elements.* The

owners' association should be granted other rights, such as the right to grant utility easements under, through or over the common elements, which are reasonably necessary to the ongoing development and operation of the project.

(3) *Responsibility for damage to common elements and units.* A provision may be made in the declaration or bylaws for allocation of responsibility for damages resulting from the exercise of any of the above rights.

(4) *Assessments*—(i) *Levy and collection.* The declaration or its equivalent shall describe the authority of the owners' association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. The common expenses assessed against any unit, with interest, costs and a reasonable attorney's fee shall be a lien upon such unit in accordance with applicable law. Each such assessment, together with interest, costs, and attorney's fee, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law. Common expenses as used in this subdivision shall mean expenditures made or liabilities incurred by or on behalf of the owners' association, together with any assessments for the creation and maintenance of reserves.

(ii) *Reserves and working capital.* There shall be in new or proposed condominium projects (including conversions) a provision for an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a 2 months' estimated common area charge for each unit.

(iii) *Priority of lien.* Any assessment lien must be subordinate to any Veterans Administration guaranteed mortgage except as provided in § 36.4352. A lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due. (38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) *Unit owners' rights and restrictions*—(1) *Obligation to pay expenses.* The declaration or equivalent document shall establish a duty on each unit owner, including the declarant, to pay a proportionate share of common expenses upon being assessed therefor by the owners' association. Such share may be allocated equally to each unit, may be proportionate to that unit's common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

(2) *Voting rights.* The declaration or equivalent document shall allocate a portion of the votes in the association to each unit. Such portion may be allocated equally to each unit, may be proportionate to that unit's common expense liability, common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method is equitable and reasonable for that condominium. The declaration may provide different criteria for allocations of votes to the units on particular specified matters and may also provide different percentages of required unit owner approvals for such particular specified matters.

(3) *Ingress and egress of unit owners.* There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit.

(4) *Easements for encroachments—units and common elements.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(5) *Right of first refusal.* The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction if the declaration or similar document is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, the right of first refusal must comply with § 36.4350(b)(5)(ii).

(6) *Leasing restrictions.* All leases should be in writing and be subject to the declaration and bylaws. Unit owners may be prohibited from leasing their units for an initial term of less than 30 days. No objection will be raised to a requirement that leases have a minimum initial term of up to 6 months; however, no prohibition related to the term of a lease shall apply to a lease having an initial term exceeding 6 months.

(d) *Rights of action.* The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners' association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

§ 36.4359 Miscellaneous legal requirements.

(a) *Declarant transfer of control of owners' association*—(1) *Standards for transfer of control.* The declarant shall relinquish all special rights, expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, not later than the earlier of the following:

(i) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or

(ii) The last date of a specified period of time following the first conveyance to a unit purchaser; such period of time is to be reasonable for the particular project. The maximum acceptable period usually will be from 3 to 5 years for single-phased condominium regimes and 5 to 7 years for expandable condominiums.

(2) *Declarant's unit votes after transfer of control.* The requirements of paragraph (a)(1) of this section shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which declarant owns.

(3) *Unit owners' participation in management.* Declarants should provide for and foster early participation of unit

owners in the management of the project. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(b) *Taxes.* Real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless this limitation is made, a tax lien could amount to more than the value of any particular unit in the structure. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(c) *Information brochure.* When units are being sold by the declarant (not applicable to resales), an information brochure must be given to veteran-buyers prior to the time a downpayment is received and an agreement is signed. Information brochures must be written in simple terms to inform buyers about the condominium regime, and the rights and obligations of unit owners. The information brochure must inform buyers that the association does not provide owner's title insurance and that if such insurance is desired, it is the buyer's responsibility to purchase it. Buyers must also be told that, like any other homeowners, personal liability policies are their responsibility. In the event the development is phased, there must be full disclosure of the impact of the total development plan.

(d) *Policies for bylaws.* The bylaws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(e) *Insurance and related requirements*—(1) *Insurance.* The holder shall require hazard and flood insurance policies to be procured and maintained in accordance with § 36.4326. Because of the nature of condominiums, additional types of insurance coverages—such as tort liability insurance for injuries sustained on the premises, personal liability insurance for directors and officers managing association affairs, boiler insurance, etc.—should be considered in appropriate circumstances.

(2) *Fidelity bond coverage.* The securing of appropriate fidelity bond coverage is recommended for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least 150 percent of the estimated annual operating expenses of the condominium project, including reserves.

(3) *Professional management.* Many condominiums are small enough and their common areas so minimal that professional management is not necessary. The Veterans Administration does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for "use control" and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. *However,* if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable by consent of the association and management. (Management contracts negotiated by the developer should not exceed 1 year.) (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

§ 36.4360 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.

(a) *Expandable condominiums.* The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The developer must build each phase in accordance with an approved plan for the total development supported by detailed plats and plans.

(2) The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.

(3) The declaration or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Administrator. Declarant may have the proposed legal documentation reviewed prior to recordation. However, the Administrator's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed.

(4) Liens arising in connection with the declarant's ownership of, and construction of improvements upon, the property to be added must not adversely affect the rights of existing unit owners, or the priority of first mortgages on units in the existing condominium property. All taxes, assessments, mechanic's liens, and other charges affecting such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the declarant.

(5) The developer must purchase (at developer's own expense) a liability insurance policy in an amount determined by the Administrator to cover any liability to which owners of previously sold units might be exposed. This policy should be endorsed "as owner's interest might appear."

(6) Each expandable project shall have a specified maximum number of units which will give each unit owner a minimum percentage of interest in the common elements. Each project shall also have a specified minimum number of units which will give each unit owner a maximum percentage of interest in the common elements. The minimum number of units to be built should be that which would be adequate to reasonably support the common elements. The maximum number of units to be built should be that which would not overload the capacity of the common facilities. The maximum possible percentage(s) and the minimum possible percentage(s) of undivided interest in the common elements for each type of unit must be stated in the declaration or equivalent document.

(7) The declaration or equivalent document shall clearly set forth the basis for reallocation of unit owner's ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in §§ 36.4357(b) and 36.4358(c) (1) and (2).

(8) The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period usually will be from 5 to 7 years after the date of recording the declaration.

(b) *Series projects*—(1) Each phase in the series approach is to be considered as a separate project. A separate set of legal documents must be filed for each phase or project that relates to the condominium within its own boundary. The declaration for each phase must describe the particular project as a part

of the whole development area, but subject only the one phase to the condominium regime. A separate unit ratio must be established that would relate each unit to all units of the particular condominium for purposes of ownership in the common areas, voting rights and assessment liability. A separate association may be created to govern the affairs of each condominium. Each phase is subject to a separate presale requirement.

(2) In the case of proposed projects, or projects under construction, the declaration should state the number of total units that the developer intends to build on other sections of the development area.

(c) *Other flexible condominiums.* Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or both, may be created) will be considered on an individual case basis. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Ownership and operation of offsite facilities*—(1) *Title requirements.* Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners has been completed and conveyed by the developer to a nonprofit corporation approved by the Administrator with title insured by an owner's title policy or other acceptable title evidence showing title in the nonprofit corporation free of encumbrances.

(2) *Mandatory membership.* The declaration of the condominium (each condominium in a series development) and the articles of incorporation of the nonprofit corporation which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility nonprofit corporation and that upon the sale of the unit, membership is automatically transferred to the new owner/purchaser. If membership in an offsite owners' association is voluntary, no credit in the CRV (certificate of reasonable value) valuation may be given for such offsite amenities.

(ii) Each member of the nonprofit corporation must have a representative vote at meetings of the corporation.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the nonprofit corporation as assessed by the corporation for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be equitably determined. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the association of owners of the condominium.

(3) *Developer payment of offsite facility expenses in a series project.* Until the developer has completed all of the intended condominium phases in a total condominium development and established each condominium regime by filing a separate declaration, approved by the Veterans Administration for each project, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the developer commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it must become a lien against those parcels of land in the development area which are owned by the developer. The collection of such debt and enforcement of such lien may be by foreclosure or such other remedies afforded the nonprofit corporation under local law.

(4) *Board of directors, first meeting.* Until the first annual meeting, the nonprofit corporation may be governed by an interim board composed of developer representatives. The annual meeting of the nonprofit corporation should take place within 1 year after the first condominium unit is conveyed. At the first annual meeting the board of directors will be elected by owners of the condominium units. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

§ 36.4360a Appraisal requirements.

(a) *Existing resale condominiums.* Upon acceptance by the local office of the organizational documents, the project and unit(s) proposed as security for guaranteed financing shall be appraised to ensure that they meet MPR's (Minimum Property Requirements) and are safe, sanitary, and structurally sound. The Veterans Administration MPR's for existing construction apply to all existing resale condominiums including conversions, except that water, heating, ventilating, air conditioning and sewer service may be supplied from a central source. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6), (b)(5))

(b) *Proposed condominiums or existing condominiums with declarant in control or marketing units*—(1) *Low rise and high rise condominiums.* Low rise and high rise condominiums including conversions shall comply with local building codes. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area.

(2) *Horizontal condominiums.* The MPS (Minimum Property Standards) for One and Two Family Dwellings, HUD (Department of Housing and Urban Development) 4900.1, as identified in § 200.929(a) and (b)(1) of title 24 of the Code of Federal Regulations are hereby incorporated by reference into this section.

Note.—Incorporation by reference provisions approved by the Director of the Federal Register on August 7, 1979.

(i) Proposed horizontal condominiums (excluding conversions) must be constructed according to HUD 4900.1, with the exception of the last sentence of paragraph 202-2, "Individual utilities serving a living unit shall not pass over, under or through another living unit", which shall not apply. Furthermore, references made therein to submission of applications for variations to the Department of Housing and Urban Development, are also not applicable. Requests for variations in projects subject to Veterans Administration approval shall be directed to Veterans Administration field installations. Amendments to HUD 4900.1 are published in the Federal Register. (See 24 CFR 200.933.) A current copy of HUD 4900.1 is available for public inspection in accordance with § 200.931 of title 24 of the Code of Federal Regulations. HUD 4900.1 shall also be available for public inspection at Veterans Administration field installations. Veterans Administration policies and procedures applicable to single-family residential construction shall also apply to horizontal condominiums.

(ii) Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with local building codes. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods

and standards for condominiums used in the area.

(3) *Additional condominium conversion requirements.* (i) The declarant of a condominium project, which is (*a*) proposed, (*b*) under construction, or (*c*) an existing project with a declarant in control or marketing units not previously occupied, must furnish structural and mechanical component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement also must give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. The noted statements and remaining useful life requirement are not applicable to existing resale conversion projects where the declarant is no longer marketing units and/or in control of the association. Expandable or series condominium conversions require engineering and architectural statements on each stage or phase.

(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the adequacy of offsite utilities servicing the site (e.g., sanitary or water) is required.

(c) *Presale requirements*—(1) *Proposed construction or existing declarant in control.* Bona fide agreements of sale must have been executed by purchasers (who are contractually obligated to complete the purchase and who intend to occupy the property as their principal place of residence) of 70 percent of the total number of units in the project. Lenders shall certify as to satisfaction of the presale requirement prior to Veterans Administration guaranty of the first unit loan. Multiple purchases of condominium units by one owner are to be counted as one sale when computing the number of sales within a condominium regime to determine if this requirement has been met. When a declarant can demonstrate that a lower percentage would be justified, the Administrator, on an individual case basis, may approve a presale requirement of less than 70 percent. Reduction of the 70 percent presale requirement will be considered when:

(i) Strong initial sales demonstrate a ready market, or

(ii) The declarant will provide cash assets or acceptable bonds for payment of full common area assessments to the owners' association until such assessments are assumed by unit purchasers, or

(iii) Subsequent phases of an overall development are being undertaken in a proven market area, or

(iv) Previous experience in similar projects in the same market area indicates strong market acceptance, or

(v) The development is in a market area that has repeatedly indicated acceptance of such projects.

(2) *Multiphase—proposed or existing declarant in control.* The requirements of paragraph (c)(1) of this section shall apply to each individual phase of a multiphase development, taking into consideration that each individual phase must be capable of self-support in the event that the developer does not complete all planned phases.

(3) *Existing—resales.* An occupancy level based on owner residency of 70 percent of the total units will apply. The Administrator may consider a lesser occupancy percentage on a case-by-case basis. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6)

(d) *Warranty.* Except in condominium conversion projects, each Certificate of Reasonable Value issued by the Administrator relating to a proposed or existing not previously occupied dwelling unit in a condominium project shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or insured loan a warranty against defects for the unit and common elements, in the form prescribed by the Administrator. The unit shall be warranted for 1 year from the date of settlement or the date of occupancy (whichever first occurs). The common elements shall be warranted for 1 year from such time as units to which 60 percent of the votes in the unit owners' association appertain have been transferred to unit owner other than the warrantor. For these purposes, defects shall be those items reasonably requiring the repair, renovation, restoration, or replacement of any of the components constituting the unit or common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

§ 36.4362 [Amended]

6. Section 36.4362 is amended by deleting "§ 36.4358" and inserting "§§ 36.4356 through 36.4360a".

[FR Doc. 79-24783 Filed 8-10-79; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 609

Transportation for Elderly and Handicapped Persons

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: New, standard, full-size urban transit buses being purchased with financial assistance from the Urban Mass Transportation Administration (UMTA) must, in accordance with UMTA regulation, be procured by using the Transbus Procurement Requirements bid package if the procurement solicitation for such buses is issued after September 30, 1979. This amendment revises the existing UMTA regulation to delete the September 30, 1979 effective date and substitute for that date the phrase "[date reserved]." The revision is being made because circumstances have made retention of the original date impossible.

EFFECTIVE DATE: August 13, 1979.

FOR FURTHER INFORMATION CONTACT: Michael S. Bates, Office of the Chief Counsel, Urban Mass Transportation Administration, Department of Transportation, 400 7th St. SW., Washington, D.C. 20590. (202) 426-1936.

SUPPLEMENTAL INFORMATION:

On May 31, 1979 the Department of Transportation's final regulation under section 504 of the Rehabilitation Act of 1973 was published in the Federal Register (44 FR 31441). The subject of that regulation is nondiscrimination on the basis of handicap in federally-assisted programs and activities receiving or benefitting from Federal financial assistance. The preamble to the Department's final section 504 regulation indicates that the section 504 regulation supersedes the existing UMTA regulations on transportation for elderly and handicapped persons, except for the requirements for Transbus (44 FR 31454).

Although the current Transbus regulation includes the original effective date of September 30, 1979, the preamble to the September 19, 1978 amendment to

the Transbus regulation (43 FR 41987), which modified the regulation to allow either a front door ramp or a front door lift, said that there was uncertainty over the actual time required by manufacturers to produce Transbus, and the summary published at the beginning of the preamble indicated that at a later date the September 30, 1979 mandate date would probably have to be extended. The preamble went on to indicate that the best way to resolve the uncertainty over the appropriate date was to conduct a procurement which required firm bids and delivery dates.

The bid opening date for the first scheduled procurement of Transbus by UMTA grantees was May 2, 1979, and no bids were received on that date. The Department has, therefore, submitted the Transbus specification to a group of experts enpaneled by the National Research Council for expeditious assessment.

In light of these circumstances it is impossible for the Department to require all grantees issuing solicitations for standard, full-size urban transit buses after September 30, 1979 to procure only buses meeting the Transbus Procurement Requirements. Therefore, the Transbus regulation is being revised to delete the September 30, 1979 effective date and to substitute for that date the phrase "[date reserved]."

This action by the Department responds only to the necessity for reserving the effective date, and is not a decision about the Transbus Procurement Requirements themselves. In light of the technical nature of the amendment and the fact that the existing date cannot be met, public comment on the amendment would not be useful. Therefore, a proposed regulation is not being issued.

Accordingly, 49 CFR 605.15(a) is revised to read as set forth below.

Issued in Washington, D.C. on August 7, 1979.

Lillian C. Liburdi,

Acting Deputy Urban Mass Transportation Administrator.

In 49 CFR Part 609, § 609.15(a) is revised to read as follows:

§ 609.15 Buses.

(a) Effective with procurement solicitations containing UMTA-approved specifications issued after [date reserved], UMTA grantees may procure new, standard, full-size urban transit buses only if the procurement solicitation utilizes UMTA's bid package entitled "Transbus Procurement Requirements," which requires a stationary floor height of not more than 22 inches, an effective floor height including a kneeling feature of not more than 18 inches, and a front door ramp or front door lift for boarding and exiting.

* * * * *

[FR Doc. 79-24792 Filed 8-10-79; 8:45 am]

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Proposed Rules

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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 TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 79-CE-21]

Transition Area—Rock Rapids, Iowa; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Rock Rapids, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Rock Rapids, Iowa, Municipal Airport which is based on a Non-directional Radio Beacon (NDB) being installed on the airport.

DATES: Comments must be received on or before September 19, 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 19, 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, Section 71.181 of the Federal Aviation Regulations (14 CFR Section 71.181) by designating a 700-foot transition area at Rock Rapids, Iowa. To enhance airport usage by provising instrument approach capability to the Rock Rapids Municipal Airport, the City of Rock Rapids, Iowa, is installing an NDB on the airport. This radio facility provides new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Rock Rapids, Iowa, 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, Section 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:

Rock Rapids, Iowa

That airspace extending upward from 700 feet above the surface within a 6½ mile radius of the Rock Rapids Municipal Airport (latitude 43°27'10"N, longitude 96°10'50"W) and within 3 miles either side of the 347° bearing from the Rock Rapids NDB (latitude 43°27'04"N, longitude 96°10'40" W) extending from the 6½-mile radius area to 8½ miles northwest of the NDB.

(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 August 2, 1979.

John E. Shaw,
Acting Director, Central Region.

[FR Doc. 79-24743 Filed 8-10-79; 8:45 am]
BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-23]

Control Zone, Topeka, Kansas; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This Notice proposes to alter the designation of the Topeka, Kansas (Forbes Field) Control Zone from a part-time to a continuous control zone. This

action is necessary because the Kansas Air National Guard Mission requires a 24-hour alert status. Communications and weather observations are provided by the FAA. The additional hours of communication are now included in a Notice to airmen until action is completed to designate the control zone as continuous.

DATES: Comments must be received on or before September 19, 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 rulemaking 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 19, 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, § 71.171 of the Federal Aviation Regulations (14 CFR Section 71.171) by altering the designation of the Topeka, Kansas (Forbes Field) Control Zone from part-time to continuous. The Kansas Air National Guard Mission requires a 24-hour alert status. Communications and weather observations are provided by the FAA. The additional hours of operation are now included in a Notice to airmen until action is completed to designate the control zone as continuous.

Accordingly, the Federal Aviation Administration proposes to amend Subpart F, Section 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 2, 1979 (44 FR 353), by altering the following control zone:

Topeka, Kansas (Forbes Field)

Within a 5-mile radius of Forbes Field Airport (latitude 38°57'06" N., longitude 95°39'45" W.) within 2.5 miles each side of the Forbes Field LOM 317° bearing extending from the 5-mile radius zone to 6 miles northwest of the airport, and within 2 miles each size of the Forbes Field ILS localizer SE course extending from the 5-mile radius zone to 1 mile SE of the LOM, excluding the portion subtended by a chord drawn between the points of intersection of the 5-mile radius zone with the Philip Billard Airport, Topeka, Kansas control zone.

(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 considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Missouri, on August 2, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-24748 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 762 3119]

Home Centers, Inc., Et al.; Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, among other things, requires two Tallmadge, Ohio firms engaged in the sale and distribution of retail general merchandise to cease representing price reductions in product advertising, unless comparison prices are bona fide, and duration of advertised offer is disclosed; or misrepresenting, in any way, that their products are being sold at a savings to consumers.

DATE: Comments must be received on or before October 12, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199 (216) 522-4207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 762 3119]

Home Centers, Inc., and Home Centers of Cleveland, Inc.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Home Centers, Inc., a corporation, and Home Centers of Cleveland, Inc., a corporation, and it now appearing that Home Centers, Inc. and Home Centers of Cleveland, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Home Centers, Inc. and Home Centers of Cleveland, Inc., by their duly authorized officers, and their attorney, and counsel for the Federal Trade Commission, that:

1. Proposed respondents Home Centers, Inc. and Home Centers of Cleveland, Inc. are corporations organized, existing and doing business under and by virtue of the Laws of the State of Ohio, with their principal place of business located at 65 Midway Plaza, in the City of Tallmadge, State of Ohio.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related materials pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only, and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Paragraph One: For purposes of this order, the following definition shall apply:

"Reference price" shall mean a price against which, directly or by implication, the offering price is being compared. A reference price incudes prices described variously as "regular price," "former price," "list price," "retail price," "value," or terms of similar import and meaning, or a reference price may be implied by terms such as "$40 savings," "save 20%," or terms of similar import and meaning.

Paragraph Two: *It is ordered,* That each of the respective respondents, Home Centers Inc. and Home Centers of Cleveland, Inc., corporations, and their respective successors and assigns, each of the respective respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Representing in any manner, directly or by implication, that any of respondents' products are being sold at a reduction from a higher, reference price, either by use of such reference price, by the use of terms such as "special," "savings," "sale," "clearance," or other terms of similar import and meaning, or otherwise, unless:

(1) Such reference price is respondents' actual, bona fide price at which substantial sales were made to the public by respondents on a regular basis for a reasonably substantial period of time in the immediate, recent past;

(2) Such reference price is respondents' actual, bona fide price at which the product was openly and actively offered for sale to the public for a reasonably substantial period of time in the recent, regular course of respondents' business; or

(3) Such reference price is based on some other price at which the same or similar products were offered or sold to the public in the immediate area in the recent, regular course of business, respondents have actual knowledge of these facts at the time the representation is made, and respondents clearly and conspicuously disclose, at the time and place that the representation is made, the source and nature of such reference price.

(B) Representing in any manner, directly or by implication, that any of respondents' products are being sold at a special or reduced price, unless the reduction in price is meaningful, and unless respondents clearly and conspicuoulsy disclose, at the time and place that the representation is made, the duration for which the special or reduced price is in effect.

(C) Misrepresenting in any manner, directly or by implication, that any of respondents' products are being sold at a special or reduced price or at a savings to consumers.

Paragraph Three: *It is further ordered,* That:

(A) Respondents shall, for a period of three (3) years subsequent to the date of this order:

(1) Maintain such records as will show the measures taken to insure continuing compliance with the terms and provisions of this order;

(2) Grant any duly authorized representative of the Federal Trade Commission, upon reasonable notice of time and place, access to all such records;

(3) Furnish to the Federal Trade Commission, at the Commission's expense, copies of such records which are requested by any of its duly authorized representatives.

(B) Respondents shall maintain such records as are necessary to substantiate each representation which, in any manner, is subject to Paragraph Two (A) or Two (B) of this order. Such records shall be maintained for a period of one (1) year from the date each such representation is made.

Paragraph Four: *It is further ordered,* That a copy of this order be delivered to all present and future personnel either (a) engaged in a supervisory capacity in the design and creation of advertising materials for respondents' products, or (b) engaged in a management or supervisory capacity in the sale of products. Respondents shall secure from each said person a signed statement acknowledging receipt of this order.

Paragraph Five: *It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in either corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Paragraph Six: *It is further ordered,* That each of the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Home Centers, Inc. and Home Centers of Cleveland, Inc.

The proposed order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Home Centers misrepresented that:

(1) Certain products were being offered for sale at special or reduced prices; and.

(2) The advertised offers were for a limited period of time.

The complaint also alleges that Home Centers represented that certain products were being offered for sale at prices lower than those prevailing in the immediate area, when, in fact, respondents did not possess a reasonable basis to make such representations.

The proposed order would prohibit Home Centers from representations that any of their products are being sold at a reduction from some higher, comparison price (whether the comparison price is explicitly set forth in the advertising or not) unless:

(1) The price to which the sale price is compared is the actual price at which Home Centers made substantial sales of the product or at which they actively offered the product for sale; or

(2) The price to which the sale price is compared is a price at which the same or a similar product was sold or offered for sale in the same area and Home Centers has actual knowledge of this fact and Home Centers states in the advertisement the source and nature of the comparison price.

The proposed order would further prohibit Home Centers from representing that any of their products are being sold at a special or reduced price unless the reduction is meaningful and unless they disclose the duration of the advertised offer.

The proposed order would also prohibit Home Centers from misrepresenting in any way that any of their products are being sold at a savings to consumers.

The purpose of this analysis is to facilitate public comment of the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

James A. Tobin,

Acting Secretary.

[FR Doc. 79-24882 Filed 8-10-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 159]

[Docket No. RM79-63]

Inquiry on Fees Applicable to Natural Gas Pipeline Construction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Commission invites comments upon application and issuance fees assessed for certificates of public convenience and necessity which authorize construction and operation of facilities pursuant to Section 7(c) of the Natural Gas Act. Although the Commission views the present fees as lawful, the Commission invites comments upon these fees in light of recent legal developments.

DATES: Comments should be filed by August 31, 1979

ADDRESS: All comments to: Secretary, Federal Energy Regulation Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426. (Reference Docket No. RM79-63.)

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-4166.

SUPPLEMENTARY INFORMATION: August 2, 1979.

On June 15, 1979, the Commission issued its Order Granting Intervention and Notice of Intent to Commence Rulemaking in Docket No. CP75-221. In that order, the Commission decided to re-examine the fees applicable to certificates of public convenience and necessity which authorize the construction of facilities pursuant to Section 7(c) of the Natural Gas Act. These fees are specified in § 159.2 of the Commission regulations.

A. The Applicable Standard

The statutory basis of Section 159.2 is Title V of the Independent Offices Appropriations Act of 1952, 31 USC § 483a (Title V). Title V requires fees "to be fair and equitable taking into consideration direct and indirect costs to the Government, value to the receipient, public policy or interest served, and other pertinent facts. . . ."

1. *Benefit Conferred*

Some observers read *National Cable Television Association, Inc.* v. *F.C.C.*, 554 F.2d 1094 (D.C. Cir. 1976) as

requiring fees recovered under Title V to be less than the cost to the government of regulation. Should the Commission undertake to re-examine the processing costs associated with the certification of natural gas pipeline construction and operation, what method should be used? Specifically, would a six month data collection period result in a representative sample? How should the indirect costs of the Commission be pro-rated between certificate matters and the Commission's other functions?

2. *Benefit Derived*

Others have read Title V to use the value of the benefit derived from a certificate as the applicable measure of permissible fees. Should the Commission elect to re-examine Section 159.2 under the "benefit derived" standard, what measure should be used? Would the estimated overall return over the useful life of a facility be a good measure?

B. The Structure of the Fee

At present, Section 159.2 specifies a flat rate fee based upon the cost of a construction project. Projects which cost less than $7,000 are exempt from the fee. The Commission's view announced in Order No. 317 is that a fee proportional to the size of a project is a fair and equitable method for apportioning the fee processing costs between different certificate applicants. The Commission invites comment on whether a ceiling should be placed on the fee due in any one project. Should certificate applications be characterized according to some criteria other than cost in designing any possible alternative fee structure?

C. May the Commission Assess a Fee on Applications for Pipeline Construction Certificates?

The Surpreme Court in *National Cable Television Assn. Inc.* v. *U.S.*, 415 U.S. 336 (1974), made a distinction between a "fee" and a "tax". The Court ascribed the following characteristics to a "fee" (415 U.S. at 340):

> A fee . . . is incident to a voluntary act, e.g., a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. The public agency performing those services normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society.

Other decisions have characterized this distinction as whether an applicant received a "special benefit" or was an "identifiable recipient" of a benefit.

Applicants for certificates of public convenience and necessity are receiving benefits not shared by other members of society. The Commission's consideration of such applications include: safety, engineering, economic and rate analyses. All of the Commission's activities in conjunction with an application are directly relevant to the Commission finding that the proposal "is or will be required by the present or future public convenience and necessity." [1] Such a determination is required by statute, rather than an inquiry into some other independent public interest.

The Commission invites comment upon whether the issuance of certificates of public convenience and necessity and the filing of certificate applications are appropriate items for fees under Title V. Comments which take the position that fees may not be assessed on applications and certificates should address alternative means for complying with the statutory mandate of Title V to recover these costs.

D. Retroactive Application

Section 159.2 is a duly promulgated regulation which remains in full force and effect. Certain natural gas companies which have filed fees under § 159.2 have petitioned the Commission to re-examine § 159.2 in light of recent legal developments. Some of these petitions include requests for refund of fees already paid. Although the Commission views § 159.2 as lawful, the Commission invites comment upon whether any possible amendment promulgated in this Docket should be accorded retroactive effect. Comments advocating a retroactive effect should propose an effective date and explain why the proposed date is necessary or desirable.

Written Comments

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79-63. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EDT, August 31, 1979, will be considered by the Commission. All written submissions will be placed in the public file which has been established in this docket and which is of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24323 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Natural Gas Act, Section 7(e), 15 U.S.C. § 717f(e).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 161]

[CGD 78-041]

Tank Vessel Operations—Puget Sound

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period on proposed rules.

SUMMARY: The Coast Guard published a proposed rule (CGD 78-041) in the Federal Register of April 12, 1979 (44 FR 21974), that would amend the Puget Sound Vessel Traffic Service Regulations (33 CFR Part 161). This proposed rule addressed the operation of tank vessels in Puget Sound and included a prohibition on the operation of tank vessels over 125,000 deadweight tons in the Vessel Traffic Service Area. The original comment period was to have terminated on June 30, 1979 but was extended in the Federal Register of June 28, 1979 (44 FR 37631) until August 15, 1979. The Coast Guard has received additional requests for an extension of the comment period beyond August 15, 1979. In order to enable commenters to properly and fully complete their efforts in preparing comments on this highly complex issue the Coast Guard is extending the comment period an additional 30 days.

DATES: Comments must be received on or before September 14, 1979.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/TP24) (CGD 78-041), U.S. Coast Guard, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Captain R. A. Janecek, Office of Marine Environment and Systems (G-WLE/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-1934.

(Sec. 2, Pub. L. 95-474, Port and Tanker Safety Act of 1978, 92 Stat. 1471, (33 U.S.C. 1221 et seq.); 49 CFR 1.46(n)(4).)

Dated: August 8, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 79-25027 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1294-7]

Approval and Promulgation of Nonattainment Plan for Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this notice is to announce the receipt of a State Implementation Plan (SIP) revision for Michigan, to discuss the results of the United States Environmental Protection Agency's (USEPA) review of that revision, and to invite public comment.

On April 25, 1979, the State of Michigan submitted to USEPA a proposed revision of its SIP pursuant to Part D of the Clean Air Act as amended in 1977. The revision applies to areas of Michigan that have not attained the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide, ozone, carbon monoxide, and particulates. As required by the Act, the purpose of this revision is to implement measures for controlling the emissions of these pollutants in nonattainment areas and to demonstrate that these measures will provide for attainment of the National Ambient Air Quality Standards as expeditiously as practicable, but no later than December 31, 1982 for the primary standards; or by December 31, 1987, under certain conditions, for ozone and carbon monoxide. The requirements for an approvable SIP are described in a Federal Register notice published on April 4, 1979 (44 FR 20372), and are not reiterated in this notice. In addition to addressing the requirements of Part D, the Michigan SIP revision incorporates certain general requirements of the Clean Air Act as amended.

DATE: Comments on this revision and on the proposed USEPA action on the revisions are due by October 12, 1979.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection:

United States Environmental Protection Agency, Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

WRITTEN COMMENTS SHOULD BE SENT TO: Ms. Maxine Borcherding, SIP Coordinator, USEPA Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Borcherding, SIP Coordinator, USEPA Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2205.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in each state as not meeting the National Ambient Air Quality Standard for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), photochemical oxidants (ozone), and nitrogen dioxide (NO_2).

Part D of the Act, which was added by the 1977 Amendments, requires each state to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary National Ambient Air Quality Standards as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions the date may be extended to December 31, 1987 for ozone and/or carbon monoxide.

On April 25, 1979, the State of Michigan submitted a portion of its revised SIP to USEPA so that the Agency could review the plan and solicit public comment on both the plan provisions and on USEPA's proposed rulemaking. The proposed SIP revision addresses the Clean Air Act requirements for a nonattaiment SIP and some general requirements for a statewide SIP. Although the proposed regulations have been adopted by the Michigan Air Pollution Control Commission (Commission), they will not become effective until the completion of additional State administrative procedures. USEPA will not complete Federal rulemaking until all State procedural requirements are satisfied. Any substantive changes in the proposed SIP revision which are not discussed or anticipated in this Federal Register notice will be addressed in supplemental notices of proposed rulemaking.

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for 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. In some instances, the present emission control regulations contained in the federally-approved SIP are different from the regulations currently being enforced by the State. In these situations, the present federally-approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally-approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and unforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulations. In these situations, the State may exempt a source from compliance with the pre-existing regulations. Any exemptions granted will be reviewed and acted on by USEPA either as part of these promulgated regulations or as a future SIP revision.

This notice discusses USEPA's review of the proposed Michigan SIP in two parts: (1) The strategies developed by Michigan to meet National Ambient Air Quality Standards for each pollutant in designated nonattainment areas; and (2) The revisions necessitated by general requirements of the Clean Air Act Amendments.

In its review, USEPA has specified portions of the proposed SIP as being approvable and not approvable. USEPA has proposed conditional approval of the plan where there are minor deficiencies, and the State provides assurances that it will submit corrections on a specified schedule. The schedule will be negotiated between the USEPA Regional Office and the State

within the 60 day public comment period announced in this Notice. The negotiated schedules will be announced for public comment in a separate Notice of Proposed Rulemaking. A conditional approval will mean that the restrictions on new major source construction and/or Federal funding will not apply unless the State fails to submit the necessary revisions by the scheduled date, or if the revisions are not approved by USEPA. Conditional approvals will not be granted without strong assurance by the appropriate State official(s) that the deficiencies will be corrected by the specified date.

USEPA solicits comments on both the proposed SIP revisions and the proposed USEPA action on these revisions from all interested parties. USEPA specifically solicits public comment on the proposals for conditional approval. USEPA also encourages residents and industries in adjoining states to comment on any interstate air quality impacts of the proposed Michigan SIP revision.

I. Plan Requirements for Nonattainment Areas

In addition to the general requirements of the Clean Air Act which apply to all state implementation plan revisions, the revised plan must satisfy the requirements of Part D of the Act. The USEPA has reviewed the proposed revisions to the Michigan Implementation Plan to determine if they meet these Part D. Requirements. Specific deficiencies in meeting the Part D requirements are addressed in the sections on each pollutant.

The proposed revision is deficient overall in that it does not meet the requirements of section 172(b)(9) of the Act. This section requires, among other things, both 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 public comment on the analysis. The proposed revision does not include an adequate identification and analysis of the six impact areas or a summary of public comment on the analysis. To correct this deficiency, Michigan must submit the impact analyses for each pollutant and the public comment on the analyses. The deficiency must either be remedied during the 60 day comment period announced in this notice or according to a schedule negotiated between the State and the USEPA Regional Office.

Total Suspended Particulates

Part D of the Clean Air Act requires State Implementation Plans to include strategies and regulations adequate to insure attainment of the primary National Ambient Air Quality Standards as expeditiously as practicable but not later than December 31, 1982, and in the interim, to provide reasonable further progress toward attainment through the application of reasonably available control technology (RACT). Where attainment cannot be demonstrated despite the application of reasonably available control technology to traditional sources of particulate matter, USEPA will accept as a basis for conditional approval a commitment by the State to conduct additional studies on the causes for particualate nonattainment, including the degree to which nontraditional area sources of particulate matter such as dust from construction or resuspended road dust affect air quality and to develop and to submit to USEPA additional strategies and enforceable regulations, measures, orders, etc. adequate to demonstrate attainment of the primary standards by the statutory attainment date.

Four areas of the State of Michigan, including portions of the Detroit metropolitan area, Saginaw, Flint, and Albion, have been designated as nonattainment for the primary particulate National Ambient Air Quality Standards. An additional 20 areas are designated as nonattainment for the secondary particulate standard.

To remedy its nonattainment problem, the State of Michigan has proposed amendments to Rule 336.44 which regulates statewide the emission of particulate matter; new regulations and site-specific control measures for each primary nonattainment area; and schedule for additional studies and a commitment to develop and adopt necessary control measures in secondary nonattainment areas. The details of each strategy and USEPA's preliminary assessments of approvability are discussed below.

Statewide

Rule 336.44 which regulates statewide the emission of particulate matter has been amended to include additional sources and emission limitations in its emission schedule. Under the fuel burning equipment category the schedule has been amended to include the following sources: Existing coal firing equipment with capacity less than 250 million BTU/hr burning other than pulverized coal; existing coal firing equipment with capacity greater than or equal to 250 million BTU/hr burning other than pulverized coal; new coal firing equipment burning other than pulverized coal, regardless of size; and new sources burning combinations of fuels or fuels combined with wastes, regardless of size. Liquid waste incinerators and sewage sludge incinerators have been added as sources under the incinerator category. Coke oven preheater equipment effective after July 1, 1979 has been included under the steel manufacturing category. All new cupolas have an allowable emission rate under the ferrous cupola foundry category. Various emission rates have been assigned to asphalt paving plants located in Priority I or II areas and located outside of Priority areas. The following two new categories have been added to the schedule: fertilizer plants and exhaust systems serving material handling equipment not otherwise listed in the schedule.

USEPA has reviewed these amendments to Rule 336.44 and proposes to approve them as meeting the requirements of the Clean Air Act.

Detroit

The State of Michigan will continue to rely on the existing point source particulate regulations which it has determined constitute reasonably available control technology and has proposed new visible emission limitation regulations for coke ovens. While fugitive particulate emissions appear to be a significant contributor to nonattainment in the Detroit metropolitan area, the State has not yet developed regulations to control particulates from these sources. The submittal contains a commitment by the State to develop fugitive dust regulations for at least the primary nonattainment area in Wayne County (Detroit) by October 1, 1979. USEPA finds this approach generally acceptable with the following noted deficiencies:

1. The commitment by the State of Michigan to develop and adopt fugitive dust regulations must be accompanied by a more detailed schedule for the completion of the proposed and ongoing studies and for the adoption of additional regulations shown to be necessary to demonstrate attainment. This schedule is to be negotiated between the State and the USEPA Regional Office during the 60 day public comment period announced in this notice of proposed rulemaking. The schedule must contain projected dates for all necessary actions to be carried out by the State of Michigan prior to submittal of a SIP revision to USEPA.

2. Michigan must specifically commit itself before final USEPA rulemaking to the development and adoption of nontraditional area source controls and point source controls more stringent than RACT if these controls are necessary to demonstrate attainment.

3. The Michigan submittal does not contain specific test methods for measurement of visible emissions from either continuous or intermittent sources of particulates. An acceptable test method or methods for these source categories must be promulgated and submitted to USEPA as a portion of the SIP.

Saginaw, Flint and Albion

The State of Michigan plans to develop specific abatement orders for individual sources, including sources of fugitive particulate emissions, that have been shown to cause or contribute to violations of the National Ambient Air Quality Standards. This approach is generally acceptable with the following noted deficiencies:

1. Where the strategy calls for control of emissions from specific sources beyond that which is required by the SIP, the necessary emission controls must be codified in a manner enforceable by the State and submitted to USEPA as a SIP revision before the State can claim emission reduction credit for controls at these facilities.

2. Industrial fugitive regulations must be applicable to all particulate nonattainment areas unless the source-specific regulations developed for these areas are sufficient to demonstrate attainment of NAAQS. The fugitive regulations should include control of particulates from storage piles, plant roads, loading and unloading operations, mineral handling and processing operations, and emissions from building openings.

Secondary Nonattainment Areas

The State of Michigan has made a commitment to conduct additional studies in all secondary nonattainment areas. The studies will include updating the point source emission inventory, adding area sources to the inventory, undertaking additional modeling, and conducting particle microscopy work. The submittal includes a schedule for completing these studies which divides the secondary nonattainment areas into four categories based on the number of samples and the magnitude of the readings exceeding the standards. The studies in each of the four categories will be completed respectively on June 30, 1979, October 30, 1980, February 28, 1981, and June 30, 1981.

In addition, the State has committed itself to develop enforceable control orders or additional emission limitations within one year of the completion of the studies in each area. A commitment is also made to attain the secondary standards within four years of the completion of the studies in each area. Thus, the secondary standards will be attained within a period between June 1984 and July 1985. USEPA proposes to approve the schedule and the commitments to analyze, select, and adopt control measures for the secondary particulate nonattainment areas on the condition that key milestones are identified for evaluating progress in the development of a SIP to attain the secondary standards.

The USEPA proposes to approve the Michigan particulate SIP if the noted deficiencies are corrected prior to USEPA's final rulemaking, or to conditionally approve the particulate SIP if the State provides USEPA with firm assurances that the deficiencies will be corrected according to schedules to be negotiated between the State and the USEPA Regional Office, during the 60 day comment period announced in this Notice of Proposed Rulemaking. The schedules must detail the steps which must be taken prior to submitting revised portions of the SIP to USEPA. If the deficiencies noted in this proposed rulemaking are not resolved during the announced comment period or if the State does not provide USEPA with the necessary assurances and schedules, USEPA will disapprove these portions of the Michigan plan in its final rulemaking.

USEPA will review conditionally approved portions of the SIP upon the receipt of State plan revisions within the negotiated or specified timeframes. These SIP revisions must contain a demonstration of attainment of the particulate National Ambient Air Quality Standard for all currently designated nonattainment areas. This demonstration must be accompanied by a compliance modeling analysis. Estimates of fugitive dust impacts must be supported by a comprehensive analysis of meteoroligical data, monitored air quality data, and filter analysis. A summary of the modeling analysis must be submitted. The summary should include a map identifying monitored and modeled receptor locations, and the highest predicted annual concentrations and highest and second highest concentrations predicted in the short-term analysis at all receptors on all days modeled. A description of the derivation and use of background concentrations should be included.

Sulfur Dioxide

Michigan is relying on the sulfur dioxide (SO_2) emission limitations in its current SIP to meet the Part D requirements of the Clean Air Act. Therefore, it has not submitted any additional SO_2 regulations for review by USEPA.

Two areas of Michigan have been designated as nonattainment for the SO2 NAAQS: A portion of Midland County surrounding the Dow Chemical Company and a portion of Ingham County surrounding one of the Lansing Board of Water and Light Generating Stations. These areas were designated nonattainment because the two sources therein are using supplementary control systems to attain NAAQS, a method clearly prohibited under Section 123 of the Clean Air Act. Michigan's plan is to require these sources to apply "constant emission control systems" for meeting the presently enforceable sulfur dioxide emission limitations. Constant emission controls will include, where necessary, increasing smoke stacks to a height representing "good engineering practice" to prevent building downwash in the vicinity of the plant. The requirements for constant emission controls will be implemented through consent orders which either have been or will be submitted to USEPA as SIP revisions. USEPA will respond to these proposed SIP revisions in separate Federal Register Notices. In USEPA's judgement the existing Michigan SIP is adequate to attain and maintain the National Ambient Air Quality Standards for sulfur dioxide when all sources are complying with the applicable rules and are utilizing constant emission controls. Therefore, no further USEPA rulemaking is necessary at this time.

Ozone

Thirty-eight counties in Michigan have been designated as nonattainment areas for ozone. On January 26, 1979 (44 FR 8220), USEPA revised the National Ambient Air Quality Standard from 0.08 parts per million (ppm) total photochemical oxidants for a maximum hourly average, to 0.12 ppm ozone for a maximum hourly average. Part D of the Clean Air Act requires states to revise their State Implementation Plan for all areas that have not attained the National Ambient Air Quality Standards. An adequate SIP for ozone is one which provides for sufficient control of volatile organic compounds (VOC) from stationary and mobile sources to provide for attainment of the standards.

For stationary sources, the plan must include, as a minimum, legally enforceable regulations reflecting the application of reasonable available control technology for those stationary sources for which USEPA has published a Control Techniques Guideline (CTG) by January 1978. For mobile sources, the plan must provide for expeditious implementation of reasonably available transportation control measures. In addition to these requirements, any SIP which provides for attainment of the ozone standard after December 31, 1982 must contain a specific schedule for the implementation of a vehicle emission control inspection and maintenance (I/M) program.

The Michigan submittal contains sections on stationary source controls, transportation plans, and vehicle inspection and maintenance.

The State of Michigan indicates in its proposed SIP revision that because of the relaxation of the ozone standard (44 FR 8220), additional time is required to develop and adopt the ozone attainment strategy portion of the SIP. Therefore, the Michigan submittal does not contain ozone design values for each nonattainment area, determination of the VOC reduction requirements for each area, or a demonstration of attainment of the ozone standard.

USEPA had stated it opinion (44 FR 20372) that the revision to the ozone standard does not affect the schedule for submittal of SIP revisions required under Part D. Section 110(a)(1) of the Act requires that SIP revisions be submitted within nine months after a standard is revised. This refers only to SIP revisions legally required because of a revision to a standard. Where a standard is relaxed, however, no SIP revision is required by law, since states may have more stringent controls than necessary if they choose. Since it is the State's option whether to relax new requirements to the 0.12 ppm level, the State may detemine its own schedule for accomplishing this. In any case, a SIP at least adequate to attain the 0.12 ppm ozone standard must be approved by USEPA prior to July 1, 1979 as a precondition for the construction or modification of any major source of VOC in a nonattainment area.

For a State Implementation plan to be considered approvable, each individual element of the submittal must be approved as a revision to the SIP, and the revised SIP as a whole must satisfy the requirements of Part D of the Clean Air Act. As discussed in the following sections, USEPA has determined that specified individual elements in the stationary source regulations and transportation plans are approvable, conditionally approvable, and disapprovable, and has proposed specific rulemaking actions with respect to those elements of the plan. If the deficiencies specifically cited below are corrected prior to USEPA final rulemaking, USEPA will approve those specified elements of the ozone portion of the Michigan SIP. Alternatively, if the appropriate State Official(s) provide USEPA with assurances that the deficiencies will be corrected according to a schedule negotiated between the State and the USEPA Regional Office during the 60 day comment period announced in this Notice of Proposed Rulemaking, USEPA will conditionally approve those specified elements of the Michigan Ozone SIP. If the State neither corrects the deficiencies nor provides the required assurances, USEPA will disapprove those specified elements of the Michigan Ozone SIP in its final rulemaking. The plan as a whole, however, contains omissions of such significance that USEPA cannot propose rulemaking on the adequacy of the entire ozone SIP at this time. USEPA will propose rulemaking upon State submission of the omitted portions of the plan.

USEPA specifically solicits public comment with respect to this approach and with respect to USEPA's proposal for rulemaking on specific elements of the stationary source regulations, transportation plans, and inspection and maintenance program. A detailed discussion of each component and USEPA proposed rulemaking is contained in the following sections.

Hydrocarbons from Stationary Sources

Section 172(b)(2) of the Clean Air Act requires the application of reasonably available control technology to stationary sources of volatile organic compounds (VOC) in nonattainment areas. The USEPA has developed Control Techniques Guidelines (CTGs) which provide information on available air pollution control techniques, and which contain recommendations of what USEPA calls the "presumptive norm" for RACT. USEPA will approve VOC RACT regulations which are marginally different from the CTGs (within 5% of the controlled emissions on a source category basis) without requiring additional technical support. Where the State regulations are not supported by the information in the CTGs, the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTGs.

Michigan has submitted eighteen new rules containing stationary source controls representing RACT. These rules provide emission limitations and prohibitions for existing sources of volatile organic compounds. Each new rule is briefly described below.

Rule 336.601 defines an "existing source" as any process or process equipment which has been placed in use or for which application was made to the Commission prior to July 1, 1979.

Rule 336.602 is a general provision making it unlawful for a person to cause or allow the emission of volatile organic compounds from any existing source in excess of the provisions of any rule or the maximum allowable emission limit specified in a permit, whichever is more restrictive.

Rule 336.603 requires sources to submit to the Commission either a written program for compliance with specified rules or evidence of compliance with these rules. The written program for compliance must be submitted within one year of the effective date of the rule if the final compliance date for the source is on or before December 31, 1982 or within eighteen months of the effective date of the rule if the final compliance date is after December 31, 1982. The final compliance dates are specified in the rules containing stationary source controls.

Rules 336.604 and 336.605 respectively address the requirements for the storage of organic compounds having a true vapor pressure greater than 1.5 pounds per square inch absolute (psia) but less than 11 psia, and organic compounds having a true vapor pressure of 11 psia or greater in existing stationary vessels of more than 40,000 gallons capacity.

Rule 336.606 provides requirements for loading gasoline into existing stationary vessels of more than 2000 gallons capacity at dispensing facilities handling 250,000 gallons or more per year.

Rule 336.607 contains requirements for loading gasoline into existing stationary vessels of more than 2000 gallons capacity at loading facilities.

Rule 336.608 specifies controls for loading gasoline into existing delivery vessels at loading facilities handling less than 5,000,000 gallons per year.

Rule 336.609 specified controls for loading existing delivery vessels with organic compounds having a true vapor pressure greater than 1.5 psia at loading facilities handling 5,000,000 gallons or more of such compounds per year.

Rule 336.610 specifies controls for existing coating lines including automobile and light truck coating, and

surface coating of cans, coils, large appliances, metal furniture, magnet wire, fabric, vinyl and paper.

Rules 336.611, 612, 612, 614, 615, 616, and 617 contain requirements respectively for existing cold cleaners, existing open top vapor degreasers, existing conveyorized coal cleaners, existing conveyorized vapor degreasers, existing vacuum producing systems at petroleum refineries, and existing organic compound-water separators at petroleum refineries.

Rule 336.618 prohibits the use of cutback asphalt for paving during the period from May 1 to September 30 of each year.

USEPA has reviewed these proposed revisions to the Mighigan SIP and proposes to approve as submitted Rules 336.601, 602, 604, 605, 607, 608, 609, 611, 613, 614, 615, 616, and 617. USEPA proposes to approve Rules 336. 603, 606, 610, and 618 on the condition that the specified deficiencies noted below are corrected in accordance with a schedule negotiated between the State and the USEPA Regional Office during the 60 day comment period announced in this Notice.

(1) While Rule 336.603 specifies final compliance dates for sources affected by these rules, interim increments of progress are not provided. These interim increments of progress are required in 40 CFR Part 51.15. USEPA proposes to approve this rule on the condition that the State provide specific assurances that the detailed compliance schedules containing the necessary increments of progress are submitted to USEPA by not later than one year from the effective date of this rule for sources with final compliance dates prior to December 31, 1982, and by not later than 18 months from the effective date of this rule for sources with final compliance dates beyond December 31, 1982.

(2) Rule 336.606 exempts gasoline dispensing facilities in major urban areas from the requirement of a vapor balance system when loading gasoline into existing stationary vessels of more than 2,000 gallons capacity if the throughput of the facility is less than 250,000 gallons per year. The Michigan submittal does not contain technical support for this exemption. USEPA believes that vapor balance systems should be required for all existing gasoline dispensing storage tanks of 2,000 gallon capacity or more regardless of throughput. USEPA has promulgated such a requirement in the past under section 110(c) of the Clean Air Act, e.g., 40 CFR 52.336, 52.787, and 52.1144. The widespread implementation of vapor balance systems on tanks of 2,000 gallons or greater demonstrates that this control is reasonable. Therefore, although the controls required by Rule 336.606 represent RACT, the applicability of the rule is too narrow.

USEPA proposes to approve Rule 336.606 for those facilities with existing gasoline dispensing storage tanks of more than 2,000 gallon capacity and a throughput of 250,000 gallons per year or more. USEPA proposes to approve the exemption of those facilities with existing gasoline dispensing storage tanks of 2,000 gallon capacity or more and a throughput of less than 250,000 gallons per year if Michigan satisfies one of the following conditions:

1. Submits a technical support document which justifies its proposal as representing RACT.

2. Documents that the allowable emissions resulting from the proposes regulation vary no more than five percent from the allowable emissions resulting from a regulation which requires a vapor balance system on all gasoline dispensing storage tanks with a capacity of 2,000 gallons or more.

3. Makes a commitment to extend the coverge of this regulation to all gasoline dispensing facilities with storage tanks of 2,000 gallon capacity or more.

(3) Rule 336.610 establishes an emission limitation for can end sealing of 4.2 pounds of VOC per gallon of coating less water prior to December 31, 1985 and 3.7 pounds of VOC per gallon thereafter.

USEPA has developed technical support which supports RACT for can end sealing compound as 3.7 pounds of VOC per gallon of coating less water and has demonstrated that final compliance can be achieved by not later than December 31, 1982 for the source category as a whole. USEPA will approve regulations which differ only marginally from the CTG recommended RACT without requiring additional technical support. Allowable emissions within 5 percent of the CTG on a source category basis are approvable. The difference between RACT as technically supported by USEPA and the emission limitation proposed in the rule for can end sealing is greater than 5 percent. However, because can end sealing is only a subcategory of can coating, the deviation from the CTG recommended RACT for the entire category may be less than or equal to 5 percent.

USEPA proposes approval of the Rule if documentation is submitted by the close of the public comment period that the rule differs by no more than 5 percent from the RACT recommended for the can coating category. Alternatively, the State can submit specific technical support for its definition of RACT during the public comment period.

(4) The proposed seasonal exemptions from the use of emulsion asphalt cannot be approved without additional technical support.

USEPA proposes to approve this rule on the condition that documentation is submitted by the close of the public comment period which demonstrates one of the following:

1. The rule differs by no more than 5% from the allowable emissions which would be obtained from RACT as technically supported in the CTG.

2. Temperature fluctuations occur in the months of April and October which would necessitate the use of cutback asphalt.

In addition, USEPA is soliciting comments on the following issues related to Rule 336.610:

(1) In Rule 336.610, the State of Michigan has proposed volatile organic compound emission limits for the surface coating of cans, coils, large appliances, metal furniture, magnet wire, fabric, vinyl and paper. The Rule contains two types of emission limits and requires that both are met. The first limit is based on the maximum content of VOC in any coating applied in these coating operations. The second limit is based on a daily weighted average of all gallons of coatings applied during any 24 hour period. The CTG emission limits for these coating operations do not address the issue of averaging time.

For the surface coating of coils, magnet wire, fabric, and paper, the proposed Michigan maximum content and daily weighted average emission limits are identical and reflect the limits supported in the CTG. For vinyl surface coating, the proposed Michigan maximum content and daily weighted average emission limits are identical but do not reflect the limits supported by the CTG. The limits proposed by Michigan for vinyl surface coating operations are discussed below. For the surface coating of cans, large appliances and metal furniture, the proposed Michigan maximum content and daily weighted average emission limits are different. The maximum content limits are as much as 10% greater than the CTG limits for these categories. The daily weighted average emission limitations for these categories, however, reflect the limits supported by the CTG.

USEPA specifically solicits comment on the use of these two limits for the surface coating operations covered by this rule.

(2) Rule 336.610 also contains plant by plant schedules for compliance with the

RACT emission limits for automobile and light duty truck coating lines. These schedules contain interim increments of progress leading to compliance with the volatile organic compound RACT regulations between December 31, 1982 and December 31, 1986. The schedules for General Motors Corporation and Chrysler Corporation are based on plans developed by these corporations to comply nationally with RACT requirements for automobile and light duty truck assembly plants.

USEPA has reviewed these plans as well as information in the submittal relating to the Ford Motor Company plants in Michigan and has determined that the schedules are as expeditious as practicable. USEPA specifically solicits public comment on the proposed compliance timetable in the automobile and light duty truck VOC-RACT regulations.

(3) Finally, Rule 336.610 proposes a vinyl coating limit of 4.5 pounds of VOC per gallon coating (minus water) as applied. This limit represents a site specific RACT determination for the Ford Motor Company vinyl coating plant in Mt. Clements, Michigan.

USEPA has reviewed the data which the State considered in making this determination and has noted a number of discrepancies concerning the data. These discrepancies relate to the density of the coatings and the percent of solids by volume contained in the coatings. In addition, USEPA questions the appropriateness of the information supplied in this determination in light of other information from plants engaged in the coating of automobile and industry related vinyl products. A detailed discussion of the discrepancies is contained in a technical memorandum in the docket on this proposed SIP revision.

USEPA is specifically soliciting comments from all interested parties in order to resolve the discrepancies in the data and to determine the reasonableness of this RACT determination.

Transportation Plans

The proposed Michigan SIP revision on transportation addresses the urban areas of Detroit, Flint, Grand Rapids, and Lansing for the attainment and maintenance of the ozone standard and the urban areas of Detroit and Saginaw for attainment and maintenance of the carbon monoxide standard.

USEPA has evaluated the transportation plan using the requirements for an approvable nonattainment area SIP which appeared in the April 4, 1979 Federal Register (44 FR 20372), the "USEPA-USDOT Transportation-Air Quality Planning Guidelines" and the USEPA Office of Transportation and Land Use Policy "Checklist for Transportation SIP's".

The chapter of the SIP which will individually evaluate the four urban nonattainment areas and develop a control program for ozone has not yet been submitted by the State. As discussed above under the section on "Ozone", the Michigan submittal does not contain ozone design values for each nonattainment area, a determination of the VOC reduction requirements for each nonattainment area, or a demonstration of attainment of the ozone standard.

The submittal does contain an adequate description of the project programming process which describes the steps involved in the identification, evaluation, selection, adoption and implementation of specific transportation control strategies. This description of the general transportation control strategies planning process is adequate to identify and follow the steps involved in the planning process. In addition, the submittal does include an adequate identification of estimated financial resources necessary to carry out the process described by the guidelines. USEPA proposes to approve these two areas of the Michigan SIP revision on transportation.

USEPA has determined, however, that the transportation portion of the Michigan SIP contains such significant omissions that rulemaking cannot be proposed at this time. Upon submission of the omitted portions of the plan, USEPA will evaluate the adequacy of the proposed State transportation plan and propose rulemaking. As previously stated, plan approval is a prerequisite for the construction or modification of any major source of VOC in a nonattainment area.

To be fully approvable, the completed transportation portion of the plan must contain the following information:

1. Identification of representative strategies from adopted TIP/TSM programs which can be implemented by 1982, approximate schedules for implementation, responsible agencies, and an approximate estimate of the emission reduction attributable to each strategy.

2. A commitment by each of the four Metropolitan Planning Organizations (MPO's) to either a schedule for using the control strategy evaluation techniques in a handbook being developed under a Transportation Systems Management (TSM) Contract, or to a schedule and process for undertaking a comprehensive analysis of alternatives.

3. A detailed description of how the analysis of the emission control strategies which are only listed in the present submission will be undertaken.

4. Initial emission reduction targets for mobile sources.

5. A schedule for the study, adoption and final implementation of additional control strategies that are reasonably available. These control strategies are to be developed in accordance with the transportation planning process described in the appendices of the SIP submittal. The submittal does contain the list of emission control strategies to be evaluated in the future.

6. A commitment to justify any decisions not to adopt strategies listed in section 108(f) of the Clean Air Act.

7. Evidence of a continuing process for public interest group and elected official consultation and involvement in defining transportation air quality issues, establishing the planning process and developing and analyzing alternatives.

8. A formal request for an extension of the ozone and/or Co attainment dates beyond 1982, a justification of the need for any extension, and a commitment to necessary strategies to justify the extension. Although the submission includes a reasonable further progress (RFP) line for CO in the Detroit Metropolitan area, it does not contain a commitment to actions necessary to justify an extension.

Vehicle Inspection and Maintenance

Section 172(b)(11) of the Act requires the establishment of a specific schedule for the implementation of a vehicle emission control inspection and maintenance (I/M) program for those SIP revisions which demonstrate that attainment of the primary standards for carbon monoxide (CO) and/or ozone not possible in an area prior to December 31, 1982, despite the implementation of all reasonable emission control measures.

Michigan has demonstrated in the proposed SIP revision that attainment of the primary standards for CO is not possible in the Detroit metropolitan area by December 31, 1982. In addition, the Governor of Michigan indicated in his April 25, 1979 letter transmitting the proposed SIP revision that an I/M program will also be necessary for the ozone control strategy in the Detroit metropolitan area. Therefore, the State has requested an extension of the statutory deadline and has submitted its proposal for an inspection and

maintenance program for the Detroit Metropolitan area.

The proposed SIP revision contains an I/M implementation schedule consisting of two alternative compliance schedules since the State has not yet determined whether to implement a decentralized I/M program or a centralized I/M program. A centralized program would require inspection testing to be conducted at facilities owned by the State, by a contractor, or by a local or regional governmental agency. A decentralized program would require inspection testing to be conducted in private garages licensed to conduct the tests by either the State or by a local or regional agency.

Specific deficiencies in the submittal are discussed in detail below:

1. Section 172(b)(10) of the Clean Air Act requires inclusion in the SIP of written evidence that the State has adopted the necessary requirements by statute, regulation, or other legally enforceable document and has commited itself to implement and enforce the elements of the plan.

On February 24, 1978, the Administrator issued a memorandum (published at 43 FR 21673) which specified that where the necessary legal authority does not currently exist for the implementation of an I/M program, it must be obtained by the State by June 30, 1979. This memorandum stated that limited exceptions to the requirement of legal authority by June 30, 1979 may be available if the State can demonstrate that (a) there was insufficient opportunity to conduct the necessary technical analysis, and/or (b) the legislature had no opportunity to consider any enabling legislation for I/M between enactment of the 1977 Amendments and June 30, 1979. On January 24, 1979, the Regional Administrator of USEPA Region V, reaffirmed the requirements for I/M legal authority in a letter to Dr. Howard A. Tanner, Director of the Michigan Department of Natural Resources.

On april 4, 1979, in the "General Preamble for Proposed Rulemaking on Approval of State Implementation Plans for Nonattainment Areas" (44 FR 20372), USEPA substantially limited the opportunity for an extension based on insufficient opportunity to conduct necessary technical analyses. USEPA stated in that notice that "as far as USEPA is aware, the needed information is now available."

The State of Michigan has not demonstrated in its proposed SIP revision that the State has existing legal authority which would enable it to implement and enforce an I/M program. In the absence of either a certification of adequate legal authority or an approved extension, the SIP cannot be approved. USEPA has received a request for an extension from the Governor of Michigan. This extension, if approved, will allow the State up to one additional year to certify adequate legal authority to implement and enforce an I/M program. USEPA will review the extension request to determine whether it meets the criteria discussed above. The decision to approve or disapprove the extension request will be published in the Federal Register in a supplemental notice of Proposed Rulemaking during the public comment period announced in this Notice.

2. At the time of certification of adequate legal authority the State must commit to implement and enforce the I/M program.

3. Pursuant to section 172(b)(11) of the Act, an I/M plan must contain both a legally enforceable schedule for the implementation of the plan and a commitment to the schedule by the State. The dates in the schedule should include the milestones described in a July 17, 1978 I/M Policy Memorandum by David Hawkins, Assistant Administrator for Air, Noise and Radiation. The Michigan I/M implementation schedule does not include all of these milestones. In addition to the dates already specified in the schedule, Michigan should include dates for the following milestones:

a. Development and issuance of requests for proposal for a constractor to construct and/or operate inspection.

b. Award contract(s) to construct and/or operate inspection facilities.

c. Completion of facility construction.

d. Adoption of procedures and guidelines for testing and quality control under all program options.

e. Completion of equipment purchase.

f. Development and adoption of cutpoints.

USEPA will find the Michigan schedule for I/M implementation acceptable if the State submits a schedule which specifies dates for the milestones in the Hawkin's policy memorandum. An acceptable schedule is a necessary part of a approvable SIP.

4. In a July 17, 1978 I/M policy Memorandum by Assistant Administrator David Hawkins, USEPA stated its policy that each State must commit itself to achieve a reduction of at least 25 percent in light duty vehicle exhaust emissions by 1987 compared to what emissions would be in the absence of I/M. A commitment to this reduction is a necessary element of an approvable Part D SIP. Accordingly, Michigan must commit itself to such a reduction.

USEPA will approve the I/M portion of the Michigan ozone and carbon monoxide SIP if the above noted deficiencies in the plan are corrected prior to final USEPA rulemaking. The corrections must include either certification of adequate legal authority or USEPA approval of an extension request.

Carbon Monoxide

Two areas of the State of Michigan in Detroit and Saginaw Counties, were designated as nonattainment for the carbon monoxide National Ambient Air Quality Standards (NAAQS). The proposed Michigan SIP bases its control strategy for demonstrating attainment in the Detroit area on transportation control strategies which will reduce emissions from mobile sources. The control strategy for Saginaw County is based on both the control of stationary source emissions from large ferrous cupolas and mobile source emission reductions which will be obtained through the Federal Motor Vehicle Control Program.

The USEPA has reviewed Michigan's proposed attainment plan for carbon monoixde and has noted the following deficiencies:

1. The mobile source control strategies which will provide carbon monoxide emission reductions are the same transportation strategies that Michigan will rely on to attain and maintain the ozone standard. As discussed above, the State plan to attain the ozone standard has not yet been submitted to USEPA. Therefore, the proposed SIP does not contain sufficient information to allow USEPA to evaluate the computed CO emission reductions which will be obtained from mobile sources.

In a letter dated April 25, 1979, Governor Milliken formally stated the Michigan commitment to develop and submit an ozone SIP which will also contain CO emission reduction strategies by not later than July 1, 1979. Therefore, USEPA will not propose rulemaking on the Detroit CO transportation plan until the ozone submittal is received and reviewed by the USEPA Regional Office.

2. Rule 336.930 requires ferrous cupolas with melting capacity of 20 tons or more per hour located within a carbon monoxide nonattainment area to be equipped with afterburners or equivalent technology. Sections 110(a)(2)(B) and 172(b)(8) of the Clean Air Act and 40 CFR 51.15 require that each SIP contain emission limitations with legally enforceable compliance

schedules which include final compliance dates and interim increments of progress. These increments must include the date of submittal of the source's final control plan; the date by which contracts for emission control systems for process modifications will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish the emission control or process modification; the date of initiation of on-site construction for installation of the emission control equipment or process change; the date by which on-site construction or installation of emission control equipment or the process modification is to be completed; and the date by which final compliance is to be achieved. Rule 336.930 contains a date for submittal of each source's final control plan, and a date by which final compliance is to be achieved. The rule is deficient in that it does not contain the other necessary increments of progress. USEPA proposes to approve Rule 336.930 on the condition that the State provides specific assurances that detailed compliance schedules containing all of the necessary increments of progress are submitted to USEPA as SIP revisions by not later than 6 months after the effective date of this rule.

Maintenance/Malfunction Provisions

Michigan has submitted proposed Rules 336.911 and 912 as its maintenance/malfunction program. USEPA proposes to approve these regulations as submitted.

Rule 336.911 requires that at the request of the Commission, a source must prepare a malfunction abatement plan to detect, prevent, and correct malfunctions or equipment failures resulting in excessive emissions. These malfunction abatement plans must contain a complete preventive maintenance program which identifies supervisory personnel responsible for the inspection, maintenance, and repair of air cleaning devices, describes the items or conditions to be inspected and the frequency of such inspections, and identifies the major replacement parts which will be maintained in inventory. The malfunction abatement plans must also identify the operating variables which will be monitored and the procedures which will be utilized in detecting a malfunction or equipment failure. Finally, a description of the corrective procedures or operational changes that will be made in the event of a malfunction or equipment failure must be contained in the malfunction abatement plan.

The Rule specifies that malfunction abatement plans are subject to review and approval by the Commission. Failure to submit a plan or an amendment to a plan which satisfies the requirements of the Rule may result in the commission amending the plan on its own initiative.

Rule 336.912 addresses abnormal conditions and the breakdown of process or control equipment. If excessive emissions occur as a result of abnormal conditions in or breakdowns of process control equipment lasting for more than two hours, the source must notify the commission or air quality division as soon as possible. The Rule also requires the source to submit to the commission within ten days of a breakdown or an abnormal condition a written detailed report outlining the probable causes of breakdown, the duration of the violation, the remedial action taken, and the steps being taken to prevent a recurrence. These preventative steps must be included in any malfunction abatement plan required under Rule 336.911.

USEPA proposes to approve these two rules as submitted.

New Source Review

The Clean Air Act requires that each SIP accommodate growth in emissions in nonattainment areas through an emission offset program or by a planned margin for growth. Michigan has elected to use an offset approach for all pollutants except carbon monoxide.

USEPA has reviewed this proposed revision to the Michigan SIP and has determined that it is generally approvable.

The following deficiencies, however, must be corrected:

1. Although carbon monoxide is exempted from the offset provision, the submittal does not demonstrate that the SIP will provide a margin for growth in those CO nonattainment areas where stationary sources contribute to ambient violations. This deficiency may be corrected in one of two ways. The State may provide additional data during the public comment period to demonstrate that the SIP will require sufficient emission reductions to provide a margin for growth. Based on this data, the State's submission must expressly quantify the margin for growth as required by Sec. 172(b)(5) of the Act. Alternatively, the appropriate State Official(s) must provide USEPA with firm assurances that the State will develop revisions to the SIP which would require offsets for those new stationary sources of CO which would cause or exacerbate a violation of carbon monoxide ambient air quality standards. During the public comment period announced in this Notice, the State and the USEPA Regional Office must negotiate a schedule for the completion of all necessary actions prior to submittal of a SIP revision to USEPA.

2. Section 173(1)(A) of the Clean Air Act requires a determination on the part of the permitting agency that issuance of permits to construct would not interfere with reasonable further progress toward attainment as defined under Section 171 of the Act. The proposed Michigan SIP does not specifically address this requirement. The plan, however, does require offsetting emissions equal to or in excess of 1.1 to 1 for new major sources seeking to locate in nonattainment areas, and this degree of overall emission reductions in combination with the other SIP requirements may be sufficient to insure that adequate progress toward attainment will be made. To correct this deficiency the State must provide USEPA with a procedure for determining that reasonable further progress is being achieved. The procedure must be submitted during the public comment period announced in this notice of proposed rulemaking. Alternatively, USEPA will accept firm assurances from the appropriate State Official(s) to develop such a procedure according to a schedule to be negotiated between the State and the USEPA Regional Office during the public comment period announced in this Notice.

II. General Requirements of Clean Air Act as Amended

The Michigan SIP revision submitted on April 25, 1979 addresses several requirements of the 1977 Amendments to the Clean Air Act that are not Part D requirements. Although incorporation of these provisions is required by law, failure to achieve final USEPA approval by July 1, 1979 does not trigger the economic and growth limitations associated with Part D.

Section 121—Consultation

Section 121 of the Act requires that the State provide a "satisfactory process" for consulting with local governments and Federal land managers to meet certain requirements in the development of the SIP. A satisfactory process of consultation must be included for transportation controls, air quality maintenance, preconstruction review of direct sources of air pollution, nonattainment requirements, prevention of significant deterioration, and certain compliance orders. This process must be

ongoing and in accordance with regulations promulgated by the USEPA on June 18, 1979 (44 FR 35176).

USEPA is currently reviewing the Michigan consultation process for conformance with the recently promulgated regulations. A discussion of that review and USEPA proposed action in regard to the Michigan consultation process will be contained in a supplemental notice of proposed rulemaking to be issued shortly.

Part C—Prevention of Significant Deterioration

In section 110(a)(2)(D) and Part C, the Clean Air Act establishes limitations on deterioration of air quality in those parts of the nation where the air quality is cleaner than the National Ambient Air Quality Standards. These SIP revisions were due nine months from the date of promulgation or March 19, 1979.

Michigan has submitted proposed Rules 203(2), 203(3), 205 and 231 to meet the requirements of Part C of the Clean Air Act. USEPA will address these rules in a separate Federal Register notice.

Section 110(a)(2)(K)—Permit Fees

This section requires the owner or operator of each major stationary source to pay the permitting authority, as a condition of any permit required by the Clean Air Act, a fee to cover the reasonable costs of processing an application for a permit and of implementing and enforcing the terms and conditions of the permit. Michigan has in effect Rule 366.82 which details a comprehensive air pollution sureveillance fee system. USEPA proposes to approve this system as meeting the requirements of Section 110(a)(2)(K).

Section 126—Interstate Pollution

Section 126(a)(1) of the Act requires that the SIP provide for written notice to nearby states of any proposed major stationary source which may significantly contribute to levels of air pollution in excess of the National Ambient Air Quality Standards in that state. Except for an agreement with Canada, the Michigan SIP does not disclose procedures for the required written notice to other nearby states. During the 60 day comment period Michigan must submit a schedule to develop these procedures and to submit them to USEPA in a legally enforceable form, or USEPA will disapprove this portion of the SIP.

Section 126(a)(2) requires the State to identify existing major sources which may significantly contribute to levels of air pollution in neighboring states. On October 31, 1977 the Chief of the Air Quality Division of the Michigan Department of Natural Resources sent letters with this information to each bordering state. USEPA proposes to approve this action as satisfying the requirement of Section 126(a)(2).

Section 127—Public Notification

Section 127 of the Act requires the SIP to contain measures for effective notification of the public on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded, to advise the public of hazards associated with such pollution and to enhance public awareness of measures which can be taken to prevent such standards from being exceeded. The Air Quality Division of the MDNR proposes to publish annually an Air Quality Report summarizing all validated air monitoring data collected in the previous calendar year. This Report will outline standards, generalized health and welfare effects and other monitoring concerns and will be mailed upon request.

In addition, the Air Qaulity Division proposes to distribute to major news outlets an annual article which not only lists the pollutants for which primary standards have been violated, and also contains: (1) Information regarding certain violations of ambient air quality standards for individual pollutants; (2) explanations of the primary health related standards and associated health effects for that pollutant and (3) methods by which members of the public may participate in enforcing the standards for the pollutant. Michigan has submitted Rules 1301 through 1308 to provide for notifying the public of air pollution episodes, and adoption of episode emission abatement programs, and the issuance of episode orders.

USEPA proposes to approve this Michigan SIP provision as meeting the requirements of Section 127.

Section 128—State Boards

Section 128 of the Act requires that any boards which approve permits or enforcement orders under the Act contain a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act; and that members of any such board adequately disclose any potential conflicts of interest. The Governor of Michigan submitted a questionnaire to the members of the Air Pollution Control Commission to determine which members could be certified as representing the public interest and as not deriving a siginificant portion of their income from persons subject to permits or orders. The reponse to the questionnaire indicated that the majority of the board membership met the requirements of Section 128. The Governor has committed himself to having all prospective commissioners complete the questionnaire and to make appointments so that the commission will continue to represent the public interest as required by section 128 of the Act.

USEPA proposes to approve the use of the questionnaire and the commitment of the Governor as meeting the requirements of section 128 of the Act on the condition that the Governor make a further commitment, within the sixty day public comment period announced in this Notice of Proposed Rulemaking, to submit the questionnaire annually to members of the Air Pollution Control Commission and to annually submit the results to USEPA. Alternatively, the Governor or his designee must make a commitment to develop and adopt regulations assuring that the members of the Air Pollution Control Commission meet the requirements of this section.

Interested persons are invited to comment on the revised Michigan SIP and on USEPA's proposed actions. Comments should be submitted to the address listed in the front of this Notice. Public comments received on or before October 12, 1979, will be considered in USEPA's final rulemaking on the SIP. All comments received will be available for inspection at Region V Office Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA lables proposed regulations as "specialized." I have reviewed these regulations pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that they are specialized regulations not subject to the procedure requirements of Executive Order 12044.

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

Dated: July 6, 1979.

John McGuire,

Regional Administrator.

[FR Doc. 79-24880 Filed 8-10-79; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

Automated Data and Telecommunications Service

[41 CFR Part 101-36]

ADP Management; Annual Validation of COBOL Compilers

Correction

In FR Doc. 79-24268, appearing on page 46305 in the issue of Tuesday, August 7, 1979, the second word in the twelfth line of § 101-36.1305-1(c)(3) should read, "or".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Chapter I]

[75-083, 75-083a, 75-083B]

Proposals for Tank Barges To Prevent Oil Pollution

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rule making; additional public hearing.

SUMMARY: The Coast Guard intends to hold an additional public hearing in Washington, D.C. concerning the proposed design standards for tank barges to prevent oil pollution (CGD 75-083) and the proposal for existing tank barges to prevent oil pollution (CGD 75-083a). Requests were received by the Coast Guard for the additional hearing in Washington, D.C. from members of the public unable to attend the public hearing scheduled for August 2, 1979. This document grants the requests for the additional public hearing.

DATES: An additional public hearing will be held on September 5, 1979, beginning at 9 a.m. in Washington, D.C.

ADDRESSES: The additional public hearing will be held at the Department of Transportation, Nassif Building, 400 Seventh St., S.W., Room 2230, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eugene K. Johnson, Merchant Marine Technical Division (G-MMT-1/TP13, (202) 426-4431) or Lieutenant Commander Kenneth E. Rock, Merchant Vessel Inspection Division (G-MVI-2/TP24, (202) 426-2190) at 2100 Second Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: Interested persons are invited to attend this additional hearing and present oral or written statements on CGD 75-083 or CGD 75-083a or both. CGD 75-083 was published in a notice of proposed rule making in the June 14, 1979 issue of the Federal Register (44 FR 34440). CGD 75-083a was published as an advance notice of proposed rule making in the same issue of the Federal Register (44 FR 34443). It is requested that anyone desiring to make an oral statement at this public hearing notify the Executive Secretary, Marine Safety Council (G-CMC/TP24), Room 2418, 2100 Second Street, S.W., Washington, D.C. 20590, (202) 426-1477, at least 10 days before the scheduled date. In this notification, it is requested that the approximate length of time needed for the presentation be specified. It is urged that a written summary or copy of the oral presentation be included with this notification.

(92 Stat. 1480 (Dec. 5, Port and Tanker Safety Act of 1978, 46 U.S.C. 391a); 49 CFR 1.46(n)(4))

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

August 3, 1979.

[FR Doc. 79-24891 Filed 8-10-79; 8:45 am]

BILLING CODE 49-1014-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 31, 33, 42 and 43]

[CC Docket No. 79-196; FCC 79-479]

Revision of the Uniform System of Accounts and Financial Reporting Requirements for Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: First Supplemental Notice of Proposed Rulemaking.

SUMMARY: This First Supplemental Notice of Proposed Rulemaking in the revision of the Uniform System of Accounts (USOA) for large telephone companies incorporates Bell's Functional Accounting System (FAS), a Management Information System, as an issue.

The original Notice released on July 21, 1978 proposed a cost accounting system which the Commission believes would permit the easy and accurate determination of costs of services without special studies. This First Supplemental Notice invites comments on whether Bell's FAS is a useful cost of service accounting tool for the regulation of Bell and others, as well as whether it is a useful management tool for those other than Bell who might adopt the system.

In addition, this notice invites comments on the differences between present accounting rules and generally accepted accounting principles; it also calls for comments on the use of cost centers with more specificity than orginally outlined; in addition it seeks clarification on the proposals submitted by parties for depreciation reserve and depreciation expense, as well as clarification of the general comments on account structure, required reports, and the use of accounts for jurisdictional cost separations; finally, the notice requests information on cost methodogies in use in the states and well as features thought necessary for auditability.

DATE: Comments must be received before September 17, 1979 and reply comments before October 15, 1979 for all issues other than Bell's FAS. For the latter issue comments are due November 15, 1979 and reply comments January 2, 1980.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Dr. David Chessler, Common Carrier Bureau, 202-653-7413.

Adopted: August 1, 1979.

Released: August 9, 1979.

See 44 FR 13051.

By the Commission: Commissioner Lee absent.

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History of This Proceeding

1. On June 28, 1978, the Commission adopted a *Notice of Proposed Rulemaking* in CC Docket No. 78–196 (*Notice*) on the *Revision of the Uniform System of Accounts and Financial Reporting Requirements for Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules)*, 70 FCC 2d 719 (1978), 43 FR 33560 (July 31, 1978). In that *Notice*, the Commission outlined a proposal for extensively revising the Uniform System of Accounts for Telephone Companies (USOA), the data collection, record keeping requirements and reporting for the telephone companies, and the reporting requirements the telephone companies are to meet. The Uniform System of Accounts contained in Parts 31 and 33 have remained unchanged in large part since their adoption in 1935.[1] Since 1935, tremendous technological changes have occurred in the telecommunications industry. Along with some regulatory policy shifts, these changes have made possible the introduction of competition into some services in the telecommunications industry. Because the industry is composed of companies offering both monopoly and competitive services, as well as companies that provide only competitive services, we have perceived a need to adopt accounting and reporting procedures that will ensure that a company offering both monopoly and competitive services does not cross-subsidize its competitive services with revenues from its monopoly services. Thus, our need is for a cost accounting system that will develop cost of service directly in the accounts themselves. Accordingly, we set forth seven objectives for a new USOA:

"(1) It will form the basis for financial reports, including both balance sheet and income statement reporting. (2) It will serve as a data base and a foundation for managerial decision-making and internal management reports by the carriers. (3) It will provide sufficiently detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements, for pricing decisions and other managerial decision-making by the carriers. (4) It similarly will provide detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements, for rate review and continuing surveillance purposes of this Commission (and other regulatory bodies which adopt the revisions) and provide a basis for rate prescription, where appropriate. (5) It will facilitate the breakdown of costs between interstate and intrastate jurisdictions ("Jurisdictional Separations"). (6) It will permit analysis of facility and plant utilization, including studies of the causes for studies of the causes for each category of expenditure and review of service efficiency. And (7) it will be structured so as to allow for regulatory and independent auditing and tracing of questioned entries." (70 FCC 2d 725).

2. Initial and reply comments were due on January 15, 1979, March 15, 1979, respectively.[2] More than seventy parties have participated in the proceeding to date through the submission of questions for the September 22, 1978, public meeting at which the staff answered questions submitted in advance by persons interested in the revision of the USOA; by filing initial comments; or by filing reply comments.[3] Attached to this order in Appendix A is a supplemental service list which, in conjunction with the service list issued on March 9, 1979, Mimeo No. 5417, 44 FR 13015 (March 9, 1979), constitutes a list of the parties who have participated in this proceeding, as well as some additional parties that have requested that their names be placed on the mailing list in accordance with directions contained in the original service list.

3. On March 20, 1979, the National Association of Regulatory Utility Commissioners (NARUC) filed its reply comments in this proceeding. One part of the filing requested that the Commission extend the date for filing reply comments by at least four months. This request for an extension of time was filed five days after the deadline set by the Commission for filing reply comments. Accordingly, the request is dismissed as having been untimely filed. This step will work no prejudice to NARUC, since we are hereby requesting that any party having additional comments in response to the original *Notice* in this docket should include those comments with its comments in response to the matters raised in this supplemental notice.

4. Analysis of the comments and reply comments helped us focus on several key issues in the proceeding. Some of these were unanticipated by our original Notice. Others elicited no response at the time. Furthermore, some comments present alternative approaches that, while of some apparent interest, are set forth in insufficient detail to be evaluated. Since it is important that every reasonable effort be made to acquire all pertinent information, we are in this Supplemental Notice providing an opportunity for all parties to comment on any of the aforementioned types of issues.

The Objectives of This Proceeding

5. In their comments, the International Business Machine Corporation, IDCMA, as well as other parties, expressed a need for the Commission to adopt an accounting system for Western Electric and Bell Labs. Such a system was thought to be necessary in order to ensure that the developmental and manufacturing costs of telephone equipment supplied to the Bell operating companies were properly charged to equipment or technologies in order that these costs would properly be reflected in the cost of service. AT&T responded that it had detailed accounting systems in place to account for the developmental and manufacturing costs of the two subsidiaries. Moreover, it contends that the prescription of accounting systems for Western Electric and Bell Labs is beyond the jurisdiction conferred upon the Commission by the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* While the comments urging extension of accounting systems over Western Electric and Bell Labs have raised some well defined issues relating to the impact on the cost of service calculations of the costing and pricing decisions made by Bell Labs or Western Electric, we believe it desirable to limit the scope of this proceeding to the revision of the Uniform System of Accounts and the related record keeping and reporting requirements for the operational aspects of telephone companies. This approach is the most efficient, since the operations of a telephone company are considerably different from those of a manufacturing or research organization. In arriving at this decision, we do not reach the question of whether the Commission's jurisdictional mandate extends to the

[1] The most notable changes have been in the Station Equipment accounts which were extensively revised in 1954.

[2] *See* Mimeo No. CC 6946 (September 6, 1978), extending the September 15, 1978 and November 1, 1978 dates established in the *Notice*.

[3] Several of the Comments filed in both the initial and reply rounds of comments were not filed by the date on which the respective comments were due. Because of the broad scope of the proceeding involved, because of a desire to receive comments from all persons who may be affected by any Commission action in this regard, and because the consideration of the late filed comments will not interfere in the orderly processing of the docket, we believe that the public interest will be served by our waiving the deadline for filing comments in response to the Notice and considering the late filed comments.

prescription of an accounting system for affiliated manufacturing and research organizations. Similarly, we will not consider prescription of an accounting system for non-carrier parent corporations in this forum.[4] While we may at some future time address the question of what types of reports should be filed by holding companies and companies "under direct or indirect common control," we do not now do so in this proceeding.

6. The primary purpose of this proceeding is to develop a system of accounts which will constitute, with the Primary Allocation Records, a *Regulatory Information System* that will meet all the ordinary needs of the Commission for the regulation of common carriers. As we stated in our original Notice, (at paragraph 6) the present USOA "has proven to be of little, if any, help in resolving issues concerning the appropriate rate levels and rate structures of the various telephone services." We see the reliance upon special studies for ordinary and frequent events, such as rate cases, as evidence of the inadequacy of the existing accounting system. Any system that cannot yield the information needed to resolve common regulatory questions is of limited value, however well it may meet some other goals. While accuracy of the basic system is an important desideratum, the information so carefully and accurately recorded must be useful for regulatory purposes. When an otherwise accurate accounting system forces us to rely upon special studies for many of the ordinary and necessary regulatory decisions, such system does not fulfill its functions. Accordingly, we have set as a major goal of our effort the achievement of a situation wherein no special study will be required to obtain any information used in the normal, recurring process of regulation. Where a respondent believes that a special study may be required for any regulatory purpose under our proposal, his own proposal, or the proposal of any other party, the respondent should clearly state what the regulatory purpose is, the nature of the study, and what advantages are gained by not gathering the necessary information as part of the regulatory information system (accounts and primary allocation records).

7. Regulatory accounting differs from normal acounting in many ways because of regulators' urgent need for accurate and consistent information on used and useful investment, and the appropriateness of expenses. In this respect it has developed regulatory accounting concepts consistent with its needs that have gone beyond the requirements of traditional accounting. Examples of such concepts are the use of original cost of plant and fixed term depreciation which are now well established. However, regulation has not, in the past, been preoccupied with cost of individual products (services), so regulatory accounting systems have not, until recently, included detailed cost accounting systems. The FPC (now FERC), the CAB, the ICC and now we, the FCC, have been forced to draw upon and then go beyond the experience of the accounting profession to develop costing methods that are consistent with regulatory practice. For example, since actual cost is one of the most basic regulatory accounting principles, 44 years ago we based our work-order system for plant upon a job order cost accounting system (see paragraph 30, below) which is the standard cost accounting practice most closely associated with actual results. We proposed in the Notice to extend and adapt this work order cost system to expense for cost of service purpose (paragraphs 31 and 32, below). It would be much easier to develop and adopt a functional cost accounting system if carriers based their tariffs upon functions rather than services (or if the services were themselves functions). We discuss this matter in detail in paragraphs 85 through 88. We could probably simplify our task immensely by requiring carriers to base their tariffed services more closely upon the identifiable functions of the telephone network and by requiring consistency and simplicity in the rate structures they employ in their tariffs. We desire to preserve the principle of carrier made rates, and we wish to develop a cost accounting system based upon *services* so as to preserve carrier flexibility and managerial prerogatives. We hope that we can develop a service cost accounting system that will give us costs of functions as well.

8. Many of the respondents have stated that the accounting system should be compatible with all costing methodologies, and not just Method 7. To the extent such a goal is feasible, it will be accomplished only by an accounting system that properly identifies and distinguishes among the various economically significant types of cost. Where fixed cost and variable cost; direct cost, indirect cost and overhead cost; first cost and additional cost; controllable cost and uncontrollable cost; allowable cost and disallowed cost; marginal cost and incremental cost; are all differentiated in the accounting system, no impediment is raised to the use of older methods of cost allocation, even while newer methods are being studied. Indeed, even though our proposal is designed to meet the needs of Method 7, it was always our intention that it be usable for existing methods of jurisdictional separations which are characterized by broad averaging. One can always add up accounts that are finely broken down; one cannot disaggregate accounts that are too broad. We therefore ask respondents to analyze our proposal, and their own, and any of the other proposals, and report to us the extent to which the significant distinctions from the economic and regulatory standpoints enumerated above (and any other distinctions the respondent thinks should be made) are reflected in and supported by the alternative regulatory information systems (accounts and primary allocation records).

9. Economic analysis of telephone systems is hampered by the deficiencies of the accounting system in use. Because of the broad aggregation of the data collected basic studies of such topics as labor productivity and economies of scale yield confusing and even misleading results. The overall efficiency of the telephone network is unknown, in part because such choices as the one between additional switching facilities and additional transmission paths cannot be analyzed directly. If one seeks to evaluate a major program, he is constrained to the evaluation of a few examples, because the cost effectiveness of entire programs (such as the replacement of crossbar electromechanical switches with electronic switches) cannot be evaluated without reference to special studies, which usually apply only to particular cases rather than the program as a whole. Such information is of limited value for regulation. Systematic study of individual events, whether disasters (floods and fires), ordinary service problems (overloads and poor service) and actions (reorganizations of the supply of a service) cannot be performed, since the data is too broadly averaged. Even utilization rates of equipment by type are unknown. Thus, regulatory oversight of carrier operations is significantly handicapped. Respondents are asked to compare our proposal, their own, and any other proposal they wish to evaluate, with respect to the types of economic analysis, efficiency studies, and regulatory oversight that can be performed without the need to collect additional data beyond that in the

[4] See sections 215(a), 218, 219(a) and 220(a) of the Communications Act.

Regulatory Information System (the Accounts and P.A.R.'s).

10. Despite our commitment to developing cost of service information, our original Notice indicated that a majority of the plant used in the telephone industry might not be directly attributable on a causational basis to a single service or a group of services. This view remains uncontroverted by any of the commenting parties. However, we continue to believe that the distinction between direct allocation, particularly on a causational basis, and indirect allocation is a vital distinction to make for any costing methodology, including present separations procedures and so should be reflected in the accounting system.[5] Certain activities or items of equipment are indeed used exclusively in support of certain services. There are some activities, such as cable splicing, that may be performed directly in support of a service, or may be done in common for many services. We have, in our proposal, tried to distinguish such situations, by the manner in which the activity is initiated or performed, so that where direct attribution is *sometimes* possible for an activity, such direct attribution is appropriately made within the accounting system. Similarly with plant investments, where an item of equipment, like a 2,400 pair 24 gauge polyethylene sheathed cable, is installed in such a way that at installation one can reasonably expect it to be used for certain services or groups of services, whether because of its nature, its location, or for other reasons, we make such attribution in the accounts. Where shared use is expected, or use can be expected to change over the life of the plant, we have placed the plant into an account that can be allocated on the basis of an inventory count, some other element of the Primary Allocation Record, or any other scheme that may be appropriate to the circumstances. Accordingly, we have designed our plant categories to distinguish between plant of varying degrees of commonality (simultaneous or nearly simultaneous use of portions of the retirement unit by different services) and fungibility (capability of being successively used by different services at intervals that are longer than the accounting period but much shorter than the life of the retirement unit). We had thought, while preparing our proposal, that the preservation of information for direct attribution where possible was the very essence of functionality, (but see paragraphs 7 and 85 through 88 on the appropriateness of functional cost accounting for cost of service rate making), but that allocation would be "premature" if it relied upon application of indirect methods, indices, inventories, and data from the primary allocation records or elsewhere. It is not certain from the comments that our intention is fully understood. We therefore call for respondents to analyze in detail our proposal, their own, and any others they care to, with respect to the retention in the accounts of information necessary for direct attribution of accounting data to separate services where such is possible, and the avoidance of allocation within the accounts by the sort of transitory considerations we capture in our proposed primary allocation records.[6]

11. The vast majority of the comments urged the Commission to eliminate from the general ledger all accounts which required service attribution. The reasoning supporting this argument was that it would provide fixity in the accounting system; it would place costing information in the PAR's [7] or other supporting records where it belonged; and it would permit the adoption of a general ledger for smaller companies that do not need cost of service information, thereby increasing comparability of financial data and facilitating the jurisdictional separations process. These parties should address in their comments the issue of whether direct costs can be tracked in the subsidiary records or PAR's if not recorded directly in the general ledger. Parties believing that it can be done should outline with specificity the procedure through which the tracking will be accomplished.

Carriers Affected

12. In our July 31, 1978 Notice of Proposed Rulemaking we called for comment on a proposal that the new system of accounts apply only to carriers with over $1,000,000 in operating revenues. This created a great deal of concern as to which carriers would actually be required to implement the new system of accounts, particularly among the smaller independents. Their main concern dealt with the cost of implementation: at best, it was considered an added cost with little or no benefit, and at worst, it was considered financially impossible. For example, the comments claim that just the cost of acquiring computer capability for a typical company with $1,000,000 in operating revenues which does not now have such a capability would be approximately $3.00 to $5.00 per month per customer. Generally alternatives to our suggested operating revenue threshold level ranged from $10 million to $100 million. The state commissions generally favored a figure of around $50 million; the smaller companies suggested figures in the $10-25 million range; and the larger independents generally recommended the larger cut off points. It is not the Commission's intention to burden any carrier with unreasonable demands of accountability. It is the Commission's intention to include only those carriers likely to have cost of service rate cases under the full scale version of the new USOA. Our proposal was intended to apply to companies so large that most of their accounting is already computerized. Assuming the states do not impose our accounting system on carriers from which cost of service information is not often required, those affected will be the Bell companies and some of the larger independents.

13. It may be necessary to modify the existing accounts for some smaller carriers to assist them in making settlement cost studies that are sufficiently comparable to those of the larger carriers. We expect that such comparability will require nothing more than some intermediate-type set of accounts (e.g., the proposed USOA at a slightly more aggregated level or a modified version of the present USOA). We leave the development of such a system to a later stage of this proceeding, at which time we may request the parties to develop with us a joint proposal. We wish to avoid a situation in which smaller carriers are forced to adopt an elaborate accounting system designed to develop information which they would rarely have to provide (that is, costs of services), where the only regulatory need is to perform cost studies for settlement purposes.

14. In addition to the respondents' almost universal recommendation of a

[5] If a costing methodology is desired that does not make use of direct attribution, averaging and indirect attribution are possible. However, once direct attribution information is lost by the accounting system it cannot be accurately retrieved.

[6] In our decision in Docket 18128 we found that forecast or before-the-fact allocation of facilities was the most appropriate means of distributing costs to services. We specifically excluded dedications of facilities to services or carrier management assignments as a means of determining direct costs (61 FCC 2nd 587), because these are self-fulfilling procedures. Management's allocations are circular, since they reflect the self-same management distributions. Dedications do not reveal, and cannot be reconciled with before-the-fact decisions, nor even the current use of equipment. They are inherently unauditable, since they violate the principles of accountability and reconcilability.

[7] Our proposal was for non-financial information to be recorded in the PAR's for use in allocating the financial information recorded in the accounts. Thus the PAR's would support the various cost allocation schemes (like separations or Method 7) when direct assignment was impossible.

higher threshold level, another frequent recommendation was the use of a multi-tier carrier classification and corresponding account structure. One such possibility might be the following:

Size in classification	Account structure operating revenues	Required
AAA	Over $30m	Proposed USOA.
AA	$10m to $30m	Intermediate USOA.
A, B, C, D	Less than $10m	Level of detail equivalent to existing accounts or separations categories.

We invite comments on this classification structure. We ask whether criteria can be devised to identify companies that, because of special circumstances, should keep the accounts prescribed for a higher or lower class.

15. One of the problems with such a structure, however, is that to depend upon a financial measure of size may be ill-advised, due to the effects of inflation of non-indexed financial data and the growth of investment in the telecommunications industry. For example, in 1970 under the structure proposed above Class AAA would have included 20 telephone carriers (excluding Bell) and Class AA would have included 18 telephone carriers. By 1977 these figures would have risen to 40 and 39 respectively. We, therefore, consider neither the monetary categories above nor any other operating revenue criterion to be established as the best means of setting a threshold level. We invite comments on a financial or non-financial real measure of size. For example, more than one respondent recommended measures of market share as alternatives to a particular operating revenue figure.[8] Included as Appendix B is a set of tables designed to give the reader some idea of various measures of size and possible alternatives to the operating revenue threshold approach. We welcome comment on these measures and any additional data carriers may be able to provide which will aid us in delimiting a class of carriers from which cost of service information is commonly required in the ordinary course of regulation.

[8] Telephone Utilities recommended that any holding company whose combined annual operating revenues exceeds 5% of the industry total should be required to comply with the full reporting requirements of the new USOA (p. 12). SPCC suggested defining "telephone company" in such a way as to include only those entities whose compliance with the revised USOA would serve the public interest, i.e., firms having the significant market share of the relevant telecommunications market as defined by geographic and service dimensions (p. 25).

Conformance With Generally Accepted Accounting Principles

16. Several respondents to our prior Notice of Inquiry and Proposed Rulemaking recommended that the telephone industry follow generally accepted accounting principles (GAAP). Present GAAP, under the addendum to Accounting Principles Board Opinion #2, provide that, if because of rate regulation an item is to be charged or credited to income in a different time period than it would be under GAAP, the utility may apply the provisions of the addendum in its published financial statements. Therefore, under present rules, conformance with regulatory accounting is conformance with GAAP. The financial Accounting Standards Board (FASB) is presently studying the impact of the addendum and might recommend changes. However, the Commission is the source for rules concerning the accounting practices of all subject carriers. Ratemaking principles usually follow established financial convention in the recording of monetary transactions, except for certain capitalization rules and deferral procedures, but in any event, it is ratemaking needs that should determine the accounting methods, practices and procedures for regulated firms. AT&T expressed the point that differences in accounting between publicly regulated utilities and non-rate regulated enterprises are differences in the application of GAAP rather than deviations from GAAP. When revenues are expeced over a long time frame (many accounting periods), an attempt is made by regulatory authorities to schedule the related costs over similar periods. This can lead to either capitalizing or deferring the expense to coincide with the revenue stream. In effect, a smoothing process results, and a test year can be computed with reasonable assurance that cost relationships will be retained in the near future. Therefore, rates may be set prospectively and not penalize the carrier nor the ratepayer for the wide swings of the business cycle.

17. In the Notice, the Commission asked for comment on the accounting treatment to be applied where the accounting rules contained in Part 31 of the rules differed from the accounting treatment applied to nonregulated companies in accordance with generally accepted accounting principles (GAAP). Specifically mentioned in the Notice were the accounting treatment for investments in affiliates (cost versus equity method) and the treatment of financing-type leases (capitalization versus expensing). On the questions of accounting for investments in affiliates, those commenting indicated that the use of the equity method should be adopted to replace the cost method currently being used. This change would bring the Commission's accounting procedures into conformity with APB Opinion 18. Since investments in affiliates do not affect the operating accounts of telephone companies, the adoption of the method used for accounting for investments in affiliates by unregulated companies appears to be desirable. AT&T in its comments recommended the adoption of the following accounts:

Statement of Financial Position

I. Investments.
E. Investments in affiliated companies.
1. Common stock.
(a) cost.
(b) equity interest in excess of cost.
II. Preferred stock.
III. Long-term debt.

Additionally, a nonoperating income account titled "Equity in Earnings of Affiliated Companies" is suggested by AT&T. Accordingly, unless a convincing argument is made by a commenting party in response to this Supplemental Notice, we propose adopting the equity method of accounting for investments in affiliated companies and propose aopting an account structure along the lines proposes by AT&T.

18. The telephone industry and the state commissions generally supported the proposition that the accounting treatment to be accorded leases should correspond to the expense treatment accorded the lease payments for tariff purposes, even though GAAP for unregulated industries requires the capitalization as the preferred approach for accounting for leases pursuant to FASB Opinion 13. However, other respondents do not agree on whether it is preferrable to capitalize leases for regulated industries or to account for leases in accordance with the treatment used in ratemaking proceedings. The addendum to APB Opinion #2 provides that if because of a rate regulation, an item is to be charged or credited to income in a different time period than it would be under GAAP, the utility may apply the provisions of the addendum in its published financial statement. The opinions guiding the accounting profession therefore recognize that differences between GAAP and ratemaking principles may exist, and where they do exist, permit the use of ratemaking principles for accounting for regulated industries. The application of the capitalization method of accounting for leases would, in all likelihood, lead to timing descrepancies between

accounting periods and create other unnecessary complications for the accounting and rate making processes. We believe that it is desirable to limit the number of situations in which timing differences must be recognized and, therefore, would propose that leases continue to be accounted for as expenses. This approach, we believe, is consistent with GAAP.

19. We also invite comments on the accounting treatment of gains or losses arinsing from the sale of equipment. The comments should address accounting for repair charges, direct costs and overheads. What accounting treatment is appropriate: operating or non-operating?

20. We note that the FASB has a draft discussion memorandum called "The Effect of Rate Regulation on Accounting to be Applied to Regulatory Issues." We hereby invite comment as to the reliance we ought to place upon the opinions expressed therein as we design the accounting rules for our proposed system of accounts.

21. Arthur Anderson and Coopers and Lybrand believe that interperiod tax allocation treatment should be accorded tax differences such as indirect costs charged to construction. The problem is one of treating these items as permanent differences. The Commission permits telephone companies to capitalize imputed interest on equity as a part of interest during construction while concurrently crediting interest income. Our practice is based on APB Opinion No. 11 which states that permanent differences do not affect other periods, and as a result interperiod tax allocation is not appropriate to account for such differences, but we invite comment.

22. Other areas in which the Commission's accounting rules differ from GAAP for unregulated firms include accounting for unamortised discount, issue cost, and premium on bonds refunded; accounting for pension cost; reporting results of operations (prior period adjustments); accounting for convertable debt and debt issued with warrants; business combinations; accounting for investment in plant (original cost versus acquisition cost); and accounting for treasury stock.[9] The majority of parties filing in this proceeding have not commented on these issues. Accordingly, we invite interested parties to comment on the accounting for these events. Parties already having filed comments relating to any of these need not repeat their comments in response to the Supplemental Notice. In responding, parties should bear in mind that where different accounting principles result in timing differences, additional recordkeeping is required since the allocation must be made at the close of each accounting period and that if the same accounting rules are applied within an industry, consistency and comparability within that industry will be maintained. It appears to us that in determining the accounting procedures to be followed in most cases we should give preference to an accounting treatment consistent with the ratemaking principles adopted by this Commission, but we invite comment.

23. Another accounting issue that respondents did not address is inflation adjusted financial reporting. Securities and Exchange Commission requirements for inflation accounting do not affect our *accounting* rules or *rate making* principles, since the cost basis of accounting and the use of original cost for rate making are well established in our rules and practice. However, since all operating companies are required to issue financial reports on a re-stated basis, we may wish to enforce some uniformity of method so that comparability is maintained. Accordingly we call for detailed proposals on how to restate both sides of the Statement of Financial Position (Balance Sheet) to reflect the changing value of money. Comments should address restatement of the Income Statement as well, because interest expense, and stock dividends represent the continuing effect of past transactions whose significance is affected by the changing value of the dollar. Would any subsidiary information have to be kept in the Primary Allocation Records to effect such restatement? We propose that a section of the annual report be devoted to inflation-adjusted results possibly by submission to us of all or part of the carrier's SEC report 10K. Would any useful purpose be served by restating results for some or all profit centers as well? How would one calculate "Capacity" so as to compute the replacement of existing used and useful productive plant with modern equipment at current cost? How would one evaluate the cost of debt and owner's equity? We specifically invite comments concerning our accounting revisions for proper measurement of cost and capacity and those considered by the FASB in its deliberations concerning a "Conceptual Framework for Financial Accounting and Reporting."

Clearing Accounts

24. Present rules provide for clearing accounts to be used as a medium for the distribution of certain expense items which affect more than one account and cannot be appropriately allocated as they are incurred. General Telephone and Electronics Service Corporation defined clearing accounts as the vehicle to gather *indirect* costs into function accounts for further distribution to other functions on the basis of benefits or usage. They further state that supervision, administration, and support costs do not contain any theoretical justification for an economic allocation to a product or a service.

25. We note, however, that much of the cost of supervision, administration and support is *direct* as economists use the term, and we proposed a system that would ensure that the direct portion of such costs would be allocated without passing through the filter of an indirect assignment scheme, which must be based upon a specific costing theory (and might not be compatible with some other theory preferred by a state commission), and which would, in any case, involve averaging with the attendant loss of specificity of information.

26. Nearly all of the respondents suggest retaining the clearing account structure, and the Iowa State Commerce Commission requested more specific criteria for clearing these accounts. We recognize that allocations of overhead and support costs are an integral part of a cost accounting system. We acknowledge the fact that management usually controls overhead costs and support costs through the budgeting and reporting processes. Because cost accounting is so critical to pricing decisions, the United States is developing standards and definitions through the vehicle of the Cost Accounting Standards Board for all contractors doing business with the government.[10] These standards encompass the basis for compiling general and administrative expenses, acquisition costs of material, allocation of pension costs, etc. In a basic job order cost system, factory overhead costs are distributed to service and production departments, based upon a benefit received or some other reasonable method for distributing the cost. However, accounting principles require

[9] A complete list may be found in Appendix C.

[10] The standards are not specifically intended for regulatory use, so we must examine their appropriateness before applying them. Cf. our comments above (especially paragraphs 7, 16, 17, 18, 21, and 22) on reasons for divergences between regulatory and non-regulatory accounting. We ask to what extent the CASB standards and procedures are applicable to our situation, which involves a public utility service industry (rather than manufacturing) subject to rate of return regulation (rather than armed services procurement regulations).

that consistency be maintained from period to period once a method is selected.

27. To avoid an excessively fluid accounting structure where organizations or functions change radically because of production dynamics or technological innovations, we request suggestions by respondents regarding the types of clearing accounts that should be prescribed. The responses should include a concise description, the contents of the account suggested, and the basis for clearing. Where a support function services more than one direct function and several other support functions, e.g. building maintenance, should this account be included with the clearing accounts or be included with the maintenance account? Should activities that are closely related to direct activity (such as first line supervision) be contained in the clearing account structure? How can distinctions between direct and indirect cost, fixed and variable cost, and the other economic concepts enumerated in paragraph 8 above be preserved in a clearing account structure? To what economic concepts of costs do the definitions of "direct" and "indirect" cost as used by cost accountants correspond? Do proposed clearing mechanisms rely upon relative use or cost causation?

28. Can we functionalize the clearing accounts and avoid the constraints of departmental or organizational structures? If we functionalize, can management still maintain controls? Should overheads and direct support costs be mixed in the same account, or should all overhead costs be accumulated in separate accounts?[11] How could there be an audit trail for the overhead accounts?

29. Responses to these questions and any other appropriate principles not enumerated here should include precise definitions for recommended accounts as well as the contents for each. We would appreciate receiving suggestions regarding a general overhead structure where factors for distributing costs could be developed easily, and where consistent definitions and contents can be established without any deleterious impact on current organizations. The precise method for handing the clearing accounts should also be addressed, as well as the accounts to which the cleared items would go. For the sake of clarity, a tiered worksheet showing the sequence and basis for allocation should be submitted.

30. In his book *Public Utility* Accounting: Theory and Application [12] James E. Suelflow describes the work order system used by telephone companies to post capital expenditures to the appropriate accounts. Such a system may have many advantages over alternatives, including clearing accounts as they are presently used. The company accumulates in the work order (commonly called the "estimate") costs that are properly associated with a project, thereby creating an audit trail, while preserving whatever degree of functionality and specificity of attribution is inherent in the final accounts and continuing property records as used.

31. The Expense Record system we proposed in Appendix F of our Notice is an attempt to apply the work order system to expensed transactions as well as those capitalized. We envision an expense Record system as having several significant benefits for cost accounting, and we fear that those benefits would be lost if extensive use were made of clearing accounts.

32. The Expense Record, or work order, can be used to allocate direct and indirect costs, whatever definitions are chosen. That is, costs of "direct supervision" (first line supervision—or even n-th line supervision—that is directly concerned with a specific project) can be charged to the Expense Record for that project without being "cleared" using some method of allocation based on "averages," some form of manipulable statistical distribution or other after-the-fact procedures. If it were desired to clear "overhead" costs to projects (which we have posed as an item of inquiry), these could be accommodated within the expense record and cleared to the same or different accounts from the direct costs. That is, we proposed that plant accounts would each contain, separately, the direct costs and indirect costs, and require a depreciation reserve for the class of plant at the cost centers. The work order is even now a means of accomplishing this result. Similarly, each expense account could contain, separately, direct, indirect and overhead expense properly charged to an activity at a cost center. The Expense Record could be the means of accomplishing this allocation. If, for some purpose, it were desired to look at direct cost only, no special study would be needed. If a costing methodology were preferred that ignored overheads, or allocated them on some special basis, no special study would be needed.

33. A significant disadvantage of clearing accounts is that the allocations made are inherently arbitrary, yet the arbitrariness of allocations is concealed, whereas work order systems (including the Expense Record System we propose) make specific allocations that are arbitrary only to the degree that the definition of "direct" cost is arbitrary (a deficiency shared with clearing account systems), and which can preserve a record of any arbitrary allocations that are made. The argument that the Expense Record is difficult to audit, we think, arises from a difference in priorities. The clearing account is simple, auditable, but imprecise. There is no way of knowing whether the expenses booked to a particular account are precisely those attributable, although *on average* all accounts must have the proper amount booked. The work order system has been used for plant accounts for many years because *averages* are insufficient, and they provide a method of *auditing the cost accounting*, in ways which are commonly ignored. In the present competitive environment, if cross subsidy is to be avoided, cost accounting must be precise, with minimal averaging, and must be auditable.

34. We call upon respondents to address our concerns and demonstrate their claims that a system of clearing accounts can be devised that will meet the needs of an accounting system whose primary function is the determination of cost of service.

35. The Bell System, in its first response, cited "Vehicle and other Work Equipment Expense" (account 702) as a candidate for retention as a clearing account. We would ask Bell to provide, in addition to the general discussion of clearing account structures requested in Paragraphs 27 and 28 above, an analysis of present account 705, "Engineering Expenses" in which Bell would explain, with appropriate flow charts of journal entries, how charges are made to this account and how it is cleared. We wish the discussion to include the organizations, activities, and functions that are charged, and to show how the charges are developed. The discussion should analyze these charges to determine which might be "fixed" or "variable," "direct" and "indirect" or "overhead" cost, under the various accounting and costing theories that Bell claims are in use in the several states. We also ask Bell to explain the clearance mechanism, the development of unit charges, the allocative

[11] Where costs of vacation time, leave, etc. are part of the labor cost cleared, variances must result. How should variances be expressed, accounted for, and cleared?

[12] East Lansing, Mich: Institute of Public Utilities, Michigan State University, 1973. pp. 152-158.

procedures used, and the expense and plant accounts to which account 705 is normally cleared, and how these are determined. Finally, we call upon Bell to explain precisely how the information on fixity and variability, and directness and indirectness of cost is preserved for use in the costing methologies Bell says are in use and for allocation to the various plant and expense accounts.

Cost Centers

36. Another concept that must be addressed before a responsive cost of service accounting system can be established is the use of cost centers. The National Association of Accountants defines a "Cost Center" as follows: [13]

A–Fundamental Concept: A category or classification unit for collecting, organizing, and categorizing costs.

B–Application Definition: An account into which operating costs having some common characteristics, such as being used for the same purpose, are grouped for common reassignment or accountability.

37. Kohler defines a cost center as, "An organization, division, department, or unit of machines, men or both having common supervision: . . . any activity within a manufacturing plant or other operating unit; for each such center, accounts are maintained containing direct costs for which the center's head is accountable." [14]

38. To prescribe accounts for cost centers, we must begin with an acceptable definition Once a center is defined, we can establish levels of aggregation for each functional segment of the nominal accounts. An example of a cost center could be a local exchange number where all direct costs are aggregated by coding the expenses and investments with the first three digits of the telephone number and summarizing the data by cost element. Another possibility for aggregation is a cost center for each area code. This center could also function as a control account for all exchanges located within the defined area covered by the area code.

39. AT&T proposed "administrative areas" as cost centers. We request a specific definition of these areas, along with a discussion of how constant they are. If cost locations (wire centers, maintenance garages, microwave toweres, etc.) are frequently transfered from one administrative area to another, the accounting reports would lack sufficient detail for regulatory use. If administrative areas do not correspond to the locations (exchanges, etc.) for which tariffs are prepared, the reported operating results would be of little use for rate making. If meaningful accounting results could be obtained only by rigidly defining administrative areas so as to prevent the transfer of cost incurring locations between them, we would be making an intrusion into what are usually considered to be management's prerogatives (by letting the accounting system determine how the business is run, rather than the reverse, as in our proposal below). We call upon Bell and the other large carriers to discussion detail "administrative areas " as points where cost is controlled and as points for which tariffs are prepared. Again, if we are to use a cost center concept, a precise definition of "Cost Center " is required.

40. In our proposal we suggested that wire centers and other network nodes were appropriate cost centers for most of the costs involved in distribution, switching, and multiplexing. We suggested that transmission spans would be appropriate cost centers for the cost of interoffice transmission. These cost centers correspond respectively to network access points (so that access charges could be developed for each locality) and transmission routes (so that route by route costing could be preformed). We recognized that some costs, as of interoffice non-toll trunking, sales and marketing, and general administration, might require other cost centers, and we invited comment. [15]

41. Should we establish separate cost centers for different business functions within an exchange area, or other appropriate segment? in addition, should we capture only direct costs, or should we include relevant overhead costs as well? [16] Should we group business functions for a given center? How often must the control account be analyzed and reported upon? can the cost center be structured by service function with support activity grouped in a common cost pool for allocation to each service? If the cost center is used as a broad control account, what reasonable breakdowns should be used for reporting purposes? In the Notice we envisioned a set of partial accounts (a "factory ledger") being kept for each Primary Recordation Location (PRL), along with a parallel set of Primary Allocation Records. Would there be sufficient accountability for the center's head (see paragraph 37, above) for this to make the primary Recordation Location a viable cost center? Would the most effective way of performing a cost study for rate making purposes be the addition of the costs at each PRL, as allocated to service by the PAR for that location? What alternative would be preferable?

42. Reports by cost center would have to be submitted periodically in computer format, containing the recorded costs and the PAR's, so that cost of service studies and rate prescriptions would be possible. Obviously, such a submission would have to be the cost support in each rate case or 214 application, and would have to be system wide; that is, a partial report of cost centers (not all centers or not all costs) would be useless. However, we see need for the data for surveillance as well, so that periodic submissions may be appropriate. Should such reports be required annually, at some other regular interval, or upon request for tariff support data, rate cases, 214 applications, or other appropriate uses as they occur?

43. We solicit comments regarding the cost center concept, as well as a recommended definition. We expect that each response will address the functions and contents of each cost center account recommended. In addition to responses to the enumerated questions above, a worksheet should be included showing the interrelationships of the cost centers to the distributive factors selected for each. We would also be interested in the mechanics or specific instructions to be prescribed for relating the cost centers to the appropriate service or services.

44. If a tiered relationship is recommended, the flow from control account to subsidiary records should be diagrammed whenever possible. For each level in the structure, adequate descriptions and contents of each tier or group of sub-accounts should accompany each respondent's submittal.

Profit Centers

45. At present, profit centers at less than the company wide levels are required by the jurisdictional separations process, but are not reflected in any official accounts or reports (unless the separations categories are considered a parallel set of books of account). Regulation seems

[13] Statements on Management Accounting Practices—Number 9A—April 15, 1977, National Association of Accountants.

[14] Eric L. Kohler, *A Dictionary for Accountants* 3rd Ed., Englewood Cliffs, NJ: Prentice Hall, Inc., 1963.

[15] Paragraphs 16 and 58 of the Notice.

[16] Relate your responses to our questions about what constitutes a direct cost, and whether indirect or overhead costs can be allocated or cleared without specifying a costing theory. See paragraphs 25, 27 and 28. In your response consider the clearing account structure that would required (if such are used), or the system or expense records, job or work orders, etc., that would be necessary to properly identify and capture costs at the appropirate cost center.

to require that the interstate jurisdiction and activities in each state be treated as profit centers, and that municipalities be treated as profit centers in some states. How should these profit centers be reflected in the accounting system?

46. Competition and rate deaveraging may require that other profit centers be developed. The decision in Docket 18128 established certain major services as profit centers. The decision of the ALJ in the MPL case [17] established a more extensive list of profit centers. The Commission's decisions in the Hi-Lo Case [18] established profit centers for only a portion of a "service." The decision of the Commission in Docket 19129 also stated that the rate elements within the MTS tariff should be cost justified.[19]

47. Proposals for network access pricing would seem to require that network access points be profit centers. Proposals for route by route deaveraging would seem to require that routes be profit centers. In our Notice we proposed accounting requirements for Primary Recordation Locations that might effectively turn them into cost centers.[20]

48. We have further elaborated upon the need for cost centers in modern rate making in this Notice. However, for surveillance purposes, (as distinguished from rate making) profit centers would appear to be required. Should these be organized geographically or by service? How should they be reflected in the accounting system? What forms should a report by profit center take (paper or microfiche or computer format)? Should the report be more frequent than annual for some or all profit centers?

49. The data for cost centers, submitted in computer format for ease of manipulation in rate making, comprehensive compliance audits, efficiency and utilization audits, reconciliation, systems analysis and related studies, would be difficult to preserve for various technical reasons.[21] Further, except for on-going procedures (like docketed proceedings or formal investigations), our needs would usually be for current data. Profit center reports, on the other hand, would be subject to some computerized analysis, but would also be of historical importance, so that permanent copies are needed. We call for comments on record retention requirements for cost center and profit center reports.

50. Also of material interest in the evaluation of cross-subsidy among services (which has become the most pressing regulatory problem in this industry) is cash flow analysis. What cash flow statements and what source and application of funds statements should we require for analysis of cross-subsidies in addition to their traditional uses in cost of capital and revenue requirement studies? Is it practical to require one or both of these statements for profit centers or for services? In any case, what should such statements look like, and how should the accounts or the accounting procedures be organized to facilitate the compilation of such statements? Should these statements be submitted annually or at some more frequent interval?

Depreciation

51. Due to such factors as technological change, the introduction of competition, and the rapid evolution of new types of services, the expected lives of newer forms of plant generally appear to be less certain than plant lives were in the past. Moreover, in many instances, both competitive and monopoly services are provided by common equipment, thereby requiring the allocation of both fixed and variable costs.

52. These structural relationships introduce several cost of service and depreciation accounting problems relevant to the proposed Uniform System of Accounts. Greater degrees of aggregation of plant in the accounting system require increased reliance upon allocation procedures to determine costs relevant for rate making proposes. This process is further complicated and compounded by the joint provision of monopoly and competitive services which may have much different depreciation, revenue, and pricing characteristics, thus requiring different accounting treatments to appropriately match revenues and expenses. In addition, allocation processes are vulnerable to manipulation for achieving desired objectives, e.g., cross-subsidization of competitive services by monopoly services or between monopoly services having different pricing attributes such as MTS/WATS. Although these issues have been considered elsewhere (e.g., Dockets 18128, 19129) they are of concern in the promulgation of a system of accounts designed to yield information useful for rate making purposes.

53. Given the need to assign costs to services, it appears that each allocated item of plant should have a depreciation reserve corresponding to the asset description and value at the point at which allocation occurs. This arrangement could require that a depreciation reserve be kept at each cost center for each class of plant located therein. The practice of retaining larger groupings of plant in the depreciation class of plant used in a state requires that arbitrary assumptions be made to reconstruct the reserves each time a cost study is done. Further, as stated in paragraph 43 of our Notice, the use of mass reserves would seriously distort the costs of services when plant investments intended for a given service are significantly older or newer than average.[22] Perhaps it is easier to do useful life studies when there are few plant classes with many items in each because of alleged gains in "data reliability" thereby. However, if most of the variation in life within a class of plant is due to the differences in expected life between various sub-classes, it may be possible to estimate the useful life of each sub-class as accurately as that of the whole class. Indeed, more accurate estimates are possible if the estimate for the class as a whole does not take proper account of the changing proportion of the sub-classes. In any event, it would still be possible to keep separate sub-accounts for particular items of plant for cost purposes, but to group the plant for depreciation studies (the opposite of what is now done).

54. Specific comments are invited concerning the effects of the new USOA upon the following factors or accounting methods and procedures:

1. Effects of the new USOA upon the life estimation of new equipment and upon the adjustments for life required for represcriptions.

(2) Effects of the new USOA upon methods of allocating costs of fungible and common plant between monopoly and competitive services, particularly the treatment of early or late retirements related to either type of service.

(3) Desirability of maintaining depreciation reserves on an account by account basis at cost centers and the relationship of reserves to the usefulness of the USOA for costing purposes.

(4) Treatment of gains and losses on retiring plant when the reserves are kept by account at each cost center, but the

[17] Initial Decision, FCC Docket No. 20814, mimeo FCC 79D-8, paragraphs 206 through 209, (released March 19, 1979).

[18] 55 FCC 2nd 224. e.g. Paragraphs 64 and 68, 58 FCC 2nd 382 esp. paragraphs 16 and 21-24.

[19] 64 FCC 2nd 1, paragraphs 268 through 277.

[20] Cf. paragraph 40, above.

[21] See comments of AT&T in Docket 78-302.

[22] If new plant of an existing class were installed to provide a new service it would, for cost of service purposes, immediately carry the average depreciation reserve for the plant class. Such treatment would have serious anti-competitive implications.

lives are calculated on a more aggregated basis.

(5) Treatment of "negative net plant" that might result from retaining plant in an account at a cost center so that its average life is greater than that for the class as a whole.

(6) Effects of jurisdictional differences upon the structure of accounts having common usage, e.g., toll switches, and the maintenance of closely associated reserves. This item would also include the accounts or systems for allocating costs between services and jurisdictions.

Other comments relevant to the effects of the new USOA upon depreciation policy implementation are invited. In any case, the comments should contain precise definitions of the terms used, the account titles recommended and the methodologies discussed, together with an outline of sufficient detail to demonstrate the impact of suggested changes upon the system.

55. Another problem in depreciation accounting concerns retirements. That is, what procedures are appropriate for handling extraordinary retirements, or retirements due to plant transfer to other subsidiaries (as between Long Lines and Bell's operating telephone companies), between services, or transfers between plant sub-accounts. Are any of the above to be treated as retirement and reuse and what would be the effects upon cash flow, depreciation expenses, and the measurement of useful life of such treatment? Comments are requested concerning the definitions of extraordinary retirements and the appropriate standards and materiality.

56. Although some degree of fixity in assignment to the plant accounts is desirable, there are some questions concerning precisely how such fixity can best be achieved. For example, consider transfers among plant account. When a new wire center is placed in service the power and common equipment (equipment enumerated in paragraph 24.131 of the Separations Manual) are placed in the sub-account of the first switch to go into service. If that switch is later replaced by one of a newer technology, the paragraph 24.131 retirement units must be re-assigned to a new sub-account. In all wire centers in which panel dial or crossbar equipment is to be replaced by electronic equipment, such an accounting change must be made. We are concerned with the accounting problems that arise out of this process, and how accuracy in the reassignment is achieved. For example, what problems does this situation create for the useful life studies for depreciation purposes? If depreciation reserves were kept by plant account, what additional difficulties would occur, and how might they be resolved? Should such transfers of account be treated as extraordinary retirements at net salvage value equal to net depreciated value, and re-installation of used equipment at the same amount? What would be the effect of such a rule on depreciable life and cash flow? What problems would be created or avoided if the depreciation reserve were recorded for each retirement unit in the Continuing Property Record?[23] How could an auditor reconcile the Continuing Property Record (part of the P.A.R. in our proposal) depreciation reserves with the depreciation reserve for the whole account? In light of the above, by what rule can we establish plant accounts that have a sufficient degree of fixity in order to avoid accunting and auditing problems due to transfers of plant between accounts?

Account Structure

57. Several parties who support a revision to the USOA and recognize the need for a system that will furnish cost of service information for rate making and regulatory surveillance have identified problems which would cause difficulty in accomplishing the Commission's objectives. AT&T's analysis of the implications of the account structure proposed by the Commission identified some fundamental problems which led AT&T to a somewhat different approach. For example, AT&T states that the level of detail proposed for the revenue accounts results in sub-accounts which are at the tariff rate element level. They state that frequent changes in tariffs will result in a volatility which is undesirable in an account structure. However, we are concerned as to whether AT&T's proposed structure of the revenue accounts would provide the requisite degree of detail in the revenue data to allow service revenues to be properly identified (Cf. paragraph 46, above).

58. A principal part of GTE's proposal is that each item of breakdown or disaggregated element (the Commission's proposed accounts) is considered a service component and data element available in the data base rather than an account in the chart of accounts. GTE's proposal reflects the revenue aggregations in the data base which correspond to each tariffed and each non-tarriffed offering. The major aggregation in the chart of accounts would be by type of service with subdivision for jurisdiction where appropriate. Would GTE's principles create an accounting system providing detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements?

59. Continental's proposal is focused on telephone carriers providing services which are offered under conditions of regulated monopoly or regulated competition. Accordingly, Continental proposes an accounting and information system which tracks four distinct markets or business segments. These business segments are terminal equipment, subscriber premise installations, local distribution and intercity services. Under this proposal, revenue, expense and investment data would be assigned or allocated directly to the four business segments rather than to detailed accounts and sub-accounts proposed by the Commission. Continental did describe the changes that would occur in the general ledger plant accounts. However, Continental did not submit a proposal sufficiently detailed that an analysis in light of the Commission's objectives could be made.

60. United's proposal would include no functional (or service) criteria in the hierarchy of the plant accounts. Its proposed plant accounts are designed along technological lines and are intended to identify the major type of plant. Thus there is a question as to whether United's proposed accounting system permits all costs to be recorded in a manner which would allow the services or facility being supported to be identified.

61. We stated in our July 21, 1978 Notice that the primary objective of the revision of the USOA is to develop the basic accounts, sub-accounts, primary allocation records and supporting records from which cost of service and other relevant information may be derived. Because the present USOA plant investment accounts are structured to depreciation categories and the continuing property records are intended to support depreciation and retirement accounting, a comprehensive modification of the present USOA was proposed. The proposed accounts are technologically based so as to provide costs of all potential services by building up such costs from the discrete elements of the accounts and records. Nevertheless, because comparability of results over time—continuity—is desirable it was our intention that the present USOA should be capable of being reconstructed at any time by appropriately adding up various sub-accounts of our proposal. Since many of the respondents have stressed

[23] See Suelflow, p. 148.

compatability with present Part 31 as a goal for the revision, we ask respondents to analyze our proposal, their own, and any others they may wish to, and to determine whether compatibility has been achieved. If not, parties should note where the differences lie, and how serious such differences would be for the various uses to which comparative accounting data is put.

62. Similarly, can the existing separations categories (Part 67) be generated by simple addition to the sub-accounts in our proposal, respondent's own proposal (if any), and any other proposal respondent wishes to comment on? The Commission did not propose a revision to the Separations Manual in the Notice. It did however, recognize that a revised USOA will have to account for the inconsistencies that result from the different mechanisms used to perform the allocations. Again, as in the case of the USOA, the problem of revising the existing Separations Manual is complex. It is generally maintained by the parties addressing this issue that a revision to the USOA will have an impact on the Separations Manual. While this may ultimately be true, there is not necessarily a causal relationship. We see improvements in the accounting system as permitting but not necessarily requiring changes in the separations process. Since the Separations Manual process would still involve the assignment of amounts recorded in the accounting system, would separations categories different from the account classification in a revised USOA present a conversion problem? Further, would AT&T's contention that since the FDC method 7 procedures are conducted after the separations procedures yield the total interstate results make the two allocations not reconcilable in the revised USOA? If so, is there any accounting structure that avoids the problem?

Reports

63. Although the parties addressing this issue believe that it is premature at this time to attempt to specify reporting requirement in terms of format, content, types of report, recipient and frequency, we believe that the desired reports must determine the form of the specific upper level accounts, just as the form of the lower level accounts is determined by the need to compute cost of service. Should the Commission continue to proceed along lines that would require financial and non-financial data to be contained in the computerized reports? Should we continue to assume that less detail would be required for monthly reporting?

64. The Commission proposes that carriers submit reports which would include the balance sheet and income statement items, the costs of individual services, and results for profit centers. The reports submitted on computer tape which would contain financial accounts and primary allocation records for each cost center are discussed in paragraph 42 above. The monthly report would have a greater degree of aggregation than the annual report.

65. It is appropriate at this time to specify the data that would be reported in an annual paper or computer format report replacing Form M, and a monthly report replacing Form 901, since these are the reports and that would be used by most of the public, and for much regulatory surveillance. Indeed, such reports might after appropriate modifications, be the basis for the reports required of carriers not subject to the full rigor of the new accounting system. Finally, it is necessary to provide for reports during the transition period to the new system of accounts.

66. Accordingly, we ask respondents to provide lists of the data elements that should be included in the annual report replacing Form M and the monthly report replacing Form 901. We also ask respondents to discuss in detail reporting requirements in the transition period. Respondents should base their comments on our proposal, their own, and any other they care to comment upon.

Applicability of Accounts to Costing Methods

67. Respondents should address in detail the applicability of the various accounting proposals to cost systems in current use.[24] Several of the parties have suggested in their comments that some of the proposed accounting systems might be incompatible with certain costing methodologies.[25] In assessing the validity of such arguments the Commission needs a detailed discussion, by all parties, of how the proposed systems would be used to assign costs and revenues under each methodology.[26] Respondents should comment on the Commission's proposal, their own, if they have made a proposal, and any other they wish to comment on.

68. Specifically, respondents should discuss what special studies would be required to develop information or breakdowns not in the accounts or primary allocation records (PARs) but necessary for the allocation processes under current methods. How will these studies differ from those in use under the existing USOA? What forms of data will be used to assign dollars to services, and how will the data be used? Will the design of the studies be consistent, or will they be designed on an ad hoc basis for individual tariff filings? To what extent will sampling estimation, or judgment be used in the study process? To what extent will sampling be used to fill out the PARs and the data bases for the special studies? Will it be feasible to do the studies periodically, according to an established schedule, or will it be necessary to rely on intermittent studies, which would be completed at the time a need arises? How can such studies be reconciled with the books of account to ensure carrier accountability? If any such studies will require data other than that in the accounts and PAR's, specify the data and show why it would be impractical to keep it within the Regulatory Information System.

69. Respondents who feel one or more of the proposals would not be amenable to use with a particular costing method, should identify the costing method, the accounting proposal, and the aspect of the proposal that renders it invalid for that specific use.

Features for Auditability

70. What features do the new Uniform System of Accounts, and the primary allocation records require to make them thoroughly and efficiently auditable for regulatory purposes? The overriding consideration for auditing purposes is clearly the concept that adequate safeguards must be built into the system to insure that "costs" (both primary and secondary level allocations) not be allowed to drift away from Commission requirements towards the discretely different needs of the communications carriers. Should the system not function effectively in this context, we would be faced with a system trying to serve "two masters" and this would not accomplish our objectives.

71. Therefore, with the support of Generally Accepted Accounting Principles, referencing the concepts of Internal Control, Materiality, Consistency, and Comparability, we feel formal procedures should be implemented, which would allow for

[24] AT&T has suggested some examples of such methods of assigning cost. See *Comments of AT&T*, pp. 19 & 25.

[25] See, e.g., *Reply Comments* of AT&T, p. 3; *Comments of UST&T*, p. 11.

[26] See also our comments and questions on the cost theories underlying clearing accounts, paragraph 27 above. Respondents should take special care to ensure compatibility between their responses to this present section of the Notice, and to the section on clearing accounts.

flexible verifiable inputs and at the same time be consistent and allow for identification of the data at the most reasonable level acceptable to the Commission. This interaction must occur jointly with the Commission and other parties functioning in an environment permitting as free an exchange of information and ideas as possible.

72. The interaction referenced above must seek to develop carrier practices and safeguards designed to protect the integrity of the recorded information. For example, there should be assurance that when data is recorded it can be examined in either the aggregate or in specific detail. These trails must be established at the beginning of the implementation of the Uniform System of Accounts and the Primary Allocation Records and carried forward with adherence to the principles mentioned previously, Internal Control, Materiality, Consistency, and Comparability.

73. Auditing, for regulatory purposes, involves what is commonly referred to as compliance. That is to say, regulators are asking whether the subject carriers are literally following the rules, regulations, and reporting requirements of the Commission. Thus, compliance auditing can be approached from three related points of view.

74. The first point relates to particular rules, regulations, and requirements. A regulatory accounting system, to be efficiently auditable must be predicated on clear concise definitions which allow for a minimum of leeway in interpretation. Compliance auditing calls for specific standards of assignment, accumulation, and allocation established at a level of disaggregation where specific items can be readily identified. Simultaneously the economic and nonfinancial events must also be recognized with specific requirements for cross referencing such information to the costs they generate.

75. The second point relates to the carriers' procedures. These procedures must be detailed, specific and in agreement with the intent of the Commission's pronouncements.

76. What specific procedures of allocation, recordation, etc. should be spelled out in the Commission's rules?

77. How should these standards be formulated and implemented? What mechanisms should be used to allow for timely growth and change to evolve? Should the systems of tracking and identification be spelled out at the Commission level or left to the individual carriers requiring only adherence to the standards?

78. Thirdly, should the primary reference system follow the generic or funcional characteristic of the data, or both? To what extent should control methods be developed to meet desired levels of confidence needed by the Commission?

79. The new accounting and PAR system will be based upon extensive use of the computer—indeed, it will require a Data Base Management System (DBMS) as discussed in paragraph 98 below. What special requirements, if any, are there to make a DBMS—or any computer based accounting system—amenable to financial and, especially, for regulatory compliance auditing?

80. Our proposal is for a single set of accounts for each PRL (or for each cost center) and a single PAR for the same entity. We do not necessarily propose to keep the accounts and the PAR's on the same file (although Mathtech did propose that the statistical measures that we call the PAR's should be considered a series of accounts). It would be convenient for analysis purposes to have accounting and allocative information on the same computer tape, but while we might require *reports* to be submitted in a fully merged fashion, we will probably not require the merger of accounting and supporting data in the carriers own records, unless we see a significant regulatory or accounting need for such a requirement.

81. However, we will require that the accounts constitute a fully integrated, fully merged data base, so that reconciliation is possible. We anticipate that, in addition to traditional types of compliance audits on the part of regulatory commissions, there will be systems audits to determine whether the internal controls are functioning properly, and that reconciliation will be performed, although in auditing a computerized system some of the procedures of a comprehensive audit may vary from those used in the past.

82. We call for comments upon the systems approach that should be followed to achieve a fully integrated accounting system that is completely reconcilable. We are concerned that the proposals of some of the carriers to have separate feeder systems leading to nonintegrated financial and cost accounting systems will be unauditable because it will be impossible to establish internal controls or to reconcile the cost and financial results. While we are willing to entertain further argument on the subject, we have tentatively concluded that only a fully integrated cost and financial accounting system forming a Regulatory Information System will meet the regulatory needs of this Commission with respect to the telephone industry in the modern competitive era, in which cost of service has become the paramount regulatory issue.

83. Moreover, Primary Allocation Records, which are the supporting data to the accounting system, must also be in a fully integrated data base. It must be possible to reconcile the data against actual inventories of plant in place or economic events. Where it is feasible to obtain a datum for the PAR through the same process that records economic events in the accounts, a proper systems approach would do so, since the use of separate data sources is likely to create problems of irreconcilable records and unnecessary difficulty in auditing the results. We call upon the parties to discuss means by which this may be accomplished. Since the PAR's are of such great importance in the performance of cost of service and separations studies, in addition to their use in operations audits, they must be accurate, consistent, and auditable. If cost of service results could not be verified, it would be impossible to allow carriers to provide service under both monopoly and competitive conditions. Separations studies have significant impact upon the overall operating results of the firm. Thus, the internal controls for the Primary Allocation Records are as important as those of the accounts themselves. No party addressed the issue of ensuring accuracy in an integrated data base of Primary Allocation Records through the use of internal controls that permit auditing. We call upon the parties to do so now.

Impact of Separate Subsidiaries and Emerging Competition Upon the Accounting System

84. Some valid questions have been posed as to our needs with respect to revision of the Uniform System of Accounts where separate subsidiaries, resale policies, and local exchange access charges are used to prevent cross subsidy and/or promote competition. Even if cross subsidy, discrimination and competition were not problems for present day regulation, we might still wish to modify the system of accounts to facilitate jurisdictional separations, the determination and reporting of interstate operating results, and audits of managerial and operating efficiency. Therefore, we pose the following questions:

1. What is the minimum degree of separation among a corporation and its subsidiaries which will render cross subsidization among the firms impossible or at least detectable?

2. How great a variety of services could each of these separate subsdiaries produce with no chance of cross-subsidization among services?

3. What percentage of the output of competitive services would have to be produced by wholly separate subsidiaries (as defined in items 1 and 2) and what other market conditions would have to be met in order that cost of service studies would not be needed to prevent cross subsidization and predation by firms supplying monopoly services?

4. If the FCC wished to avoid imposition of a cost of service accounting system, what costs would it impose upon the industry for re-structuring, so as to eliminate the need for such a system? What would be the advantages and disadvantages of such a course of action?

5. What incentives to offer services using jointly used plant are created when a cost of service accounting system is used in lieu of separate subsidiaries? What are the implications for economic efficiency?

6. What impact will new communication services have on the need for a cost of service accounting system? How would such competitive communication services affect both the need and structure of such an accounting system? To what extent would resale policies have a similar effect? More broadly, what will be the effect of emerging communications technologies on the cost of service accounting system under consideration in this notice?

Accounting for Functions

85. There has been much discussion of "functions" which are combined to provide services. These input functions may be unique or attributable to a single service or common to two or more services. In theory, these costs may be derived for each of the functions and the cost elements can be combined to arrive at a cost of service. Because there have been major arguments for the establishment of a functional accounting system, it is necessary for us to get more information concerning these functions in the context of our ability to determine cost of service. The following questions seek such information. Of special interest is the ability of any proposed system to relate functions to services, costs to these functions and overall costs of services to specific rates. The commenting parties should be aware that the make-up and types of services offered through tariffs change over time. The flexibility of the system to accommodate these changes is important as well as our ability to quickly analyze service changes. We are also concerned as to how factor costs are related to the levels of output of various services. The data provided from the USOA should be useful in the development of such basic functional relationships as discussed in a report done for us by T&E, a consulting firm.[27]

86. The import of T&E's report is that there may be some underlying set of basic, discrete, disjoint functions of a telephone company that are the basic components of all services. If such a set of functions can be identified and if costs can be accurately ascribed to such functions within the accounting system itself there will be no need for special studies to determine the cost of any rate element, except for a new rate element that makes use of a new function not previously performed by the company, or where expansion or contraction of a function is so rapid that nonlinear scale effects distort historic accounting data, or make it otherwise unreliable.

87. Is T&E's report correct as to the existence of such a set of basic, discrete, disjoint functions? If the functions do exist, are they stable over time, or do new ones frequently appear and old ones disappear? Can these be identified in an accounting system with sufficient precision to make each function a sub-account of the appropriate level? If all of the preceding three questions cannot be answered in the affirmitive, of what use is "functionalism" for cost of service accounting?

88. We now ask the following questions about the nature of these basic, discrete, disjoint functions:

1. What are the basic, discrete, disjoint functions performed by a telephone company? Are there any functions which are specific to or directly attributable to a single service (e.g. television transmission)?

2. How consistent are these functions over time?

3. How are these functions combined to create tariffed services?

4. How do these functions correspond to tariff rate elements? Is there any direct relationship between tariff charges and the functions performed? If not, what are the problems in reconciling the costs of these functions and rates charged customers?

5. How will the proposed systems affect our ability to relate reported revenues to costs of services and various functions?

6. How can the costs of these functions be combined to arrive at costs of services? How does the method of cost allocation affect this (if at all)?

7. Should data be kept (and what sorts) by function for allocational purposes; that is, what special non-financial (e.g. traffic) data should be kept by function solely for the purposes of allocating that function among services?

8. How well does the FCC proposal, respondent's own proposal and the Bell functional accounting system identify these fundamental functions? What improvements can be made?

9. How would it be possible to develop costs of new services within the context of the various proposed systems?

10. Do information needs differ for competitive and monopoly services? What are the appropriate functions to develop costs for competitive and monopoly environments? These questions are premised on the concept that the level of functional detail needed for ratemaking may differ in the two situations. In other words, a monopoly customer may be concerned that the price charged for the total service is just and non-discriminatory, since there is no alternate supplier for the various elements of the service. This may not be the case in a competitive market where the consumer's choice may not only be limited to choosing complete "through" service from one supplier or another, but "assembling" a through service by piecing together different functions from different suppliers.

11. Are the functions related to the mechanical activity of the firm (e.g. splicing wire), or to the management activity (e.g. marketing)? For instance, is splicing wire for service orders the same as, or different from, splicing wire for repair of damage, or splicing wire for expansion of facilities? For them to be the same function, the costs would have to be the same, but would the benefits to the firm (the marginal revenue of the marginal product) have to be the same as well?

12. What changes, if any, would have to be made to the tariffs so that costs of service and rate elements could be developed from the basic, discrete, disjoint functions?

89. Assuming that functionalism is the appropriate basis for a cost of service accounting system, there are some basic questions that must be answered before we can design such a system.

1. Are the costs of each function best measured with full overhead loadings,

[27] See *A Study to Assist in the Evaluation of the Socioeconomic Impact of the Telephone Rate Structure*, T&E Report, November 7, 1978, Chapter 5 (especially section 5.1, attached as Appendix D). A copy of the full report is available for inspection in the FCC Library, or through the duplicating contractor.

or on some more direct basis? If they should be directly measured, how can overheads be assigned to each function?

2. Are functional accounts more compatible with clearing accounts or work orders (expense records)?

3. Can functional accounts be developed for plant and depreciation? How about the case where plant represents a fixed cost in common use: do there then exist basic, *discrete, disjoint* functions? If the functions of plant are not both discrete and disjoint, how can cost of service by ascertained?

4. If functional accounting for plant is possible, how can functional accounting for depreciation be performed? What should be the structure of the depreciation accounts? What depreciation method should be used?

Bell's Functional Accounting System

90. The Bell System has proposed a functional accounting system as the basis for its recommendation to us for a new system of accounts. We order the Bell System functional accounting system to an issue in this proceeding,[28] and direct Bell to file an original and seven copies of its system manual with us within seven days of the release date of this order. If any party wishes to comment upon the Bell proposal, he may review it in our public reference room or order a copy from the Commission's Duplicating Contractor. We also direct Bell to file one copy of its manual with the commission of each state, with a cover letter saying that they are doing so by our direction in this docket, and asking the commission on our behalf to place the copy in its public reference file.

91. Bell's functional accounting system has been several years in development at varying degrees of intensity of activity.[29] It was originally designed to coordinate with present part 31 of the rules (USOA), and it was not originally designed to yield cost of service information. Oral representations to the Bureau staff as to the earliest date at which the Bell functional accounting system (FAS) will be able to yield cost of service information directly have ceased since the institution of this Rule-Making proceeding, so we ask Bell whether 1988 is still the earliest date at which we can expect the FAS to yield service cost directly. We also ask Bell to discuss specifically the evolutions that the FAS must go through before it can yield accurate service cost information.

92. Given the functional accounting system at its present stage of evolution, we ask the following questions, of Bell and the other parties. Although Bell developed the FAS, there are many issues associated with it which can be answered by the non-Bell respondents whose views we solicit.

1. Are the functions described the basic, discrete disjoint functions needed for cost of service studies as discussed by T&E? What would have to be done to make them so usable?

2. are the functions appropriate ones for other regulatory purposes, such as disallowance of inappropriate expenditure, disallowance of non-utility activity (non-telephone business), measurement of operating efficiency and of productivity, determination of capacity utilization, analysis of the economics of choice among technologies, analysis of the economics of early retirement of plant in favor of a new technology.

3. Are the function codes sufficiently detailed for rate making use but not excessively detailed for workability of the system?

4. Are the functions compatible with the accounting system we proposed? With the accounting system Bell proposed? With the respondent's own proposal, or any other the respondent wishes to comment upon?

5. Would the allocation of cost to functions in the Bell FAS be best done by a system of work orders, such as the Expense Records we proposed, by a system of clearing accounts, or by some third alternative? If clearing accounts or a third alternative are preferred, please specify in detail the system that should be used.

6. Although Bell proposes to charge some loadings and overheads to the functions in its FAS, Bell also identifies some overhead and support activities as functions. Given cost of service as the principal objective of the accounting system, and given that managerial needs should be subordinate to regulatory needs in a regulatory information system, would an ideal FAS book overheads to functions and also identify separately some overhead and support functions?

7. Is the Bell proposed FAS designed too specifically as a managerial tool to be optimal, in its present form, as a regulatory instrument, and what structural changes would have to be made in it to optimize the FAS for regulatory use?

8. In general, in the measurement of cost of functions for regulatory purposes, where cost of service is the principal objective, should function costs be direct cost only, or should some overheads and loadings be included as well? Be very specific in your definition as to precisely which costs should be included, and what costs are "direct" in their context.

9. Is the Bell FAS auditable? Would its adoption create problems in accuracy reconciliation or accountability? In particular, can the standard times and standard costs developed by the Bell FAS be *reconciled* with actual times and costs recorded in the books of account? Can Bell be held *accountable* for the accuracy of the standards?

10. We note that, for example, Bell's functional accounting code 4112 covers installation and moves and rearrangement of all types of small PBX's, and code 4122 covers their repair. How could it support even the degree of maintenance detail called for in Bell's own proposal (See pp. II—B-10 and II—B-2 (item IV. C.) of AT&T's Comments)? How could the installation cost (or the repair cost) of a "Dimension" PBX be computed for rate making purposes? The use of standard costs in this context must create a variance. How would such a variance be reconciled? (See also paragraph 28, above.)

11. Bell's functional accounting relies on supervisor's estimate, in advance, of the time employees spend at various functions. What internal controls exist—or can be devised—for such allocations? How can supervisors be held accountable for the accuracy of such estimates? How can the variances between the estimates and the actual hours the employees spend be reconciled?

12. Apart from the "paper trail" what could an auditor verify? While verification that money expended for payroll is indeed properly accounted for by the hours worked of the staff is an important part of auditing, it is not the whole of auditing. (See paragraphs 70 through 84). In item 10, above, could an auditor determine actual expenditures for installation of "Dimension" PBX's? Could he determine actual expenditures for total PBX installations?

13. Do the proposed Bell Journal Entry Codes represent appropriate cost centers for regulatory purposes? To what concept of cost centers, if any, do they correspond?

14. Will existing mechanisms for reporting work time to field codes be

[28] We are not here concerned with whether Bell's Functional Accounting System is a useful *management* tool for Bell. Our only concerns in this proceeding are whether it is a useful service cost accounting tool for Bell and others and whether it is a useful management tool for *others* who might adopt the system. Thus our questions are directed at cost accounting using Bell's FAS, and at its implementation in non-Bell carriers. Whether or not Bell's management will get any benefit from FAS is a topic for another forum.

[29] See "Comments of American Telephone and Telegraph Company', CC Docket 78-196, January 15, 1979, pp 81-84, appendix V, et passim.

reconcilable with the pre-determined allocation to job function codes? How will differences (variances) be reconciled?

15. What control mechanisms exist to ensure the accuracy of time reported to present field codes?

16. In what way can one determine whether cost differences exist within a "category of service" as defined in the Bell FAS? For example, how could one determine whether initial installation of a PBX costs the same as a move or rearrangement of one already installed, when all these operations have the same function code? How can the carrier be held accountable for the amounts of such differences.

17. How can standard times of installation be verified and reconciled with actual time? Can meaningful standard times be developed for existing USOC codes?

18. What revisions must be made to USOC codes to make them sufficiently apparatus-oriented so that meaningful time studies can be performed, and so that cost studies can be done within the system of accounts.

19. Does Bell's FAS use standard time and cost or actual time and cost to allocate cost to service? Which approach is preferable? If standard costs are preferred, how should the variances be reconciled?

20. What existing time reporting systems are there for craft workers, white collar workers, supervisors or managers at present in the Bell System? How is accuracy ensured in these systems, by internal control, accountability, or otherwise? What use is made of these systems in the Bell FAS? Can the results of such systems be reconciled with the results of the Bell FAS?

21. What statistical methods are used to determine allocations in the Bell FAS? How can consistency of methodology and reliability of results be ensured? Under what conditions should a carrier be permitted to change statistical study methods?

22. Is the system sufficiently well defined as to give comparable results despite its complexity? Is it insufficiently flexible for use in operating companies in a telephone system as diverse as that of the United States? Is there an appropriate amount of centralized control?

23. What resources would the FCC need to exert its regulatory authority to impose an appropriate degree of comparability and uniformity upon a FAS like Bell's?

24. Will the Bell FAS eliminate the need for special studies for ordinary and necessary regulatory decisions, including the prescription of just and reasonable rates which are not unduly discriminatory, and which are based on cost of services?

25. We ask whether Bell's proposed Stage III functional Accounting system eschews management assignments as discussed in footnote 6, above, and whether it uses assignment techniques that are inherently accountable and reconcilable.

93. We note that the pace of Bell's implementation of its FAS has been measured, and we are concerned that it may be too elaborate or complicated for ready use. We ask independent telephone companies to evaluate Bell's FAS in terms of their own operations. In particular, we ask whether it is compatible with the procedures they would adopt if the new system of accounts resembled our proposal, their own, or another they choose to evaluate. If the Bell FAS were adopted, how could it be implemented in the respondent's operations? What managerial and other benefits would the respondent get from adoption of the bell FAS?

94. For comparison, we ask Bell to state the procedures that would be followed to adopt the FAS in a Bell operating company, the cost of such adoption, and the benefits that would be received at each stage in the implementation.

95. We observe that nearly two thirds of the expenditures for Bell's functional accounting system have yet to be incurred. We are concerned that some of the modifications necessary to render it useful for determining cost of service will make obsolete some portions of the presently proposed FAS. We ask Bell to perform an analysis, and identify all portions of the FAS that will have to be modified if our proposal were adopted, to explain what modifications would have to be made, and to estimate the cost of such modifications. Bell may present a similar analysis for its own and any other respondent's proposal. We ask Bell to state whether, in light of the analysis, it intends to proceed with the implementation of those portions of the FAS that will have to be changed for the purposes of cost of service accounting, and what benefits Bell expects to reap from such premature implementation. We note that costs of developing or implementing accounting changes that are not in accordance with what may reasonably be foreseen to be accounting rules in effect at the time of implementation or shortly thereafter are normally properly recorded in account 316, "Miscellaneous Income" (as a negative amount), as being not relevant to telephone operations.

96. Some parties have read our proposal as requiring a great deal of new time and work recording upon the part of craftspeople and other low level employees. Although the information needed for cost study purposes could be obtained in such a way, we believe it would be more cheaply and accurately gathered through the correlation in the central computer of information accumulated on *existing* forms but now *discarded* after local processing. For example, when craftspeople are assigned tasks they are given job tickets telling them what to do, and upon which they record time spent. The information on the job tickets is sorted by the foreman who develops "productivity" statistics like "work units per hour," and it is then discarded since there is no further requirement for it. The foreman, in making up work assignments for service orders which had service (USOC) information when placed on the teletype, uses, among other things, a separate copy of the same service order that is used for billing. Similarly, when investigating a called-in trouble, even if the customer does not identify the particular service about which he is complaining, the information is found at the complaint desk when the attendants there look up their records of the line. Clearly, the information does exist for the direct assignment of most expense to service, on forms now in use at Bell and General Telephone operating companies. We assumed, for the purpose of the first Notice, that the practices we observed are used at all companies large enough for cost of service frequently to be a significant issue in their rate cases. Given that all the information is now available—much of it in machine readable form (such as sense-marked cards)—we thought that the mere imposition of a common control number, the "Expense Record," to serve as a mechanism for correlation of the information would not be particularly burdensome. We call for further comment upon methods for implementation of the system we propose in Appendix F of the Notice using minor modifications of existing forms, but without the collection of new data. For what aspects of operations would it actually be necessary to develop a new time-reporting system because no record that includes service information is handled at any point in a process that includes some form of time reports, either for local or central use? How valid is our assumption that if records containing service information and time information are used as parts

of a process, the allocation procedure can then be done in a centralized computer with no significant additional efforts on the part of craftspeople and their immediate supervisors? To what extent could such a correlation of existing time and service information eliminate the need for Bell's FAS, and special studies for rate making purposes? Would such a correlation be auditable?

97. We call upon parties to specifically list the capacity, forecast use and actual use statistics that will have to be in each category of the primary allocation records (corresponding to specific accounts) to allow for allocation to service using Method 7 (and any other method for which it is desired to do so) and to jurisdiction using the Separations Manual. We have called upon parties elsewhere (e.g. Paragraphs 11, 41, 68, 70, 72, 80 and 83) to comment upon the means of posting and auditing the PAR's. We also call upon parties to discuss with specificity the computerized records that must be kept of financial instruments in order to calculate cost of capital, and appropriate formats for reporting such information to regulatory commissions.

Data Base As A Goal

98. A stated goal in the proposed revision of the USOA is the development of a single data base that can serve multiple purposes and be used by both internal management and regulatory authorities. Two consulting firms recently reviewed the USOA and agreed on the need to establish a computerized system. Peat, Marwick, Mitchell and Co. concluded that what is needed is a computerized, fully integrated data system capable of providing several matrices of revenues and costs by such bases as cost of service categories, class of customers, function, product, and others. Mathtech concluded that under a data base approach, it will be possible to produce (1) conventional accounting reports to meet the traditional needs of regulators for rate level information; (2) cost studies including those which fully allocate costs to services; and (3) various special analyses.

99. The only way to effectively accomplish the above goal is with a Data Base Management System (DBMS). Data must be stored so that it can be used for a wide variety of applications and in such a way that both the data and the programs utilizing the data can be modified without disruption. A necessary characteristic of the USOA will be sufficient adaptability to accommodate expansion and change. The process of restructuring the data base must be simple and efficient to allow for new types of data as well as new applications. Restructuring should be possible without having to rewrite, test and debug existing programs. Users should also be able to query the data base without the time consuming operation of writing specific application programs. The data base should be designed for a combination of batch processing runs and real-time man-machine dialogues.

100. The primary objective of the proposed new and computerized USOA is that it should make applications development easier, cheaper, faster, and more flexible. The data must be kept accurate and secure. It should be organized so that many users with diverse purposes can work with the data. The extent to which demands for new uses of the data will arise and be implemented shall determine the overall value of the system. Data base software should permit data modification without the need for revisions to other application programs utilizing the same data for different purposes.

101. A broadly applicable computerized USOA will not come about immediately. It will have to expand one step at a time. Both the software and logical structure must be capable of orderly growth with minimal if any disruption. Commission employees must have the capability to utilize the data in creative and productive ways without having to wait for programmers to incorporate these thoughts into applications programs. To do this they should be able to both query and manipulate the data base in the easiest possible manner.

102. A DBMS is the only way to achieve the high degree of automation necessary to fully utilize the proposed new computerized USOA.

103. Respondents should show how their proposal is compatible with a data base management system. Further, respondents have suggested that the data base be kept in several unrelated files. They are requested to show how these files could be integrated into a comprehensive DBMS. We are particularly concerned that the several files may not be wholly compatible, taking data from different sources without cross-check and comparison. We tolerated the fact that plant location records could not be reconciled with continuing property records when both were manual systems. We see no reason to continue to countenance such a dichotomy in the age of the computer. Accordingly, respondents are requested to show how accuracy and accountability could be maintained in a non-integrated multi-file system. Respondents are asked to provide a specific implementation schedule for a Data Base Management System.

104. Is the Bell functional accounting system compatible with a DBMS? Would adoption of the FAS complicate the DBMS, or lead to auditing or accountability problems?

Disposal of Motions

105. Several commenting parties have suggested that the Commission should defer its efforts in revising the USOA until other related proceedings are concluded *i.e.*, considerations relating to alternative depreciation practices, or until its regulatory role is resolved by Congress. The Iowa State Commerce Commission urges that the Commission's "conclusion should be based upon the determinations of a joint Federal-State Board established pursuant to 47 U.S.C. 410." It will always be possible to point to regulatory or legislative uncertainties which, if definitively resolved, would make the process of revising the USOA a simpler task. However, in regulatory decisions, it is not always possible or practical to await this certainty. The most common theme expressed in the comments was the belief that the USOA for telephone companies was in need of revision, although parties disagreed on the scope, applicability, and detail for any revised USOA. We believe that the needs of the telecommunications industry and this Commission are such that it is imperative for this effort to continue. With respect to the question of a joint board, we do not anticipate that the revision of the USOA will require any changes in the separations manual (Part 67). As we indicated in the notice, it should be possible through a summation process to generate the existing categories of plant, revenue, and expense that are required for separation purposes. Accordingly, we are not required to establish a joint board pursuant to Section 410(c) since no change in Part 67 is proposed. If it should later appear that a change in Part 67 is necessary, it will be possible at that time to convene a joint board. At this point in the revision process, it is too early to determine whether the referral to a joint board of some or all of the issues in this proceeding would be desirable or helpful. AT&T, GTE, NARUC, as well as several other parties, have suggested the Commission should establish working committees to assist the Commission in developing a revised USOA. At this point in the

proceeding we are not in a position to commit overselves to a procedural framework for subsequent steps in the proceeding. This supplemental notice as well as the original notice have been designed to attempt to define issues that must be addressed, to develop alternative approaches to resolving these issues, and to determine whether there may be some commonality of viewpoints on certain issues. Accordingly, we encourage parties in filing their comments to consider various procedural approaches the Commission might use in evolving the next generation of its chart of accounts, account definition, item list, and accounting rules. In making suggestions for future procedural approaches the parties should address the relative advantages and disadvantages of their recommended procedural approval as compared to other procedural approaches that might be adopted by the Commission. Parties might also consider whether some issues are more suitable to one procedural approach, while other issues may require a different procedure.

106. Accordingly, It Is Hereby Ordered, Pursuant to Sections 4(i), 4(j), 213, 220 and 403 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i)–(j), 213, 220 and 403, that this Supplemental Notice of Proposed Rulemaking is hereby instituted in the above-captioned matter. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a statement in writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

107. It Is Further Ordered, Pursuant to Section 220(i) of the Communications Act, 47 U.S.C. § 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Secretary shall serve a copy of this Notice on each state commission.

108. It Is Further Ordered, That interested parties may file comments on the issues, objectives and proposed requirements discussed herein no later than September 17, 1979, and that replies to such comments may be filed no later than October 15, 1979, except for the matter contained in paragraphs 90 to 95 and 104 on the Bell Functional Accounting System, for which the dates be November 15, 1979 and January 2, 1980 respectively. In accordance with the provision of Section 1.419 of the Commission's Rules (47 C.F.R. § 1.419), an original and 7 copies of all statements, briefs or comments shall be furnished the Commission. All comments received in response to this Notice will be available for public inspection in the Docket Reference Room in the Commission's Offices in Washington, D.C.

109. It Is Further Ordered, That the March 20, 1979, petition of the National Association of Regulatory Utilities Commissioners for an extension of time in which to file reply comments to the original notice of proposed rulemaking IS DISMISSED as having been untimely filed.

110. It Is Further Ordered, That the request of the Iowa State Commerce Commission for the institution of a joint board pursuant to Section 410 of the Communications Act of 1934, as amended, 47 U.S.C. 410, is denied.

Federal Communication Commission,

William J. Tricarico,

Secretary.

List of Appendices

Appendix A—Service List.

Appendix B—Tables of Firm Size (P. Treuer's tables attached plus possibly a ranking of firms in Tables 16 & 17 (SOCC) by size using various parameters—A. Feldman says it would take 2 weeks to make such lists).

Appendix C—List of Accounting Differences.

Appendix D—T&E Report Chapter 4.

Appendix E—Index of Questions (to be prepared later).

Appendix A—Supplemental Service List

This appendix is a supplement to the service list for Docket No. 78-196 that was released by the Commission on March 9, 1970. *See* Mimeo No. CC 5417, 44 FR 13015 (March 9, 1979). Taken together the two lists constitute the revised service list for this proceeding. Parties to this proceeding should serve a copy of all pleadings they file on the persons named in the revised service list. Additionally, any party filing for the first time in this proceeding should be included on the service list by the parties and served with copies of pleadings in future rounds of comments. At least one copy per party should be served on those firms representing more than one party.

The following have filed comments in this proceeding.

Joseph F. Moraglio, Director, Federal Government Division, Richard A. Gnospelius, Chairman, Subcommittee on Communications, American Institute for Certified Public Accountants, 1620 Eye Street, N.W., Washington, D.C. 20006.

George F. Griffin, Amery Telephone Co., Amery, Wisconsin 54001.

Edwin R. Lundborg, Chairman of the Commission, 500 State Service Building, 1525 Sherman Street, Denver, Colorado 80203.

H. C. Hearn, Jr., Continental Telephone of the South, 705 North Caswell Street, Glenville, Georgia 30427.

Pearl M. Arant, Gulf Telephone Co., Drawer 670, Foley, Alabama 36535.

Paul Brewer, United Telephone Co., Huebel Parkway, Beloit, Wisconsin 53511.

The following persons have filed letters with the Commission requesting that their names be placed on the service list. These persons should be served with copies of pleadings in the same manner as those who have participated in the proceeding through the filing of comments.

James C. Buckley, James C. Buckley and Associates, 1341 C Street, N.W., Suite 420, Washington, D.C. 20005.

Phil W. Widenhouse, Executive Vice President, The Concord Telephone Company, 68 Cabarrus Avenue, East, P.O. Box 227, Concord, North Carolina 28025.

John S. Urban, Jr., Administrative Assistant Illinois Commerce Commission, 527 East Capital Avenue, Springfield, Illinois 62706.

Edwin R. Carlson, Auditing Supervisor, Michigan Department of Commerce, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909.

Ralph W. Christy, Esq., Emily M. Williams, Esq., Alston, Miller and Gaines, 1800 M Street, N.W., Washington, D.C. 20036, Counsel for National Data Corporation.

George M. Shea, Esq., Vice President and General Counsel, National Data Corporation, Atlantic, Georgia 30359.

Arthur L. Litke, Regulatory Operations Group, FGMS, U.S. General Accounting Office, Room 5043, 441 G Street, N.W., Washington, D.C. 20548.

John M. Scorce, Esq., The Western Union Telegraph Co., 1828 L Street, N.W., Washington, D.C. 20036.

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TABLE 1

BREAKDOWN OF TELEPHONE COMPANIES BY NUMBER OF MAIN TELEPHONE SUBSCRIBERS*

	5M Up	3M-5M	1M-3M	500000-1M	100000-500000	50000-100000	10000-50000	Up to 10000
Bell Companies	4	6	9	2	3	-	-	-
Non-Bell Companies	-	-	1	4	21	4	6	12
Total	4	6	10	6	24	4	6	12
	4	10	20	26	50	54	60	72**

* Compiled from 1977 SOCC Manual
** Number to the left are cumulative.

TABLE 2

BREAKDOWN OF TELEPHONE COMPANIES BY NUMBER OF LOCAL CALLS*

	10B up	1000M-10B	500M-1000M	100M-500M	50M-100M	10M-50M	5M-10M	Up to 5M
Bell Companies	7	13	1	1	-	-	-	-
Non-Bell Companies	-	16	4	13	3	7	1	2
Total	7	29	5	14	3	7	1	2
	7	36	41	55	58	65	66	68**

* Compiled from 1977 SOCC Manual
** Numbers to the left are cumulative.

TABLE 3

BREAKDOWN OF TELEPHONE COMPANIES BY NUMBER OF TOLL CALLS*

	1000M-10B	500M-1000M	100M-500M	50M-100M	10M-50M	5M-10M	Up to 5M
Bell Companies	11	3	8	2	-	-	-
Non-Bell Companies	-	1	10	7	13	4	11
Total	11	4	18	9	13	4	11
	11	15	33	42	55	59	70**

* Compiled from 1977 SOCC Manual
** Numbers to the left are cumulative.

TABLE 4

BREAKDOWN OF TELEPHONE COMPANIES BY NUMBER OF EMPLOYEES*

	75,000 Up	50,000-75,000	30,000-50,000	10,000-30,000	5,000-10,000	3,000-5,000	1,000-3,000	Up to 1,000
Bell Companies	3	2	3	11	3	1	1	-
Non-Bell Companies	-	-	-	2	5	8	12	22
Total	3	2	3	13	8	14	13	22
	3	5	8	21	29	43	56	78**

* Compiled from 1977 SOCC Manual
** Numbers to the left are cumulative.

TABLE 5

BREAKDOWN OF TELEPHONE COMPANIES BY TOTAL CO.-OWNED PHONES*

	Over /3M	1M- / 3M	500,000- /1M	100,000- /500,000	50,000- /100,000	10,000- /50,000	Up to / 10,000
Bell Companies	15	6	1	2	-	-	-
USITA	1	2	12	33	25	146	538
Total	16	8	13	35	25	146	538
	16	24	37	72	97	243	781**

* Compiled from 1977 SOCCManual and USITA's 1978 Annual Statistical Volume II .

** Numbers to the left are cumulative.

TABLE 6

BREAKDOWN OF TELEPHONE COMPANIES BY TOTAL OPERATING REVENUES - 1977*

	1B /Up	500M- /1B	200M- /500M	100M- /200M	50M- /100M	20M- /50M	10M- /20M	5M- /10M	2M- /5M	1M- /2M	.25M /1M	Up to /.25M
Bell Companies	14	5	3	1	1	-	-	-	3	-	-	-
USITA	-	1	6	100	12	20	31	35	106	138	211	97
Total	14	6	9	101	13	20	31	35	109	138	211	97
	14	20	29	130	143	163	194	229	338	476	687	784**

* Compiled from 1977 SOCC Manual and USITA's 1978 Annual Statistical Volume II

** Numbers to the left are cumulative.

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Table 7.—*USITA Holding Companies*

[Number of subsidiaries with operating revenues of $100,000 or more and total operating revenues of subsidiaries]

1. Allied Telephone Co. (largest subsidiary: Allied Telephone Co. of Arkansas)	13	$34,029,843 ($10,310,042)
2. Central Communications Corporation	2	$2,143,949
3. Central Telephone & Utilities Corp. (largest subsidiary: Central Telephone Co. (Chicago)	11	$333,721,937 ($162,383,101)
4. Century Telephone Enterprises Inc. (largest subsidiary: La Crosse Telephone Corp. (Wis.))	27	$37 701 443 ($10,159,973)
5. Continental Telephone Corp. (largest subsidiary: Continental Telephone of Cal.)	46	$628,194,654 ($111,512,777)
6. General Telephone & Electronics Corp. (largest subsidiary: General Telephone Co. of Cal.)	18	$3,477,959,340 ($861,649,036
7. Mid-Continent Telephone Corporation (largest subsidiary: Western Reserve Telephone Co.)	23	$164,191,648 ($32,247,574)
8. Telephone Data Systems Inc. (largest subsidiary: Somerset Telephone Co.)	42	$26,675,547 ($2,409,833)
9. Telephone Utilities Inc. (largest subsidiary: Northwestern Telephone Systems)	25	$35,231,763 ($13,185,254)
10. Telephone Utilities of Pennsylvania Inc. (largest subsidiary: Murraysville Telephone Company)	8	$14,751,190 ($5,518,739)
11. United Telecommunications (largest subsidiary: Carolina Telephone & Telegraph Co.)	23	$338,840,562 ($175,218,201)
12. Universal Telephone Inc.	2	$2,427,811

Appendix C—Survey of Differences Between FCC Prescribed Accounting Rules and Generally Accepted Accounted Principles

1. Accounting for unamortized discount, issue cost and premium on bonds refunded: FCC—write off to extraordinary income accounts; refinancing amount subject to amortization with Commission approval. GAAP—write off to income in year of refunding.

2. Accounting for Leases: FCC—No specific provision for handling leases as conditional sales or as purchases on lessee's books; In effect, Operating Method to be followed on lessor's books. GAAP—provides for the lessee to record a capital lease as an asset and an obligation and amortized in a manner consistent with the lessee's normal depreciation policy for owned assets.

3. Accounting for pension costs: FCC—Pay-as-you-go accounting permitted as is current year expensing of prior service costs. GAAP—APB Opinion 8 does not recognize pay-as-you-go accounting and provided for amortization of prior period service costs over future period.

4. Reporting results of operations: FCC—Provision for prior period items in determining net income either in current or delayed income accounts; extraordinary account classification by nature of item regardless of size. GAAP—Net income should reflect all items of profit and loss recognized during accounting period except for material prior period adjustments, with large extraordinary items to be shown separately as an element of net income for the current period.

5. Accounting for investments in common stock: FCC—Cost method. GAAP—Equity method.

6. Accounting for income taxes: FCC—Interperiod allocation of taxes allowed only for differences resulting from the use of accelerated depreciation (including ADR and the use of the normalized method of accounting for any other tax differentials not provided for elsewhere by waiver) for tax purposes and straight-line depreciation on books, and differences resulting from the exclusion from taxable income of profits on intrasystem sales of materials and services within groups of affiliated companies filing consolidated tax returns. GAAP—APB Opinion 11—Deferred tax accounting recognition for any item material in amount arising from the different treatment accorded thereto for book and tax purposes, but see Addendum #2 re non-applicability to regulated industries.

7. Accounting for convertible debt and debt issued with stock purchase warrants: FCC—No specific mention; face amount for debt issued. GAAP—detachable warrants: proceeds; allocable to warrants go to paid-in capital; not detachable: record; as convertible debt, i.e., solely as debt, no portion of proceeds considered attributable to conversion feature.

8. Business Combinations: FCC—Purchase only in regulations; poolings have been permitted. GAAP—when specified conditions are met, pooling of interests; otherwise, purchase method.

9. Accounting for investment in plant: FCC—Original cost accounting; acquisition cost by exception only. GAAP—Acquisition cost; recognizes original cost accounting in regulated industries.

10. Accounting for Treasury Stock: FCC—Recorded at book account; difference between book amount and cost recorded in Other Capital or Retained Earnings accounts as if differences between recorded amount and sale price if subsequently sold. GAAP—Recorded at cost of acquisition when purchased; paid-in capital account for gain or loss on subsequent sale.

Appendix D

5.0 APPLICATIONS

In this chapter we consider the application of the rate benchmark principles developed in Chapter 3 to the evaluation of possible subsidies embedded in the current rate structure. Since current ratemaking principles are the result of an historical evolution of cost allocation procedures, rather than direct application of an objective function which embodies the Federal Communications Commission's regulatory objectives, it is important to identify the patterns and magnitude of such subsidies and then determine the extent to which they correspond to these objectives. The premise of this report is that in order to identify and estimate the level of service and user subsidies, a set of subsidy-free prices or rate benchmark is required. The issues associated with determining a benchmark and the conditions which such a set of prices must satisfy were discussed in Section 3.4. A more formal, mathematical treatment of subsidy-free prices is contained in Appendix C. In our view, establishing the rate benchmark is a prerequisite for evaluating subsidies embedded in the rate structure. In Section 5.1 below, the data requirements for determining the rate benchmark and calculating service and user subsidies are discussed. These requirements relate to cost relationships, demand functions, and objective or social welfare functions. Section 5.2 contains a description of data potentially available for evaluating subsidies. Finally, Section 5.3 considers the issues regarding subsidies which, in our view, are policy relevant and may potentially be addressed given the availability of existing data.

5.1 *Data Requirements*

In general, the cost allocation problem facing the regulator involves determining a set of prices that (1) ensures that the overall profit constraint is met at the levels of output demanded at those prices, and (2) generate revenues from each service which cover some desired share of total costs. Since costs very with the levels of outputs and since the outputs demanded in the market are related to prices via the demand functions for the services, the cost allocation and resultant revenue requirements are determined simultaneously with prices. While the rate-making process in practice may involve some iterative or other empirical approach, the above considerations must underlie any cost allocation determination.

Thus, in order to allocate costs properly or determine the rate benchmark, the regulator needs to possess knowledge of both the demand relationships for the services and the functional relationships that relate costs to the levels of output of different services. Furthermore, as we have discussed in Chapter 3 and 4, determination of the share cost of allocable to each service in both the optimal and subsidy-free cases required information regarding marginal costs, the

nature of the cost hierarchy for common costs, and own and cross-elasticities of demand.

In Section 5.1.1 below we discuss in detail the nature of the cost information required to determine the rate benchmark and, therefore, to identify subsidies embedded in the exisitng rate structure. Section 5.1.2 addresses the data requirements for assessing the demand relationships for each service. The implications of the social welfare function for determining the rate benchmark and rate setting are discussed in Section 5.3.3. Finally, the issues involved in calculating service and user subsidies are addressed in Sections 5.1.4 and 5.1.5 respectively.

5.1.1 *Cost Functions*

It is evident from the discussions in Chapter 3 and 4 that knowledge of the cost function for the public utility is a prerequisite for rate-making or determination of the rate benchmark. Even if the regulator's objectives are limited to merely ensuring that the public utility satisfies some overall profit constraint, some knowledge of the cost function is required.

The cost function describes total costs incurred in relation to the full range of outputs of the different services which could be produced by the firm. In addition to the level of costs associated with each set of outputs, the form of the cost function will have important implications regarding the share of total costs which may be attributable to different services. This issue is addressed in detail below when the relationship between cost hierarchies and cost allocation procedures is discussed.

The marginal cost relationship for each service is a characteristic of the cost function of well-known importance. In the context of a multi-output firm, marginal cost for a given service is defined as the change in total costs with respect to a unit increase in that service holding the outputs of all other services constant. We point out that the existence of common costs does not alter the concept of marginal costs. In the common cost case the only difference is that the marginal costs for a given service will not be independent of the levels of output of the other services.[1]

Another characteristic of the cost function concerns its functional form with respect to the outputs of the different services. In the multi-output case with joint production, the production technology will require some input factors which are common to two or more services. In general, then, the cost function can be decomposed into a sum of cost of elements, where each element is attributable to a single service or set of services. Thus, the cost function may be viewed as reflecting a hierarchy of costs. The first level involves all cost elements that are attributable to single services. Such costs are usually termed direct costs. At the second level are cost elements attributable to pairs of services and at the third level costs attributable to combinations of three services. At the highest level would be the costs (if any) attributable to all the services. A cost element is attributable to a given service only if the magnitude of the costs for that element depends on the level of output of that service. Similarly, a cost element is attributable to a set of services only if the mangitude of costs for that element depends on the levels of output of *all* the services in that set.

As we have argued in Chapter 3, development of the subsidy-free set of prices requires that costs be allocated only among those services to which they are attributable. Similarly, revenues from any set of services must at least cover those costs which are attributable solely to those services. These constraint are formally presented in Appendix C.[2] Thus, the first step in developing a rate benchmark and determining the set of subsidy-free prices involves identifying the cost elements, if any, attributable to each set or subset of services. Since these cost elements are part of the total cost function of the firm, full knowledge of the function would permit these cost elements to be identified.

Before proceeding with a discussion regarding derivation of the cost relationships, we first consider the proper set of services to be included in an analysis of costs for the determination of a rate benchmark. As noted in Chapter 3, aggregation of services for rate setting purposes is likely to result in deviations from subsidy-free prices. The primary criterion for evaluating whether any component of telecommunications services should be treated as a separate service for the purposes of rate benchmark determination involves the production process for that component. If the production technology is such that certain input costs are specific to that service component alone, then it should be treated as a separate service component alone, then it should be treated as a separate service for rate benchmark purposes. The determination of the proper set of services is a prerequisite for identifying the hierarchical nature of the cost relationship necessary for the determination of subsidy-free prices. A delineation of services for actual rate setting purposes would include the following: local exchange service, message toll service, wide area telephone service, digital data service, private line telegraph, private line telephone, audio/radio, television, and various other private line and specialized services. We argue, however, that determination of the rate benchmark requires at a minimum separate consideration of the costs of terminal equipment services and network access (i.e., the droplines and local loop dedicated to each subscriber). Each of these service components has cost elements which are specifically attributable to it, and hence should be considered as separate services. Thus, at the outset, an engineering analysis of the production characteristics of all the service components is necessary to establish the proper set of services for benchmark analysis.[3]

Given this discussion of the characteristics of the cost function, we turn to a consideration of the methodological issues associated with determining cost relationships. First, we point out that the cost function for the provision of telephone services is not likely to correspond to the textbook version of cost functions which are continuous and well-behaved. Given the alternative technologies available, indivisibilities in factor inputs, and other complicating factors, determination of the cost function is not an easy task. Second, we emphasize that the cost function is more than an estimation of costs for the existing level of output or a summation of the costs of factor inputs. These procedures will generate cost equations, which relate inputs to total cost, but they will not generate cost functions.[4] And as we have argued, it is not only the total cost levels associated with different output levels for the various services which is important, but also the form of the cost relationship.

What is known regarding costs is the magnitude of the input costs incurred in the provision of services. This is available from the accounting data such as those contained in the Uniform System of Accounts. However, without further knowledge, these data will not yield information regarding the cost functions. The difficulty is that *a priori* there is no way of knowing how factor costs are related to the levels of output of the various services. It is this knowledge that is required for applying the factor cost data to ascertain overall cost relationships.

However, the problem of determining the cost function involves several stages. First, knowledge of the production process relating the use of different inputs in the production of the various services is necessary. This knowledge is sufficient to specify or identify the form of the cost hierarchies. That is, with this information a determination may be made as to which sets of services use equipment or other inputs in common.

[1] As we have shown in Appendix A, even in the case where all costs are common, the marginal cost function for each service is well-defined and marginal cost pricing will, in general, result in some share of the costs being allocated to each service. We also note that while common costs are often treated in the economics literature as fixed costs, this will not be true in general. Presumably in the long run all costs are variable.

[2] As discussed in Section 3.4.4, whenever revenues from each set of services satisfy the stand-alone test and the overall profit constraint, these constraints will also be satisfied. However, the stand-alone test requires determining prices for market outcomes which are never observed and are not ascertainable without complete knowledge of the cost function (including possible less costly alternative technologies for separate production) and the demand curves. As such the stand-alone tests by themselves are not likely to be a practical tool for determining the rate benchmark. However, in cases where information regarding stand-alone costs can be obtained, especially where separate production involves a less costly technology, it should be utilized, in our view, to establish stronger constraints on the set of prices eligible for the rate benchmark.

[3] We point out, however, the necessary level of service aggregation for proper identification of the cost function does not necessarily imply a different rate benchmark for each service in the aggregation. For example, if MTS and WATS are different services only to the extent that they have different pricing rules (i.e., usage-sensitive as opposed to flat-rate), but exhibit no differences in production costs, they should be treated as one service for establishing subsidy-free prices. However, for the purposes of identifying the cost function and the resultant cost hierarchy there is no loss from including MTS and WATS as separate services.

[4] For a further discussion of the distinction between cost equations and cost functions, see T. H. Naylor and J. M. Vernon (47), Chapter 4.

Second, the input cost data must be such that the magnitude of each cost element can be determined for different observations of service output levels (e.g., outputs at different points in time). Finally, functional form of each cost element must be specified which relates cost levels to the levels of output for each service reflected in the cost element. At this stage, at least in theory, econometric techniques could be applied to estimate the overall cost function and each of the cost elements. While the absence of a well-defined and stable cost relationship may preclude the accomplishment of this last step, we argue that achievement of the first two stages are of considerable value to the regulator. This conclusion follows from the result that identification of the nature of the cost hierarchy and proper attribution of input costs to the various cost elements are sufficient to determine whether or not revenues from any service or set of services satisfy the inequality constraints necessary for subsidy-free prices. It is conceivable that after the cost hierarchy has been properly identified and input costs properly attributed, these constraints will result in only a narrow latitude remaining for subsidy-free prices. Thus it is possible that even if data and methodological limitations preclude the full determination of the rate benchmark as discussed in Chapter 3, significant departures of actual prices from the rate benchmark may be ascertained.

The problem of identifying the cost hierarchies and determining the magnitude of the cost elements has two aspects. The first involves analysis of the production process or technology to determine which inputs are specific to sets of one or more services. Such inputs will either be used in the joint production of a set of services or used separately in the production of one or more services. In the first case the costs of the inputs will be common costs while in the second case the input costs will be direct costs. For example, switching equipment is used in the joint production of local and toll calling and the costs of such equipment is common to both services. On the other hand, labor is also utilized in the production of both services, but labor costs may not be common. If some component of the total labor requirement depends on the output of one service alone, then the costs of that labor component will be included in the direct costs for the service.

Given this assignment of inputs to sets of services, the second aspect of the problem involves the attribution of total input costs to the cost elements in the hierarchy. In the case of inputs which are specific to a set of services and employed in the joint production of all the services of the set, all the costs of these inputs are common and must be allocated solely to that set of services. For example, the costs of switching equipment are common to local and toll services. They are not, however, common to private lines services. Hence, for subsidy-free prices, no switching costs should be allocated to PLS. In the other case where a particular factor is used separately in the production of two or more services, the problem is to ascertain the quantity of the input specifically attributable to each service or set of services. In practice this is often done by special studies in which estimates of the input requirements per unit of output for a given service are developed. These types of estimates, which are usually based on engineering studies, are analogous to the econometric estimation of a production function for a service that relates levels of inputs to levels of outputs.

A final and potentially important problem concerning the issue of cost allocation involves the situation where input requirements of one service impact costs of inputs utilized either separately or in common by other services. Perhaps the foremost example is the costs imposed by the requirement of toll grade standards for local equipment. While such equipment in general is common to both local and toll services, the additional costs resulting from the higher standard can be attributed solely to toll services. Another possible example involves the fact that certain more costly electronic switching equipment may be required in order to facilitate the usage of new types of terminal equipment services. In the absence of such services less costly conventional cross-bar switching might be optimal. It is conceivable that this type of assessment for all telephone services will reveal significant subsidies embedded in the rate structure.

In summary, the analysis of cost functions for evaluation of subsidies and determination of the rate benchmark requires at a minimum the application of engineering expertise regarding the nature of the production process to correctly identify the form of the cost hierarchies embedded in the total cost function and properly allocate input costs to the various cost elements. It must be emphasized that the analysis requires the utilization of the proper set of services as discussed above. If the results of such analysis were incorporated into the structure of accounting data such as contained in the Uniform System of Accounts, then such data could be directly utilized in evaluating possible subsidies embedded in the rate structure. In this respect, we note that the cost allocation requirements for determination of the rate benchmark appear to correspond with the goals of the FCC in its proposed restructuring of the USOA.[5] We believe the proposed changes represent a highly useful step in improving the applicability of accounting data to the analysis of possible subsidies.

5.1.2 *Demand Relationships*

In addition to information regarding the cost function for the public utility, determination of the rate benchmark for evaluation of existing subsidies requires knowledge of the demand relationships for services produced by the utility. At a basic level, of course, demand information is required to ensure that the market clears at the desired levels of prices and outputs.

At another level, however, more detailed knowledge of the demand functions is required for the determination of a subsidy-free benchmark. Based on the conventional assumptions of consumer demand theory, demand relationships may be viewed as reflecting the consumer surplus associated with the consumption of each service. It is in this respect that the own and cross price elasticities of demand appear in the rules for determining the markups over marginal cost required by subsidy-free prices.

In general, the demand functions for the different services are integral to the cost allocation procedure. First, from the standpoint of marginal cost pricing, since the quantity of output demanded is a function of the prices of all the services, the demand curve must be known in order to ensure that the market will clear at the desired price. Second, the conditions for subsidy-free prices require that the revenues from a set of services cover its attributable costs. However, both the revenues and the cost to be allocated to the set of services will depend on the demand function since changes in price will alter the quantity demanded. Third, as noted above, the demand functions must be known in order to determine the price elasticities necessary for the calculation of the rate benchmark. We point our that in estimating the determinants of demand for a given service, the prices of other services must be explicitly considered since significant interdependencies of demand can have important implications for the rate benchmark.

Information regarding demand relationships is also necessary for the determination of the magnitude of inter-service user subsidies which result from any set of service subsidies which might be embedded in the rate structure. Since the level of user subsidies depends on the quantity of each services consumed by the individual, a demand function which includes the effect of policy/relevant socio-economic characteristics of consumers is required. In this case patterns of demand by user classes can be ascertained and the resultant user subsidies calculated for each user class.

A final issue regarding demand relationships involves the possible divergence of the actual set of services from the proper level of service aggregation necessary for the determination of subsidy-free prices. The demand functions necessary for benchmark determination must correspond to the latter set of services. If some of these services are aggregated for actual ratemaking, the requisite demand relationships cannot be directly observed. A related problem concerns instances where the form of actual prices differs from that required by the rate benchmark (e.g., flat rate as opposed to usage-sensitive prices). In this case the proper price elasticities for determination of subsidy-free prices cannot be derivied directly from the observed demand relationship. While in theory such difficulties might prove insurmountal, in practice indirect evidence derived from demand studies of existing services is likely to be sufficient to approximate the relative sized of the propoer price elasticities and, therefore, provide a reasonable estimated of subsidy-free prices.

[5] See Federal Communications Commission, "Accounts and Financial Reporting for Telephone Companies: Proposed Revision," Federal Register, Vol. 43, No. 147, July 31, 1978.

5.1.3 *Social Welfare Functions*

One of the major arguments of this report has been that the allocation of any revenue shortfall (or surplus) which would result from marginal cost pricing requires the use of some type of a social welfare function. In general, the determination of prices by a regulator necessitates some form (possibly implicit) of an objective function which embodies the regulatory objectives of the regulator. In the economics literature the conventional social welfare function employed usually involves some weighted sum of individual utilities. Such a welfare function corresponds in a general way to a consumer sovereignity view of social welfare. However, there is no reason why the objective function of the regulator should take this form. Instead, this function will presumably specifically reflect the goals of the regulator. Furthermore, the objective function could be implicit rather than explicit if it were believed the regulator always acted in an optimal and consistent manner with respect to regulatory objectives.

As discussed in Chapter 3, the determination of subsidy-free prices requires the use of a distributionally-neutral social welfare function of the Baumol-Bradford/Ramsey type. In this case welfare is assumed to be an unweighted sum of individual utilities, and the individual social weights attached to the consumption of each service are assumed equal and constant.

However, the utilization of such a welfare function in allocating costs and determining subsidy-free prices requires no additional information beyond the requisite knowledge of the demand and cost functions. Since all the social weights are the same and constant, the mark-ups over marginal costs required for subsidy-free prices will depend only on the own and cross-elasticities of demand and the size of the budget deficit to be recouped. However, as indicated in Appendix B, the relative mark-up between any pair of services will be invariant to the budget constraint.

This result does not hold for the determination of optimal prices. In this case the specific form of the objective function must be explicitly considered in determining the set of desired prices. For example, in the conventional welfare function where the distributional weights for different services are not assumed to be equal, some determination of the relative magnitude of the weights must be made in order to derive the optimal set of prices.

As a final point regarding the determination of the benchmark, it is possible that after satisfying all the constraints for allocating costs to different sets of services and with the remainder of costs allocated on the basis of marginal costs, the resulting shortfall may not be of sufficient magnitude to warrant serious concern regarding the deviations from marginal cost required to make the public utility compensatory overall. Whether or not this outcome is a possibility depends on the magnitude of direct and common costs for different sets of services and the size of the revenue deficiency which would result from unconstrained marginal cost pricing.

5.1.4 *Calculation of Service Subsidies*

The previous discussion has concerned the issues involved with the cost allocation procedures required to establish a rate benchmark. The question now arises as to how such a benchmark may be employed in calculating the subsidies actually embedded in the existing rate structure. In this section we consider the determination of service subsidies, while in the following section the calculation of use subsidies is discussed.

First, suppose that the existing rate structure was predicated on the same set of services and the same form of pricing as would be dictated by a requirement for subsidy-free prices. That is, assume that the existing rate structure includes a price for every service which is included in the rate benchmark determination. The assumption that acutal prices have the same form as subsidy-free prices implies, for example, that if benchmark rates are usage sensitive then so are actual rates. If the existing rate structure satisfies these conditions then the calculation of service subsidies would be straight-forward. The amount of subsidy for each unit of output for the service would be reflected merely by the difference between the actual and subsidy-free prices.

It should be pointed out that because of the simultaneity of output and price determination, a comparison of revenues for each existing service as opposed to the subsidy-free case will, in general, give misleading information about the magnitude of the subsidy. Even though the same profit constraint must be satisfied in both cases, deviation in price from subsidy-free levels will affect the quantities of services demanded as well. Depending on the demand elasticities, the percentage change in revenues from the subsidy-free case may be greater or less than the percentage deviation of price from the benchmark. Thus, service subsidies must be calculated on a per unit basis rather than in terms of total revenues from each service.

If it could be assumed that the subsidy-free prices and outputs corresponded to inelastic portions of the relevant demand curves, then the direction of any subsidies embedded in the actual rates could be ascertained by comparison of actual revenues from a service with the subsidy-free allocation of total costs to that service. Whether or not the demands are inelastic in a neighborhood around the subsidy-free prices depends on the nature of the cost function. In general, there is no reason to assume this will be the case. However, the greater the percentage of costs that are fixed and the smaller the marginal costs, the more likely the subsidy-free prices will be in the inelastic portion of the demand curves. The usual assumption made in the literature is the "local profitability condition." Under this assumption profits are positively related to prices at the subsidy-free price levels. This is equivalent to the ascertion that the marginal revenues are less than marginal costs. Thus operating in the inelastic portion of the demand curve is sufficient but not necessary for the local profitability condition to hold.

The problem of applying the rate benchmark to the calculation of service subsidies is complicated by the fact that the existing rate structure does not satisfy the assumptions required in the above case. Certain services are aggregated for rate setting purposes (for example, network access is not treated as a separate service), and the forms of actual rates do not correspond to that required by subsidy-free prices. The obvious example here is the flat rate for local calling.

Because of these complexities a simple comparison of prices as suggested above is not possible since proper prices for comparative purposes do not exist in the actual rate structure. Furthermore, for the same reasons discussed above, a comparison of the total revenues from each service with those which would have obtained in the benchmark case is inappropriate. That is, the quantities actually demanded will depend on the level of the existing rates.

In the case where the service classes in the existing rate structure correspond to the benchmark case but the form of the rates differ, the appropriate comparison involves the average revenue per unit of output in the actual case and the corresponding price in the benchmark case. Thus, the service receives, on average, a subsidy per unit equal to the amount of this deviation. It should be noted that in this case intra-service user subsidies will generally exist, since even if the service subsidy were zero, some users will be paying more and some less per unit of output than they would in the benchmark case.

The problem is made more complex if the service classes for actual rate-making purposes do not correspond to the proper set of services for benchmark analysis. For example, subsidy-free prices may require network access to be priced as a separate service. In practice, however, access costs are loaded onto both local and toll service costs. In this case, a determination of the service subsidies for local and toll services requires that the access costs allocated to each service be subtracted from revenues for the respective services (assuming revenue requirements were satisfied by the rate structure). These "net" revenues would then be used to calculate the average "net" revenue for each service. These average revenues would then be compared with the respective benchmark rates for the calculation of the service subsidies. Note that in this case it may not be possible to isolate the service subsidies for each of the services as defined for benchmark analysis; however, the subsidies embedded in the existing services can be calculated.

5.1.5 *User Subsidies*

A user subsidy represents the net monetary transfer to particular individuals or groups implicit in the rates for the services they consume. The pattern of such user subsidies is of critical importance since, in our view, the ultimate regulatory concern rests with the implicit subsidies to users of the various services, rather than with the service themselves.

Two components of user subsidies may be identified. The first, inter-service user subsidies, represents the weighted sum of the service subsidies for the services which the use consumes, where the weights are the

absolute amount of the services consumed. The second, intra-service subsidies, are related to the difference between the price of a *given* service and the costs of providing the amount of that *service* consumed by the user. Thus, even if service subsidies do not exist, disparities between rates and costs of different levels of usage may generate a pattern of user subsidies within a given service. Since subsidy-free prices are based on the cost relationship for providing a service, deviations of the form of actual prices from that dictated by the requirements of the rate benchmark will, in general, result in intra-service user subsidies.

We consider first the question of inter-service subsidies. For any given rate structure the existence of service subsidies will result in higher or lower rates for each service than would exist in the absence of such subsidies. The magnitude and pattern of the resultant user subsidies depend, therefore, on the quantity of each service consumed by the different users and the "rate differential" for each service, where it is understood that the "rate differential" refers to the difference between the actual rate and the subsidy-free price.

However, the existing pattern of subsidies among users is only one part of the issue. The second part relates to the impact that service subsidies have on the levels of usage by subscribers to different services. That is, how do the rate levels associated with existing service subsidies alter the usage patterns that would have existed in the absence of service subsidies?

We emphasize that the rationale for evaluating the magnitude and pattern of user subsidies resides in the fact that there exist policy criteria embodied in the objective function of the regulator regarding socially-preferred distributional impacts of telephone rate structures. Thus, any useful analysis of usage patterns to identify the nature and impact of user subsidies must explicitly distiguish subscribers on the basis of user characteristics which embody the policy-relevant distributional considerations.

A major example of this issue concerns the impact of service subsidies on basic exchange penetration levels. Since the attainment of a high level of basic telephone availability has been traditionally viewed as a primary policy objective, evaluation of the impact of service subsidies on basic exchange penetration represents an important area for further research.[6] An analysis of the impact of service subsidies on basic exchange penetration, as well as subscriber usage of other services, rests fundamentally on the identification and estimation of demand relationships for each service which include the effect of relevant user characteristics. On the basis of these relationships and information regarding the magnitude of service subsidies to each service, the resultant user subsidies for relevant user groups may be identified, and the impact of such service subsidies on penetration and usage of other services ascertained.

While inter-service user subsidies depend on the existence of service subsidies, intra-service subsidies may exist even in the absence of service cross-subsidization. Intra-service subsidies exist when the rate a subscriber pays for a service does not reflect the actual cost of the quantity of the service he consumes. The best example of an intra-service subsidy is perhaps the case of local service. If subscribers are charged a flat-rate for calling and if some costs vary with the number of calls made, then those subscribers who make fewer than the average number of calls subsidize those who make more than the average number. We point out that these subsidies (positive or negative) are in addition to any inter-service subsidies which may exist as the result of a service subsidy to or from local service.

The critical issue regarding intra-service user subsidies involves the relationship between costs and the level or intensity of usage by an individual or group of subscribers. Several considerations are important here. First, on an individual basis, the relevant question concerns the marginal cost of additional units of service and how that cost compares with the price the subscriber pays for those units. For example, consider the costs associated with peak-load usage. Since peak-load demands influence the amount of capacity, the costs of the required additional capacity are properly attributable to those users or groups of users whose calling patterns induce the peak-load demands. To the extent the rates such users pay do not reflect those peak-load costs, intra-service subsidies will exist, and peak-load users will be subsidized. This issue is potentially important in the analysis of subsidies between business and residential subscribers, to the extent that business calling is more highly concentrated during peak hours.

Thus, the first step in identifying potentially important patterns of intra-service user subsidies involves determining the costs which are properly attributable to the level and pattern of usage by an individual or group of subscribers. These costs are then compared to the rates which the subscriber pays to obtain that level of service.

The rate structure for a service and the pattern of user subsidies which results clearly has an impact on usage. For example, depending on the price elasticity of basic exchange penetration and local calling, changing from a flat rate structure to usage sensitive pricing should result in an increase in penetration and a decrease in per customer local calling.[7] Thus, as in the case of inter-service user subsidies, the implications of intra-service subsidies for usage patterns has important policy relevance.

The significance of intra-service subsidies, aside from the obvious efficiency considerations, depends on whether the pattern of such subsidies is systematically related to users characteristics which are important from a distributional perspective. These user characteristics may be group-related, such as the business-residential example cited above, or individually-related, such as household income. The issue is whether intra-service subsidies result in net transfers to or from groups of users aggregated on the basis of policy-relevant distributional characteristics.

In the remainder of this section we discuss some of the distributional issues regarding user subsidies which, in our view, have important implications for regulatory policy regarding the rate structure. These include: (1) possible cross-subsidies between residential and business users; (2) geographical patterns of user subsidies such as between urban and rural users; (3) user subsidy patterns between residential subscribers of different income levels; and (4) other patterns of user subsidies related to residential subscribers' socioeconomic characteristics such as age, race, etc.

The question regarding residential-business cross-subsidies involves the consideration of whether business subscribers or residential subscribers as a whole receive or contribute subsidies. To the extent it is possible or meaningful to aggregate *all* subscribers on the basis of a residential or business classification, the net inter-service subsidy enjoyed by each group will be a measure of the cross-subsidy between these two groups which results from the existing pattern of service subsidies. A similar comparison can be made for the pattern of intra-service subsidies for each service, such as terminal equipment, basic exchange, MTS, etc. A complete answer to the question of cross-subsidization involves the netting-out of all inter-service and intra-service subsidies.

In the case of inter-service user subsidies, cross-subsidies between business and residential subscribers could result if the usage of services was disproportionate across subscriber classes. For example, suppose toll calling provides subsidies and local calling receives subsidies. Then if business subscribers had proportionately more toll usage relative to local usage than residential subscribers, it could be concluded that subsidies were flowing from business to residential subscribers. We point out that in the case of inter-service user subsidies it is the existence of service subsidies and the differential usage patterns that generate the user subsidies, *not* direct subsidization between user groups.

Only in the case of intra-service subsidies does this direct subsidization occur. In the business-residential case for local calling these subsidies may possibly result from a number of factors. These include whether peak-load costs are properly assigned to subscriber classes, whether rates accurately reflect the costs which result from the level of usage of each class, whether extra costs imposed on the system by the requirements of sophisticated business oriented terminal equipment (such as more costly electronic switching equipment) are properly borne by business users, and so forth. Each of these areas represents a source of cross-subsidy between users and must be evaluated to obtain a complete answer to the question of the direction and magnitude of potential cross-subsidies between business and residential subscribers.

[6] For a preliminary framework for formulating the "demand" for basic exchange penetration, see C. Fenton and M. Schankerman (23).

[7] For an examination of the effects of changing from flat-rate to usage-sensitive pricing, see B. Mitchell (44).

In considering geographical aspects of user subsidies, the major question concerns the impact of rate averaging. Since the cost per call is inversely related to density of usage, callers in high density areas will subsidize those in low density areas if calling rates are the same in both areas. This amounts to an intra-service subsidy between urban and rural subscribers. Another potential source of geographically related intra-service user subsidies concerns the probable lack of correspondence between exchange costs and exchange rates for different size exchanges. Currently exchange rates for the operating companies are based directly on exchange size. However, it is likely that exchange costs vary inversely with the number of subscribers at least up to some minimum size. This result would indicate a cross-subsidy from subscribers in larger exchanges to subscribers in smaller exchanges. A final area of possible subsidy to rural users concerns the impact of settlements procedures on independent telcos. To the extent such settlements exceed the cost of toll calling properly allocated to these telcos, they serve to subsidize the cost of local calling in the telcos' service areas.

Perhaps the most important distributional issue concerns the impact of the rate stucture on the promotion of "universal service" in basic exchange. In is conventionally held that long distance services, primarily MTS, provide subsidies to basic exchange. Furthermore, such subsidies are believed to be socially desirable because they reduce the price for basic exchange access and, therefore, lead to wider telephone availability. There are two aspects to this and other subsidy-related issues. The first is related to the extent to which any inter-service or intra-service subsidies which may exist are progressive or regressive in terms of their impact on income distribution. This is the relevant consideration in analyzing the intra-service subsidies implicit in flat-rate pricing for local calling.

The second aspect of this issue concerns the efficacy of inter-service subsidies in promoting the use of specific services. The most important case involves the extent to which subsidies to basic exchange users actually promote higher levels of basic telephone service penetration. It has been demonstrated elsewhere than an income-conditioned subsidy to basic exchange users is the preferred scheme because it provides a greater stimulus to penetration, for a *given* level of inter-service subsidy, than one which is not income-conditioned.[8] In other words, the nature of the *intra-service* user subsidy materially affects the efficacy of a given *inter-service* user subsidy. As such, it underscores the potential importance of the pattern of the intra-service subsidies, especially for the case of residential basic exchange service.

Finally, there are other user characteristics which may be relevant to the Federal Communications Commission. For example, do certain minorities as a group receive or provie user subsidies? Other examples are age, inner-city or suburban location, etc. We point out, however, that the analysis of user subsidies on the basis of such characteristics is useful for policy formulation purposes only if the user characteristic provides a proper and legal criterion for establishing rate differentials. For example, differential rates cannot be established for white, black, and hispanic subscribers. However, while such user characteristics cannot be used as a basis for restructuring rates to create or eliminate user subsidies, an analysis of usage patterns by different classes of subscribers may reveal the elements of the rate structure (such as intra-service subsidies generated by flat rate pricing) which are the source of user subsidies to or from these subscriber classes and are properly the domain of regulatory policy.

[8] Fenton and Schankerman (23).

Appendix E

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Appendix F.—Major Issues in the Notice of Inquiry

(Released July 21, 1978)

Whether this proposal (Appendices D and E) is adequate for all regulatory purposes, what additional data may be required for some purposes and what these data might be.

Carriers are invited to discuss what additional information (such as the establishment of separate subaccounts for each year's accretions of plant in each account) would be required to implement anything other than straight line vintage group depreciation under our proposal.

Comments are invited as to whether the proposed accounts and records are adequate to permit such buildup of costs for potential services, or what additional information would be needed.

We invite comments, not only on the specific matters discussed below, but also on any other relevant matters directly related to the proposed USOA modifications.

We invite comments concerning basic definitions of terms.

Parties should address specifications of terms which are both subject to generic use in the telecommunications industries and which will have special accounting relevancy in designing a multipurpose recording and reporting system.

In defining terms, various quantity (as opposed to dollar) measures and, in fact, conceptualizations associated with the production function or supply of telecommunications services should be specified.

Parties attempting to define terms should delineate the conditions or assumptions they have made regarding supply of telecommunications services.

Parties should submit proposed definitions relevant to their suggested revisions of the USOA. All criticisms of our proposals should be accompanied by recommendations of alternative approaches. All criticism should be accompanied by counter proposals that are demonstrated to produce fully equivalent information with less cost, or even better and more relevant information at the same cost.

We invite comments concerning our definition and use of "common" and "fungible" accounts.

We invite comments on whether it is necessary or appropriate to use both accounts or whether such use would prove to be unduly confusing and whether all plants should be assigned to service based accounts at installation, so that the datum would be in the accounts rather than the underlying primary allocation records.

We invite comments on establishment of a general rule as to when an "other" account should be broken down into two or more specific accounts (e.g., greater than $100,000 or greater than 5 percent of all the accounts listed on the same account level as the "other" account in question).

We invite comments as to how the accounts, subaccounts, primary allocation records and supporting records can be structured so as to provide maximum flexibility in the assignment and allocation of the appropriate costs to individual services.

Comments are invited as to how FAFFG should be distinguished from property held for future use.

We invite comments concerning the precise point at which service assignments should be made and accounting records established to fix cost incidence.

We request comment on what provisions are necessary in the rules for the accounting and primary allocation records to facilitate the Commission's recognition of circumstances requiring reconciliation and to permit the Commission to order the necessary accounting changes to accomplish such reconciliation.

We also request comment on the sort of accounting changes and transfers that might be ordered by the Commission in the reconciliation process.

We request comments concerning the nature and extent of evidence that could be deemed sufficient for the granting of a waiver of the FDC-7 requirement for particular services.

We invite comments conerning proper measures of utilization (fill) as well as usage or distribution of plant between services.

We invite comments concerning accounting for separated plant within the cost of service facilities datum.

Since records must be maintained so that such plant can be "fixed" by service, are our proposals adequate to accomplish such fixing?

Do our proposals permit records to be maintained so that separated but fixed plant can be subject to the reconciliation or waiver processes?

We invite comments on the use of this general approach (i.e., revising prescribed expense accounts only as new functions arose or as existing functions were changed to reflect changing methods of providing telephone services) and on the specific accounts we have proposed which are intended to implement this approach.

Comments should specifically address both the types of functional accounts which should be included as well as the level of detail which should be attempted.

We request AT&T to present a breakdown of all spending to date on the functional accounting system, by year, company and purpose. We request, too, that AT&T state what changes have been and will be necessary to cause their functional accounting system to develop cost of service for all tariffed services. We also request that AT&T estimate all future expenditures necessary for its functional accounting system until it can be fully adopted in all companies. Finally, we request that AT&T state what changes to its proposed system would be necessary as a result of the proposed new USOA.

We request comments as to the accounts for which this approach (i.e., use of a two-dimensional spread sheet with the functions being designated as row headings and the services as column headings) is preferable and those for which it is not.

Does the retirement unit, as the entry into the basic property record set a useful purpose in rate making?

Can any use be made of costs of retirement units if maintenance and depreciation expense and the depreciation reserve are not kept at the retirement unit level as well.

Those parties supporting the concept of identifying FAFFG should evaluate the viability of identifying the first costs elements of such plant and be prepared to identify and recapture increments of capacity and related costs, as they are added or removed from plant in service.

We invite comments on the appropriate breakdown of each of the accounts for which further breakdown is indicated. Parties should feel free to suggest a further breakdown of any other accounts not specifically mentioned above, whether plant accounts or otherwise.

We request each carrier filing comments herein to submit an estimate of the dollar magnitude of each of our proposed accounts, for a representative company.

AT&T is requested to submit such dollar magnitude estimates on a consolidated company-wide basis as well.

We request comments on the implementation schedule for our proposal and any alternatives.

We feel parties should comment on several of the more general aspects of the Mathtech report.

To what degree should even the broadest engineering characteristics of provision of telecommunications services become an intrinsic part of the logic of the revised USOA.

How long would such logic apply—

(1) when a company engages only in exchange distribution and short haul interexchange operations
(2) when certain functions become mixed
(3) when technological advances alter the supply functions for telecommunications services
(4) when telephone carriers supply important services or products outside of telecommunications
(5) when several parallel but distinct and incommensurate supply functions are used to provide telecommunications services.

We invite comments from economists and members of related disciplines concerning what data can usefully be gathered through the USOA and its supplemental records.

We seek comments as to whether such information can be gathered at a cost commensurate with expected benefits.

We invite comments as to revisions of the USOA which would facilitate decisionmaking by the carriers such as changes permitting functional cost comparisons.

It has been claimed that the presently used accounting system provides hidden incentives for the firm to make uneconomic decisions. We invite comments on this point and seek suggestions as to how the USOA can be changed so as to provide incentives which improve carrier efficiency and the quality of regulatory and managerial decisions.

We invite comments on what reporting requirements we should establish once the basic USOA revisions are accomplished. Parties should address the question of what types of reports should be required of the carriers on an annual basis and what types should be required on a monthly basis or other.

Parties should address the reporting requirements in terms of both financial and nonfinancial information.

We invite comments on proposals concerning the information to be included in the basic reports and how to be submitted (see para 57) and on the question of how computerization would affect the ability to generate more detailed reports on a regular basis.

We invite comments on what types of special (as opposed to regular periodic) reports the system should be designed to generate.

We invite comments on additional structural safeguards which should be built into a revised USOA to further enhance auditing and entry verification in this age of computer-maintained accounts.

We invite comments on:

(1) Accounting for gains and losses on the sale of terminal equipment both new and in-place

(2) Accounting for the sale of inside wiring

(3) Accounting for the removal of company telephones from customers' premises when customers provide their own equipment

(4) Accounting for the repair of customer provided equipment

(5) Determination of the cost of equipment to be sold and the repair charges to be imposed direct costs and overheads

(6) Whether these operations will be conducted under tariff

(7) Whether operating or nonoperating accounting treatment of gains and losses on these transactions is appropriate.

We invite comments on accounting to insure that gains and losses on property sold from or previously included in a rate base account shall accrue to the ratepayers.

We solicit comments on differences between Part 31 as written and as proposed and generally accepted accounting principles as an item of inquiry. Two of the more significant items concern accounting for investments in affiliated companies (cost basis versus equity basis of investment) and accounting for financing type leases (expensing versus capitalization of lease costs).

We invite comments concerning the degree of accounting uniformity we should require among companies that will be subject to the provisions of the revised USOA.

Should the Commission only exercise its authority to prescribe accounts for larger telephone companies such as class A carriers? How should we define "larger" carriers for this purpose, e.g., in terms of revenues or assets and at what levels?

Should our rules require the use of uniform data storage or retrieval mechanisms of any particular type or function absent a showing of undue burden to a particular carrier? Should the same level of detail in supplemental records or subaccounts be required of all reporting carriers?

We request comments on a specific proposal that the new system of accounts apply only to carriers with over $1,000,000 in operating revenues. What questions will we be unable to answer if we do not apply these accounts to all class A carriers? What changes for other class A and B carriers are needed for compatability with this system if it is adopted only for the largest carriers, as proposed?

We invite comments concerning the needs and desires of State Commissions which might be satisfied in the rules which we finally adopt herein.

[FR Doc. 79-24883 Filed 8-10-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Endangered Species Scientific Authority

[50 CFR Part 810]

Exports of Appendix II Species; American Alligator; Proposed Export Findings for the 1979 Harvest Season (Supplemental Proposal)

AGENCY: Endangered Species Scientific Authority

ACTION: Proposed Rulemaking.

SUMMARY: The Endangered Species Scientic Authority (ESSA) proposes to find that commercial export of American alligator (*Alligator mississippiensis*) hides taken in Florida and Louisiana before June 28, 1979, will not be detrimental to the survival of the American alligator or other crocodilian species, provided that exports of these hides are subject to the same conditions to be adopted for post-June 28 hides in order to ensure that exports will not be detrimental to other crocodilian species. These findings are meant to satisfy ESSA's responsibilities under Article IV, paragraph 2 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). ESSA findings of "no detriment" are required before Federal permits can be obtained for export of alligator hides.

DATES: Comments are due by August 24, 1979. The ESSA seeks public comment in order to base such determinations on the best available information.

ADDRESS: Comments should be addressed to the Executive Secretary, Endangered Species Scientific Authority, 18th & C Streets, N.W., Washington, D.C. 20240. Forthcoming comments and comments already received will be available for public inspection at room 536, 1717 H Street, N.W., Washington, D.C., 7:45 a.m. to 5:30 p.m., Mondays through Fridays except federal holidays.

FOR FURTHER INFORMATION CONCERNING BIOLOGICAL FINDINGS CONTACT: Dr. Peter Escherich, Staff Zoologist, Endangered Species Scientific Authority, 18th & C Streets, N.W., Washington, D.C. 20240, 202/653-5948.

FOR INFORMATION CONCERNING EXPORT PERMITS CONTACT: Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 703/235-1903.

SUPPLEMENTARY INFORMATION: On May 31, 1979, the ESSA proposed findings on export of American alligator hides harvested in 1979 after June 27 (44 FR 31583). That notice describes the purpose and effect of the findings in detail and states that findings on hides taken prior to June 28 await a determination by the U.S. Management Authority (MA) whether it is prepared to issue export permits for these hides, taken while the alligator was included in Appendix I of the CITES.

Through a letter dated August 7, 1979, the MA has stated that it is prepared to issue export permits for pre-June 28 alligator hides. The ESSA now proposes to find that commercial export of American alligator hides taken in Florida and Louisiana before June 28, 1979, will not be detrimental to the survival of the American alligator or to other crocodilian species, provided that these hides were taken in conformity with federal and state law and provided that exports of these hides are subject to the same conditions to be adopted for post-June 27 hides in order to ensure that exports will not be detrimental to other crocodilian species.

We propose to find that export of American alligator hides legally taken in Florida and Louisiana before June 28, 1979, will not be detrimental to the survival of the alligator (CITES Article II

2a) because these alligators were taken in a manner pursuant to which we have proposed to approve export hides harvested after June 27 (44 FR 31583). In addition, export of these hides will not establish a precedent for export approval of future harvest under periodic ESSA findings for Appendix II species.

We propose to find that export of such pre-June 28 hides will not be detrimental to the survival of other crocodilian species (CITES Article II 2b), provided that exports of these hides are subject to the same conditions to be adopted for export of the harvest after June 27. This finding is proposed because the potential effect of pre-June 28 hide exports on other crocodilian species is the same as the potential effect of exporting hides taken after June 27. Proposed findings and discussion under Article II 2b for post-June 27 hide exports are given in the May 31 Federal Register (44 FR 31583). This amendment to that proposal will be taken into account when final findings are made. Although final findings were tentatively scheduled for mid-August, publication will be delayed in order to coordinate these findings with final regulations on alligators to be issued by the Fish and Wildlife Service.

Proposed Regulations Promulgation

Accordingly, the first sentence of the final paragraph of the left column of 44 FR 31590, May 1, 1979, is hereby amended to read as follows:

1979 and Previous Harvest: Florida, Louisiana.

Publication of this revised proposed finding has been approved by the Members of the Endangered Species Scientific Authority.

Dated: August 8, 1979.

William Y. Brown,

Executive Secretary.

[FR Doc. 79-24851 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 44, No. 157
Monday, August 13, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service

Request for Comments, Review of Statistical Methodology and Procedures

AGENCY: Economics, Statistics, and Cooperatives Service, (Statistics) USDA.

ACTION: Notice of evaluation of the Department's statistical methodology and procedures by an outside independent statistical group.

SUMMARY: The Inspector General, USDA, and the General Accounting Office conducted reviews of the Department's statistical operations during 1977 and 1978. Reports emanating from these reviews recommened that the Department engage the services of outside, independent statisticians to review and evaluate the statistical methodology and procedures used in the statistical operations carried out by the Statistical Unit of Economics, Statistics, and Cooperatives Service.

DATES: Comments and suggestions regarding the Statistics Unit's current methodology and procedures and other information thought to be useful for this evaluation must be received by October 12, 1979.

ADDRESSES: Comments in writing may be addressed to Statistical Review Group, Post Office Box 23271, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: John W. Kirkbride, Acting Assistant Deputy Administrator for Statistics, ESCS, USDA, Rm. 5865 So., Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture assigned to the Economics, Statistics, and Cooperatives Service, USDA, the functions under the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457) and functions that relate to the collection and dissemination of crop and livestock statistics and the conduct of economic research in agricultural production, marketing, and distribution under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

The functions relating to crop and livestock estimates are carried out by the Statistics Unit (Crop Reporting Board). This activity includes estimates of production, supply, price, and other aspects of the agricultural economy; conduct of enumerative and objective measurement surveys; preparation and issuance of the official National and State estimates and reports of the Department relating to acreage, types and production of farm crops, number of livestock on farms, livestock products, stocks of agricultural commodities, value and utilization of farm products, prices received and paid by farmers and other subjects as required.

The estimates derive major importance from their use in determining agricultural policy, providing measures of supplies of agricultural commodities, and providing the basis for deficiency payments that may be authorized under existing legislation. Such estimates may at times have significant impact upon market prices, impact that may adversely affect market prices and create concern on the part of producers of agricultural commodities. Price levels, in turn, can have major influence on the amount of deficiency payments that may be authorized.

It is necessary that the methodology and procedures utilized to obtain the estimates conform to sound statistical techniques.

K. R. Farrell,

Administrator, Economics, Statistics, and Cooperatives Service.

[FR Doc. 79-24686 Filed 8-10-79; 8:45 am]

BILLING CODE 3410-18-M

Forest Service

Coronado National Forest Grazing Advisory Board; Meeting

The Coronado National Forest Grazing Advisory Board will meet at 10 a.m., September 18, 1979, at the Federal Building, Room 4T, 301 W. Congress, Tucson, Arizona, 10 a.m. The purpose of this meeting is to discuss allotment management planning and the use of range betterment funds.

The meeting will be open to the public. Person who wish to attend should notify Larry Allen, Coronado Supervisor's Office, telephone 602-792-6418. Written statements will be filed with the board before or after the meeting.

The board has established the following rule for public participation: Nonmembers are asked to withhold comments until the close of business.

K. R. Weissenborn,

Forest Supervisor.

August 6, 1979.

[FR Doc. 79-24830 Filed 8-10-79; 8:45 am]

BILLING CODE 3410-11-M

[P.L. 95-150]

Montana Wilderness Study Act; Intent To Prepare an Environmental Impact Statement

In the matter of Beaverhead, Bitterroot, Deerlodge, Gallatin, Kootenai, and Lewis and Clark National Forests located in Beaverhead, Fergus, Gallatin, Golden Valley, Granite, Judith Basin, Lincoln, Madison, Park, and Ravalli Counties, Montana.

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 for the purpose of determining suitability for preservation as wilderness, certain National Forest lands located on the above-named National Forests.

Twelve public workshops will be conducted in western and central Montana towns between September 17 and September 27 to identify public issues and concerns to be addressed in the Environmental Impact Statement.

R. Max Peterson, Chief, USDA, Forest Service, is the responsible official for the Environmental Impact Statement. Comments and suggestions on the Notice of Intent or the Environmental Impact Statement should be directed to Ray D. Hunter, Montana Wilderness Study Act Coordinator, USDA, Forest Service, P.O. Box 7669, Missoula, Montana 59807.

A Draft Environmental Impact Statement is scheduled to be issued in March 1980, followed by public hearings on the proposal in May 1980. A Final

Environmental Impact Statement is scheduled for completion early in 1981.

Dated: August 7, 1979.

Philip L. Thornton,

Acting Chief.

[FR Doc. 79-24875 Filed 8-10-79; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 32851, Agreement C.A.B. 1175, as amended; Order 79-6-65]

International Air Transport Association; Agreements Relating to the Traffic Conferences; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 8th day of June, 1979

By Order 79-5-113, served May 14, 1979, we narrowed the scope of this proceeding and established further proceedings to be held in this docket, including a "legislative" hearing, briefs, and oral argument to the Board. Petitions for reconsideration of that order were filed on May 24, by the International Airforwarder and Agents Association (IAAA), British Airways, and the International Air Transport Association (IATA).[1]

IAAA's petition is concerned solely with our decision to sever from this docket all resolutions relating to IATA's passenger agency program and cargo agency program. IAAA objects to our stated intention to examine the cargo agency program after the conclusion of our investigation of the IATA passenger agency program, and requests that all issues pertaining to the IATA agency programs, passenger and cargo, be heard in one proceeding. IAAA asserts that it would be fundamentally unfair for it to be foreclosed from addressing those issues common to both programs that we would consider in an investigation of the passenger agency program.

We severed consideration of all resolutions relating to IATA's passenger agency program from this docket because we wished to consider them in conjunction with an examination of ATC's agency program in the United States. We stated that because of the many similarities between the two programs, it would be more efficient to consider them simultaneously.

Upon reconsideration of our decision to examine the IATA Cargo Agency program after the conclusion of our investigation of the IATA passenger agency program and ATC's agency program, we have now decided to consolidate these investigations. Consolidation will spare interested parties such as IAAA from the trouble and expense of having to litigate the same or similar issues in two proceedings, and any sacrifices in time or effort resulting from the larger, consolidated proceeding therefore appear to be outweighed by the benefits to the parties.

British Airways argues that we have not afforded parties sufficient notice or guidance as to the procedures to be followed in the investigation we are conducting in this docket. It requests that we allow more time for the parties to prepare for the scheduled hearing and oral argument called for by Order 79-5-113, and asks us to "refer the next stage of this proceeding to an Administrative Law Judge for hearing and initial or recommended decision under the established, well-understood administrative hearing procedures" which are set forth in our Rules of Practice. British Airways also asks that we establish "pretrial procedures, including pretrial discovery" in this proceeding.

In support of its request that any hearing be conducted before an administrative law judge British Airways advances no arguments not previously raised by various parties in earlier pleadings. We continue to believe that a record responsive to our concerns and those of the parties can best be developed through our direct and active involvement in the "legislative" hearing and at oral argument. Therefore, we deny British Airways' petition that we refer this proceeding to an administrative law judge. Should it become apparent at some future date that one or more discrete issues might best be resolved by initial submission to an ALJ we would make the decision at that time.[2]

IATA has filed an extensive petition for reconsideration, asserting (a) that any further Board proceedings should be restricted to determining a U.S. negotiating position on international rate coordination and, at a minimum, stayed pending appropriate diplomatic interchanges; (b) that a period of stay should be provided to give a fair working test of the revised IATA operating procedures granted interim approval in Order 79-5-113; (c) that any final Board determination disapproving the rate coordination of the Traffic Conferences must be subjected to Presidential review pursuant to § 801(a) of the Federal Aviation Act; (d) that a proper Board decision cannot be reached in the absence of a detailed environmental analysis focused on the impact of the traffic inceases forecast by the propohents of Order 78-6-78, and (e) that the procedures which we have proposed (i) must provide adequate preparation time, (ii) must permit all witnesses to engage in a direct dialogue with the Board, (iii) must include the right to confront and cross-examine all adverse witnesses and staff proponents of rate coordination disapproval, and (iv) must make provision for a pre-hearing conference vehicle to sort out operating ground rules for the hearing and formulate substantive issues with precision.

The formulation of a U.S. negotiating position on international rate coordination is not within the scope of the Board's authority. As pointed out in DOJ's response, the United States has a policy on international aviation. It is stated directly by the President and is implemented in bilateral agreements. (Response of DOJ, pp. 3-4).[3] Our duty, which is set forth in section 412(b), is to determine whether agreements affecting foreign air transportation are adverse to the public interest or in violation of the Federal Aviation Act. We do not intend to ignore or expand upon that statutory mandate.

IATA asserts that our interim approval of the revised operating procedures is a "hollow gesture" since the schedule in Order 79-5-113 does not provide an interval sufficient to give those procedures a "fair test". A stay of the proceedings in this docket for a period of 12 months is suggested as an adequate trial period.[4] This argument betrays a fundamental misapprehension of our interim approval and the grounds therefor. Order 79-5-113 explained that since we had already determined to continue our approval of the old system, with antitrust immunity, pending a final decision in this docket, we saw no reason to deviate from that approach with respect to the proposed amendments. Although we noted that

[1] Responses to IATA's petions were filed individually by the Department of State, the Department of Justice, Sabena, National Airlines, Air Canada, Air India, British Caledonian Airways, Air France, the Department of Transportation, Aer Lingus, Iran Air, The Air Transport Association of America and Empress Ecuatoriana de Aviacion, and jointly by Japan Air Lines, Lufthansa, Philippine Airlines, and by Scandinavian Airlines System, CP Air and Varig. Individual responses to IATA's petition were filed one day late by Venezolana International de Aviacion, Compania Mexicana de Aviacion, Aerovias Nacionales de Colombia and Aerolineas Argentinas.

[2] British Airways' "procedural" objections are similar to issues raised by IATA and will be discussed *infra*.

[3] The State Department, which supported in its response several of IATA's requests, did not support, or even mention, the "negotiating position" proposal.

[4] The State Department supports the notion of a 12-month trial; DOJ opposes it.

interim approval would give IATA members the opportunity to behave more competitively, we gave no indication that we intended the interval between approval and final decision in this docket as a test of the desirability of the amended procedures.

As DOJ observed in its response, one of the fundamental questions that must be answered in this proceeding is whether, consistent with the Federal Aviation Act, we should continue our approval of any rate-conferences. As a theoretical matter, the conduct of IATA pursuant to its revised structure will not assist us in answering that question. As a practical matter, were we to endorse the notion of a trial period, the IATA carriers would have every incentive to tailor their behavior in a fashion they expect would find the most favor with the Board. That incentive would end with the trial period.[5]

IATA's argument, that any final Board decision disapproving the rate and rate-related resolutions of the Traffic Conferences would have to be submitted to the President for review pursuant to § 801(a) will require further research by our legal staff. Because such review, if necessary, would be months away, we need not resolve that question now. Final briefs and oral argument would appear to be the appropriate time for the parties to raise this issue. With respect to IATA's argument that an environmental analysis must precede any decision in this docket, we are hereby instructing our staff to study the need for such an investigation as expeditiously as possible. In that connection, any information that IATA wishes to submit will, of course, be considered.

Both British Airways and IATA have suggested that the participation by our staff in the proceedings we have established might somehow constitute unfairness to the parties. The "solution" proposed by British Airways is reference to an "impartial Law Judge"; IATA would be satisfied if the Bureaus of Domestic Aviation and International Aviation were to assume the status of parties. Neither party has asserted, let alone demonstrated, any fact that would require or suggest an alteration in the staff's traditional role as advisors to the Board. The issues on which we will reach a decision are those set forth in Orders 78-6-78 and 79-5-113. All parties will have a full and fair opportunity to present testimony and witnesses on those issues, and any other issues they may wish to raise. Because of our direct participation in the proceeding there should be no problem of the screening by staff of testimony or briefs in a way that might favor any point of view.

Because of the tight procedural deadlines imposed by Order 79-5-113 and the many objections to them by IATA, British Airways, and other parties, we have decided to substitute the expanded procedural schedule set forth in Appendix A. This new schedule will allow 79 days from the date of service of Order 79-5-113 for the submission of original testimony, and 51 days after that in which parties may prepare reply testimony. All other procedural dates will provide parties with sufficient time to prepare for this proceeding.

The oral hearing which we have set for October 22 should allow all parties an opportunity either to present their own witness or sponsor a representative witness. The questions of whether there should be a cross-examination of witnesses and testimony under oath, and issues relating to procedural matters, such as the manner of presenting witnesses, can be handled adequately by a further Order after we know the extent of the testimony and the number of witnesses who will attend. We will also decide, at the time of that Order, whether to hold a pre-hearing conference.[6]

The Department of State and Transportation, with the support of all parties responding to Order 79-5-113 except DOJ, have requested that consultations be had with foreign governments. We are well aware of the international consequences of any action we may take in this proceeding and of the numerous requests by parties and interested foreign governments that we arrange intergovernmental consultations prior to resolving the issues presented by this proceeding. We are persuaded, therefore, that government-to-government consultations prior to the legislative hearing would be valuable. We hope that such discussions will enable us to understand better the concerns of foreign governments regarding our examination of the Traffic Conferences. We will immediately contact the State Department to determine whether and when such consultations should be scheduled and what role the Board should play in them.

Accordingly,

1. We grant the petition for reconsideration of Order 79-5-113 filed by the International Airforwarder and Agents Association and will examine IATA's cargo agency program in conjunction with our investigation of the IATA and ATC passenger agency programs;

2. We deny the petition for reconsideration of Order 79-5-113 filed by British Airways except to the extent that it requests an expanded time period for the procedures scheduled by Order 79-5-113;

3. We deny the petition for reconsideration of Order 79-5-113 filed by the International Air Transport Association except to the extent that it requests an expanded time period for the procedures in this proceeding;

4. We deny the requests of the Department of State and Department of Transportation that we stay this proceeding for one year to allow a test period of the amended IATA procedures;

5. We defer action on the issues of whether our possible disapproval of the rate and rate-related resolutions of the IATA Traffic Conference will require presidential review under Section 801(a) of the Federal Aviation Act or will have a significant effect on the environment, and on whether we should hold a pre-hearing conference to establish the procedural framework for our legislative hearing;

6. We will contact the Department of State to determine whether and when consultations with representatives of foreign governments should be scheduled and what role the Board should play in those consultations;

7. Further proceedings will be held pursuant to the Schedule in Appendix A,[7] and;

8. All other requests are denied.

This Order shall be served on all parties who have previously filed in this docket and shall be published in the Federal Register.

By the Civil Aeronautics Board:[8]

Phyllis T. Kaylor,

Secretary.

O'Melia, Member, Concurring and Dissenting

This is not a simple, black or white, one-issue case of terminating a mechanism for price-fixing. If it were we would have done something about it over the last thirty-some years we have approved IATA's existence.[1] If it were we certainly would not still be arguing about a procedure to do it in after

[5] For similar reasons, in the context of merger cases, courts are wary of giving weight to post-acquisition evidence. *See, e.g., FTC* v. *Consolidated Foods Corp.*, 380 U.S. 592, 598 (1965).

[6] British Airways alleged in its response the need for some variety of "pre-trial discovery". Nowhere in its response, or in any earlier pleading, did it specify what evidence it needs to discover or from whom. This request will be denied.

[7] Appendix A filed as part of the original document.

[8] All Members concurred except Member O'Melia who filed the attached concurring and dissenting statement.

[1] 6 CAB 639 (1946).

show causing its demise almost a full year ago. Rather this is an extremely complex case that I believe should be heard before an administrative law judge with elements of our staff participating as formal parties in an adjudicatory-type hearing. The majority has invented an untested procedure which I do not believe can satisfactorily delineate the issues nor provide a sound record on which to base a final judgment. It is a procedure not used in decades of federal administrative law proceedings. Consequently, I must dissent from that procedure.[2]

I did not delay issuance of Order 79-5-113 to attach my dissenting statement because I knew the parties would be anxious to see the Board order. This concurrence and dissent constitutes my delayed statement on that order and my views on this order to which it is attached.

At the time the show-cause issued, I said I could not accept the tentative findings calling for disapproval of IATA because the order did not take into account the historical acceptance of IATA as a coordinating and initial rate-setting body accepted for many, many years by all elements of our government and relied upon by foreign governments.[3] I also objected to the show-cause procedure because it sought to shift the burden of justifying IATA without precise or sufficient findings to support the Board's tentative decision to terminate its approval. Furthermore the order was cast in a way that was certain to annoy foreign governments.

I have reread the show-cause order and see but a paragraph or so of findings supporting the tentative disapproval.[4] Those findings are premised solely on the refrain that price-fixing is contrary to the antitrust laws. But as at least one respondent has put it, dogma without facts cannot sustain a show-cause order nor disapproval of the IATA machinery.

I have read most of the pleadings filed to date: they raise a host of questions of law and substance. A number of respondents raise serious legal questions about the show-cause and *en banc* procedures which need to be answered. They cite court cases holding that an agency cannot "make up the [procedural] rules as we go along" and still meet the standards of the Administrative Procedure Act and due process. Even with the Board's second and third orders, we do not yet know with any precision just how the case will be handled. Moreover, Order 79-5-113 does not add any substance to the tentative findings in the original show-cause, does not even purport to list the issues in the case nor consider alternatives to the IATA ratesetting process, yet it concludes that another series of comments is required. It does not answer the arguments that the breadth and complexity of the case demand an oral hearing if only to make it manageable for full and balanced consideration and final decision.

I believe the controversy now requires the refining process of a hearing before an administrative law judge. The judge will organize the presentations, clarify and define the issues and referee the confrontation of different views. This case needs the experience of a presiding judge to separate out the chaff and distill the evidence so the Board has something better to decide the issues on than an unchallenged stack of pleadings and testimony. I would have thought, with half the Members not lawyers, they would have demanded the help of a judge's initial decision in weighing the evidence.

We have established procedures and expert analysts, counsel and judges on our payroll to see that each proffer of evidence and opinion is challenged by those of opposing view. We have experienced staff whose job it is to summarize the evidence and to make and support judgments and conclusions from it. Why in the world don't we make use of that process in this still amorphous, undefined case? The issues are too important, and the world-wide implications of our decision too vital for us to be experimenting with a "legislative hearing"—a process no one at the Board can yet define. I do not understand how it permits us to further explore the factual questions the majority recognizes still remain.[5] If there is no confrontation in the form of exhibits, rebuttal exhibits and cross-examination. Nor do I understand why we do not avail ourselves of assistance from some or all of the primary elements of our staff, the Bureaus of Domestic and International Aviation, the Office of Economic Analysis and the Bureau of Consumer Protection. They should enter the hearing arena with factual and policy presentations as has been their traditional role at the Board and as they have done in the merger cases. This would point up the issues for the outside parties to agree with or dispute. Isn't this an important enough case? I certainly think it is. There has been more unanimity on its importance amongst the parties and the foreign government respondents than has been achieved since Babel.

The majority wastes its analysis on whether an oral hearing is specifically required by the provisions of the APA or our own statute. I cannot resolve that legal controversy now and will not attempt to do so. But there is no doubt in my mind that whether or not required, we need an adjudicatory-type hearing to deflate the hyperbole, isolate the hard facts and tighten up the arguments and we need it to give the participants a fair chance to present their case as they see fit. The issues here are not unique: there is no mystique that only Members can comprehend. Also we need our staff to participate and to take positions in the hearing so that all views are fully aired. It is patently unfair for the Board to fire off a show cause, with no real findings to support it, and then ask for a seemingly endless repetition of views in testimony, rebuttal testimony and oral argument without affording the outside parties a chance to know and meet their adversaries in the hearing room, a chance to hear and challenge each others positions.

The Board's order setting up the "legislative hearing" procedure says the pleadings thus far have concentrated on legal issues. It now calls for "detailed economic analysis of the costs and benefits—to consumers, carriers and countries—of the three major options open to us: continued approval of IATA, total dsapproval or partial disapproval". Parties are encouraged to address the issues with "concreteness, precision and succinctness whenever possible."[6] For us to resolve detailed analyses of costs and benefits, whether succinctly put or not, we need the winnowing of the record we pay a good staff good money to provde for us.

That order says further that we will use the "legislative hearing" so that Members may directly confront the experts in an area where the exercise of our judgment and expertise is paramount. To decide the issues in this case must Members look Knut Hammerskjold straight in the eye and watch for a tremble of the hand? I think not. Our judgment and expertise is developed from record evidence and argument freely given and carefully considered and weighed, not by our sitting through a week of panel discussions. I would like some assistance from a staff that will logically array and make a preliminary evaluation for me on the issues and I don't see how we can give this matter the full and careful consideration we must without it, without following the adjudicatory-type hearing procedures.

Just what is the magic of the "legislative hearing"? It is said the hearing before an administrative law judge would result in substantial delay. No basis for that statement is given. Nor is any reason given in the Board's order for special expedition in this case. The rate at which we have been disapproving IATA agreements in recent years certainly does not suggest an evil that must be exorcised immediately for the public interest to survive. An important case such as this warrants a full and balanced consideration of all the issues. An institution that has existed for over thirty years and which has the support of a preponderance of foreign governments deserves a fair trial before the execution.

For that reason, I believe the Board should grant the motion of the Department of State, supported by the Department of Transportation, for a one-year trial of the new IATA traffic conference procedures. I support that request because I think IATA should be given a chance on its own to correct the troublesome anticompetitive aspects of its operations perceived by the majority in the show-cause order. The Board cannot restructure IATA to its own liking. The majority say a test would not be reliable because "the IATA carriers would have every incentive to tailor their behavior in a fashion they expect would find the most favor with the Board." I disagree, and would note that not since Copernicus, can anyone

[2] I concur in the Board's approval of IATA's amended conference procedures, with antitrust immunity, and agree we should not concern ourselves with the so-called "facilitation" agreements. I agree with our second order decisions to provide an opportunity for face-to-face discussion with foreign governments, to hear the cargo agent resolutions with the travel agent resolutions and to provide more time for preparing "testimony".

[3] Order 78-6-78, June 9, 1978.

[4] Order 78-6-78, pp. 4-5.

[5] Order 79-113, p. 9.

[6] *Ibid.*, p. 11.

assert that the heavens revolve around us mere mortals nor that world air transportation revolves around the CAB.

The unusual nature of this "legislative hearing" procedure, particularly since it is being imposed in a highly controversial case, makes it essential that we avoid any semblance or suggestion that participation will be limited, arbitrarily selected or organized so as to favor one philosophy or orientation over another. Nor should it be dominated by witnesses who may favor or be resigned to what they may perceive to be the Board majority's preordained determination of the issues. Accordingly, confronted with the Board's insistence on experimenting with a telescoping of views in a group-think, panel-discussion drill, I would as a minimum request that the discussions seek to embrace the fullest range of ideas, experience and insights. To this end, I am directing my own special invitation to spokesmen of all divergent viewpoints to participate, present testimony and ask questions. I will reserve until I see the makeup of the panels and the questions whether to appoint my own.

In conclusion, I can only say that I have great difficulty deciphering how we are to resolve this complex case in the context the Board has established, and I suspect the parties do as well. I want to know what the alternatives to IATA are and how we should evaluate each one of them. I want to know what happens if we present a final decision to foreign governments which outlaws IATA, and they reply, as is their right, "No, that is not the way it is going to be!" I doubt whether testimony or quick visits abroad can provide these answers.

Richard J. O'Melia.

[FR Doc. 79-24852 Filed 8-10-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Intent to Prepare an Environmental Impact Statement, Eastern Industrial (Interim) Trunk Sewer, Oxnard, Calif.

Notice is hereby given that, pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Economic Development Administration (EDA) of the U.S. Department of Commerce will prepare an Environmental Impact Statement (EIS) on the proposed Eastern Industrial (Interim) Trunk Sewer in Oxnard, California.

This proposal involves the installation of a gravity trunk sewer to serve approximately 1,200 acres of land zoned for industrial development in the northeastern portion of Oxnard. The trunk sewer will consist of approximately 16,700 linear feet of 18" to 36" VCP pipe and related appurtenances. The proposed route follows Rice Avenue from Latigo Avenue southerly to Wooley Road. A lift station will pump the wastewater along Wooley Road for approximately 2,700 feet. It will then discharge into a gravity trunk extending to Rose Avenue. From Rose Avenue a second pump station and force main will carry flows to the industrial drain located in Richmond Avenue.

Alternatives to the proposed trunk sewer include different routes and service areas and different projects having similar economic and community benefits.

In accordance with the Council on Environmental Quality's regulations, a scoping meeting will be held near the project site both to inform interested parties and to solicit their comments. A notice will be published in a local newspaper prior to the meeting indicating the time, date, and location of the scoping meeting.

Comments and questions regarding the Eastern Industrial Trunk Sewer or the EIS should be addressed to Mr. Jack D. Price, EIS Coordinator, Room 7217 (EDA), U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-5339.

Dated: August 8, 1979.

Robert T. Hall

Assistant Secretary for Economic Development.

[FR Doc. 79-24866 Filed 8-10-79; 8:45 am]

BILLING CODE 3510-24-M

Intent to Prepare an Environmental Impact Statement; Regional Water System, Hope, Ark.

Notice is hereby given that, pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Economic Development Administration (EDA) of the U.S. Department of Commerce will prepare an Environmental Impact Statement (EIS) on a proposed regional water system in the Hope, Arkansas service area. The proposal includes the construction of a new water treatment plant, raw water lines, finished water supply lines, additional water lines to a distribution system, booster pumping station, and appurtenances. The proposed water system would provide Hope, Arkansas and other area communities with a surface water supply system.

Environmental impacts resulting from a regional water system will be assessed as a part of the EIS. Additionally, alternative designs, site locations, and sources of water supplies will be considered as a part of the EIS.

Pursuant to the Council on Environmental Quality's regulations, a scoping meeting will be held both to inform interested parties and to solicit their comments. A notice will be published in a local newspaper prior to the meeting indicating the time, date, and location of the scoping meeting.

Comments and questions regarding the regional water system, the EIS, or the time and place of the scoping meeting should be made to Mr. John W. Faris, EIS Coordinator, Economic Development Administration, U.S. Department of Commerce, 600 American Bank Tower, 221 West Sixth Street, Austin, Texas 78701, Telephone: 512-397-5849.

Dated: August 8, 1979.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-24867 Filed 8-10-79; 8:45 am]

BILLING CODE 3510-24-M

Petitions by Ten Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from ten firms: (1) Georgia Steel, Inc., 1825 Fuller Street, Macon, Georgia 31202, a fabricator of steel (accepted July 26, 1979); (2) Norco Industries, Inc., 344 West 57th Street, Gardena, California 90247, a producer of steel jacks, stabilizers and winches (accepted July 26, 1979); (3) Cobell Button Manufacturing Company, Inc. 38-11 29th Street, Long Island City, New York 11101, a producer of garment buttons (accepted July 27, 1979); (4) Billen Shoe Company, Inc., 65 Oxford Street, Lewiston, Maine 04240, a producer of men's, boys' and women's footwear (accepted July 27, 1979); (5) Tobin Hamilton Company, Inc., 105 Commercial Street, Mansfield, Missouri 65704, a producer of children's footwear (accepted July 30, 1979); (6) all Star Products, Inc., P.O. Box 487, Defiance, Ohio 43512, a producer of electronic components (accepted July 30, 1979); (7) M. & M. Jewelry Creations, Inc., 175 Pearl Street, Brooklyn, New York 11201, a producer of jewelry (accepted July 30, 1979); (8) Rockford Headed Products, Inc., 1928 Twelfth Street, Rockford, Illinois 61108, a producer of screws and other fasteners (accepted July 31, 1979); (9) Robert Lawrence Company, Inc., 217 Friend Street, Boston, Massachusetts 02114, a producer of men's coats (accepted August 1, 1979); and (10) Martil Clothing Company, Inc., 2701 N. Broad Street, Philadelphia, Pennsylvania

19132, a producer of men's suits and sport coats (accepted August 2, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (P.L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

Jack W. Osburn Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-24868 Filed 8-10-79; 8:45 am]

BILLING CODE 3510-24-M

Office of the Secretary

Economic Advisory Board; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C App. (1976), notice is hereby given that the meeting of the Department of Commerce Economic Advisory Board will be held on Tuesday, September 11, 1979, from 9:30 a.m. to 4:00 p.m. in Room 4830 Main Commerce Building, 14th Street and Constitution Avenue, N.W. Washington, D.C.

The Board was established by the Secretary of Commerce on January 13, 1967. The purpose of the Board is to advise the Secretary of Commerce on economic policy issues. The intended agenda for this meeting is as follows:

- A review of the economic outlook by major sector.
- A discussion of the outlook for prices and employment and of stategies for sustaining economic growth and dealing with inflation.

A limited number of seats will be available to the public on a first-come, first-served basis. Public participation will be limited to request for clarification of items under discussion. Additional statements or inquiries may be submitted to the chair before or after the meeting. Copies of the minutes will be available on request 30 days after the meeting.

Additional information concerning this meeting may be obtained by contacting Ms. Virginia R. Marketti, Office of the Chief Economist for the Department of Commerce, Room 4848, Department of Commerce, Washington, D.C. 20230 (202) 377-3523.

Dated: July 30, 1979.

Courtenay M. Slater,

Chief Economist for the Department of Commerce.

[FR Doc. 79-24849 Filed 8-10-79; 8:45 am]

BILLING CODE 3510-17-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Correction

In FR Doc. 79-23234 appearing on page 44210 in the issue for July 27, 1979, make the following correction: In the first column, in the third paragraph, in the fifth line, substitute "section 552b(c)" for "section 552(c)".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

A. Tarricone, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: July 25, 1979. Comments by: September 14, 1979.

ADDRESS: Send comments to: Herbert Maletz, New York Audit Group Manager, Northeast District 252 Seventh Avenue, New York, New York 10001.

FOR FURTHER INFORMATION CONTACT: Herbert Maletz, New York Audit Group Manager, Northeast District, 252 Seventh Avenue, New York, New York 10001, 212/620-6706.

SUPPLEMENTARY INFORMATION: On July 25, 1979, the Office of Enforcement of the ERA executed a Consent Order with A. Tarricone, Inc. Under 10 CFR 205.199J(b) a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

A. Tarricone, Inc. ("Tarricone"), with its home offices located in Yonkers, New York, is a firm engaged in the resale and retail sale of No. 2 heating oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Part 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Tarricone, the Office of Enforcement of the ERA, and Tarricone entered into a Consent Order, the significant terms of which are as follows:

1. During the period November 1, 1973 through December 31, 1974 (audit period), Tarricone allegedly overcharged its following classes of purchaser in the resale and retail salt of No. 2 heating oil:

Class I—"Tarricone" Retail
Class II—"Terrone"
Class III—"Tedone"
Class IV—Wholesale Rack
Class V—Pepsico
Class VI—Greenberg School District
Class VII—Fairview Fire District
Class VIII—Barge Lot
Class IX—"Empire"

2. It is alleged that Tarricone incorrectly computed its maximum legal selling price in its sales of No. 2 heating oil to the classes of purchaser listed above during the audit period. As a result, Tarricone charged prices in excess of those permitted under 10 CFR 212.93(a) and 6 CFR 150.359(c)(1).

3. This Consent Order constitutes neither an admission by Tarricone that it has violated the Mandatory Petroleum Price Regulations nor a finding by ERA that Tarricone has violated such regulations.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Tarricone agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of

Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $400,000.00 over the period of five (5) years.

The amount to be refunded to each class is as follows:

Class I— "Tarricone"Retail	$14,586
Class II—"Terrone"	2,821
Class III—"Tedone"	13,213
Class IV—Wholesale Rack	66,546
Class V—Pepsico	3,388
Class VI—Greenberg School District	61
Class VII—Fairview Fire District	157
Class VIII—Barge Lot	298,808
Class IX—"Empire"	420

In order to accomplish the refund of overcharges to classes I, II, III, V, VI, VII and IX, Tarricone will issue refund checks or credit memoranda to the affected customers during the refund period. In order to accomplish the refund of overcharges to Classes IV and VIII, Tarricone will issue, during the refund period, certified checks made payable to the United States Department of Energy and delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the Classes IV and VIII refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that is is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the Classes IV and VIII refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the Classes IV and VIII refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to this refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Herbert Maletz, New York Audit Group Manager, Northeast District, 252 Seventh Avenue, New York, New York 10001. You may obtain a free copy of this Consent Order by writing to the same address or by calling 212/620-6706.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on A. Tarricone, Inc. Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on September 14, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in New York, New York on the 27th day of July 1979.

Herbert M. Heitzer,

Northeast District Manager of Enforcement.

[FR Doc. 79-24803 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Bayside Fuel Oil Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Bayside Fuel Oil Corp., 1820 Cropsey Avenue, Brooklyn, New York 11214. This Proposed Remedial Order charges Bayside Fuel with pricing violations in the amount of $112,345.21, connected with the retailing of No. 2 heating oil during the time period November 1, 1973 through March 31, 1974, in the State of New York.

A copy of the Proposed Remedial Order, with confidential information deleted, may obtained from Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102. On or before August 28, 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 Philadelphia, Pennsylvania, on the 26th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement, Northeast District.

[FR Doc. 79-24798 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Bayside Fuel Oil Depot Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Bayside Fuel Oil Depot Corp., 510 Sackett Street, Brooklyn, New York 11213. This Proposed Remedial Order charges Bayside Depot with pricing violations in the amount of $81,145.66, connected with the reselling and retailing of No. 2 heating oil during the time period November 1, 1973 through April 30, 1974, in the State of New York.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102. On or before August 28, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 'M' Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Philadelphia, Pennsylvania, on the 26th day of July 1979.

Herbert M. Heitzer,

District Manager of Enforcement Northeast District.

[FR Doc. 79-24799 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Ethyl Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account

established pursuant to the Consent Order.

DATES: Effective date: July 30, 1979.

Comments by: September 12, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235 [phone] 214/767-7745.

SUPPLEMENTARY INFORMATION: On July 30, 1979, the Office of Enforcement of the ERA executed a Consent Order with Ethyl Corporation of Baton Rouge, Louisiana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Ethyl Corporation wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Ethyl Corporation effective as of the date of its execution by the DOE and Ethyl Corporation.

I. The Consent Order

Ethyl Corporation, located in Baton Rouge, Louisiana, is a firm engaged in the resale of petroleum products, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Ethyl Corporation as a reseller of petroleum products, the Office of Enforcement, ERA, and Ethyl Corporation entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was January 17, 1974, through May 31, 1974, and it included sales of No. 2 diesel fuel to Stinnes Oil and Chemical Company.

2. Ethyl Corporation did not apply the provisions of 10 CFR 212.93 and 10 CFR 212.111(b)(3) when determining the price to be charged for its petroleum product, and as a consequence the above firm was overcharged on some of its purchases.

3. Ethyl Corporation agrees to refund to the DOE $14,535, including interest and penalties, within 30 days of the effective date of the Consent Order.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Ethyl Corporation agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $14,535 within 30 days of the effective date of the Consent Order. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submissions of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designiation, "Comments on Ethyl Corporation Consent Order." We will consider all comments we receive by 4:30 p.m. local time, on September 12, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 3rd day of August 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-24500 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Gulf Energy and Development Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Gulf Energy and Development Corporation (Gulf Energy), 8626 Tesoro Drive, San Antonio, Texas 78217. This Proposed Remedial Order charges Gulf Energy with pricing violations in the amount of $88,095.68, caused by Gulf Energy's sales of plant condensate as "new," "released," and/or "stripper" well crude oil during the period September 1, 1973 through December 31, 1975 in the state of Texas in violation of 10 CFR 212.73.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 767-7745. On or before August 28, 1979, any aggrieved person may file a Notice of

Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the Sixth day of August 1979.

Wayne L Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-24302 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Lewtex Oil & Gas; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: July 31, 1979.

Comments by: September 12, 1979.

ADDRESS: Send comments to: Wayne L Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235.

FOR FURTHER INFORMATION CONTACT: Wayne L Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235, [phone] 214/767-7745.

SUPPLEMENTARY INFORMATION: On July 31, 1979, the Office of Enforcement of the ERA executed a Consent Order with Lewtex Oil and Gas Company of Breckenridge, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Lewtex Oil and Gas Company wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Lewtex Oil and Gas Company effective as of the date of its execution by the DOE and Lewtex Oil and Gas Company.

I. The Consent Order

Lewtex Oil and Gas Company, with its home office in Breckenridge, Texas, is a firm engaged in the production and sale of natural gas liquids (NGL), and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of NGL's the Office of Enforcement, ERA, and Lewtex Oil and Gas Company entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1973 through March 1977, and it included all sales of a mixed NGL stream to Enterprise Products Company and Warren Petroleum Company.

2. Lewtex Oil and Gas Company improperly applied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subparts E and K, when determining the prices to be charged for its NGL's and as a consequence the above firms were overcharged on some of their purchases.

3. Lewtex Oil and Gas Company agrees to refund to the DOE $189,744 plus interest within 18 months of the effective date of the Consent Order, July 31, 1979. The interest rates are those officially set by DOE and will be computed from the month of overcharge through the date of the refund.

4. The provisions of 10 CFR 205.199J, including the publication of this notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Lewtex Oil and Gas Company agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. 1 above, the sum of $189,744 within 18 months of the effective date of the Consent Order. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Lewtex Oil and Gas Company Consent Order." We will consider all comments we receive by 4:30 p.m. local time, on September 12, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 2nd day of August, 1979.

Wayne I. Tucker,

District Manger of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-24797 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

McFarland Energy, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: July 16, 1969.

Comments by: September 12, 1979.

ADDRESS: Send comments to: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111; Phone (415) 556-7200.

SUPPLEMENTARY INFORMATION: On July 16, 1979, the Office of Enforcement of the ERA executed a Consent Order with McFarland Energy, Inc. (McFarland) of Los Angeles County, California. Under 10 CFR 205.199J(b) a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because of the DOE and McFarland wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with McFarland effective as the date of its execution by the Doe and McFarland.

I. Consent Order

McFarland, with its home office in Los Angeles County, California, is engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212.

The Office of Enforcement of the Economic Regulatory Administration (ERA) and McFarland entered into a Consent Order to resolve certain actions which could be brough by ERA as a result of its audit of McFarland's production and sale of crude oil, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1978 through May 31, 1979.

2. DOE alleges that McFarland charged prices for crude oil produced from certain properties in excess of the maximum allowable to its customers in violation of the ceiling prices prescribed by 6 CFR 150.353, 10 CFR 212.73 and 10 CFR 212.74.

3. McFarland, without admitting to any violation of the DOE regulations, agrees to refund to the DOE $265,000.00 plus interest thereon. Interest through July 31, 1979 totals $70,933.88.

4. The refund shall be made by McFarland in sixteen monthly installments of $21,000.00 the first of which is due August 1, 1979. A final payment representing the balance is due December 1, 1980. McFarland paid $15,000.00 upon execution of the Consent Order in settlement of potential civil penalties.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges in the total amount described in I.3 in the form of certified checks made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, EAR. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Jack Wood, District Manager of Enforcement, Western District Office, Department of Energy, 111 Pine Street, San Francisco, CA 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling (415) 556-7200.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on McFarland Energy, Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on September 12, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in San Francisco, California on the 3rd day of August, 1979.

Jack L. Wood,

District Manager of Enforcement, Western District Office, Economic Regulatory Administration.

[FR Doc. 79-24793 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act; Issuance of Orders Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on August 7, 1979, it issued orders granting temporary public interest exemptions pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 et seq., and 10 CFR 501.68 and 10 CFR 508, from the prohibitions of Section 301(a)(2) and (3) of the Act to the following powerplants:

Case number	Owner	Generating station location	Powerplant Ident. No.	Low sulfur residual fuel
50653-2491-01-41, 50653-2491-02-41, 50653-2491-03-41, 50653-2491-04-41, 50653-2491-05-41.	Consolidated Edison Company of New York, Inc.	Astoria (20th Ave. and E. 21st, New York, N.Y.)	1	643,000
			2	803,000
			3	715,000
			4	410,000
			5	500,000
50653-2500-01-41, 50653-2500-02-41		Ravenswood (7-18 37th Ave., New York, N.Y.)	1	1,300,000
			2	1,550,000
50653-2493-05-41, 50653-2493-06-41, 50653-2493-07-41		East River (14th St. and East River, New York, N.Y.)	5	523,000
			6	555,000
			7	847,000
50653-2502-04-41, 50653-2502-05-41, 50653-2502-06-41		Waterside (38th to 40th St. and East River, New York, N.Y.).	4	101,000
			5	636,000
			6	705,000
516-2513-04-41	Long Island Lighting Company	Far Rockaway (Far Rockaway, N.Y.)	4	100,000
50490-6190-01-41	Central Louisiana Electric Company.	Rodemacher (Lena, La.)	1	33,502

Petitions were received and filed pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) with ERA for temporary public interest exemptions for the use of natural gas as a primary energy source. Notices of the petitions and the proposed orders granting these temporary exemptions were published in the Federal Register on May 11 and June 1, 1979, (44 FR 27668 and 44 FR 31677). Written comments were requested on the proposed orders. All comments were considereed by ERA.

A general comment from Allied Chemical Corporation expressed concern that the chemical industry has experienced production curtailments and plant shutdowns due to inadequate gas supplies for nonsubstitutable feedstock and process needs at the same time that DOE has concluded that excess supplies of natural gas are available. The Allied Chemical Corporation comment did not refer to any specific region nor did it specify impacts resulting from any particular petition or proposed order.

The other comment received was in support of the petitions. The State of New York Department of Environmental Conservation stated, "We are in favor of the use of natural gas wherever possible, since the environmental benefits are obvious when compared to the use of oil and especially coal." However, not all the petitions listed received specific comments.

These temporary exemptions will allow the above-named units to burn an estimated total of 58,625,879 MCF of natural gas annually, notwithstanding the prohibitions of Section 301(a) (2) and (3) of FUA, displacing an estimated 9,329,502 barrels of low sulfur residual fuel oil.

These temporary exemptions shall become effective sixty days following publication of this notice of issuance of these orders in the Federal Register in accordance with section 702(a) of FUA. These temporary exemptions shall be in effect for a period of two years, and are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

All of the above-named powerplants have received Decisions and Orders granting these temporary exemptions by certified mail. In addition, copies of all comments received during the public comment period and the temporary exemptions granted this date will be available for public inspection and copying in the Public Information Office located in Room B-110, 2000 M Street, NW., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. Charles A. Falcone, Director, Existing Facilities Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-7450.

Issued in Washington, D.C., on August 7, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-24801 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Wallace & Wallace Fuel Oil Company, Inc.; And Wallace & Wallace Chemical and Oil Corp., Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date July 12, 1979.

COMMENTS BY: September 12, 1979.

ADDRESS: Send comments to Herbert Maletz, New York Audit Group Manager, Northeast District, 252 Seventh Avenue, New York, New York 10001.

FOR FURTHER INFORMATION CONTACT: Herbert Maletz, New York Audit Group Manager, Northeast District, 252 Seventh Avenue, New York, New York 10001, 212/620-6706.

SUPPLEMENTARY INFORMATION: On July 12, 1979, the Office of Enforcement of the ERA executed a Consent Order with Wallace & Wallace Fuel Oil Company, Inc. and Wallace & Wallace Chemical and Oil Corp., Inc. Under 10 CFR § 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Wallace & Wallace Fuel Oil Company, Inc. and Wallace & Wallace Chemical and Oil Corp., Inc. ("Wallace"), with its home offices located in St. Albans, New York, is a firm engaged in the resale and retail sale of No. 2 heating oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Wallace, the Office of Enforcement of the ERA, and Wallace entered into a Consent Order, the significant terms of which are as follows:

1. During the period November 1, 1973 through December 31, 1974 (audit period), Wallace allegedly overcharged its following classes of purchaser in the resale and retail sale of No. 2 heating oil:

Class I—Reseller.
Class II—Commercial Space Heating/Queens.
Class III—Commercial Space heating/Brooklyn.
Class IV—Commercial Space Heating/Westchester.
Class V—Residential.
Class VI—Government/Queens Port Authority.
Class VII—Government/Queens.
Class VIII—Government/Brooklyn.
Class IX—Government/Nassau.

2. It is alleged that Wallace incorrectly computed its maximum legal selling price in its sales of No. 2 heating oil to the classes of purchaser listed above during the audit period. As a result, Wallace charged prices in excess of those permitted under 10 CFR 212.93(a) and 6 CFR 150.359 (c)(1).

3. This Consent Order constitutes neither an admission by Wallace that it has violated the Mandatory Petroleum Price Regulations nor a finding by ERA that Wallace has violated such regulations.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II Disposition of Refunded Overcharges

In this Consent Order, Wallace agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $127,476.06 over the period of three (3) years.

The amount to be refunded to each class is as follows:

Class I—Resellers, $50,000.
Class II—Commerical Space Heating/Queens $8,060.09.
Class III—Commerical Space Heating/Brooklyn $2,512.94.
Class IV—Commerical Space Heating/Westchester $10,027.06.
Class V—Residential, $1,887.90.
Class VI—Government/Queens Port Authority $15,245.12.
Class VII—Government/Queens $25,326.95.
Class VIII—Government/Brooklyn $10,493.67.
Class IX—Government/Nassau $3,922.93.

In order to accomplish the refund of overcharges to classes II through IX, Wallace will issue refund checks or credit memoranda to the affected customers during the refund period. In order to accomplish the refund of overcharges to Class I, Wallace will issue, during the refund period, certified checks made payable to the United States Department of Energy and delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the Class I refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the Class I refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the Class I refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to this refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Herbert Maletz, New York Audit Group Manager, Northeast District, 252 Seventh Avenue, New York, New York, 10001. You may obtain a free copy of this Consent Order by writing to the same address or by calling 212/620-6706.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Wallace & Wallace Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on September 12, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR § 205.9(f).

Issued in Philadelphia, PA. on the 26th day of July, 1979.

Herbert M. Heitzer,

Northeast District Manager of Enforcement.

[FR Doc. 79-24804 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreements for Cooperation Between the Government of the United States of America and the Governments of Japan, Korea, the Philippines, Switzerland, Spain, and Sweden, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangements to be carried out under the above mentioned agreement involve conversion of Long-Term, Fixed Commitment Uranium Enrichment contracts to the new Adjustable, Fixed Commitment contracts at the customers option.

Contract No.	Customer	Facility
EG-100	Arab Republic of Egypt	EFFAP Sidi Krier-1.
EU-112	European Atomic Energy Community	Ems (previously VEW-B).
EU-115	European Atomic Energy Community	NEUPOTZ-A.
JA-106	The Chubu Electric Power Company, Inc	Chubu-3 (Japan).
JA-124	The Hokkaido Electric Power Company, Inc	Hokkaido-1 (Japan).
JA-125	The Hokkaido Electric Power Company, Inc	Hokkaido-2 (Japan).
JA-126	The Chugoku Electric Power Company, Inc	Chugoku-4 previously Chugoku-2 (Japan).
JA-127	The Chugoku Electric Power Company, Inc	Chugoku-3 (Japan).
JA-128	Kyushu Electric Power Company, Inc	Kyushu-5 (Japan).
JA-130	The Kansai Electric Power Company, Inc	Kansai N-1 (Japan).
JA-133	The Kansai Electric Power Company, Inc	Kansai N-4 (Japan).
JA-134	The Kansai Electric Power Company, Inc	Kansai N-5 (Japan).
JA-135	The Kansai Electric Power Company, Inc	Kansai N-6 (Japan).
JA-136	Hokuriku Electric Power Company, Inc	Hokuriku-2 (Japan).
JA-138	The Chubu Electric Power Company, Inc	Chubu-4 (Japan).
JA-139	The Chubu Electric Power Company, Inc	Chubu-5 (Japan).
JA-140	The Chubu Electric Power Company, Inc	Chubu-6 (Japan).
JA-143	Tokoku Electric Power Company, Inc	Namie Odaka-2 (Japan).
JA-144	Tokoku Electric Power Company, Inc	Tokoku-4 (Japan).
JA-146	Japan Atomic Power Company	Tsuruga-2 (previously JAPCO-4).
JA-150	The Chugoku Electric Power Company, Inc	Chugoku-4 (Japan).
KO-106	Korea Electric Company	Nuclear Power Plant-7.
KO-107	Korea Electric Company	Nuclear Power Plant-8.
KO-108	Korea Electric Company	Nuclear Power Plant-9.
KO-109	Korea Electric Company	Nuclear Power Plant-10.
PH-100	National Power Corporation	Philippine Nuclear-1.
SD-100	Kernkraftwerk Leibstadt A.G	Liebstadt-1 (Switzerland).
SD-101	Kernkraftwerk Graben A.G	Graben (Switzerland).
SD-102	Kernkraftwerk Gosgen-Daniken A.G	Gosgen-Daniken (Switzerland).
SP-100	Empressa Nacional del Uranio S.A	Almaraz-I (Spain).
SP-101	Empressa Nacional del Uranio S.A	Almaraz-II (Spain).
SP-102	Empressa Nacional del Uranio S.A	Cofrentes (Spain).
SP-103	Empressa Nacional del Uranio S.A	Lemoniz-I (Spain).
SP-104	Empressa Nacional del Uranio S.A	Lemoniz-II (Spain).
SP-105	Empressa Nacional del Uranio S.A	ASCO-I (Spain).
SP-106	Empressa Nacional del Uranio S.A	ASCO-II (Spain).
SP-114	Empressa Nacional del Uranio S.A	Zorita-I (Spain).
SP-115	Empressa Nacional del Uranio S.A	Santa Maria de Garona (Spain).
SW-104	Svensk Kambransleforsorjning Aktiebolag (SKFB)	Oskarshamn-III (Sweden).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the conversion of these contracts to the Adjustable, Fixed Commitment contract form will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 8, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-24695 Filed 8-9-79; 10:25 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic energy and the Agreements for Cooperation between the Government of the United States of America and the Governments of Austria, Finland, Japan and the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency: Cooperation in Peaceful Application.

The subsequent arrangements to be carried out under the above mentioned agreements involve the approval for shipment, without charge, of the following materials:

Contract No.	United States to	Description of material
WC-EU-121	West Germany	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2.
WC-EU-122	West Germany	20 grams Uranium, containing 0.6 grams U-235 (3.1%), as U-NO_3.
WC-EU-123	West Germany	20 grams Uranium, containing 0.6 grams U-235 (3.1%), as U-NO_3.
WC-EU-124	Italy	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2.
WC-EU-125	United Kingdom	4 grams Uranium, containing 0.1 grams U-235 (3.1%), as U-NO_3.
WC-EU-126	France	4 grams Uranium, containing 0.1 grams U-235 (3.1%), as U-NO_3.
WC-EU-127	Netherlands	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 40 grams Uranium, containing 1.2 grams U-235 (3.1%), as U-NO_3.
WC-EU-128	West Germany	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as U-NO_3.
WC-EU-129	France	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as U-NO_3.
WC-EU-130	United Kingdom	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as U-NO_3.
WC-EU-131	Belgium	175.8 grams Uranium, containing 4.1 grams U-235 (2.35%), as UO_2 and 40 grams Uranium, containing 1.2 grams U-235 (3.1%), as U-NO_3.
WC-EU-132	West Germany	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as U-NO_3.

Contract No	United States to	Description of material
WC-EU-133	Italy	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as $U-NO_3$
WC-AT-5	Austria	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as $U-NO_3$
WC-FI-3	Finland	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%) as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as $U-NO_3$
WC-JA-16	Japan	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2.
WC-JA-17	Japan	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 40 grams Uranium, containing 1.2 grams U-235 (3.1%), as $U-NO_3$.
WC-IA-104	Czechoslovakia	87.9 grams Uranium, containing 2.1 grams U-235 (2.35%), as UO_2 and 20 grams Uranium, containing 0.6 grams U-235 (3.1%), as $U-NO_3$.

The materials listed above are to be used in the IAEA's Safeguards Analytical Laboratory Evaluation (SALE) program. This program is designed to evaluate the capability of participating laboratories to analyze materials to be safeguarded in the nuclear fuel cycle and to provide the means by which measurement capability may be improved through the interchange of measurement technology.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 8, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-24396 Filed 8-9-79; 10:23 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning the Peaceful Uses of Atomic Energy and the Agreements for Cooperation Between the Government of the United States of America, and the Governments of Japan, Korea and Sweden, concerning Civil Uses of Atomic Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve conversion of Long-Term, Fixed-Commitment Uranium Enrichment contracts to the new Adjustable, Fixed-Commitment contracts at the customers option.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that entering into these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Contract No.	Customer	Facility
JA-100	The Tokyo Electric Power Co., Inc	Fukushima I-5
JA-101	Shikoku Electric Power Co., Inc	Ikata-1 (Japan).
JA-102	The Chubu Electric Power Co., Inc	Hamaoka-2 (Japan)
JA-103	Kyushu Electric Power Co., Inc	Genkai-2 (Japan)
JA-105	The Japan Atomic Power	Tokai-2
JA-107	The Tokyo Electric Power Co., Inc	Fukushima I-4
JA-108	The Tokyo Electric Power Co., Inc	Fukushima I-6
JA-109	The Tokyo Electric Power Co., Inc	Fukushima II-1
JA-110	The Tokyo Electric Power Co., Inc	Fukushima II-2.
JA-111	Shikoku Electric Power Co., Inc	Shikoku-X (Japan)
JA-113	The Tokyo Electric Power Co., Inc	Tokyo-9.
JA-114	The Tokyo Electric Power Co., Inc	Tokyo-10
JA-115	The Tokyo Electric Power Co., Inc	Tokyo-11
JA-116	The Tokyo Electric Power Co., Inc	Tokyo-12
JA-118	The Tokyo Electric Power Co., Inc	Tokyo-14.
JA-120	The Tokyo Electric Power Co., Inc	Tokyo-16.
JA-123	The Tokyo Electric Power Co., Inc	Tokyo-19.
JA-129	Kyushu Electric Power Co., Inc	Kyushu-4 (Japan).
KO-100	Korea Electric Company	Kori-1.
KO-101	Korea Electric Company	Kori-2
KO-104	Korea Electric Company	Korea Nuclear-5.
KO-105	Korea Electric Company	Korea Nuclear-6.
SW-100	Svensk Kambranslelorsorjning Aktiebolag (SKBF)	Ringhals-3 (Sweden).
SW-101	Svensk Kambranslelorsorjning Aktiebolag (SKBF)	Ringhals-4.
SW-102	Svensk Kambranslelorsorjning Aktiebolag (SKBF)	Forsmark-1
SW-103	Svensk Kambranslelorsorjning Aktiebolag (SKBF)	Forsmark-2.
SW-105	Svensk Kambranslelorsorjning Aktiebolag (SKBF)	Forsmark-3.

For the Department of Energy.

Dated: August 8, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Programs.

[FR Doc. 79-24397 Filed 8-9-79; 10:23 am]

BILLING CODE 6450-01-M

Office of Resource Applications

Davis Storage Project in West Virginia; Study of Alternatives

AGENCY: Department of Energy.

ACTION: Notice of Public Inquiry.

SUMMARY: The Department of Energy (DOE) is undertaking a study of alternatives to the Davis Pumped Storage Project (No. 2709) in West Virginia proposed by Allegheny Power System, Inc. Using the Davis Project as the basis for comparison, the Department will examine the merits of various energy supply and conservation alternatives to that project.

DOE is requesting comments and information from all interested parties on this matter. We anticipate the information will be useful in determining the scope of the study, the nature of the analysis to be applied, and the supply and conservation alternatives to be studied.

DATE: Written public comments should be submitted to the person named below on or before September 12, 1979.

ADDRESS: Mail comments or requests for further information to Ellison S. Burton, Environmental Advisor to the Assistant Secretary for Resource Applications, U.S. Department of Energy, RA-1, 3344 Federal Building Washington, DC 20461.

Comments submitted in response to this notice may be inspected at the Freedom of Information Office Reading Room, U.S. Department of Energy, Room GA-152, 1000 Independence Avenue, Washington, DC 20585, between 8:00 a.m. and 4:00 p.m. on business days after the expiration of the thirty (30) day comment period.

I. Purpose of Study

The Department of Energy will compare the alternatives for satisfying the peaking power needs of the region to be served by the proposed Davis Pumped Storage Project No. 2709-West Virginia. The Davis Project will serve as the base case for measuring the merits of the alternatives. DOE is particularly interested in receiving comments on the proposed study tasks, the limitation on the study, and several specific issues, as outlined below.

II. Background

Name of Project: Davis Pumped Storage Project No. 2709—West Virginia.

Owner/Operator of Facility: Allegheny Power System, Inc.

Type of Facility: Hydroelectric Pumped Storage Power Plant.

Capacity: 11,000 megawatts (MW) for peaking power.

Project History: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, which are electric public utilities and subsidiaries of Allegheny Power System, Inc. (APS), applied to the FPC (now FERC) in June 1970 for a license to construct and operate a 1,000 MW hydroelectric pumped storage peaking facility to be sited in the Canaan Valley, Tucker County, West Virginia. According to the final environmental impact statement filed by the FPC in February 1974, the project would have an upper reservoir of about 600 acres and a lower reservoir of about 7,000 acres at full pool. Four reversible pump turbines would pump water from the lower to the upper reservoir, from which water would be released to generate electric power for peak periods. The need for the project was based on an estimated load growth of 2,360 MW between 1976 and 1982. APS determined that to meet this estimated load growth and provide the minimum required margin of reserve about 2,780 MW of new generating capacity would need to be installed. APS planned to add 1,660 MW of steam capacity in addition to the 1,000 MW to be provided by the proposed Davis project.

Extensive hearings were held by FPC on the project. The Sierra Club and other environmental groups opposed it alleging that unique plant life in the wetlands would be destroyed by the inundation of a large area of the Cannan Valley by the lower reservoir. In April 1977, the FPC decided in favor of the proposed project and issued a license. In May 1977, the Department of Interior (DOI) decided to make the Canaan Valley floor a wildlife refuge. A draft envrionmental impact statement on this proposal was published by DOI in March 1978 and pubiic hearings were held in West Virginia in May 1978 by the U.S. Fish and Wildlife Service. DOI, two environmental groups and the State of West Virginia subsequently brought suit against the FPC for issuing the license. A decision on this suit is pending in the U.S. Court of Appeals for the District of Columbia Circuit.

APS applied for a dredge-fill permit from the U.S. Army Corps of Engineers (COE) under Section 404 of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended, in January 1978. This was necessitated when the COE assumed jurisdiction over the Blackwater River as a Phase III water project on July 1, 1977. The Pittsburgh District Engineer of the COE denied the permit on July 15, 1978 primarily on a finding that 4,300 acres of irreplaceable wetlands would be destroyed and that at least one alternative to the project identified in the FPC's final environmental impact statement would provide the needed power and tax revenues and preserve the significant wetlands of the Canaan Valley.

On September 12, 1978, the power companies filed suit against the COE, seeking an order directing the COE to issue the Section 404 permit. A decision on this case is pending in the U.S. District Court of the District of Columbia.

On June 21, 1979 the President of the United States directed DOE to conduct a study of alternatives to the Davis Project: "* * *I would like the Department of Energy to conduct an analysis of the peaking power needs for the region to be served by, and alternatives to, the Davis Power Plant Project using the Davis Power Project as a base case to measure the merits of alternatives. Since the Davis Power Project has already been excluded as a viable project by regulatory action of the Army Corps of Engineers, it is inappropriate for that project to be reconsidered among the possible alternatives* * *. The analysis should be broad enough to examine any alternative which would meet the need for energy production and the need for environmental protection and economic development in West Virginia."

The President's directive also instructed the Department of the Army, the Department of the Interior and the Environmental Protection Agency to provide data and staff support for the DOE analysis. DOE excepts to complete the study in about six months.

In carrying out the President's directive DOE has organized an interagency task force made up of specialists within DOE and representatives from the agencies mentioned immediately above. The task force will also consult with the Council on Environmental Quality throughout the study. The day-to-day analysis will be carrried out by a support contractor selected through a competitive process. The task force has the requisite expertise to develop the technical specifications of the study, ensure full and fair consideration of public comments, and apply a high standard of quality review over the contractor's work.

To ensure further public participation in the study, a notice of availability of the draft study report will be published in the Federal Register requesting the public comment on the draft report be submitted within thirty (30) days. In addition, throughout the study, bi-weekly status reports will be sent automatically to Federal and State agencies, Congressional offices, utility companies, public interest groups, and individuals with whom contract has already been established and to all others who respond to this Notice. Copies of the final study report will be sent to those on the bi-weekly status report mailing list without further request. DOE will satisfy later requests for copies as the supply permits; however, DOE will ensure that the final report will be available from the U.S. Government Printing Office

III. Study Tasks

Following is a brief description of the study tasks to be performed by the support contractor and reviewed by the interagency task force.

Task 1. Survey Background Information. Survey and obtain background information and documentation from the Federal Energy Regulatory Commission, Energy Information Administration, U.S. Army Corps of Engineers, Allegheny Power System, Inc., the State of West Virginia, and others on the details of and alternatives to the Davis Project, electric power demand projections and patterns, utility expansion plans, related environmental impact statements, assessments and reports, and other relevant material. Devise and maintain a consolidated bibliography and library of the materials obtained.

Task 2. Develop Detailed Study Plan. On the basis of the Task 1 orientation and public comments, the interagency task force will prepare a detailed analysis plan and schedule: The analysis plan shall include all feasible supply and conservation alternatives meeting limitation 2 below and reflect consideration of public comments received by DOE as a result of the issuance of this Notice of Public Inquiry. A synoptic final report outline shall also be proposed in the analysis plan.

Task 3. Specify Electrical Load Requirements. Based on the data obtained from Allegheny Power System, Inc., the Energy Information Administration and other sources (e.g. state public service commissions), specify the average and peak load generation requirements for the Allegheny Power System service area over the next 15 years. Changes in electrical load and generation patterns from those upon which the Davis Project was based shall be documented and

accounted for in the analysis. This task is subject to limitation 3 below.

Task 4. Analyze Economic Merits of Alternatives. Using state-of-the-art analytical, economic, and financial methods, compare the merits of the alternatives with each other using the Davis Project as a base case in conformance with limitation 1 below.

Task 5. Assess Environmental Impacts of Alternatives. Develop a comparative assessment of the major health, environmental, socioeconomic, cultural, and aesthetic impacts of the alternatives in comparison with the Davis Project.

Task 6. Develop Draft Report. Prepare a draft study report, subject to limitation 4. Based on comments of the interagency task force and the guidance of the Project Manager, prepare a Federal Register notice of the availability of the draft report for public comment.

Task 7. Prepare Final Report. Based on the task force's review and public comments prepare a final report.

Limitations

1. In accordance with the President's directive to DOE, the Davis Project is not to be considered as a possible alternative, but only as a basis for comparing the merits of alternatives.

2. In accordance with the President's directive to DOE, the study shall be broad enough to examine supply and conservation alternatives which would meet the need for energy production, environmental protection, and economic development in West Virginia.

3. Because of time constraints, basic or original electric load forecasting shall not be undertaken.

4. The report will draw conclusions about the alternatives to the Davis Project based on trade-offs from several viewpoints, but will not make recommendations. This limitation is imposed on the interest of (i) promoting a broad acceptability of the study among the various parties-at-interest regarding the Davis Project and its alternatives, and (ii) maintaining DOE's neutrality in this matter.

In addition to comments on the study tasks, DOE is particularly interested in receiving comments on the following issues.

1. What plausible alternatives to the Davis Pumped Storage Project should be considered for study? Possible, but not necessarily available or feasible, alternatives include:

- Other pumped storage projects at the Davis site or other sites;
- Baseload steam plants;
- Conservation and loan management programs, such as end use demand reduction through new rate designs, utility-financed residential insulation, time-of-day rates, load control, etc.;
- Coal cycling plant;
- Purchase power through existing interconnections from a viable source;
- Gas turnbines;
- Combined cycle system;
- Compressed air storage;
- Solar devices;
- Battery storage;
- Thermal storage;
- Conventional hydroelectric;
- Diesel engines.

2. What studies of the availability, feasibility, and impact of supply and conservation alternatives have been performed which are applicable to the APS service area?

3. What impacts (human health and welfare, economic, environmental, employment, tax base, etc.) are posed by the alternatives? How can adverse impacts be mitigated? To what region are the impacts confined (e.g., electric service area, West Virginia)?

4. What factors affect the projection of electrical demand and the need for new generating capacity in the APS service area?

Issued this day in Washington, D.C., August 9, 1979.

George S. McIsaac,

Assistant Secretary, Resource Applications.

August 9, 1979.

[FR Doc. 79-25070 Filed 8-10-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1294-6; Program Requirements Memorandum—PRM No. 79-10]

Grants for Construction of Treatment Works; Qualification of Major Items of Equipment

To assure national uniformity in program implementation and to provide policy direction in integrating the various complex requirements of the Federal water pollution control program, EPA headquarters periodically issues policy and operational guidance documents to the EPA Regional Offices and others involved in the grants program.

A Program Requirements Memorandum conveys basic program policy. The specific provisions of a Program Requirements Memorandum are not available in existing regulations or in other EPA policy documents.

The Program Requirements Memorandum PRM No. 79-10, Qualification of Major Items of Equipment, has been developed in accordance with the recommendations for action in the Report to Congress, "Wastewater Treatment Contracting and Bid Shopping". The PRM as developed identifies, for voluntary use, the necessary minimum elements for qualification which comply with the nonrestrictive specifications requirements for adequate competition.

This PRM is the result of extensive study and review within EPA and by others interested in this subject. The degree of review that resulted from our study of the issues, the EPA report to Congress and subsequent comments and input on the PRM exceeded that which is normally afforded in PRM development.

This is notice that Program Requirements Memorandum, PRM 79-10 on this subject was issued to EPA's Regional Administrators on July 11, 1979. The contents of that Program Requirements Memorandum are included with this notice. As with an construction grant procedures, comments are accepted at any time. Any comments on this PRM should be sent to Harold P. Cahill, Jr., Director, Municipal Construction Division, WH-547, EPA, 401 M Street, S.W., Washington, D.C. 20460.

Dated: August 6, 1979.

Thomas C. Jonling,

Assistant Administrator for Water and Waste Management.

Purpose

This memorandum sets forth guidance for the qualification of major items of equipment for construction grant projects. This guidance is appropriate for use during either Step 2 or Step 3 phases of construction.

Discussion

The following qualification procedures are for optional use by Environmental Protection Agency (EPA) grantees who desire to qualify major items of equipment for construction grant projects with the approval of the EPA regional offices. Under 40 CFR 35.935-2, (43 FR 44071, September 27, 1978) The Regional Administrator may review grantee procurements including equipment qualification and may request additional grantee action consistent with applicable statutes and regulations.

Qualification is a system that may be used to ease the administrative burden of determining responsive, responsible bidders on equipment. However, qualification is not a conclusive determination of responsibility and a qualified equipment bidder or offeror

may be rejected as nonresponsive on the basis of subsequently introduced information e.g., shop drawings. In all cases the equipment furnished must comply with the specifications.

There are a number of necessary minimum requirements for any qualification system. Whether the qualification procedure is to take place in Step 2 or Step 3, all of these requirements must be met. If the qualification is to occur during Step 2 the qualification information package will not contain plans and specifications. Therefore a qualification information package containing the relevant information must be prepared. This package must contain enough specific detail regarding performance and quality to assure that equipment sources will thoroughly understand what is required of the specified equipment.

Adequate advertisement is critically important to assure that knowledge of the project is widespread and so that new manufacturers, small firms and minority businesses are provided an opportunity to compete. Adequate time must be allowed for submission of the necessary information for qualification review since an overly strict time frame would limit competition. This should conform to 40 CFR 35.938–4(b), (43 FR 44080, September 27, 1978), generally 30 days. Adequate time must also be provided for the engineering evaluation of the qualification packages submitted.

Policy

A. *Advertisement.* The grantee is responsible for accomplishing adequate advertisement for qualification. Whether qualification occurs during Step 2, or during Step 3, the advertisement procedure shall conform to Section 35.938–4(a) of the EPA regulations. The advertisement procedure for qualification shall also conform to the local regulations regarding advertisements for construction bids. In addition to advertisements, private mailings to known equipment sources may be made. Mailing lists of equipment sources are available from trade journals and technical associations. The advertisement shall contain all information needed by the sources to properly submit information regarding their equipment for consideration. The advertisement shall include the following as a minimum:

1. Address and telephone number of grantee.
2. Name, size and type of plant.
3. Name, address, and telephone number of the designer and name of contact for inquiries.
4. Location where qualification information package can be obtained.
5. Cost of qualification information package—(this should not exceed the price that bidders must pay to obtain bidding documents).
6. Brief schedule of equipment needed in the construction project that is to be qualified (e.g., filter press).
7. Locations of qualification information for review by interested individuals. These locations should be the same as those used for additional information for contractors interested in bidding.
8. Deadline for submittal of qualification packages by equipment sources. This should be a minimum of 30 days from date of advertisement to allow adequate time for equipment sources to prepare their qualification package. Longer time periods should be provided for qualification submission for complex systems.

B. *Qualification information package.* The qualification information package, prepared by the design engineer, shall include the construction bid package plans and specifications or suitable extracts of this information if qualification occurs during Step 2. These specifications shall be performance specifications where possible and in all other cases conform to the two brand names or equal requirement. In addition to the plans and specifications, a description of the package the equipment sources submit for qualification consideration should be included.

The equipment sources should submit catalog cuts or readily available specifications and drawings of their equipment and any supplementary information that would be helpful in the evaluation. It should be stressed that shop drawing quality submittals are not required or wanted in this phase of the project.

All equipment manufacturers or distributors interested in supplying their equipment for the project must submit a qualification package for approval, including the suppliers who propose to furnish the equipment which may have been preliminarily named to indicate the salient requirements of the equipment desired. This is required so that all equipment offerors have the same opportunity to submit information for consideration, and to assure that the equipment offered fully meets all requirements of the specifications.

A time schedule of the qualification and bidding process must be included in the qualification information package.

C. *Evaluation.* Evaluation of the qualification submission shall be completed by the design engineer within 30 days from date of closing of submittals of qualification packages. At the end of the review period, the grantee will notify all proposers of their status (by registered mail return receipt requested). Such correspondence should contain notice consistent with EPA protest regulations described below that any protest actions must take place within the time limitation described in 40 CFR 35.939(b), (43 FR 44083, September 27, 1978). By addendum to the specifications, the grantee will notify the holders of the bid package of the equipment that has been qualified for the specific project.

D. *Protest procedures.* Protest procedures regarding qualification must conform to EPA regulations 40 CFR Section 35.939, (43 FR 44083, September 27, 1978).

The proposer of any equipment qualified as a result of a protest will be notified by the grantee and a further addendum to the specifications will be sent to the bid package holders.

In those cases when qualification takes place during Step 3, the entire process (including protests to the grantee, if any) should take place within the time frame of the advertisement for construction bids and the bid opening. When qualification takes place during Step 2, adequate time must be allowed for submittals and prompt determination of qualified equipment must be made. All protests should be resolved before the bidding process. In order to satisfy this requirement, grantees must state in the qualification information package and notification to proposers of their status that any decision on qualification is final grantee action and the time for protests under 40 CFR 35.939(b), (43 FR 44083, September 27, 1978), begins to run from the date the proposers receive notification of their status from the grantee. Failure to protest within one week of this time period will result in finding the protest untimely. Consistent with the procedures of this memorandum, after determination of the qualified equipment no other equipment can be considered.

Qualification does not exempt the supplier from meeting the specifications. The specifications are the final authority for acceptance of equipment. Approval of a qualification package does not eliminate the need for shop drawing submittals and approvals during construction.

E. *Construction delays.* If bidding is significantly delayed, then the qualification process may be reopened by the grantee with the EPA regional office approval in order to allow consideration of equipment sources that

may then be interested in supplying equipment. In such cases the previously qualified equipment need not be reconsidered.

F. *Other qualification procedures.* Qualification procedures consistent with state or local law which provide the same considerations in terms of competition may be used in lieu of these procedures.

G. *Public inspection.* On the cut off date for submittal of qualification packages for evaluation a list of all equipment sources that have submitted qualification packages shall be published. Whether the packages themselves become availabe for public inspection will be decided by local ordinances on the subject of public disclosure.

H. *Costs.* The cost incurred by the grantee incidental to qualification of major items of equipment for inclusion in a construction grant project are eligible for construction grant funding during the step in which they are undertaken.

[FR Doc. 79-24831 Filed 8-10-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1296-2]

Request by the State of Alabama for State NPDES Program Approval

The State of Alabama has submitted a request to the Environmental Protection Agency for approval of a proposal to administer the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters within the State. According to the State's proposal, the NPDES program would be administered by the Alabama Water Improvement Commission (AWIC), the staff of which is under the direction of Mr. James W. Warr, Director, Water Improvement Commission.

Section 402 of the Federal Clean Water Act created the NPDES under which the Administrator of the United States Environmental Protection Agency (EPA) may issue permits for the discharge of pollutants into waters of the United States under conditions required by that Act.

The Alabama submission includes, among other aspects, a description of the Alabama NPDES program, and an opinion from the State Attorney General that the laws of the State provide adequate authority to carry out the described program. The Administrator is required to approve each such submitted program within 90 days of submittal unless it does not meet the requirements of Section 402(b) of the Act and EPA regulations, which include, among other things, authority to issue permits which comply with the federal Act, authority to impose civil and criminal penalties for permit violations, and authority to insure that the public is given notice and opportunity for a hearing on each proposed NPDES permit issuance.

The Alabama submittal may be reviewed during normal business hours by the public at the AWIC office on the third floor of the Perry Hill Office Building, 3815 Interstate Court, Montgomery, and at the EPA office in Atlanta at the address appearing at the beginning of this Notice. Copies of the submittal may also be obtained (at a cost of 10¢/page or $21.80 for the entire submission) by appearing in person at either of those offices, or by writing to EPA at the same address or to the AWIC at: State Office Building, Montgomery, Alabama 36130.

A public hearing to consider the State of Alabama's request to administer the NPDES permit program has been scheduled for Wednesday, September 12, 1979, at 10:00 a.m. at the Richard Beard Building, Department of Agriculture and Industries, 1445 Federal Drive, Montgomery, Alabama.

The Hearing Panel will include the EPA Region IV Regional Administrator as Presiding Officer, the Director of the AWIC, and the EPA headquarters Director of the Division of Water Enforcement (on behalf of the Assistant Administrator for Enforcement), or their representatives.

The following are policies and procedures which shall be observed at the public hearing:

(1) The Presiding Officer shall conduct the hearing in a manner that permits open and full discussion of any issues involved;

(2) Any person may submit written statements or documents for the record;

(3) The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program;

(4) Members of the Hearing Panel may ask questions of witnesses and respond to questions and statements of witnesses;

(5) The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Administrator; and

(6) The hearing record shall be left open until September 27, as described below, to permit any person to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing; immediately following such seven-day period the Regional Administrator shall forward a copy of the complete hearing record to the Administrator.

Hearing statements may be oral or in writing. Written copies of oral statements are urged for accuracy of the record and for the use of the hearing panel and other interested persons. Statements should summarize any extensive written materials.

All comments or objections received by EPA Region IV by September 27, 1979, or presented at the public hearing will be considered by EPA before taking final action on the Alabama Request for State Program Approval.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter. Further questions on the hearing or the NPDES program should be addressed either to Mr. James W. Warr of the AWIC (205/277-3630) or Mr. Howard Zeller of EPA (404/881-2211).

John A. Little,

Acting Regional Administrator, Region IV.

[FR Doc. 79-23602 Filed 8-10-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Notification List: Mexican Standard Broadcast Stations

Correction

In FR Doc. 79-23388, published at page 44620, on Monday, July 30, 1979, on page 44621, at the top of the table, in the first station XEDKR, in the second line of the location, "N.20°38'8"" should be corrected to read "N.20°38'28"".

BILLING CODE 1505-01

FEDERAL HOME LOAN BANK BOARD

[No. 79-412]

Privacy Act of 1974; Systems of Records; Annual Republication

Dated: August 2, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final Action Systems of Records—Republication.

SUMMARY: The Bank Board is required, by the Privacy Act of 1974 to republish, annually, its systems of records. In accordance with the procedure provided

for in 43 FR 23749, June 1, 1978, the Bank Board is incorporating by reference its systems of records set forth in 43 FR 35792–35804, August 11, 1978, subject to the amendments noted below. The amendments reflect, principally, in the Bank Board's organizational changes since the republication in August, 1978.

EFFECTIVE DATE: August 13, 1979.

FOR FURTHER INFORMATION: Mr. William L. Van Lenten (202–377–6463).

AUTHORITY: 5 U.S.C 552a.

The amendments to the Bank Board's systems of records published in 43 FR 35792–35804, August 1, 1978, are set forth below.

FHLBB–1

System name: Internal Office Personnel Files.

System manager(s) and address: This category is amended to read as follows:

Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552
Director, Office of Economic Research
General Counsel, Office of the General Counsel
Director, Federal Savings and Loan Insurance Corporation
Director, Administration
Director, Office of Industry Development
Manager, Scottsdale Office
Federal Savings and Loan Insurance Corporation
Western Office Manager
Federal Savings and Loan Insurance Corporation
Northwest Guaranty Receivership
Federal Savings and Loan Insurance Corporation
Director, Equal Employment Opportunity Office
Director, Office of Communications
Personnel Liasion Officer, Controller's Division
Director, Office of Community Investment
Director, Administrative Services Division
Director, Office of District Banks
Director, Information System Division
Personnel Liasion Officer, Internal Review
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, One Federal Street—Thirtieth Floor, Boston, Massachusetts 02108
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, One World Trade Center, Floor 103, New York, New York 10048
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 11 Stanwix Street, Room 300, Pittsburgh, Pennsylvania 15222
Assistant District Director—Administration, Department of Examinations, Federal Home Loan Bank Board, 260 Peachtree Street, N.W., 10th Floor, Atlanta, Georgia 30303
Assistant District Director, Silver Spring Area Office, Department of Examinations, Federal Home Loan Bank Board, 8757 Georgia Avenue, Room 538, Silver Spring, Maryland 20910
Assistant District Director, Charlotte Area Office, Department of Examinations, Federal Home Loan Bank Board, 4915 Albemarle Road, Charlotte, North Carolina 28205
Assistant District Director, Fort Lauderdale Area Office, Department of Examinations, Federal Home Loan Bank Board, 1525 South Andrews Avenue, Fort Lauderdale, Florida 33316
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 2700 DuBois Tower, 511 Walnut Street, Cincinnati, Ohio 45202
Assistant District Director, Cincinnati Area Office, Department of Examinations, Federal Home Loan Bank Board, 2700 DuBois Tower, 511 Walnut Street, Cincinnati, Ohio
Assistant District Director, Nashville Area Office, Department of Examinations, Federal Home Loan Bank Board, 2209 Crestmoor Road, C–2 East, Nashville, Tennessee
Assistant District Director, Canton Area Office, Department of Examinations, Federal Home Loan Bank Board, 229 Wells Avenue, N.W., Canton, Ohio 44703
Assistant District Director, Department of Examinations, 90 East Wilson Bridge Road, Worthington, Ohio 43085
Assistant District Director, Department of Examinations, Federal Home Loan Bank Board 2950 Indiana Tower, One Indiana Square, Indianapolis, Indiana 46204
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 111 East Wacker Drive-Suite 700, Chicago, Illinois 60601
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 714 Second Avenue, Room 300, Des Moines, Iowa 50309
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 120 East Street, No. 3, Townsite Plaza, Topeka, Kansas 66603
Assistant District Director, Department of Examinations, Federal Home Loan Bank Board, Room 379, Post Office Building, 18th and Stout Street, Denver, Colorado 80202
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 600 Stewart Street, Suite 610, Seattle, Washington 98101
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 600 California Street, Room 310, San Francisco, California 94108
District Director—Examinations, Department of Examinations, Federal Home Loan Bank Board, 1350 Tower Building, Little Rock, Arkansas 72201
Assistant District Director, Dallas Branch Office, Department Of Examination, Federal Home Loan Bank Board, 1100 Commerce Street, Room 3–A–6, Dallas, Texas 75242
Assistant District Director, Houston Branch Office, Department of Examinations, Federal Home Loan Bank Board, Suite 820, One Allen Center Suite, 500 Dallas Street, Houston, Texas 77002
Administrative Officer, Federal Savings and Loan Insurance Corporation, 10001 West Roosevelt Boulevard, Westchester, Illinois 60153
Receivership Agent, Midwestern Office Receiverships, Federal Savings and Loan Insurance Corporation, 10001 West Roosevelt Boulevard, Westchester, Illinois 60153

FHLBB–13

System name: Office of Examinations and Supervision Training Records.

This system has been abolished.

FHLBB–16

System name: Upward Mobility Program (Career Development).

This system is amended by deleting, wherever it appears, the word "Division" after "Personnel Management".

FHLBB–17

System name: Payroll

This system is amended by adding the word "Division" after Controller in the last subsection of the system.

FHLBB–19, 20, and 22

System names: Employee Relations Files (19), Employee Locator File (2) and "Form 587" File—Training Request, Authorization, Notice of Completion of Training (22).

The above systems are amended by deleting, wherever it appears, the word "Division" after "Personnel Management".

FHLBB–24

System name: Assignment History of Examiners.

This system has been abolished.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79–25031 Filed 8–10–79; 8.45 am]
BILLING CODE 6720–01–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 September 4, 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-3839.

Filing Party: Lynne R. Feldman, Assistant City Attorney, Richmond, California 94804.

Summary: Agreement No. T-3839, between the Surplus Property Authority of the City of Richmond (City) and Canal Industrial Park, Inc. (Canal), provides for the lease of Building No. 24 in the Maritime Richmond Reserve Shipyard No. 3 to Canal for the purposes of office space, warehousing, cargo handling and assembly operations. As compensation, Canal will pay City a monthly rental of $4,500. The term of the lease is 9½ years.

Agreement No.: T-3841.

Filing Party: Mr. E. A. Shaw, Jacksonville Port Authority, P.O. Box 3005, 2831 Talleyrand Avenue, Jacksonville, Florida 32206.

Summary: Agreement No. T-3841 between the Jacksonville Port Authority (Authority) and Trans Freight Lines, Inc. (TFL) provides that the Authority will lease to TFL 3 acres of Port terminal property suitable for a container marshalling yard.

Agreement No.: 5850-37.

Filing Party: Howard A. Levy, Esq., Suite 727, 17 Battery Place, New York, New York 10007.

Summary: Agreement No. 5850-37 would modify Article 2 of the North Atlantic Westbound Freight Association Agreement by adding new language which provides for matters relating to payment of rates and charges, including authority to establish credit rules.

Agreement No.: 7100-24.

Filing Party: Howard A. Levy, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 7100-24, among the member lines of the North Atlantic United Kingdom Freight Conference, would amend Article I of the basic agreement by adding a new paragraph providing that the members may, for their own account, provide substituted service (1) between any ports in Great Britain; (2) between any ports in Northern Ireland; (3) between any ports in the Republic of Ireland; and (4) between any ports in Northern Ireland and the Republic of Ireland. Any port at which substituted service is provided must be served by water by one or more of the members, and all ports so served must be listed in the Conference tariff.

Agreement No.: 9848-9.

Filing Party: F. A. Wendt, Senior Vice President, Traffic and Sales, Delta Steamship Lines, Inc., 1700 International Trade Mart, New Orleans, Louisiana 70150.

Summary: Agreement No. 9848-9 is a proposal by the members of the U.S. Gulf/Brazil Pooling Agreement to amend the pool accounting and settlement period from 6 months to 12 months, and the minimum number of direct sailings per pool period from 8 to 16.

By Order of the Federal Maritime Commission.

Dated: August 8, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-24848 Filed 8-10-79; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

President's Commission on Foreign Language and International Studies; Meeting

AGENCY: President's Commission on Foreign Language and International Studies.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the President's Commission on Foreign Language and International Studies. It also describes the functions of the Commission. Notice of this meeting is required under the Federal Advisory Committee Act, 5 U.S. Code, Appendix I, Section 10(a)(2). This document is intended to notify the general public of its opportunity to attend.

DATES: September 6 and 7, 1979.

ADDRESS: Edmund Walsh Building, Hall of Nations, 36th St. and N. Prospect St., N.W., Washington, D.C. 20057.

FOR FURTHER INFORMATION CONTACT: Nan Bell, Staff Director, 1832 M Street, N.W., Suite 837, Washington, D.C. 20036, (202) 653-5817.

The President's Commission on Foreign Language and International Studies is established under Executive Order 12054 (April 21, 1978) and Section 9(a) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. Appendix I). The Commission is directed to:

(A) conduct such public hearings, inquiries, and studies as may be necessary to make recommendations to the President and the Secretary of Health, Education, and Welfare.

(B) The objectives of the Commission shall be to:

(1) Recommend means for directing public attention to the importance of foreign language and international studies for the improvement of communications and understanding with other nations in an increasingly interdependent world;

(2) Assess the need in the United States for foreign language and area specialists, ways in which foreign language and international studies contribute to meeting these needs, and the job market for individuals with these skills;

(3) Recommend what foreign language area studies programs are appropriate at all academic levels and recommend desirable levels and kinds of support for each that should be provided by the public and private sectors;

(4) Review existing legislative authorities and make recommendations for changes needed to carry out most effectively the Commission's recommendations.

The hearing will take place in Washington, D.C. on September 6-7, 1979 from 9:00 a.m. to 5:00 p.m. and will include Commission discussion on the following issues:

(1) Discussion of final report and recommendations.

(2) Follow-up plans.

(3) Dissemination of report and pertinent papers.

The meeting will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the President's Commission on Foreign Language and International Studies, 1832 M Street, N.W., Suite 837, Washington, D.C. 20036.

Signed at Washington, D.C. on August 3, 1979.

Nan P. Bell,

Staff Director.

[FR Doc. 79-24794 Filed 8-10-79; 8:45 am]

BILLING CODE 4110-02-M

Office of Human Development Services

Regional Adoption Resource Centers Demonstration Program; Program Announcement No. 13652-791a

AGENCY: Administration for Children, Youth and Families Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Grant Funds for a Regional Adoption Resource Center Demonstration Program in DHEW Region VIII.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for a Regional Adoption Resource Center grant in DHEW Region VIII for Fiscal Year 1979. This program is authorized under Public Law 95-266, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Title II, Adoption Opportunities, 42 U.S.C. 5113).

Scope of This Announcement

A notice was previously published in the Federal Register announcing the availability of grant funds for the Regional Adoption Resource Centers Demonstration Program. (See 44 FR 25511 published May 1, 1979.) Applications submitted from Region VIII, which includes Colorado, Utah, Montana, Wyoming, North Dakota and South Dakota, were reviewed by an advisory panel and were not recommended for approval. The Administration for Children, Youth and Families, therefore, is announcing the availability of $266,743 for one grant to be awarded for Region VIII and soliciting applications from public and private nonprofit organizations, including institutions of higher learning. The applicant must provide a written assurance that it has been physically located in the geographic region it proposes to serve for a minimum of one year prior to the time the application is submitted. Applications received without this assurance will be considered nonconforming and will not be reviewed. Applications from regions other than Region VIII will be considered ineligible. Applicants must conform to the eligibility and program requirements previously published in the Federal Register. A copy of the previous announcment will be included in the Application Kit.

Closing Date for Receipt of Applications

To assure the awarding of a grant for a Region VIII Regional Adoption Resource Center before the close of Fiscal Year 1979, all applications must be received by the Grants Management Office, Office of Human Development Services, no later than 5:30 p.m., August 31, 1979. The mailing address and location for hand-delivered applications is: Grants Management Branch, Office of Human Development Services, Room 345-F1, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Applications may be sent by registered or certified mail or Federal Express or an equivalent.

Hand-delivered applications will be accepted daily between 9:00 a.m. and 5:30 p.m., except Saturdays, Sundays and holidays. Applications, either mailed or hand-delivered, which are received after the deadline or incorrectly sent to any Regional Office of the Department of Health, Education, and Welfare will not be accepted and will be returned to the applicant.

(Catalog of Federal Domestic Assistance Program Number 13652.Regional Adoption Resource Centers Demonstration Program.)

Dated: August 8, 1979.

Herschel Saucier,

Acting Commissioner for Children, Youth and Families.

Approved: August 9, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

FR Doc. 79-25036 Filed 8-8-79; 8:45 am]

BILLING CODE 4110-92-M

Office of the Secretary

Proposed Data Collection of Compliance Information Meeting

ACTION: Notice of Public Meeting on Proposed Data Collection of Compliance Information.

SUMMARY: The following information describes a proposed survey of Public Welfare and Social Service agencies. A public meeting will be held at 9:30 a.m. on August 28, 1979, in Room 529A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201. Additional information may be obtained by contacting Mr. Robert Durst, Office for Civil Rights, OSPR/R&A, DHEW, 330 Independence Avenue SW., Washington, D.C. 20201. (Telephone 202-245-9177).

Description of a Proposed Collection of Information and Data Acquisition Activity

1. *Title of Proposed Activity*

1979-1980 Youth Referral Survey.

2. *Agency/Bureau/Office*

Department of Health, Education, and Welfare, Office of the Secretary, Office for Civil Rights (OCR).

3. *Agency Form Number*

OS/CR-301.

4. *Legislative Authority For This Activity*

—Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) which prohibits discrimination on the basis of race, color or national origin in any program or activity receiving Federal financial assistance.

—Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706) which prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

The Collection of compliance information is authorized by the Title VI Regulation (45 CFR 80.6) and by the Section 504 Regulation (45 CFR 84) which incorporates the Title VI procedures at 84.61.

5. *Voluntary/Obligatory Nature of Response*

Obligatory.

6. *How Information Collected Will Be Used*

The purpose of the survey is to help determine which local welfare agencies may be in violation of Title VI of the Civil Rights Act of 1964, and/or Section 504 of the Rehabilitation Act of 1973.

Survey data will be used to target agencies most likely to be in non-compliance with the cited statutes. These agencies will then receive further investigation. Survey data alone is not used to make a final determination of compliance status. The primary areas of analysis are:

(1) The assignment of children to facilities by ethnic origin;

(2) The assignment of children by handicapping conditions.

7. *Data Acquisition Plan*

(a) Method of collection: Mail.

(b) Time of collection: December 1979.

(c) Frequency: Once.

8. *Respondents* OS/CR-301.

(a) Type: Public Welfare and Social Service Agencies

(b) Number: 3000

(c) Estimated average person-hours per responding agency: 15

9. *Information To Be Collected*

The survey requires data on the ethnic origin of children/youths in the areas of legal status, type of facility, placement location and length of stay in out-of-home care. There is a section which requests counts of special needs and type of facility. The final section deals with supervisory or review status and type of facility by race/ethnic group of children served.

Dated: August 8, 1979.

Cynthia G. Brown,

Acting Director, Office for Civil Rights.

[FR Doc. 79-24834 Filed 8-10-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

Iowa; Notice of Major Disaster and Related Determinations

[Docket No. NFD-725; FDAA-590-DR]

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FDAA-590-DR), dated July 1, 1979, and related determinations.

DATED: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of July 1, 1979 to the Secretary, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from high winds and tornadoes beginning on or about June 28, 1979, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Iowa.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Francis X. Tobin of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster.

The following Counties for Individual Assistance only:

Calhoun; Dallas; Hamilton; Humboldt; Kossuth; and Wright

William H. Wilcox,

Federal Disaster Assistance Administration.

(Catalog of Federal Domestic Asst. No. 14.701, Disaster Assistance.)

[FR Doc. 79-24800 Filed 8-10-79; 8:45 am]

BILLING CODE 4210-22

[Docket No. NFD-723]

FDAA-592-DR; Kentucky, Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration, HUD.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Kentucky (FDAA-592-DR), dated July 19, 1979, and related determinations.

DATED: July 19, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development Washington, D.C. (202) 634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of July 19, 1979 to the Secretary, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Kentucky resulting from severe storms and flash flooding on July 15, 1979, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Kentucky.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11785, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Paul E. Hall of the Federal Disaster Assistance Administration to act as the Federal coordinating Officer for this declared major disaster.

I do hereby determine the following area of the State of Kentucky to have been affected adversely by this declared major disaster.

The following county for individual assistance and public assistance.

Pike County

(Catalog of Federal domestic Assistance No. 14.701, Disaster Assistance)

William H. Wilcox,

Federal Disaster Assistance Administration.

[FR Doc. 79-24807 Filed 8-10-79; 8:45 am]

BILLING CODE 4210-22-M

[FDAA-577-DR; Docket No. NFD-726]

Mississippi; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration, HUD.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Mississippi (FDAA-577-DR), dated April 16, 1979.

DATED: July 10, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 634-7825.

NOTICE: The Notice of a major disaster for the State of Mississippi dated April 16, 1979, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 16, 1979.

For Federal assistance to disaster-damaged oyster beds under Section 4(b), Pub. L. 88-309:

The oyster reefs contained in the submerged lands of the Mississippi Sound, property of the State of Mississippi.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance; No. 11.406, Commercial Fisheries Disaster Assistance)

[FR Doc. 79-24810 Filed 8-10-79; 8:45 am]

BILLING CODE 4210-22-M

[FDAA-591-DR; Docket No. NFD-724]

Wyoming; Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration, HUD.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Wyoming (FDAA-591-DR), dated July 19, 1979, and related determinations.

DATED: July 19, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development Washington, D.C. (202) 634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of July 19, 1979 to the Secretary, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Wyoming resulting from severe storms and tornadoes on July 16, 1979, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Wyoming.

Notice is herby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Donald G. Eddy of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following area of the State of Wyoming to have been affected adversely by this declared major disaster.

The following county for individual assistance and public assistance.

Laramie County

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

William H. Wilcox,

Federal Disaster Assistance Administration.

FR Doc. 79-24803 Filed 8-10-79; 8:45 am]

BILLING CODE 4210-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Elko District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Elko District Grazing Advisory Board will be held on September 11, 1979.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management Office at 2002 Idaho Street, Elko, Nevada.

The agenda for the meeting will include: (1) A discussion of the function of the Board; (2) a discussion of and action on expenditure of Range Betterment funds for range improvements; (3) a review of current policy and program relating to allotment management plans including the ongoing and future grazing environmental statement effort and briefing on the Wells Environmental Statement effort; (4) a progress report on range inventory and all other inventories; (5) the arrangements for the next meeting and (6) a field trip to an area northwest of Wells, Nevada to view the weight estimate Range Inventory and Range Suitability process.

The meeting is open to the public. Interested persons may make oral statements to the Board between 10:30 a.m. and 11:00 a.m. on Tuesday, September 11, 1979 or file written statements for the Boards consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2002 Idaho Street, Elko, Nevada 89801 by September 4, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Field trip participants who are not members of the Advisory Board must furnish their own transportation.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Dated: August 3, 1979.

Wayne W. Wilde,

Acting District Manager.

[FR Doc. 79-24831 Filed 8-10-79; 8.45 am]

BILLING CODE 4310-84-M

National Park Service

General Management Plan Alternatives, Coulee Dam National Receation Area, Washington; Availability of Environmental Assessment

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared an assessment on the alternatives for the general management plan for Coulee Dam National Recreation Area, Washington.

The assessment considers the alternatives for the general management plan which includes visitor use development proposals and cultural and natural resources management actions.

Written comments on the environmental assessment are invited and will be accepted on or before September 10, 1979. Comments should be addressed to the Superintendent, Coulee Dam National Recreation Area, at the address below.

Questions concerning the content of the assessment will be answered by the Superintendent at Coulee Dam National Recreation Area, telephone 446-9441, Area Code 509.

Copies of the environmental assessment are available from, or for inspection at, the following locations:

Pacific Northwest Regional Office, National Park Service, 607 Fourth and Pike Building, Seattle, Washington 98101.

National Park Service/Forest Service, Information Office, U.S. Court House, Room 112, West 920 Riverside, Spokane, Washington 99201.

Coulee Dam National Recreation Area, 1008 Crest Drive, P.O. Box 37, Coulee Dam, Washington 99116.

W. C. Quick,

Associate Regional Director, Administration Pacific Northwest Region.

[FR Doc. 79-24832 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-70-M

Kalaupapa National Historical Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a public meeting of the Kalaupapa National Historical Park Advisory Commission will be held in Honolulu, Hawaii. The meeting will be on August 17, 1979, and will begin at 10:00 a.m. HST at the McCully-Moiliili Library, 2211 S. King St., Honolulu.

The purpose of the meeting is to discuss and evaluate meetings held with the public, state agencies, private organizations, and cultural and church groups in regard to the future of Kalaupapa's people and resources.

The meeting is open to the public. Anyone may file, with the Commission, a written statement concerning matters to be discussed. A summary of the meeting will be available for public inspection four weeks after the meeting at Hawaii State Office, National Park Service, 300 Ala Moana Blvd., Suite 6305, Honolulu, Hawaii 96850.

Dated: July 31, 1979.

Stanley Albright,

Acting Regional Director, Western Regional Office.

[FR Doc. 79-24833 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Death Valley National Monument; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Continental Minerals Corporation has filed a plan of operations in support of proposed mining activities on its Warm Springs West Mine within the Death Valley National Monument. This plan is available for public inspection during normal business hours at the Death Valley National Monument Headquarters, Death Valley, California.

Dated: July 12, 1979.

George Von der Lippe,

Superintendent, Death Valley National Monument.

Dated: August 1, 1979.

Stanley T. Albright,

Acting Regional Director, Western Regional Office.

[FR Doc. 79-24835 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-70-M

Santa Monica Mountains National Recreation Area; Intent

Notice is hereby given that the National Park Service will hold a series of ten public workshops leading to the development of a General Management Plan and a Land Acquisition Plan for Santa Monica Mountains National Recreation Area during September 1979, in Southern California.

The Schedule of the workshops is as follows:

10—Multi-purpose Room, Conejo Community Center, Junction of Dover and Hendrex Rds., Thousand Oaks, Beginning at 7:30 p.m.

11—Martin Luther King Jr. Hospital Auditorium, 12021 S. Wilmington Ave., Los Angeles, Beginning at 7:30 p.m.

12—Multi-purpose Room, Malibu Civic Center, 23555 Civic Center Way, Malibu, Beginning at 7:30 p.m.

13—Cafeteria, Topanga Elementary School, 141 N. Topanga Canyon Blvd., Topanga, Beginning at 7:00 p.m.

17—Cafeteria, Portala Junior High School, 18720 Linnet, Tarzana, Beginning at 7:00 p.m.

18—Cafeteria, Santa Monica High School, 601 Pico Blvd., Santa Monica, Beginning at 7:30 p.m.

20—Cafeteria, San Fernando High School, 11133 O'Melveny Ave., San Fernando, Beginning at 7:00 p.m.

24—Walter Reed Junior High, 4525 Irvine Ave., North Hollywood, Beginning at 7:00 p.m.

26—Cafeteria, Hollenbeck Jr. High, 2510 East 6th St., Los Angeles, Beginning at 7:00 p.m.

27—Ventura City Hall, Community Meeting Room, Room 205, 501 Poli St., Ventura, Beginning at 7:30 p.m.

Concurrent with the public workshops the National Park Service will consult with various Federal, State and local government agencies, individuals and organizations about the proposed General Management and Land Acquisition Plans.

The purpose of these workshops and consultations is to provide for wide citizen participation through which the National Park Service will receive ideas, suggestions and comments from the public on the two plans before they are completed.

Anyone wishing additional information about the workshops, the National Park Service planning and land acquisition processes, or wanting to submit comments about the park may write to the Superintendent, Santa Monica Mountains National Recreation Area, 23018 Ventura Blvd., Woodland Hills, CA 91364 or call the park's office (213)888-3770.

Background information on the issues and problems to be discussed at the public workshops is available from the park either by calling or writing to the above address.

Dated: August 2, 1979.

Stanley T. Albright,

Acting Regional Director, Western Region, National Park Service.

[FR Doc. 79-24834 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore, Ind.; Availability of Assessment and Review of Alternatives; Public Meetings on Proposed General Management Plan

Notice is hereby given that the National Park Service has prepared an assessment to consider alternative proposals for the preservation, public use, development, and management of Indiana Dunes National Lakeshore. The assessment states planning problems, issues, and constraints; describes the environment which may affect, or be affected by, the alternative proposals; and addresses the probable environmental impacts of the proposals.

Alternatives are addressed for the management of natural and cultural resources, for public educational and visitor use programs, and for the general development of the Lakeshore.

Also available is a Review of Alternatives which details the proposals preferred by the National Park Service, the reasons for selection of these alternatives, and the rationale for the rejection of the other proposals.

The assessment and review which are available for public comment will be the subject of a series of public meetings to be held in the Lakeshore region on the dates and at the places described in the following:

August 14, 7:30 p.m., Field Museum, Chicago, Illinois

August 15, 7:30 p.m., City Hall, Gary, Indiana

August 16, 7:30 p.m., Elston Senior High School, Michigan City, Indiana

August 21, 7:30 p.m., Westchester Middle School, Chesterton, Indiana

August 22, 7:30 p.m., Center for Lifelong Learning, South Bend, Indiana

(All dates in 1979)

Copies of the assessment and the review of alternatives will be available for review at the Office of the Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304. Due to the length of the assessment, only a limited number will be published; however, copies will be available for review at these locations:

Michigan City Public Library, Fourth and Franklin Streets, Michigan City, Indiana 46360.

Gary Public Library, 220 West 5th Street, Gary, Indiana 46808.

Westchester Public Library, 200 West Indiana, Chesterton, Indiana 46304.

Westchester Public Library, 100 Francis, Porter, Indiana 46304.

Chicago Public Library, 425 North Michigan, Chicago, Illinois 46304.

Chicago Public Library, 9055 South Houston, Chicago, Illinois 60617.

Chicago Public Library, 6435 North California, Chicago, Illinois 60645.

Library, Indiana University, North-West, 3400 Broadway, Gary, Indiana 46408.

Library, Purdue University, Calumet Campus, 2233 171st, Hammond, Indiana 46323.

Library, University of Notre Dame, Notre Dame, Indiana 46556.

Library, Calumet College, 2400 New York Avenue, Whiting, Indiana 46394.

Library, Indiana University, South Bend, 1700 Mishawaha Avenue, South Bend, Indiana 46615.

Library, Purdue Regional North Central Campus, U.S. Highway 421, Westville, Indiana 46391.
Library, University of Illinois, Chicago Circle Campus, 601 South Morgan, Chicago, Illinois 60607.
Indiana Department of Natural Resources Library, 608 State Office Building, Indianapolis, Indiana 46204.
Valparaiso University, Moellering Library, Valparaiso, Indiana 46383.

Written comments may be made on both the assessment and the review. Such comments will be received until August 31, 1979, and should be mailed to the Office of the Superintendent at the address stated in the foregoing. All comments will be considered. Substantive comments, pertinent to the issues, will be reflected as appropriate in the General Management Plan which will be prepared subsequent to the public review period.

The National Park Service has determined that the Assessment of Alternatives does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: July 10, 1979.

J. L. Dunning,

Regional Director.

[FR Doc. 79-24850 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-70-M

Revised Management Policies

AGENCY: National Park Service, Interior.

ACTION: Notice of Revised Snowmobile Policy.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Management Policy, National Park Service, Washington, D.C. 20240, (202) 343-7456.

I. Introduction

On December 7, 1978, the National Park Service published in the Federal Register a proposed revision to its management policy on snowmobiles. (A copy of the final proposed draft policy appears at the conclusion of this document) and a notice of public meetings to receive public comment. In response to that publication, we received a total of 2,221 responses; 186 public meeting and 2,035 mailed comments. Comments were received from Members of Congress, Federal, State, and Local officials, entrepreneurs, representatives of Snowmobile Associations, representatives of Conservation Organizations and members of the public. Comments were received from 48 states, the District of Columbia and Canada. Although, the purpose of the public involvement was to solicit comments about the proposed policy revisions, the vast majority of the comments dealt with the broader question of the appropriateness and function of snowmobiles in National Park Service areas. As a consequence, it is our opinion that a discussion of the National Park Service perspective on the appropriateness and function of snowmobiles is warranted. The following commentary is designed to address those concerns raised during the public comment period.

II. Technical Background

Through Executive Order 11644, the President of the United States addressed the need for a unified Federal policy on the use of off-road vehicles (ORVs) on public lands. This need was brought about by the widespread and growing use of such vehicles, generally for legitimate purposes but frequently in conflict with wise land and resource management practices, environmental values, and other recreational activities.

The purpose of the Order was to establish policy direction and initiate procedures to ensure that the use of ORVs on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands. The Order required that each respective agency designated therein develop and issue regulations and administrative instructions to provide for administrative designation of the specific areas and trails on public lands on which the use of ORVs may be permitted and areas in which their use may not be permitted, and set a date by which such designation of all snowmobile use zones on public lands shall be completed. The Order further required that each respective agency head develop and publish regulations prescribing operating conditions for ORVs on the public lands. These regulations are to be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

On May 24, 1977, the President issued Executive Order 11989 which amends Executive Order 11644 by clarifying agency authority to define zones of use by off-road vehicles on public lands.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental Memorandum on May 5, 1972, which is not part 616 of the Departmental Manual providing policies and procedures for implementation with respect to ORV use on Department of Interior lands.

The Chapter is specific in regard to the Order for ORV use and control on Interior lands, and general in regard to bureau operations and implementation. The purpose of the Chapter is to establish general procedures for implementing the Executive Order with respect to all lands under the custody and control of the Department, except Indian lands.

In response to the Departmental Memorandum of May 5, 1972, the National Park Service promulgated 36 CFR 2.34 which, on April 1, 1974, had the effect of closing all National Park System areas to snowmobile use except those specifically designated as open by Federal Register notices or special regulations.

In order to develop a uniform, consistent approach for park managers, a Task Force was established in August 1977, to devise a Servicewide policy on snowmobiles. Its recommendation was incorporated in the *Management Polices* of the National Park Service and placed on general review along with all other policies contained in the manual. That snowmobile policy was published in the February 1978 edition on the *Management Policies.*

III. Applicability to Alaska

The proposed snowmobile policy will apply to parks in the coterminous United States. Snowmobiles are a means of access in the vast roadless areas of Alaska and they are essential in subsistence.

Snowmobile use in Alaskan park areas will be managed under Special Regulations which are currently being developed. A Service policy statement on snowmobile use in Alaskan parks will be reflected in these regulations. This position is reflected in sentence one of the proposed policy.

IV. Perspective

Snowmobiles are viewed as a mode of transportation which provide an alternate form of access when snow cover interrupts normal vehicular access to a park. Snowmobiles can transport park users to and from areas which are set aside for non-motorized forms of winter recreation such as ice fishing, snow shoeing and cross-country skiing.

Snowmobiles provide common sense access through parks to other public or private lands on existing roadways.

While the Service encourages those recreational uses which draw their meaning from association with and direct relation to park resources and which are consistent with the protection

of such resources, certain recreational uses of snowmobiles are not viewed as appropriate in National Parks. These recreational uses include, but are not limited to, skilled machine handling, endurance riding or racing.

This position is reflected in sentence one of the proposed policy.

V. Snowmobile Benefits

More than 14 million snowmobilers in this country derive pleasure from the use of snowmobiles. Although such uses as skilled machine handling, endurance riding, or racing, are some of the uses to which snowmachines are put, those activities have no place in the National Park System. The Service does recognize other benefits of snowmobile use. This position is reflected in the policy by the addition to the first sentence of the word "enjoy" which more fully describes the reasons for snowmobile use in national parks as it is related to the facilitation of other visitor activities.

VI. Planning and Snowmobile Use

The Service recognizes the specifically unique nature of each National Park area. As an integral component of the region which surrounds the National Park area, the Service recognizes the interdependent relationship between the surrounding region and the National Park area. The Statement for Management and the General Management Plan for each park area are developed with respect for the unique nature of the park area and the surrounding region. The issues around snowmobile use must be analyzed during the general management planning process for each park. The opportunity for public involvement in the planning processes is an assurance that public concerns and expectations are given ample consideration. Laws, Executive Orders and Departmental instructions to the National Park Service define the magnitude of park area-level management prerogatives. Within the parameters of these limited management prerogatives, snowmobile use can occur in National Park areas only when it is in harmony with specific management direction. The Service recognizes that there may be instances where snowmobile users desire to use National Park areas when equally desirable opportunities exist on adjacent lands. In these instances, snowmobile use is more appropriate on the adjacent lands which do not have the specific preservation mandate of the National Park Service.

This position is reflected in sentence two of the proposed policy.

VII. Snowmobile Use

The statement, "Snowmobiles shall not be permitted except where designated by the Service when such use is consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives; and will not disturb the wildlife or damage other park resources." is a necessary addition to this policy as it clarifies the conditions under which snowmobile use is permitted within units of the National Park System.

VIII. Interpretation of Executive Order 11644 and 11989

Off-road vehicle use is not regarded as an appropriate use in the National Park System. Therefore, snowmobiles will generally be permitted to operate on those established roads and on frozen water ways where other motor powered vehicles are allowed at other times. In those very limited places where off-road use of snowmobiles is permitted through Special Regulation, the provisions of Executive Order 11644 and 11989 will be enforced.

IX. Nondiscrimination Between Winter Park Users

Conditions under which snowmobile use is permitted are specific. First, routes and water surfaces must be properly designated. This proper designation requires the consideration of public opinion, the approval of the Director of the National Park Service and publication of special regulations in Title 36, Section 7 of the Code of Federal Regulations. Second, while snowmobile use isn't always appropriate, snowmobile use is permitted on routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Thus, no discrimination is made between motorized users of the same designated routes and water surfaces.

X. Deletion

The statement, "Exceptions must be approved by the Director," is an unnecessary addition to the policy in that the Director's approval is required prior to the promulgation of *any* Special Regulation in Section 7 of the Code of Federal Regulations. Snowmobile use is permitted only as a result of a process which involves a myriad of considerations. The Director's approval is one step in this process.

XI. Public Involvement in the Special Regulation Process

The Service recognizes the fundamental need for public involvement in the promulgation of Special Regulations which permit snowmobile use in National Parks. Special instructions for managers are being developed which require meaningful public involvement in the development of such Special Regulations.

This invitation for public participation and review insures the desired input of many opinions on resource impact, need, desirability, location, and intensity of possible snowmobile use in specific National Park areas.

XII. Safety

The proposed snowmobile policy addresses the Service's concern for the safety of snowmobile operators. Snowmobile operator safety, particularly when snowmobile use is permitted on frozen water surfaces, will be addressed in the Special Regulations for each park to clarify that snowmobile operators do so with the permission of the Service but at their own risk.

XIII. Environmental

A final Environmental Impact Statement was prepared in 1978 by the Department of the Interior under the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) as a step in the implementation of E.O. 11644, as amended, pertaining to the use of Off-Road Vehicles on Public Lands. All stipulations of the proposed management policy on snowmobiles are made in consideration of FES 78–5.

The National Park Service has determined that this policy revision, in and of itself, has no environmental impact. The consequence of the policy revision is that snowmobile route designation must be tied to the GMP process. Therefore, when a snowmobile route is proposed for designation, a determination will be made on the environmental impacts of the *specific* route with the context of the *specific* park.

XIV. Proposed Final Revision to NPS Management Policy on Snowmobiles

In the coterminous United States, snowmobiles may be permitted in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities or features of the park in winter. Snowmobiling shall be consistent with the park's Statement for Management, General Management Plan, EIS, applicable laws, Executive Orders, regulations, and departmental policy.

Snowmobiles shall not be permitted except where designated by the Service when such use is consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives; and will not disturb the wildlife or damage other park resources.

Where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons.

Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the CFR (Title 36, Part 1, Section 7).

EFFECTIVE DATE: August 13, 1979.

Remarks: Holders of the National Park Service Management Policies notebook may obtain copies of the revised policy also by writing to the nearest regional office after September 14, 1979. Please specify that you are requesting a copy of the new pages for insertion in the Management Policies notebook.

Mid-Atlantic Regional Office, National Park Service, 143 South Third St., Philadelphia, Pa. 19106.

Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebr. 68102.

National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. 20242.

North Atlantic Regional Office, National Park Service, 15 State Street, Boston, Mass. 02109.

Pacific Northwest Regional Office, National Park Service, 601 Fourth and Pike Building, Seattle, Wash. 98101.

Southeast Regional Office, National Park Service, 1895 Phoenix Blvd., Atlanta, Ga. 30349.

Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colo. 80225.

Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, N. Nex. 87501.

Western Regional Office, National Park Service, 450 Golden Gate Ave., Box 36063, San Francisco, Calif. 94102

William J. Whalen,

Director, National Park Service.

August 3, 1978.

[FR Doc. 79-24832 Filed 8-10-79; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining

Receipt of Permanent Program Submission From the State of Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement ("OSM"), U.S. Department of Interior.

ACTION: Notice of receipt of program submission from the State of Montana and procedures for public participation in review for determination of completeness of submission.

SUMMARY: On August 3, 1979, the State of Montana submitted to OSM its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"). OSM is seeking public comments on the completeness of the State program.

DATES: A public review meeting to disucuss completeness of the submission will be held on September 12, 1979 from 9:00 a.m. to 2:00 p.m. or until all discussion has been completed. Written comments must be received on or before 5:00 p.m., September 12, 1979.

ADDRESSES: The public review meeting will be held at State Capitol, Helena, Montana. The room number will be posted on the day of the hearing. Copies of the full text of the proposed Montana program are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation & Enforcement, Region V, 1823 Stout Street, Denver, CO 80202.

Montana Department of State Lands, 1625 11th Avenue, Capitol Station, Helena, Montana 59601.

Department of State Lands Field Office, 1245 N. 29th Street, Billings, Montana.

Written comments should be sent to: Mr. Donald A. Crane, Regional Director, Office of Surface Mining, 1823 Stout Street, Denver, CO 80202.

Written comments will be available for public review at the OSM Region V Office above, on Monday through Friday, 8:00 a.m.—4:30 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Walker, Assistant Regional Director, Office of Surface Mining, 1823 Stout Street, Denver, CO 80202.

SUPPLEMENTARY INFORMATION: On August 6, 1979, OSM received a proposed permanent regulatory program from the State of Montana. The purpose of this submission is to demonstrate both the State's intent and its capability to assume responsibility for administering and enforcing the provisions of SMCRA and OSM's permanent regulatory program (30 CFR Chapter 7), as published in the Federal Register on March 13, 1979 (44 FR 15311–15463). This notice describes the nature of Montana's proposed program and sets forth information concerning public participation in the Regional Director's determination of whether or not the submission is complete. The public participation requirements for the consideration of a permanent State program are found in 30 CFR 732.11 and 732.12 (44 FR 14326–15327). Additional information may be found under corresponding sections of the preamble to OSM's permanent program regulations (44 FR 14959–14960).

The receipt of the Montana submission is the first step in a process which will result in the establishment of a comprehensive program for the regulation of surface coal mining and reclamation operations and coal exploration in Montana.

By submitting a proposed program, Montana has indicated that it wished to be primarily responsible for this permanent program. If the submission, as hereafter modified, is approved by the Secretary of the Interior, the State of Montana will have primary jurisdiction for the regulation of coal mining and reclamation and coal exploration on non-Federal lands in Montana. If the program is disapproved, a Federal program will be implemented and OSM will have primary jurisdiction for the regulation of those activities.

Before OSM and the Secretary formally begin consideration of the substance of the program, the Regional Director must determine that the submission is complete. If the Regional Director determines the submission to be complete, consideration of the adequacy of the program will begin and the public will be informed of the decision and granted the opportunity to submit comments on the adequacy of the submission. If the submission is determined to be incomplete, the State will be given the opportunity to submit additional material. If the State fails to provide the missing elements, or the submission is otherwise determined to be inadequate, the program will be initially disapproved. After initial disapproval the State may revise the program. If the submitted program is also found to be incomplete after opportunity for supplementing it has passed or is otherwise deficient, the State program will be given a final disapproval, and a Federal program will be implemented.

At this time, OSM is primarily concerned with whether the proposed program constitutes a complete submission. The decision on completeness will be made by Donald A. Crane, Regional Director, OSM Region V. To assist in obtaining information on the completeness of the Montana submission, the Regional Director is requesting written comments from the public and will hold a public review meeting on the issue of completeness.

The public review meeting on completeness will be conducted by the

Regional Director and will be informal. This will provide members of the public, State and OSM opportunity to openly exchange thoughts concerning program completeness outside the more rigid structure of formal public hearing proceedings. Specific format procedures will be at the discretion of the Regional Director.

Written comments may supplement or be submitted in lieu of oral presentation at the public review meeting. All written comments must be mailed or handcarried to the Regional Director's Office above or may be handcarried to the public review meeting at the address above and submitted as exhibits to the proceeding. The comment period will close at the conclusion of the public review meeting or at 5:00 pm on September 12, 1979, whichever is later. Comments received after that time will not be considered in the Regional Director's completeness determination. Representatives of the Regional Director's Office will be available to meet between August 10, 1979 and September 11, 1979 at the request of members of the public to receive their advice and recommendations concerning the completeness of the proposed program.

Persons wishing to meet with representatives of the Regional Director's Office during this time period may place such request with Sylvia Sullivan, Public Information Office, telephone (303) 837-5966, at the Regional Director's Office above.

Meetings may be scheduled between 9:00 a.m. and noon and 1:00 p.m. and 4:00 p.m., Monday through Friday, excluding holidays at the Regional Director's Office.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed Montana program. Under Section 1702(d) of SMCRA (30 U.S.C. Section 1292(d)), approval of State programs does not constitute a major action within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

The following constitutes a summary of the contents of the Montana submission: The Montana Department of State Lands has been designated by the Governor of Montana to implement and enforce the Montana Strip and Underground Mine Reclamation Act in accordance with the Surface Mining and Reclamation Act of 1977 (Pub. L. 95-87). The Department has developed State regulations to carry out the State mandate.

Contents of the State Program Submission include:

1. Montana laws and regulations for surface coal mining and for coal prospecting.
2. Other state laws and regulations affecting coal prospecting and mining in Montana.
3. Chief legal officer's opinion.
4. Governor's letter designating state regulatory authority.
5. Structural organization and coal program duties of the Montana Department of State lands and the Department of Health and Environmental Sciences.
6. Intra-agency agreement regarding Montana's coal program.
7. Narrative description of Montana's coal program.
a. Receipt, review, and decision on permit applications.
b. Assessing fees for permit applications.
c. Bonding procedures and liability insurance.
d. Inspection and monitoring procedures.
e. Enforcement procedures.
f. Administration and enforcement of permanent program performance standards.
g. Assessing and collecting civil penalties.
h. Issuing public notices and holding public hearings.
i. Coordination of permits with other agencies.
j. Consultation with agencies having jurisdiction over fish, wildlife, historic, cultural and archaeologic resources.
k. Designation of lands unsuitable program.
l. Restrictions against financial interests.
m. Training, examination and certification of blasters.
n. Providing for public participation in the State program.
o. Administrative and judicial review of Department of State Lands actions.
p. Small operator assistance programs.
8. Statistical information on Montana's coal mining and prospecting operations:
a. Coal tonnage.
b. Number of mines and mine locations.
c. Acreage for mine permits and prospecting permits.
d. Geographic distribution of Montana coal mining and prospecting areas.
e. Number of permits issued during the last 3 years.
f. Frequency of DSL mine inspections during the interim program.
g. Status of reclamation on surface coal mines and coal prospecting operations.
h. Proposed future coal production and future production areas.
9. Existing and proposed program staffing levels.
10. Description of staffing adequacy.
11. Technical and professional personnel available from other agenices.
12. Budgetary summary for Montana's coal program.
13. Physical resources available for use in Montana's coal program.
14. Other programs administered by the Department of State Lands.

Donald A. Crane,
Director, Region V, Office of Surface Mining.

[FR Doc. 79-24503 Filed 8-10-79; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-11]

Feridun Gunduy, M. D.; Hearing

Notice is hereby given that on January 29, 1979, the Drug Enforcement Administration, Department of Justice, issued to Feridun Gunduy, M. D., Huntington Station, New York, and Bellerose, New York, an Order to Show Cause as the why the Drug Enforcement Administration should not deny Respondent's applications for registration, executed August 12 and August 18, 1977, under Section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, August 28, 1979, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C.

Dated August 7, 1979.

Peter B. Bensinger,
Administrator, Drug Enforcement Administration.

[FR Doc. 79-24504 Filed 8-10-79; 8:45 am]
BILLING CODE 4110-09-M

OFFICE OF THE FEDERAL REGISTER

Availability of U.S. Senate Procurement Regulations

Editorial Note.—The United States Senate Committee on Rules and Administration adopted procurement regulations for the United States Senate on July 26, 1979, which apply to all procurements of personal property and non-personal services with some exceptions. For a copy of these regulations write to: The Chairman, United States Senate, Committee on Rules and Administration, Room 305, Russell Senate Office Building, Washington, D.C. 20510.

BILLING CODE 0000-00

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

August 8, 1979.

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 or 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 of 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.

Agency Clearance Officer—Richard J. Schrimper (Acting)—447-6201

New Forms

Economics, Statistics, and Cooperatives Service
Study of the Distributional Effects of Recent Economic Development on the Rural Population
Single Time
Sample of Households, Establishments, and Governments; 3,072 Responses; 3,072 Hours
Standard—673-7974

Revisions

Agricultural Stabilization and Conservation Service
Application for Dairy Indemnity Payment (7 CFR 760)
ASCS-373
On Occasion
Description not Furnished by Agency; 25 Responses; 13 Hours
Charles A. Ellett—395-5080
*Warehouseman's Report of Space Availability
MP-140
Other (see SF-83)
Processed Commodity Warehousemen; 9,600 Responses; 2,400 Hours
Charles A. Ellett—395-5080

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Revisions

Department of the Army
Application for the U.S. Army Health Professions Scholarship Program
DA 4628
On Occasion
Potentially Eligible Individuals; 3,000 Responses; 3,000 Hours
David P. Caywood—395-6140

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488

New Forms

National Institutes of Health
American Attitudes Toward Abortion
Single Time
Persons 18 Years of Age and Over; 1,600 Responses; 800 Hours
Richard Eisinger—395-3214

Office of Education
Survey of Vocational Needs and Aspirations of Adult Women Offenders
OE 650
Single Time
Incarcerated Females; 500 Responses; 1,260 Hours
Laverne V. Collins—395-3214

Revisions

Center for Disease Control
Birth Defects and/or Genetic Disease Surveillance
On Occasion
Parents, Physicians; 600 Responses; 467 Hours
Office of Federal Statistical Policy and Standard—673-7974

Social Security Administration
Representative Payee Report for Supplemental Security Income
SSA-8190
Annually
Individuals or Institutional Representative Payees; 321,200 Responses; 107,066 Hours
Barbara F. Young—395-6132

Reinstatements

National Institutes of Health
Development of Methodologies for Behavioral Measurements Related to Malocclusion
Single Time
450 Family Units; 1,837 Responses; 1,228 Hours
Office of Federal Statistical Policy and Standard—673-7974

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John T. Murphy—755-5190

New Forms

Policy Development and Research
Social Service Providers Questionnaires for Single Room Occupancy Study
Single Time
Managers and Residents of SRO Housing in 3 Cities; 395 Responses; 197 Hours
Office of Federal Statistical Policy and Standard—673-7974

Questionnaires for Single Room Occupancy Study

Single Time
Managers and Residents of SRO Housing in 3 Cities; 685 Responses; 445 Hours
Office of Federal Statistical Policy and Standard—673-7974

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426-1887

New Forms

National Highway Traffic Safety Administration
Survey of Public Acceptability of Highway Safety Countermeasures
Single Time
U.S. Population 17 and Older; 1,600 Responses; 528 Hours
Susan B. Geiger—395-5867

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—John J. Stanton—245-3064

Reinstatements

State Water Supply Program Recordkeeping and Reporting on Occasion
State Public Water Supply Program; 14,791 Responses; 110,696 Hours
Edward H. Clarke—395-5867

COMMUNITY SERVICES ADMINISTRATION

Agency Clearance Officer—Jack Stoehr—254-5300

MIS Financial Reporting System 285A, 285B, 517, 291, 292A, 292B, 293, and 294
Quarterly
Corporations and Individual Businesses; 800 Responses; 1,050 Hours
Barbara F. Young—395-6132

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Agency Clearance Officer—Wallace Velander—755-3122

Revisions

Report of Government-Owned/Contractor-Held Property
NASA 1018
Annually
Government Contractors; 3,000 Responses; 6,000 Hours
David P. Caywood—395-6140

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312-751-4693

Revisions

*Waiver of Annuity or Pension Under the Railroad Retirement Act
G-129
On Occasion
Retirement Annuitants; 200 Responses; 17 Hours
Barbara F. Young—395-6132

U.S. INTERNATIONAL TRADE COMMISSION

Agency Clearance Officer—Charles Ervin—523-0267

New Forms

Producers: Products Made From Casein, Casein Mixtures and Casein Derivatives
Single Time
U.S. Producers of Products Made From Casein/Casein Derivatives; 100 Responses; 4,000 Hours
Susan B. Geiger—395-5867

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-24091 Filed 8-10-79; 8:45 am]
BILLING CODE 3110-01-M

POSTAL SERVICE

Merchandise Return Service Classification; Negative Declaration

On August 7, 1979, the Board of Governors of the United States Postal Service authorized Postal Service management to file a Merchandise Return Service Classification request with the Postal Rate Commission. In making its determination to file the request, the Board had before it a declaration by Assistant Postmaster General Edward J. McCaffrey that the classification would have no significant effect on the quality of the human environment and a statement of the reasons for Mr. McCaffrey's declaration. The document which appears below is Mr. McCaffrey's declaration and the statement of the reasons on which he based it.

It is the policy of the Postal Service to interpret and administer its governing laws, regulations, and policies in accordance with the policies in the National Environmental Policy Act (NEPA) and NEPA regulations. We do not believe, however, that NEPA applies to this classification proposal, or classification proposals generally, or that this proposal or classification proposals generally constitute major Federal actions as defined by NEPA. Nevertheless, we are publishing in the Federal Register the following negative declaration in order to inform the public fully of our actions.

W. Allen Sanders,
Acting Deputy General Counsel.

Environmental Assessment for Merchandise Return Service

The National Environmental Policy Act (NEPA) directs agencies of the Federal government to include in recommendations or reports for major Federal actions significantly affecting the human environment a detailed statement of the environmental impact of the proposed action. Without taking a position on the applicability of NEPA to this classification proposal, and rates and fees and classification proceedings in general, but in the spirit of the policy enunciated in NEPA, I have studied the possible environmental effects assoicated with changes of the kind and magnitude of those in the Postal Service's request to the Postal Rate Commission for a recommended decision establishing merchandise return as a special service, and I conclude that they will have no significant effect on the human environment. This memorandum constitutes my negative declaration. It states my reasons for finding that the proposed merchandise return service will have no significant effect on the quality of the human environment, and that no environmental impact statement is required.

Under the mandate of the Postal Reorganization Act, the Postal Service is obligated to receive, transmit, and deliver adequately and efficiently, at fair and reasonable rates, written and printed matter, parcels, and like materials and provide such other services deemed appropriate to its functions and in the public interest, while serving as nearly as practicable the entire population of the United States. 39 U.S.C. 403(a). I believe that establishment of the merchandise return service is an important means of serving the public by providing a service which will meet the needs of mail users and recipients of parcels pursuant to 39 U.S.C. 403(b)(2).

Changes in mail classifications and rates and fees do not, in themselves, have a measurable environmental effect. Impacts from postal classifications and rates and fee changes—if they exist at all—are the secondary results of changes in the use of the mails, reflecting the effect of new classifications and rates and fees on mailers. The most visible manifestation of the use of mail services is volume.

Unfortunately, there is no historical precedent on which to base volume projections for the proposed merchandise return service. However, a survey conducted by the Marketing Servcies Division of the Customer Services Department indicates a demand for the service. This study, the summary results of which are contained in Postal Service testimony, focused on those mailers anticipated to be predominant users of the merchandise return service, *i.e.*, major department stores, mail order firms, and special-rate fourth-class mailers. One can safely conclude from the study that Postal Service transactions generated solely by the adoption of the merchandise return service will amount to far less than the originally

estimated 0.03 percent increase in total postal volume attributed to the proposed bulk parcel post restructuring being separately considered in Docket No. MC78-1[1]

This slight increase in special service transactions and in returned-parcel volume may produce some minuscule environmental effects. Much of these effects, however, may be offset by a reduction in transportation use by customers who currently return unwanted parcels to department stores and other mailers at their own expense. Given the option of a merchandise return service, householders and other parcel recipients would no longer be forced to resort to as great a degree on their own automobiles or other methods of transportation to return merchandise; instead, they could rely on the postal system, which has the capacity to absorb easily a small incremental increase in special service transactions and returned-parcel volume.

The possible impact of changes due to the establishment of a merchandise return service is examined primarily from the standpoint of the use of resources: human resources, transportation, energy, materials, and land. Pollution is considered an unwanted byproduct of resource and energy consumption.

Socioeconomic Effects

Even assuming that some recipients of parcels who previously returned them in person would shift to the Postal Service upon implementation of the merchandise return service, the effect upon employment levels would be negligible. This would seem especially true given the standardized procedures for the handling of parcels from the point of origin to destination. Once parcels bearing merchandise return labels entered the mailstream, the vast majority would be processed in the national bulk mail system, currently operating below capacity. However, some increased activity, particularly with respect to window acceptance, may lead to a slight overall increase in localized employment in the long run.

Regional employment and unemployment figures would not change, especially in the short run. Moreover, any possible increase in employment would be geographically dispersed throughout the country. Given that a rise in employment is considered a societal "good," the effect of a slightly increased workload on the human environment would, in fact, be positive. Any increase in employment, however, is highly speculative since the Postal Service has reduced its labor force over the last several years (despite increased mail volume) through increased efficiency and through attrition. Thus, human resource utilization cannot reasonably be expected to change either in intensity or locality to any significant degree due to the establishment of the merchandise return service.

Transportation—Resource Use, Energy, and Pollution

The overall effects—if any—of the proposed merchandise return service on transportation use and, consequently, on resource use and pollution levels would be beneficial. Postal Service transportation mileage could increase to a minor extent in the short run, while mileage accrued by recipients' automobiles and other methods of transportation could decrease to a greater extent. In other words, consolidated and efficient postal transportation of returned parcels will replace to an extent recipients' automobile trips to merchandise distributors. Thus, not only will the use of scarce fuels decrease, but simultaneously, the sum of all immediate corresponding deleterious effects upon our environment will be reduced. Moreover, traffic congestion in downtown urban regions could experience slight relief, as increased numbers of householders and other parcel recipients turn to the postal system for assistance in returning merchandise. Though customers returning parcels may drive to neighborhood post offices or stations, the drive would be shorter than to the stores to which merchandise would be returned.

Even when considered alone, the Postal Service's transportation system would not entail significant environmental change merely in the transportation of a few additional returned parcels. Besides, any effects of a small percentage increase in noise level, air pollution, and fuel consumption would be more than offset by the anticipated decreased use of automobiles by customers. Moreover, any negative effects would be geographically dispersed throughout the country. The diffused effect would tend to occur in intercity travel, where mileage is particularly sensitive to volume changes, but where the environment has a great capacity to absorb pollutants. Since carrier routes are relatively insensitive to changes in mail volume, the marginal impact of increased mileage would be more attenuated in the populated areas where parcels are delivered.

Further environmental effects, while extremely unlikely, could result from the implementation of the merchandise return service. An increased purchase of vehicles for expansion and replacement could become necessary in the long run, but any corresponding effects on the environment would be imperceptible. The Postal Service spends only 0.9 percent of all nationwide money spent on small transportation equipment and accessories, which suggests that small changes in consumption have very negligible environmental ramifications. Furthermore, the increased volume of returned parcels is likely to be very small, and, coupled with the current under-utilization of Postal Service transportation, the likelihood of discernible environmental effects is nil. I conclude that the proposed merchandise return service would result in a net overall positive environmental effect—if any—due to Postal Service transportation use.

Energy, Materials

The Postal Service uses many different goods in providing services to the Nation. Since consumption of any particular good is an extremely small portion of total national consumption of that good, any change in Postal Service consumption of that good cannot sizably affect overall national consumption. The increase in transactions as a consequence of the established merchandise return service may cause trivial changes in the nationwide consumption of certain goods.

In my estimation, the increased use of facilities, paper, and ink could arguably produce some indeterminably inconsequential environmental effects. The energy and fuel required to operate facilities would not increase; mail processing facilities would keep their normal working shifts. There may be some negligible increase in the use of electric power necessary to process the added transactions. Certainly, the figure would fall far short of the 0.002 percent increase in national energy consumption originally projected for the proposed parcel post subclass in Docket No. MC78-1.[2]

The increased paper use would amount to proportionately less than that expected from the adoption of the bulk parcel post proposal presented in Docket No. MC78-1.[2] For each parcel returned, an additional three items of mail would be generated: (1) A letter from the recipient to the shipper expressing a desire to return a parcel; (2) the merchandise-return label sent from the shipper to the recipient upon notification of the desire to return the parcel; and (3) the bottom part of the merchandise return label from the window clerk to post office of destination with indication of charges and then to shipper. However, common sense dictates that with the low volume anticipated from the adoption of the merchandise return service relative to overall volume of mail and services, any increase in paper use would be inconsequential.

Whatever the minute effects produced by increased resource use, these effects would be dispersed over wide areas. In summary, I conclude that the environmental effects—if any—of the merchandise return service on energy and materials would be negligible.

Land Use

The slight increase in transactions and in returned-parcel volume anticipated from the implementation of the merchandise return service can be easily absorbed by the twenty-one existing bulk mail centers and ten auxiliary service facilities, as well as other postal facilities throughout the country. These mail processing centers have the capability of absorbing the small additional increase in transactions and parcel volume that would be generated by merchandise return without expanding in number or size. Thus, no net increase or decrease in land or change in existing land use patterns would result from implementation of the proposed service.

Effect on Alternative Services

Any adverse impact on alternative delivery systems would be negligible. United Parcel Service (UPS), the Postal Service's major parcel competitor, makes no charge for a similar service. Thus the vast majority of firms currently doing business with UPS would have little incentive, if any, to switch

[1] *See* 43 FR 40961 (1978).

[2] *See* 43 FR 40962 (1978) (.170×.03=.0021).

to the postal system, where a 25-cent fee will be required for the service.

Conclusion

In conclusion, I find that as a result of the merchandise return service:

(1) Postal Service national and regional employment levels would not change to a significant extent;

(2) Resource use, energy use, and pollution levels would not be altered to a significant extent due to any change in transportation mileage;

(3) Resource use and pollution would not be increased to a significant extent due to any additional utilization of raw materials;

(4) Existing land use patterns would not be altered. Any increases in the intensity of land use would be insignificant.

Therefore, it is evident that the increase in transactions and in volume generated by the proposed merchandise return service would have no perceptible or significant effect on the Nation's human environment. Even if the detrimental environmental effects of the increase in transactions and returned-parcel volume exceeded the beneficial environmental effects of such increases, the net environmental impact would be dispersed over thousands of facilities and vehicles throughout the Nation, and would constitute an insignificant increment to national totals.

For these reasons I find that the proposed merchandise return service would not significantly affect the quality of the human environment. This constitutes my negative declaration pursuant to 39 CFR 775.5 and 775.14(c) (1978).

Edward J. McCaffrey,

Assistant Postmaster General, Rates and Classification Department.

July 26, 1979.

[FR Doc. 79-24837 Filed 8-10-79; 8:45 am]

BILLING CODE 7710-12-M

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND

Meetings

In accordance with the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following meetings:

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

Place: Washington, D.C., Georgetown University, Hall of Nations, The Edmund Walsh Building (36th Street, N.W., between N and Prospect Streets, N.W.)

Time: Tuesday, August 21, 9 a.m.–10:30 a.m.; Wednesday, August 22, 9 a.m.–6 p.m.; and Thursday, August 23, 9 a.m.–1 p.m.

Proposed Agenda:

I. Briefing Sessions

II. Discussion of issuance of *subpoenas ad testificandum* and *duces tecum*

III. Testimony of Witnesses

The Commission was established by Executive Order 12130 on April 11, 1979, to conduct a comprehensive study and investigation of the accident involving the nuclear power facility on Three Mile Island in Pennsylvania.

On August 20 and part of August 21, 1979, the Commission will meet in closed session for staff briefings on the conduct and status of its investigation, on the presentation of documents and oral testimony at the public hearings, and to discuss issuance of subpoenae for subsequent meetings.

These meetings will be held pending notification and approval by the GSA Administrator.

Except for these designated closed sessions, the meetings are open to the public. Inquiries should be addressed to Barbara Jorgenson (202/653-7677).

August 7, 1979.

Barbara Jorgenson,

Public Information Director.

[FR Doc. 79-24793 Filed 8-10-79; 8:45 am]

BILLING CODE 6820-AJ-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 16074; File No. 4-208]

American Stock Exchange, Inc., et al.; Application Regarding Line Cost Amendment to Intermarket Trading System

August 2, 1979.

In the matter of American Stock Exchange, Inc., Boston Stock Exchange, Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc. and Philadelphia Stock Exchange, Inc., order.

Notice is hereby given that the Securities and Exchange Commission has issued an order approving an amendment to the joint industry plan ("ITS Plan") approved pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act"), governing the implementation and operation of the Intermarket Trading System ("ITS").[1]

I. Background

On November 30, 1978, the participants in the ITS ("Participants")[2] executed an amendment to the ITS Plan establishing a procedure for the allocation among themselves of the costs of leasing various telecommunication lines necesary for the operation of ITS ("Line Cost Amendment").[3]

In connection with implementation of the Line Cost Amendment, the Participants requested that the Commission issue an order approving the amendment, pursuant to Section 11A(a)(3)(B). On May 9, 1979, the Commission published a release describing the Line Cost Amendment and requested a release describing the Line Cost Amendment and requested interested persons to submit comments on the Amendment within thirty days of publication of the release in the Federal Register. This comment period ended June 15, 1979.[4] No comments on the Line Cost Amendment were received by the Commission. The absence of comment might be expected because the principal parties affected by the Amendment, the Participants, agreed to the Amendment before its submission to the Commission.

II Discussion

The ITS plan originally stated that line costs[5] were to be shared by the Participants, but placed no limitation on the amount of line costs to be allocated among the Participants.

Pursuant to the procedure which would be formally established by the Line Cost Amendment, a Participant's share of the line costs will vary each month in relation to the number of messages sent or received by that Participant and the total number of messages sent or received by all Participants. With respect to the initial three lines leased by any Participant, 100% of the costs of these lines will be allocated among all Participants based upon each Participant's percentage of the total number of messages sent or received by all Participants. With

[1] *See* Securities Exchange Act Release No. 14661 (April 14, 1978) 43 FR 17419 and No. 15959 (August 11, 1978) 43 FR 36732.

[2] The Participants include the American, Boston, Midwest, New York, Pacific, and the Philadelphia Stock Exchanges.

[3] Agreement to Amend Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage, dated November 30, 1978, contained in File No. 4-208. The Amendment is set forth in full as Exhibit A to Securities Exchange Act Release No. 15805 (May 9, 1979) 44 FR 22435, 22435.

[4] Securities Exchange Act Release No. 15805 (May 9, 1979) 44FR 22435.

[5] The ITS Plan. [Plan submitted to Securities and Exchange Commission for the Purpose of Creating and Operating on Intermarket Communications Linkage, pursuant to Section 11A(a)(3)(B) of the Act (March 19, 1978)] defines "line costs" as follows:

[T]he total monthly rentals paid to common carriers for lines and associated modems [a modem is a coupling device that facilitates the transmission of machine readable data over telecommunication lines by reformating both incoming and outgoing data] employed in the System's communication network between the Participants, the System's control center and the System's facilities manager, [Securities Industry Automation Corporation] plus any federal, state or local taxes applicable to such rentals.

§ 8(a), ¶4, at 42.

respect to lines four through seven leased by any Participant, 50% of the costs of these lines will be allocated among all Participants based upon each Participant's percentage of the total number of messages sent or received by all Participants and 50% of the costs of these lines will be paid for solely by the Participant leasing these lines. With respect to lines eight and above leased by any Participant, the Participant's cost will be the total cost of leasing these lines.

In light of the Participant's agreement to the Amendment and the absence of comments on the Amendment, the Commission approves the Line Cost Amendment.

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act, that the Line Cost Amendment to the ITS Plan, submitted by the ITS Participants, is approved by the Commission.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79-24869 Filed 8-10-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16086; File No. SR-MSRB-79-8]

Municipal Securities Rulemaking Board, Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule changes as follows:

Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing proposed amendments (hereafter referred to as the "proposed rule changes") to Board rule G-3 on professional qualifications. The proposed rule changes designate the Board's Municipal Securities Principal Qualification Examination (the "Examination") as satisfying the Board's examination requirements for qualification as a municipal securities principal. The proposed rule changes also provide an exemption from the examination requirements for persons entering the municipal securities business as municipal securities principals after December 1, 1975 who were qualified at the time of entry as general securities principals with a registered securities association or in a general supervisory capacity with a national securities exchange, and who have actively performed the functions of municipal securities principals since that time. The text of the proposed rule changes is set forth below.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule changes is as follows:

The purposes of the proposed rule changes are (1) to designate the Examination as satisfying the Board's examination requirements for qualification as a municipal securities principal, and (2) to exempt from the examination requirements certain persons who were qualified as general securities principals or in a general supervisory capacity when they entered the municipal securities business.

Examination Requirements for Municipal Securities Principals

Board rule G-3 generally requires that defined categories of municipal securities professionals, including municipal securities principals, take and pass appropriate qualification examinations. The proposed rule changes provide that, subject to certain exceptions,[1] every municipal securities principal must take and pass the Examination in order to qualify as a municipal securities principal.

Development of Examination

(A) *Establishment and Operation of Advisory Committee.* On January 18, 1978, the Board established the Principal Examination Advisory Committee (the "Advisory Committee") for the purpose of developing the Examination. The Advisory Committee consisted of 9 persons with extensive experience in the securities industry, all of whom have performed the functions of a municipal securities principal or general securities principal over an extended period of time. The Advisory Committee members are associated with securities firms and bank dealers and come from diverse geographic areas. A list of the members of the Advisory Committee and their respective affiliations is set forth below.[2]

In order to assure that the Examination would test knowledge of subjects necessary for the performance of the functions of a municipal securities principal, the Advisory Committee analyzed such functions and developed a detailed outline of subjects based on such analysis. This outline was used as the basis for developing questions for the Examination, as well as for developing the examination specifications (hereafter called the "Examination Specifications"). The Examination Specifications set forth the relative weight to be accorded to each of the subject areas on the Examination and, accordingly, the number of questions from each area to be included on each form of the Examination. The Board intends to use the Examination Specifications in developing a study guide for the Examination.

The Advisory Committee met eight times for a total of sixteen and one-half working days. Representatives of Educational Testing Service of Princeton, New Jersey ("ETS"), the National Association of Securities Dealers, Inc. (the "NASD"), the New York Stock Exchange, Inc. (the "NYSE") and the Board participated in these meetings. At each meeting, members of the Advisory Committee presented draft questions which were discussed and revised as necessary or rejected. In addition to the appropriateness of the questions for the Examination, the Advisory Committee gave attention to the consistency of format and difficulty level of the questions developed by the Advisory Committee.

The Board determined not to pretest the Examination, as it had done with the Municipal Securities Representative Qualification Examination, because the results of a pretest program would not have been statistically meaningful due to the relatively small candidate population.

Description of Examination

The Examination consists of a question bank containing 442 questions approved by the Advisory Committee, an answer key and the Examination Specifications.[3] Each form of the Examination will consist of 100 questions chosen from the question bank in accordance with the Examination Specifications. In order to preserve the validity of the Examination as a means of determining the qualifications of municipal securities principals, the Board is requesting, concurrent with this filing, that the Securities and Exchange Commission (the "Commission") grant confidential

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[1] *See* rule G-3(c) (ii) and (v).

[2] Since the completion of the Examination, the Board has consolidated the Advisory Committee and the examination advisory committee for the Municipal Securities Representative Qualification Examination. In the future, this combined Committee will develop new questions for both examinations.

[3] The Board plans to publish a study guide based on the Examination Specifications which will indicate the weight assigned to major subject categories on the Examination, but does not intend to publish the Examination Specifications.

treatment to the Examination, pursuant to Commission Rule 24b–2.

The proposed rule changes provide that the passing grade on the Examination will be determined by the Board. The Board has determined that the passing grade will be 70 percent, with all questions on each form of the Examination being weighted equally.

Effective Date of Examination Requirements

Under the terms of Board rule G–3(c)(vi), the requirement to take the Examination will become effective six months following the date of first administration of the Examination (the "Effective Date"). A person subject to the examination requirements who presently acts as a municipal securities principal or becomes a municipal securities principal before the Effective Date will be required to take and pass the Examination by the Effective Date in order to continue functioning as a municipal securities principal. A person who intends to become a municipal securities principal on or after the Effective Date will not be able to function as a municipal securities principal without having taken and passed the Examination or obtaining a waiver pursuant to Board Rule G–3(c)(v).

Examination for Certain Persons Qualified Prior to Approval Date

One of the proposed rule changes provides an exemption from the Board's examination requirements for persons who were qualified as general securities principals pursuant to the rules of the NASD or rule 15b8–1 of the Commission or in a general securities supervisory capacity with a national securities exchange on the date they became municipal securities principals, and who continue to function as municipal securities principals until the date of Commission approval of the proposed rule changes (the "Approval Date"). This proposed rule change affects persons who became associated with bank dealers after December 1, 1975 and who were, at the time of such association, qualified in any of the aforementioned capacities, but whose qualification lapsed because they have been associated with a bank dealer for two or more years.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule changes pursuant to the provisions of Section 15B(b)(2)(A) of the Securities Exchange Act of 1934, as amended (the "Act"), which directs the Board to propose and adopt rules which

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless . . . such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

Comments Received From Members, Participants or Others on Proposed Rule Changes

The Board has not solicited or received comments on the proposed rule changes. However, in the course of development of the Examination, the Board received substantial input from the Advisory Committee, representatives of ETS, the NASD and the NYSE. In addition, the proposed exemption for persons who became municipal securities principals after December 1, 1975 and were qualified as general securities principals with the NASD or pursuant to rule 15b8–1 of the Commission or in a general supervisory capacity with a national securities exchange is responsive to concerns expressed orally by members of the municipal securities industry and representatives of the Federal bank regulatory agencies with regard to the status of certain bank dealer personnel. A similar exemption is currently provided in rule G–3 for persons who became municipal securities representatives after December 1, 1975, and were qualified as general securities representatives or general securities principals at the time that they entered the municipal securities business.

Burden on Competition

The Board has concluded that any burden on competition imposed by its professional qualifications rules, including the requirement to take and pass qualification examinations, is necessary and appropriate in furtherance of the purposes of the Act.

Within 35 days of the date of publication of this notice in the Federal Register (September 17, 1978) or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 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 on or before September 4, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 7, 1979.

Text of Proposed Rule Changes [4]

Rule G–3 Classification or Principals and Representatives Numerical Requirements; Testing

(a)–(b) No change.

(c) Qualification Requirements for Municipal Securities Principals.

(i) Except as otherwise provided in this section (c), every municipal securities principal shall take and pass *the Municipal Securities Principal Qualification Examination* [an appropriate qualification examination for municipal securities principals prescribed by the Board by rule] prior to being qualified as a municipal securities principal. *The passing grade shall be determined by the Board.* [Such examination shall test such matters as the Board may deem pertinent.]

(ii) The requirement of paragraph (c)(i) shall not apply to any person associated with a municipal securities broker or municipal securities dealer and who

(A) Was, on December 1, 1975, actively performing the functions of a

[4] *Italics* indicate new language; [brackets] indicate deletions.

municipal securities prinicipal and, during the period from such date to ———— [5] [the effective date of a rule of the Board first prescribing a qualification examination for municipal securities principals] has continuously performed such functions;

(B) On ————, [5] [the effective date of a rule of the Board first prescribing a qualification examination for municipal securities principals] is duly qualified as a general securities principal with a registered securities association or in a general securities supervisory capacity with a national securities exchange; [or]

(C) If the municipal securities broker or municipal securities dealer with which such person is associated is subject to rule 15b8–1 under the Act, is on ———— [5] [the effective date of a rule of the Board first prescribing a qualification examination for municipal securities principals], duly authorized pursuant to rule 15b8–1(a)(1)(i), under the Act to supervise individuals engaged in the activities specifed therein by virtue of having successfully completed a general securities examination for principals prescribed by a registered securities association; *or*

(D) Between December 1, 1975 and ————,[6] became a municipal securities principal, and was, at the time of becoming a municipal securities principal with a registered securities association or in a general securities supervisory capacity with a national securities exchange or duly authorized pursuant to rule 15b8–1(a)(1)(i) under the Act to supervise individuals engaged in the activities specified therein by virtue of having successfully completed a general securities examination for prinicpals prescribed by a registered securities association, and between the time of becoming a municipal securities principal and ————,[6] has continuously performed the functions of a municipal securities principal.

(iii) Any person who ceases to be associated with a municipal securities broker or municipal securities dealer (whether as a municipal securities principal or otherwise) for two or more years at any time after having qualified as a municipal securities principal in accordance with the requirements of paragraph (c)(i) of this rule or being exempted therefrom in accordance with paragraph (c)(ii) of this rule or having compliance with paragraph (c)(i) waived pursuant to paragraph (c)(v) of this rule shall take and pass the *Municipal Securities Principal Qualification Examination* [appropriate qualification examination for municipal securities principals prescribed by the Board] prior to being qualified as a municipal securities principal.

(iv) The requirements of paragraph (c)(i) shall not apply to *any person* [persons] who *is* [are] qualified as *a* municipal securities *representative* [representatives] or general securities *representative* [representatives] or *principal* [principals] and who *becomes* [become] *a* municipal securities *principal* [principals] *on or after,*[7] provided, that such *person* [persons] shall take and pass the *Municipal Securities Principal Qualification Examination* [appropriate qualification examination for municipal securities prinicpals prescribed by the Board] within 90 days after becoming *a* municipal securities *principal* [principals].

(v) The requirements of paragraph (c)(i) may be waived by a registered securities association with respect to a person associated with a member of such association, by the Commission with respect to a person associated with any other municipal securities broker or municipal securities dealer (other than a bank dealer), or by the appropriate regulatory agency with respect to a person associated with a bank dealer, in extraordinary cases in which such person demonstrates extensive experience in a field closely related to the business of such municipal securities broker or municipal securities dealer in municipal securities.

(vi) The requirements of paragraph (c)(i) shall become effective on ———— (six months following the date of the first administration of *the Municipal Securities Principal Qualification Examination*) [a qualification examination for municipal securities principals designated by the Board].

(d)–(h) No change.

Municipal Securities Rulemaking Board

Principal Examination Advisory Committee

Ronald E. Buesinger, A. G. Edwards & Sons, Inc., St. Louis, Missouri.
Willard E. Carmel, McDonald and Company, Cleveland, Ohio.
John B. Clayton, III, First National Bank in Dallas, Dallas, Texas.
Joseph C. Fenner, First National Bank of Chicago, Chicago, Illinois.
Dennis Kelleher, First National Bank of Boston, Boston, Massachusetts.
John H. Mitten, Peoples National Bank of Washington, Seattle, Washington.
Milton Newton, Columbian Securities, Inc., Chicago, Illinois.
Richard O'Brien, Blyth Eastman Dillon & Company, Inc., Baltimore, Maryland.
Allan Pessin, Salomon Brothers, New York, New York.

[FR Doc. 79-24071 Filed 8-10-79; 8:45 am]

BILLING CODE 8010-01-M

[5] The date of approval by the Commission of the proposed rule changes.

[6] The date of approval by the Commission of the proposed rule changes.

[7] The date of approval by the Commission of the proposed rule changes.

[Release No. 34-16085; File No. 600-15]

National Securities Clearing Corporation; Pricing Policy on Processing Listed Transactions

The Commission today sent the following letter to Jack Nelson, President of the National Securities Clearing Corporation ("NSCC"), concerning NSCC's pricing policy on processing listed transaction in NSCC's branch offices:

Mr. Jack P. Nelson,
President, National Securities Clearing Corporation, 55 Water Street, New York, N.Y.

Dear Mr. Nelson: This is in response to the letter dated March 26, 1979 from Robert J. Woldow, Vice President and General Counsel of National Securities Clearing Corporation ("NSCC"), informing the Commission that NSCC is planning to begin installing the processing of transactions in securities listed on national securities exchanges ("listed processing") in its branch offices. In his letter, Mr. Woldow indicates that, rather than developing two fee schedules, one for listed processing and one for the processing of transactions in securities traded in the over-the-counter market ("OTC processing"), NSCC would prefer to impose a surcharge for listed processing in its branch offices. Although not stated in his letter, the purpose of the surcharge would be to create non-geographically mutualized prices until the Commission can respond to the remand in the *Bradford* litigation.[1]

Mr. Woldow also indicates that before imposing the surcharge NSCC would like the Commission to confirm NSCC's understanding of which cost components should be included in that surcharge. Mr. Woldow continues that NSCC believes the "surcharge should consist of the transportation costs [it] incur[s] for both the physical handling of securities in the branches (i.e., courier costs) and for the transmission of data to and from the branch offices (i.e., line costs)." Finally, Mr. Woldow asks that the Commission agree with NSCC that the surcharge need not be filed as a proposed rule change pursuant to Rule 19b–4 under the Securities Exchange Act of 1934.

In addition to Mr. Woldow's letter, in a telephone conversation with the Division of Market Regulation, you requested that the Commission not require NSCC to impose a surcharge on envelope settlement system deliveries between its New York City and its Jersey City offices.

[1] *Bradford National Clearing Corporation v. Securities and Exchange Comission*, 590 F.2d 1085 (D.C. Cir. 1978).

The Commission believes that NSCC's proposal for computing its surcharge should be modified somewhat. The cost of a line connecting a branch office to NSCC's processing center in New York City and the cost of transporting securities outside of New York City are only a portion of the costs of operating a branch office. In addition, there are other costs generated directly at the branch offices, such as rent, salaries and other overhead items, or, where NSCC branch offices are not operated directly by NSCC, but rather by a local bank or other financial institution, contractual fees. The Commission believes that an aliquot portion of these other costs generated at a branch office, not just line and courier costs, should be used in computing NSCC's surcharges.

The Commission also considered whether any additional costs or savings experienced in NSCC's New York City facility as a result of installing listed processing in the branches should be included in its surcharge. The Commission has concluded that NSCC need not do so. The surcharge is a temporary measure that will remain in effect only until the Commission determines its response to the *Bradford* remand. Once that determination is made, NSCC will have to submit a new fee schedule either including or excluding geographically mutualized prices. The Commission believes that to require or permit NSCC, in computing the surcharge, to factor in changes in its New York City costs is likely to involve unnecessary and time consuming cost accounting which would require verification by NSCC's independent public accountants and would delay unnecessarily the installation of listed processing in NSCC's branch offices. At the same time, the Commission recognizes that the proposed formula may not produce a perfect non-geographically mutualized price. On balance, however, the Commission believes that this formula is an appropriate compromise that will permit NSCC to install listed processing in its branch offices quickly and that will produce reasonably accurate non-geographically mutualized prices.

The Commission also believes that NSCC should compute separate surcharges for each branch office rather than a uniform surcharge for its branch office system as a whole. A surcharge based on NSCC's entire branch office system would have the effect of geographically mutualizing prices among NSCC's branch offices and would be inappropriate during the consideration by the Commission of the *Bradford* remand.

Requiring NSCC to base its surcharge on an aliquot portion of the costs generated at a branch office, rather than only line and courier costs, will entail modifying the manner in which NSCC charges for physical and envelope deliveries services outside New York City. In the order approving NSCC's fee schedule (Securities Exchange Act Release No. 15222, October 6, 1978), the Commission required NSCC to charge the actual cost of transportation for physical and envelope services outside of New York City. The Commission believes that adding other costs generated at a branch office to the surcharge would be appropriate at this time in order to assure that the surcharge for physical and envelope delivery services outside of New York City and the surcharge for the processing of listed transactions through branch offices will be computed consistently.

With regard to NSCC's request that its surcharge not be filed as a proposed rule change pursuant to Rule 19b-4, the Commission believes filing is appropriate. Section 19(b) of the Securities Exchange Act of 1934, and Commission Rule 19b-4 thereunder, clearly provide that "dues, fees and other charges" are considered proposed rule changes and must be filed with the Commission. At the same time, Section 19(b)(3)(A) of the Securities Exchange Act provides that dues, fees and other charges can be effective on filing subject to the authority of the Commission to abrogate them summarily within 60 days of their filing. Accordingly, filing the surcharge under Section 19(b)(3)(A) will satsify the requirements of the Securities Exchange Act but will not delay the installation of listed processing in NSCC's branch offices. At the same time, since rule submissions are published in the **Federal Register**, filing will provide an opportunity for public comment.

Finally, in a telephone conversation with the Division of Market Regulation, you gave three reasons why NSCC believes it should not be required to impose a surcharge on envelopes shipped between its New York City office and its Jersey City office. First, you asserted that, since no other clearing agencies offer envelope settlement services in Jersey City, there will be no anticompetitive impact if NSCC does not impose a surcharge. Second, you felt that Jersey City should be considered as part of the New York City metropolitan area and not as a separate branch office and that broker-dealers located in Jersey City are part of the New York City investment community rather than regional broker-dealers. Third, you indicated that due to the low cost of delivering envelopes between New York City and Jersey City the expense required to develop and collect a surcharge may be greater than the income the surcharge will produce.

The Commission will not require NSCC to impose a surcharge on envelopes delivered between its New York City and its Jersey City offices at this time. The Commission believes that the rationale underlying the surcharge—that is, the restriction of geographically mutualized prices outside New York City during the consideration by the Commission of the *Bradford* remand—would not, under the circumstances, be materially undercut by permitting a mutualized price for envelope deliveries between NSCC's Jersey City and New York City participants.

Sincerely,

Harold Williams,

Chairman.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

August 3, 1979.

[FR Doc. 79-24878 Filed 8-10-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16081; SR-OCC-79-2]

Options Clearing Corp.; Order Approving Proposed Rule Change

August 3, 1979.

On February 5, 1979, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change revising the formula used to determine members' clearing fund contributions. Currently, that calculation is based on a $10,000 minimum contribution plus a variable contribution which is a member's proportionate share of a fund which is based on the average daily value of all option contracts maintained in short positions at OCC. Under its proposal, OCC would eliminate the $10,000 minimum contribution. The variable contribution, which would be renamed the required contribution, would be retained but could not be less than $10,000.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15558, February 9, 1979) and by publication in the **Federal Register** (44 FR 10165, February 16, 1979). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies, and in particular, the requirements of Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79-24870 Filed 8-10-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16084; File No. SR-OCC-79-4]

Options Clearing Corp., Self-Regulatory Organization; Proposed Rule Change

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 9, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes procedures for dealing with cash tender offers and other events that create, or threaten to create, shortages of underlying securities. The proposal includes a stated policy regarding the fixing of cash settlement prices and other procedures that OCC proposes to follow in cases where the supply of underlying securities is impaired by a cash tender offer.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to improve OCC's procedures for dealing with cash tender offers and other events that create, or threaten to create, shortages of underlying securities.

When a cash tender offer is made for all or substantially all of the outstanding shares of an underlying security at a significant premium over the current market price, it can be expected that a substantial percentage of the outstanding shares will be tendered. If open interest in call options for the target security is large, a "short squeeze" may develop, in which uncovered call writers find themselves unable to purchase the underlying securities required to be delivered on assignment. Other events, such as exchange offers, may have similar effects.

Options can ordinarily be liquidated by closing transactions in the secondary market, thereby obviating the need for exercise. However, if substantially all of the outstanding shares of a target security were to be tendered, the security might well cease to be traded on its primary market; and if that were to occur, it is highly unlikely that options for that security would continue to be traded. Moreover, even if the secondary market in target security options continued to exist, there could still be no assurance that the volume of call option exercises would not exceed the number of shares available for delivery.

The alternatives presently available to OCC for dealing with short squeezes are unsatisfactory. Under Rule 902(b), OCC has the right to postpone the exercise settlement dates for exercised options. Such a postponement may, depending on the circumstances, be an equitable way of dealing with a temporary shortage of underlying securities, provided that the shortage is of relatively brief duration. However, postponements of exercise settlement dates do nothing to relieve the problems created by a permanent shortage.

OCC also has the right, under Article VI, Section 17 of the By-Laws, to impose exercise restrictions on outstanding option contracts, and ultimately to fix cash settlement prices if necessary. Cash settlement prices do provide a potential solution to the problems resulting from long-term shortages of underlying securities, by providing a vehicle for settlement other than the underlying securities themselves. However, under OCC's present By-Laws, OCC can fix settlement prices only during the ten days preceding an option's expiration. That leaves holders of options with the possibility of having to wait for a period of months before settlement is made. During that period, their investments might well be illiquid, because, for the reasons given above, their options probably would no longer be traded on the secondary market. Moreover, OCC's present By-Laws provide no standards for fixing settlement prices, and it would be difficult to find a satisfactory basis for fixing settlement prices months after the underlying security ceased to be traded.

A. Article VI, Section 19 of By-Laws

Proposed Article VI, Section 19 of the By-Laws is designed to provide a flexible procedure for dealing with shortages of underlying securities. Under that procedure, OCC would impose no exercise restrictions[1] on holders of call options for the target security, or on holders of put options for the target security who were in a position to make delivery on the exercise settlement date. Call option exercises assigned to writers who hold the underlying securities, and put option exercises by holders who are able to deliver the underlying securities, would proceed to settlement in the ordinary course. In order to determine which exercises proceed to settlement in that manner, OCC would utilize a "manual" exercise settlement system, under which settlements would be made directly between the exercising and the assigned Clearing Members, rather than through correspondent clearing corporations. The use of the manual system would permit OCC to identify those Clearing Members who did not meet their delivery obligations, and would minimize the contribution of option exercises to any short squeeze that might exist in the market for the underlying securities (by segregating the option exercise settlement system from the systems for settling other types of transactions in the underlying security).

Holders of put options who would not be able to deliver the underlying securities on the exercise settlement date (and thereby discharge their obligations under the terms of their option contracts) would be prohibited from exercising. However, such holders would retain the ability to liquidate their positions in the secondary market, provided that the secondary market continued to exist.

In those instances where an exercise of a call option is assigned to a writer who is unable to deliver the underlying securities on the exercise settlement date, the settlement obligations of the exercising Clearing Member and the assigned Clearing Member would be suspended until further action by OCC. That action could consist either of fixing a cash settlement price (when OCC had sufficient information to do so), or, if the shortage of underlying securities proved to be temporary (*e.g.*, where a tender offer was withdrawn), requiring the delivery of the underlying securities on a new exercise settlement date.

The specific actions that OCC would take with respect to exercises for which settlement is suspended would necessarily depend on the reason for the shortage of underlying securities and the circumstances of the particular case. However, in order to provide guidance to Clearing Members, the proposed rule change is accompanied by a policy statement setting forth the actions that OCC would propose to take in the event of a cash tender offer (which is the event most likely to precipitate a long-term shortage of underlying securities).

[1] OCC would also request that the Exchanges refrain from imposing such restrictions.

The premise on which OCC's tender offer policy is based is that exercising holders of call options who fail to receive the underlying securities on the regular exercise settlement date should be placed, as nearly as possible, in the same position that they would have occupied had they received the underlying securities in due course.

Such holders cannot be placed in exactly the same position that they would have occupied, because it is impossible to recontruct what any individual holder would have done with the underlying securities after he received them. However, OCC believes that one presumption can fairly be made: *i.e.*, that a holder of a call option who exercised it in sufficient time to tender the underlying securities, had they been delivered by the assigned Clearing Member on the regular exercise settlement date, would have tendered them. OCC's tender offer policy is designed to place such holders in substantially the same position that they would have occupied had they tendered the underlying securities. Accordingly, in the case of a tender offer where all shares tendered are accepted and paid for by the offeror, such holders would be entitled to receive from their assigned Clearing Members a cash settlement price equal to the tender offer price. In the case of a tender offer where fewer than all of the tendered shares are accepted, such holders would be entitled to receive a cash settlement price equal to a weighted average between (i) the tender offer price and (ii) the market value of the underlying security on the first date on which certificates for properly tendered shares that were not accepted by the offeror are released to the tenderors. In cases where a tender offer is withdrawn, and all of the tendered shares are returned (in which event a shortage of underlying securities would no longer exist), such holders would be entitled to receive the underlying securities, at approximately the same time when certificates for the tendered shares were returned to the tenderors.

No presumption can fairly be made regarding holders who exercised at too late a date to tender the underlying securities. Such a holder may have exercised with a view towards selling the underlying securities immediately, or holding them for a fixed period, or holding them indefinitely. In view of those uncertainties, under OCC's proposed tender offer policy, an exercising holder in that category would be entitled to receive a cash settlement price equal to the market value of the underlying securities on the regular exercise settlement date, when the underlying securities should have been delivered.[2] Cash settlement prices would be fixed for holders in that category even in cases where the underlying securities subsequently became available for delivery (*e.g.*, where a tender offer is withdrawn), because OCC believes that it would be unfair to subject such holders to the risk of fluctation in the value of the underlying securities after the regular exercise settlement date, when there can be no assurance that they would have continued to hold the underlying securities during that period.

Under the proposed tender offer policy, settlement prices may be fixed for different classes of exercising holders at different times. Settlement prices would ordinarily be fixed shortly after the regular exercise settlement dates for holders who exercised at too late a date of tender the underlying securities, because the settlement prices payable to those holders would be based on the market value of the underlying securities on their respective exercise settlement dates, and would not be affected by subsequent events. The settlement prices payable to holders who exercised at earlier dates would depend on the outcome of the tender offer, and therefore cannot be fixed until that outcome is determined. Because that might not happen for some period of time, the proposed rule change provides that where settlement obligations are suspended, those obligations will remain in existence until discharged in accordance with OCC's directions, even though the affected series of options may have expired in the interim.

Finally, because of the impossibility of anticipating every possible event or combination of events that may occur in connection with a tender offer, OCC would reserve the discretion to vary its stated policies and procedures in circumstances where it would be inequitable or impractical to apply them in accordance with their terms.

B. Proposed Amendment to Article VI, Section 17 of By-Laws

The proposed amendment to Article VI, Section 17 of the By-Laws is intended to conform the provisions of that Section to new Article VI, Section 19, and to delete provisions regarding the fixing of cash settlement prices that would be made redundant by the provisions on the same subject in new Article VI, Section 19.

[2] The proposed policy provides other bases for fixing settlement prices for such holders in cases where there is no reported market for the underlying security on the exercise settlement date.

The proposed rule change relates to the protection of investors and the public interest, in that it provides fairer and more expeditious procedures for effecting exercise settlements in cases where settlement cannot be made by the delivery of underlying securities on the regular exercise settlement date.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

OCC does not believe that the proposed rule change would impose any burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register (on or before September 17, 1979), or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. 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 on or before September 4, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 3, 1979.

Exhibit 1a.—Text of Proposed Rule Change

New Article VI, Section 19 of By-Laws; Shortage of Underlying Securities

Section 19. (a) If the Corporation shall in its discretion determine that an imminent or pending tender offer, exchange offer, suspension of trading, or other event affecting an underlying security (the "affected security") threatens to reduce the available supply of the affected security to a level insufficient to permit performance of the obligations of all writers of outstanding

call option contracts for the affected security if all such option contracts were to be exercised, then, in addition to any other actions that the Corporation may be entitled to take under the By-laws and the Rules, the Corporation shall be empowered to do any or all of the following:

(1) The Corporation may direct that all exercises of option contracts for the affected security be settled directly between the exercising Clearing Member and the assigned Clearing Member in accordance with the procedures for direct settlements prescribed in Chapter IX of the Rules, rather than through the facilities of correspondent clearing corporations.

(2) The Corporation may prohibit the exercise of put option contracts for the affected security by Clearing Members who will be unable to deliver the underlying securities on the exercise settlement date. If a Clearing Member files an exercise notice for a put option contract at a time when any such prohibition is in effect, and then fails to make delivery of the underlying securities on the exercise settlement date, the purported exercise and any assignment resulting therefrom shall be null and void, and the exercising Clearing Member and the assigned Clearing Member shall be restored to the respective positions that they would have occupied had such exercise notice not been filed. In addition, the exercising Clearing Member shall be subject to disciplinary action by the Corporation and shall be obligated to compensate the assigned Clearing Member for any loss, damage or expense sustained by the latter as a result of the purported assignment.

(3) The Corporation may suspend the settlement obligations of those Clearing Members that are assigned exercise notices in respect of call option contracts for the affected security and are unable to deliver the underlying securities on the regular exercise settlement date fixed pursuant to Chapter IX of the Rules. In the event of any such suspension, the settlement obligations of the exercising Clearing Members shall also be suspended, and the exercised option contracts shall not be settled thereafter except in such manner as the Corporation shall direct pursuant to subsection (b) or (c) hereof.

Any action taken by the Corporation pursuant to this subsection (a) may be continued in effect beyond the respective expiration times of the option contracts affected thereby; provided that a prohibition imposed pursuant to subsection (a)(2) hereof shall not stay or postpone the expiration of any put option contract affected thereby, and neither the Corporation nor any writer shall have any further obligation to the holder of any such put option contract after such expiration. Settlement obligations in respect of exercised call option contracts that have been suspended by the Corporation pursuant to subsection (a)(3) hereof shall remain in existence until such obligations are discharged in accordance with directions issued by the Corporation pursuant to subsection (b) or (c) below, regardless of whether such directions are issued before or after the respective expiration times of the option contracts to which they apply.

(b) If, after taking any action pursuant to subsection (a) hereof, the Corporation shall determine that a sufficient supply of the underlying security has become available to warrant the termination of such action, the Corporation shall promptly terminate such action and notify all Clearing Members thereof. If settlement obligations shall have been suspended pursuant to subsection (a)(3) hereof, the Corporation shall fix a new exercise settlement date for the exercised call option contracts affected by such suspension, on which date the assigned Clearing Members shall be obligated to deliver, and the exercising Clearing Members shall be obligated to receive, the underlying securities covered by such exercised call option contracts; *provided, however,* that if the Corporation determines that it would be inequitable to any class of exercising Clearing Members to require such Clearing Members to accept delivery of the underlying securities, the Corporation shall instead fix cash settlement prices which such exercising Clearing Members shall be obligated to accept, and the Clearing Members to whom their respective exercise notices were assigned shall be obligated to pay, in lieu of delivery of the underlying securities, on the new exercise settlement date.

(c) If, after suspending settlement obligations pursuant to subsection (a)(3) hereof, the Corporation shall determine that there is no reasonable likelihood that a sufficient supply of the underlying security will become available within the foreseeable future to permit the assigned Clearing Members affected by such suspension to discharge their obligations by the delivery of underlying securities, the Corporation shall fix cash settlement prices for the exercised option contracts affected by the suspension, which the assigned Clearing Members shall be obligated to pay, and the exercising Clearing Members shall be obligated to accept, in lieu of delivery of the underlying securities, at a new exercise settlement date or dates to be set by the Corporation.

Interpretations and Policies

One common event that might require application of the foregoing provisions is a cash tender offer for an underlying security. The Corporation has adopted the following policies for dealing with cash tender offers. There may, however, be situations where the application of the following policies would be inequitable or impractical. In those situations, the Corporation will take such actions, consistent with the By-Laws and Rules, as it deems equitable and feasible under the circumstances.

1. *Action under article VI, section 19.* When the Corporation determines that an impending tender offer threatens to create a shortage of underlying securities, the Corporation will ordinarily take all three of the actions provided for in subsection (a) of Article VI, Section 19 of the By-Laws. The Corporation may act before the formal commencement of the tender offer if it appears that the underlying security is already in short supply.

2. *Waiting period.* Action under Article VI, Section 19 of the By-Laws will ordinarily be followed by a "waiting period" to enable the Corporation to monitor the progress of the tender offer and the extent to which open positions in options for the target security are reduced through closing transactions and exercises that proceed to settlement in due course.

3. *Where shortage ceases to exist.* If the tender offer is withdrawn, or if open positions in options for the target security are reduced after its commencement to the point where a shortage of underlying securities no longer appears to exist, the restrictions previously imposed by the Corporation will be terminated. If any exercise settlements had been suspended while the restrictions remained in effect, and cash settlement prices has not previously been fixed for those exercises (see paragraph 6 below), the Corporation would fix a new exercise settlement date for the exercised options affected by the suspension, and would direct that settlement be made on that date either by delivery of the underlying securities against payment of the exercise price, or, in circumstances where the Corporation determined that it would be unfair to require the exercising Clearing Member to accept delivery of the underlying securities (see, *e.g.,* paragraph 5.C(2) below), by

the payment of a cash settlement price fixed by the Corporation.

4. *Where shortage appears to be permanent.* If the Corporation determines that there is no reasonable likelihood that a shortage of underlying securities will abate within the foreseeable future (*e.g.* in the case of a successful cash tender offer for all or substantially all of the target company's outstanding stock), the Corporation will fix cash settlement prices to be paid in settlement of the exercised call option contracts for which settlement had previously been suspended.

5. *Fixing of cash settlement prices.* In fixing cash settlement prices, the Corporation will ordinarily distinguish between those Clearing Members who filed exercise notices in sufficient time to tender the underlying securities, had they been delivered on the normal exercise settlement date, and those who filed exercise notices thereafter. The term "cut-off date," as used below, refers to the latest date when a Clearing Member could have exercised a call option contract and tendered the underlying securities had they been received on the normal exercise settlement date.

The Corporation will generally observe the following policies in fixing settlement prices:

A. *Tender Offers Where All Shares Tendered are Accepted and Paid For.*

(1) Holders of calls who exercised on or before the cut-off date will be entitled to receive the tender offer price.

(2) Holders who exercised after the cut-off date will be entitled to receive:

(a) The market value (see subsection D. below) of the underlying security on the normal exercise settlement date, if a reported market existed for the underlying security on that date; or

(b) The tender offer price, if no reported market existed for the underlying security on the normal exercise settlement date.

B. *Tender Offers Where a Portion of the Shares Tendered are Accepted and Paid For.*

(1) Holders who exercised on or before the cut-off date will be entitled to receive a weighted average of (i) the tender offer price and (ii) the market value of the underlying security on the first date on which certificates for shares properly tendered but not accepted by the offeror are released to the tenderors, the weighting being proportionate to the percentage of tendered shares accepted by the offeror.

(2) Holders who exercised after the cut-off date will be entitled to receive:

(a) The market value of the underlying security on the normal exercise settlement date, if a reported market existed for the underlying security on that date; or

(b) The same settlement price as holders who exercised on or before the cut-off date, if no reported market existed for the underlying security on the normal exercise settlement date.

C. *Tender Offers Where None of the Tendered Shares are Accepted and Paid For.*

(1) Holders who exercised on or before the cut-off date will be entitled to receive the underlying securities on a new exercise settlement date fixed in accordance with Paragraph 3 above.

(2) Holders who exercised after the cut-off date will be entitled to receive:

(a) The market value of the underlying security on the normal exercise settlement date, if a reported market existed for the underlying security on that date (notwithstanding that underlying securities would again be available for delivery); or

(b) The underlying securities, if no reported market existed for the underlying security on the normal exercise settlement date.

D. *Determination of Market Value of Underlying Security.*

If trading takes place in an underlying security on one or more national securities exchanges on an exercise settlement date, the "market value" of the underlying security on that date, for the purpose of fixing a cash settlement price, will ordinarily be the mean between the high and the low sale prices reported for the underlying security for that date on the composite tape. If the underlying security is traded on an exercise settlement date only in the over-the-counter market, its "market value" for the purpose of fixing a cash settlement price will ordinarily be the mean between the hightest "asked" quotation and the lowest "bid" quotation reported on that date for the underlying security, provided that the Corporation considers such quotations to be reliable and representative. However, if the Corporation determines that there are special circumstances that would make the application of the foregoing policies unfair to exercising Clearing Members or assigned Clearing Members, the Corporation may use a different method to determine the market price of the underlying security, or may determine that it is impossible to fix a market value for the underlying security on the date in question. In the latter case, the Corporation will take such action as would be taken if there had been no reported market for the underlying security on the exercise settlement date.

6. *Early Payment of Settlement Price to Some Holders.*

Where a holder of a call option exercises it after the cut-off date, and a reported market exists for the underlying security on the normal exercise settlement date, the exercising holder will be entitled to receive a settlement price based on the underlying security's market value on the normal exercise settlement date regardless of the ultimate outcome of the tender offer (see subparagraphs 5.A.(2)(a), 5.B.(2)(a), and 5.C.(2)(a) above). Accordingly, there will generally be no need to defer fixing settlement prices for those holders until the outcome of the tender offer is known. The Corporation's policy will be to fix settlement prices and establish new exercise settlement dates for those holders at as early a date as possible.

7. *Situations Not Otherwise Provided For.* A. *Exchange Offers*—To the extent that it is feasible to do so, the Corporation will deal with exchange offers in the same manner as tender offers. Where, in the case of a tender offer, the settlement price would be based in whole or in part on the tender offer price, the settlement price in the case of an exchange offer would be fixed (where possible) by reference to the market value of the exchanged securities on the date on which they were first issued in exchange for underlying securities.

B. *Other Situations*—In other situations not provided for above (including suspensions of trading and situations where competing tender offers are made for the same underlying security), settlement prices will be fixed in such manner as the Corporation determines to be equitable in the circumstances.

Proposed Amendment to Article VI, Section 17 of By-Laws

[Settlement when delivery of underlying stock is restricted]

Exercise Restrictions

Section 17. (a) [No change]

(b) Anything in the By-Laws or Rules to the contrary notwithstanding, the Corporation shall be empowered to impose such restrictions on exercises in one or more series of options as the Board of Directors in its judgment deems advisable in the interests of maintaining a fair and orderly market in option contracts or in underlying securities or otherwise deems advisable in the public interest or for the protection of investors. During the effectiveness of any such restriction, no Clearing Member shall, for any account in which it has an interest or for the account of

any customer effect an exercise in contravention of such restriction. Notwithstanding the foregoing, during the ten business days prior to the expiration date of a given series of options, no restriction on exercise may be in effect with respect to that series of options, except *restrictions imposed pursuant to Section 19 of this Article VI on the exercise of put option contracts by Clearing Members who would be unable to deliver the underlying securities on the exercise settlement date.* [that (i) during such ten business day period or thereafter the Board of Directors may restrict the delivery upon exercise of underlying securities not owned by the writer of a call option contract to whom an exercise notice is assigned, in which event the Corporation shall, at the beginning of each business day during which such restriction is in effect, fix a settlement value, if any, for such series of call options, and any writer of call option contracts of that series who is assigned an exercise notice shall, to the extent that he does not own the underlying securities required to be delivered, be obligated to pay, and the holder of a call option contract whose exercise notice has been assigned to such call option contract writer shall be limited to receipt of, the settlement value so determined for the day the exercise notice is assigned; and (ii) during such 10 business day period or thereafter the Board of Directors may restrict the delivery upon exercise of underlying securities now owned by the holder of a put option contract who has exercised such put option contract and in addition may at any time fix a settlement value and require payment or acceptance thereof by any party to the put option contracts (provided that if the imposition of such restriction was based on the suspension of trading in the underlying security, the Board of Directors will fix a settlement value at such time, if any, as the Board of Directors determines that the underlying security has no value).]

[FR Doc. 79-24873 Filed 8-10-79; 8:45 am]

BILLING CODE 6010-01-M

[Release No. 34-16082; File No. SR-PCC-79-1]

Pacific Clearing Corp., Self-Regulatory Organization; Proposed Rule Change

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 9, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change is a Participant's Agreement governing the relationship between Pacific Clearing Corporation ("PCC") and its participants. A copy of the proposed rule change is attached as an Exhibit.

Statement of Basis and Purposes.

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change is designed to govern the relationship between PCC and its participants, and to subject participants to the rules of PCC.

The proposed rule change assists PCC in enforcing compliance by its participants with its rules.

Comments were neither solicited nor received on the proposed rule change.

The proposed rule change does not impose any burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register (September 17, 1979), or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file 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 on or before September 4, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 3, 1979.

Pacific Clearing Corp.

Participant's Agreement

The undersigned hereby makes application to become a Clearing Participant at Pacific Clearing Corporation, hereinafter referred as the "Corporation," and in the event the Corporation accepts the application, in consideration of such acceptance, and in consideration of the Corporation acting on behalf of the undersigned, the undersigned agrees as follows:

1. The undersigned, while a Clearing Participant, will abide by the By-Laws and Rules of the Corporation and will be bound by all the provisions thereof, and the Corporation will have all rights and remedies contemplated by said By-Laws and Rules of the Corporation, as to all transactions, obligations, and matters entered into or incurred while the undersigned is a Clearing Participant.

2. In addition to any other lien provided in the Rules of the Corporation, the Corporation shall have a lien upon any cash, securities, or other property of the Clearing Participant, which is held by the Corporation or Pacific Securities Depository Trust Company ("Depository"), to secure payment by the undersigned of all sums owed to the Corporation or which may become owed by the undersigned to the Corporation. The Corporation may, at its discretion, cause all or any of the securities or other property of the undersigned held by or for it to be sold.

3. The By-Laws and Rules of the Corporation shall be a part of the terms and conditions of every transaction which the undersigned as a Clearing Participant may make or have with the Corporation, and every transaction which the undersigned, while a Clearing Participant, may direct for clearance and settlement to the Corporation.

4. The undersigned, while a Clearing Participant, will be bound by any amendments to the By-Laws and Rules of the Corporation, with respect to any transactions occurring subsequent to the time such amendment takes effect, as fully as though such amendments were now a part of the By-Laws and Rules of the Corporation, provided, however, that no such amendment shall affect the undersigned's right under the By-Laws and Rules of the Corporation to cease being a Clearing Participant, unless before any such amendments become

effective, the undersigned is given an opportunity to give written notice to the Corporation of the undersigned's decision that the Corporation shall cease to act for the undersigned.

5. The undersigned cannot clear or settle through the Corporation any contracts or transactions unless the By-Laws and Rules of the Corporation are a part of the terms and conditions of such contracts or transactions.

6. The undersigned's books and records shall at all times be open to inspection by duly authorized representatives of the Corporation. The undersigned will furnish the Corporation any and all information relating to the undersigned's business and transactions, which the Corporation may require, provided that if the undersigned ceases to be a Clearing Participant, the Corporation will have no right to inspect the undersigned's books and records or to require information relating to transactions which occur after the undersigned has ceased to be a Clearing Participant.

7. In the event of disputes, claims, or controversies between Clearing Participants involving any matter arising out of participation in the Clearing Services offered by the Corporation, the undersigned hereby agrees to submit such disputes, claims, or controversies to arbitration pursuant to and in accordance with any By-Laws and rules of the Corporation requiring such arbitration, and the undersigned will accept the decisions of such arbitration proceedings as final, binding, and conclusive.

8. The undersigned agrees that through its participation as a Clearing Participant, and through its entering into this agreement and carrying out its terms, it does not acquire any right or interest in any of the properties, assets, or profits of the Corporation.

9. Except as otherwise provided, either party may terminate this agreement upon giving ten days written notice to the other. In addition, the Corporation may at any time upon its determination that adequate cause exists, cease to act for the Clearing Participant.

10. Should the undersigned fail or be unable to perform any of its contracts or obligations, it shall immediately inform the Corporation orally and in writing of such failure or inability.

11. The undersigned will pay to the Corporation the compensation provided for by the Rules and fee schedules of the Corporation for all services rendered to the undersigned while a Clearing Participant and such fines as may be imposed in accordance with the By-Laws and Rules of the Corporation for the failure of the undersigned while a Clearing Participant to comply therewith. In addition, the undersigned specifically acknowledges and agrees to abide by and observe the over-deposit requirement contained in the Rules of the Corporation and the requirements contained in the Rules of the Corporation relating to Participants Fund contributions.

12. The undersigned will promptly pay to the Corporation such other amounts as may become payable by the undersigned to the Corporation under the By-Laws, Rules and procedures of the Corporation.

13. The undersigned while a Clearing Participant will maintain such insurance coverage as the Corporation may from time to time require of Clearing Participants.

14. The undersigned while a Clearing Participant will maintain its accounts with the Corporation in compliance with all applicable laws, all rules and regulations thereunder, all rules of the Pacific Stock Exchange (to the extent, if any, applicable to the undersigned), and all provisions of the contracts of the undersigned with its customers, and the maintenance of any account by the undersigned with the Corporation shall constitute the representation of the undersigned to the Corporation that such account has been so maintained.

15. The undersigned recognizes and agrees that in connection with the clearance and settlement of transactions (including stock and cash dividends and stock loan) the Corporation and the Pacific Securities Depository Trust Company ("Depository") perform services for each other and for Clearing Participants. These services, and the rights and responsibilities of the undersigned in connection therewith, shall be governed by the Rules of the Corporation and the rules of the Depository.

16. The undersigned represents and warrants to the Corporation that neither the execution and delivery of this agreement nor any act to be performed pursuant to this agreement by the Corporation or by or on behalf of the undersigned will violate the partnership agreement or the charter or By-Laws, as the case may be, of the undersigned, or any other agreement which is binding upon the undersigned, or any law or regulation of governmental authority.

17. The undersigned may cease to be a Clearing Participant by delivering to the Corporation written notice of its election to do so, specifying the date and time as of which the withdrawal from participation is to become effective (which may not be less than 10 days after the date when the notice is received by the Corporation); provided, however, that the undersigned's contribution to the Participants Fund shall be returned only upon satisfaction of the conditions specified in the Rules of the Corporation.

18. By signing this agreement, the undersigned acknowledges its familiarity with the By-Laws, Rules and procedures of the Corporation and of the Depository.

19. This agreement, if accepted by the Corporation, will become effective on ———— and thereafter continue in full force as long as the Clearing Participant remains as such. The agreement shall be binding upon the parties hereto and their respective successors and assigns.

Dated: ————.

Name of Partnership

Form of execution by partnership

By ————

a General Partner

Name of Corporation

Form of execution by corporation

By ————

President

Attest: ————

Secretary

Accepted as of the date shown above: Pacific Clearing Corporation

By ————

Signature Title

Partnership Acknowledgement

State of

ss:

County of

On the ——— day of ————, 19—, before me came

one of the general partners of the firm of ———— to me known and known to me to be the individual who executed the foregoing agreement, and acknowledged that he executed said agreement in the name and behalf of said firm, pursuant to authority duly vested in him by said firm.

————,

Notary Public.

Corporate Acknowledgement

State of

ss:

County of

On the ——— day of ————, 19—, before me came

to me known and known to me to be the President of ————, and ————, to me known and known to me to be the Secretary of said corporation, and severally acknowledged that as such President and Secretary they signed the foregoing agreement in the name and on behalf of said corporation, and caused the corporate seal of

said corporation to be affixed thereto, pursuant to authority given by the board of directors of said corporation.

———,

Notary Public.

Officer's Certificate

For Corporate Participants

I, ————, the duly elected, qualified and acting Secretary of ————, a corporation organized and existing under the laws of the State of ———— (hereinafter referred to as the "Corporation"), Hereby Certify that:

1. The following is a correct copy of a resolution duly adopted by the board of directors of the Corporation at a meeting thereof legally and regularly called and held on the ——— day of ————, 19—, at which meeting a quorum was present and acting:

Resolved, that the President or any Vice President of the Corporation is authorized to execute and deliver, in the name and behalf of the Corporation, under its corporate seal attested by its Secretary or Assistant Secretary, a Participant's Agreement between the Corporation and Pacific Clearing Corporation, in the form presented to this meeting and hereby approved.

2. Said resolution is still in full force.

3. The executed Participant's Agreement to which this certificate is attached is in the form presented to and approved by the board of directors of the Corporation at the above described meeting.

In Witness Whereof I have subscribed my name and affixed the seal of the Corporation this ——— day of ————, 19—.

———,

Secretary.

[FR Doc. 79-24872 Filed 8-10-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 79-115]

Proposed Amendment to Bridge Permit for Highway I-90 Crossing of Lake Washington; Public Hearing

August 7, 1979.

The Commandant has authorized a public hearing to be held by the Commander, Thirteenth Coast Guard District, at the fourth floor, Federal Building Auditorium, 915 Second Avenue, Seattle, Washington from 1:00 pm to 5:00 pm and from 7:00 pm until all comments have been received, on Tuesday, September 18, 1979. The purpose of the hearing is to consider the application received from the Washington Department of Transportation to amend an existing Coast Guard bridge permit.

The existing bridge permit authorized modification of the present floating bridge to provide for the permanent closure of the drawspan, construction of a new floating bridge across Lake Washington and a fixed span bridge across the East Channel. The fixed span bridge will provide a 65 foot vertical clearance. The new floating bridge will be located adjacent to and north of the existing floating bridge. Under the conditions of the permit, navigation would be accommodated by maintaining access through the existing drawspan and an opening on the new bridge across Lake Washington until *after* the existing fixed span bridge across the East Channel which provides 40 feet of vertical clearance has been removed.

As proposed, the schedule would be as follows:

August 1980: Remove the drawspan of the existing floating bridge and replace it with a fixed pontoon;

September 1981: Complete new East Channel Bridge with a vertical clearance of 65 feet;

September 1981: Remove existing East Channel Bridge which provides a vertical clearance of 40 feet.

All interested parties may present data, views and comments orally or in writing at the hearing concerning the impact of the proposal on navigation. The hearing will be informal. A Coast Guard representative will preside at the hearing, make brief opening statements describing the proposed work and announce the procedures to be followed at the hearing.

Each person who wishes to make an oral statement should notify the Commander (oan), Thirteenth Coast Guard District, Federal Building, 915 Second Avenue, Seattle, WA 98174, by September 14, 1979. Such notification should include the approximate time required to make a presentation. A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of the proposal to amend the bridge permit by submitting their comments in writing on or before October 3, 1979, to the Commander (oan), Thirteenth Coast Guard District. Each comment should state the reasons for any objections or suggestions as to requirements for navigation and the name and address of the persons or organizations submitting the comment.

Copies of all written communications will be available for examination by interested persons at the office of the Commander (oan), Thirteenth Coast Guard District. All comments received will be considered. After the time set for the submission of comments, the Commander (oan), Thirteenth Coast Guard District will forward the record, including all written comments and his recommendations to the Commandant, U.S. Coast Guard, Washington, D.C. 20590. The Commandant will review the case record and make a final determination of issuance or denial of the amendment to the bridge permit application.

(Section 502, 60 Stat. 847, as amended; 33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C); 49 CFR 1.46(c)(10))

K. G. Wiman,

Acting Chief, Office of Marine Environment and Systems.

Dated: August 7, 1979.

[FR Doc. 79-24883 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 133—Airborne Weather and Ground Mapping Pulsed Radar; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C App. I) notice is hereby given of a meeting of the RTCA Special Committee 133 on Airborne Weather and Ground Mapping Pulsed Radar to be held September 11-13, 1979, Bendix Corporation Avionics Division, 2100 62nd Street, N.W. Fort Lauderdale, FL, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Eighth Meeting held May 30 through June 1, 1979; (3) Review Draft Report on Minimum Operational Performance Standards for Airborne Radar Approach and Beacon Systems for Helicopters; (4) Review of European Organization for Civil Aviation Electronics Working Group Three Comments on Draft Report; (5) Review Initial Draft Report on Minimum Operational Performance Standards for Weather and Ground Mapping Pulsed Radar; (6) Discussion on Color Standardization Data for Inclusion in Weather Radar Standards; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 7, 1979.

Karl F. Bierach,

Designated Officer.

[FR Doc. 79-24816 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 136—Installation of Emergency Locator Transmitters (ELT) in Aircraft; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App I) notice is hereby given of a meeting of RTCA Special Committee 136 on Installation of Emergency Locator Transmitters (ELT) in Aircraft to be held September 6-7, 1979, in Building 8 Auditorium, NASA Goddard Space Flight Center, Greenbelt, MD, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourth Meeting held April 24-26, 1979; (3) Working Group Reports; (4) Discussion on Proposed Changes to RTCA Document DO-168, "Minimum Performance Standards—Emergency Locator Transmitters Operating on 121.5 and 243.0 Megahertz"; (5) Working Groups Meet in Separate Sessions; (6) Committee Plenary Session; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 6, 1979.

Karl F. Bierach,

Designated Officer.

[FR Doc. 79-24817 Filed 8-10-79; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

Removal of Prohibition on the Importation of Tuna and Tuna Products from Costa Rica

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

ACTION: General Notice.

SUMMARY: This notice is to advise that under the Fishery Conservation and Management Act of 1976 ("the Act"), the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has notified the Secretary of the Treasury that the reasons for the imposition of a prohibition on the importation of tuna and tuna products from Costa Rica no longer prevail.

EFFECTIVE DATE: The prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Costa Rica is removed effective August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry, Examination, and Liquidation Branch, Duty Assessment Division, Office of Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

Section 205(a)(4)(C) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, *et seq.*) provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the United States. The responsibility for this certification was delegated to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs by Department of State Delegation of Authority No. 138 of April 29, 1977.

Pursuant to section 205(b) of the Act, upon receiving the certification, the Secretary of the Treasury is required to take such action as may be necessary and appropriate to prohibit the importation of all fish and fish products from the fishery involved.

Section 205(c) of the Act provides that if the Secretary of State finds that the reasons for the import prohibition under section 205 no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove the import prohibition.

On February 16, 1979, a notice was published in the Federal Register (44 FR 10171) advising that under section 205(a)(4)(C) of the Act, on February 6, 1979, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs certified to the Secretary of the Treasury that two United States fishing vessels, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, were seized by Costa Rica as a consequence of a claim of jurisdiction which is not recognized by the United States. Under the authority of sections 205 (b) and (c) of the Act, on February 9, 1979, the Secretary of the Treasury determined that the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Costa Rica was prohibited until the Department of State notified the Secretary of the Treasury that the reasons for this prohibition no longer prevailed.

On July 5, 1979, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs informed the Secretary of the Treasury that the reasons for the imposition of the import prohibition on tuna and tuna products no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Costa Rica is removed.

Drafting Information

The principal author of this document was Laurie Strassberg Amster, Regulations and Legal Publications Division, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Treasury Department participated in its development.

Dated: August 2, 1979.

Richard Davis,

Assistant Secretary of the Treasury.

[FR Doc. 79-24859 Filed 8-10-79; 8:45 am]

BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1979 Rev., Supp. No. 2]

American Fidelity Fire Insurance Co.; Surety Companies Acceptable on Federal Bonds

Correction

In FR Doc. 79-24201, appearing in the issue of Monday, August 6, 1979, on page 46015, company name in the heading should have appeared as set forth above.

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Notice No. 142

Aug. 2. 1979.

MC 1824 (Sub-98TA), filed July 3, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Thomas M. Auchincloss, Jr., 918 16th St., NW., Washington, DC 20006. *Foodstuffs,* in vehicles equipped with mechanical refrigeration, between Baltimore, MD, the District of Columbia, New York, NY, points in Frederick, Anne Arundel, Howard, Prince Georges, Washington and Baltimore Counties, MD, DE, NJ, Nassau, Suffolk and Westchester Counties, NY, VA and PA, for 180 days. An underlying ETA seeks 90 days. Applicant does intend to tack this authority with authority it presently holds in MC 1824. Supporting shipper(s): There are 8 supporting shippers. Their statements may be examined at Headquarters or at the office listed below. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 2835 (Sub-41TA), filed May 4, 1979. Applicant: ADIRONDACK TRANSIT LINES, INC., 18 Pine Grove Ave., P.O. Box 1758, Kingston, NY 12401. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St. NW., Washington, D.C. 20004. Common, regular route, Passengers and their baggage, and express and newspapers in the same vehicle with passengers, between Saranac Lake, NY and Tupper Lake, NY, from Saranac Lake, NY over NY Highway 3 to Tupper Lake, NY and return over the same route, serving all intermediate points, for 180 days. An underlying ETA seeks 90 days authority. Applicant request authority to interline at New York, Kingston, Albany, and Glens Falls, NY and to tack this authority with authority it presently holds in No. MC 2835. Supporting shipper(s): There are 14 supporting shippers to this application on file at the Springfield, MS Field Office. Send protests to: District Supervisor David M. Miller, 338–342 Federal Building, 436 Dwight Street, Springfield, MA 01103.

MC 3854 (Sub-53TA), filed July 5, 1979. Applicant: BURTON LINES, INC., P.O. Box 11306, E. Durham Stat., Durham, NC 27703. Representative: G. E. Martin, Jr. (same as above). *Common Carrier—* Regular Routes; *Air conditioning supplies and equipment* from the facilities of Bahnson at or near Winston-Salem, NC to points in FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bahnson-Envirotech, 1001 S. Marshall St., Box 10458, Winston-Salem, NC 27108. Send protests to: District Supervisor Price, 800 Briar Creek Rd., Rm CC516, Charlotte, NC 28205.

MC 8535 (Sub-91TA), filed July 3, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same as above). *Walkboard, fibreboard, pulpboard, or strawboard* from Cicero, IL to points in IN, KY, NY, OH and PA, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): G. B. Bundy, Boise Cascade Corporation, P.O. Box 2885, Portland, OR 97208. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 10875 (Sub-52TA), filed June 19, 1979. Applicant: BRANCH MOTOR EXPRESS COMPANY, 114 Fifth Avenue, New York, N.Y. 10011. Representative: G. G. Heller (same address as applicant). Common carrier, *regular routes: General commodities, except those of unusual value, household goods as defined by the Commission, Classes A and B explosives, commodities in bulk or requiring special equipment,* serving Hanover, PA, as an off-route point to applicant's regular routes; for 180 days. Applicant request authority to interline at all points where applicant presently interlines with connecting carriers and tack this authority with authority it presently holds in No. MC–10875 and Subs. Supporting shipper(s): There are eleven (11) shippers supporting this application. Their statements may be examined at the office listed below and headquarters. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 24784 (Sub-32TA), filed July 5, 1979. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. *Building, roofing and insulation materials (except iron and steel articles and commodities in bulk),* from the commercial zone of Kansas City, MO to points in IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Certain-Teed Products Corp. I.G. Group, P.O. Box 860, Valley Forge, PA 19482; G.A.F. Corp., 7600 Truman Road, Kansas City, MO 64126; Mid-America Asphalt, Inc., 4900 Blue Parkway, Kansas City, MO 64130. Send protests to: John V. Barry, D/S, ICC, Room 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 31675 (Sub-20TA), filed April 16, 1979. Applicant: NORTHERN FREIGHT LINES, INC., Suite 102, Bldg. 7, Woodlawn Green, Charlotte, NC 28234. Representative: Garland V. Moore, P.O. Box 34303, Charlotte, NC 28234. *Glass containers, one gallon or less in capacity,* from Atlanta, GA to Ridgeway, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Glass Container Corp., 1301 S. Keystone Ave., Indianapolis, IN 46203. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd.—Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 31675 (Sub-21TA), filed April 26, 1979. Applicant: NORTHERN FREIGHT LINES, INC., Suite 102, Bldg. 7, Woodlawn Green, P.O. Box 34303, Charlotte, NC 28234. Representative: Garland V. Moore (same as applicant). *Cast iron pipe, pipe fittings and related articles, plastic pipe, fittings and related articles* from the facilities of Charlotte Pipe and Foundry Company at Charlotte, NC and Bakers, NC to points in the US in and east of ND, SD, NE, KS, and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Charlotte Pipe & Foundry Company, P.O. Box 4430, Charlotte, NC 28204. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 31675 (Sub-22TA), filed May 24, 1979. Applicant: NORTHERN FREIGHT LINES, INC., Suite 102, Bldg. 7, Woodlawn Green, Charlotte, NC 28234. Representative: Garland V. Moore, P.O. Box 34303, Charlotte, NC 28234. *Fiberboard boxes and bottle carrying cartons, other than corrugated, knocked down flat* from Stone Mountain, GA to Rocky Mount, NC and Ringgold, VA, for 180 days. Supporting shipper(s): Container Corporation of America, P.O. Box 1225, Stone Mtn., GA 30086. Send protests to: Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 31675 (Sub-23TA), filed June 20, 1979. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Garland V. Moore (same as above). *Iron or steel articles* from facilities of Southwestern Ohio Steel, Inc., Butler Cy, OH to points in AL, AR, FL, GA, IL, IN, KY, LA, MI, MO, MS, NC, SC, TN, VA, and WV, for 180 days. Supporting shipper(s): Southwestern Ohio Steel, Inc., 903 Belle Ave., Hamilton, OH 45012. Send protests to: Terrell Price, 800 Briar Creek Rd-Rm CC516, Charlotte, NC 28205.

MC 34975 (Sub-14TA), filed June 25, 1979. Applicant: TREDWAY'S EXPRESS, INC., 512 Myrtle Avenue, Boonton, NJ 07005. Representative: Edward F. Bowes, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. *Department store merchandise.* From applicant's facilities at East Windsor, NJ to Christiana Mall, Christiana, DE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bamberger's, 131 Market Street, Newark, NJ 07101. Send protests to: Joel Morrows, D/S, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

MC 44735 (Sub-43TA), filed June 18, 1979. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th Street, Kansas City, MO 64126. Representative: William B. Barker, Jandera and Gregg, 641 Harison Street, Topeka, KS 66603. *Iron and steel articles,* from Butler, WI to points in IA, IL, and MO. Supporting shipper(s): Butler Structural Steel, Inc., 4450 North 127th Street, Butler, WI 53007. Send protests to: Vernon V. Coble, I.C.C. D/S, Room 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 45194 (Sub-24TA), filed June 15, 1979. Applicant: LATTAVO BROTHERS, INC., P.O. Box 6270, Canton, OH 44706. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215. *Iron and steel articles,* from the facilities of Republic Steel Corporation located at Canton, Cleveland, Elyria, Massillon, Niles, Warren and Youngstown, OH to points in IN; and from the facilities of Jones & Laughlin Steel Corporation located at or near Cleveland, OH, to points in IN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones & Laughlin Steel Corp., 3341 Jennings Rd., Cleveland, OH 44109. Republic Steel Corp., P.O. Box 6778, Cleveland, OH 44101. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620 Phila., PA 19106.

MC 52614 (Sub-11TA), filed June 18, 1979. Applicant: R. S. POWELL, INCORPORATED, P.O. Box 338, Madison Heights, VA 24572. Representative: Morton E. Kiel, Suite 1832 2 World Trade Center, New York, New York 10048. Contract—irregular: Gypsum and gypsum products and materials and supplies used in the installation and distribution of gypsum products (except commodities in bulk), from the plant site of Georgia-Pacific Corporation at or near Wilmington, DE, to points in KY and TN on and east of Interstate Highway 75, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Sidney T. Mackenzie, Assistant Gypsum Transportation Manager, Georgia-Pacific Corporation, Gypsum Division, 1062 Lancaster Avenue, Rosemont, PA 19010. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 85934 (Sub-107TA), filed June 21, 1979. Applicant: MICHIGAN TRANSPORTATION COMPANY, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Gypsum and gypsum products and building materials and such materials* and supplies as are used in the manufacture, installation and distribution of the aforementioned; from the plant site of United States Gypsum Company in River Rouge, MI to points in IL, IN, OH and PA. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Gypsum Co., 101 S. Wacker Drive, Chicago, IL 60606. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 94265 (Sub-309TA), filed June 22, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Frozen foodstuffs,* from the facilities of Southern Frozen Food, Division of Seabrook Foods, Inc., at or near Montezuma, GA to all points in AL, AR, CT, DE, DC, FL, IL, IN, KS, KY, LA, MD, MA, MI, MS, MO, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VA, WV and WI, for 180 days. Any underlying ETA seeks 90 days authority. Supporting shipper(s): Southern Frozen Foods, Division of Seabrook Foods, Inc., P.O. Box 306, Montezuma, GA 36106. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 107515 (Sub-1259 TA), filed June 14, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Marc A. Pearl, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Citrus products and juices, not canned or frozen,* from the facilities of Tropicana Products, Inc., Manatee County, FL, to points in AZ, CA, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Tropicana Products, Inc. P.O. Box 338, Bradenton, FL 33506. Send protests to: T/A Sara K. Davis, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta GA 30309.

MC 107515 (Sub-1258 TA), filed June 12, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE, Atlanta, GA 30326. *Refined sugar (except in bulk)* from Reserve and Kenner, LA to points in AL, AR, FL, GA, IL, IN, IA, KS, KY, MS, MO, NE, NC, OH, OK, SC, TN, TX, WV, VA and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Godchaux-Henderson Sugar Company, Inc., P.O. Drawer AM, Reserve, LA 70084. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtreee St., NW., Rm. 300, Atlanta, GA 30309.

MC 109154 (Sub-18 TA), filed March 15, 1979. Applicant: BAYLOR

TRUCKING, INC., R. R. 1, Milan, IN 47031. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., Indianapolis, IN 46204. *Plumbing supplies and accessories* (1) from Plainview, NY to points in IN, OH and Detroit, MI and (2) from Monroe, OH to points in AZ, CA and NM for 180 days. Supporting shipper: Powers Fiat Corporation, 1 Michael Court, Plainview, NY 18803. Send protests to: Beverly J. Williams, Transportation Assistant; ICC. 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 109324 (Sub-41 TA), filed June 19, 1979. Applicant: GARRISON MOTOR FREIGHT, INC., P.O. Box 1278, Harrison, AR 72601. Representative: Jay C. Miner (same address as applicant). Underlying ETA seeks corresponding authority for 90 days. *General commodities* (Except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) between Memphis, TN and Kansas Gity, MO., serving no intermediate points, as an alternate route for operating convenience only in conjunction with carrier's authorized regular-route operations between Memphis, TN and Kansas City, MO: from Memphis over Interstate Hwy 40 to junction Interstate Hwy 55, then over Interstate Hwy 55 to junction U.S. 63, then over U.S. Hwy 63 to Cabool, MO, then over U.S. Hwy 60 to Springfield, MO, them over MO Hwy 13 to junction MO Hwy 7, them over MO Hwy 7 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Kansas City and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Garrison Motor Freight, Inc., P.O. Box 1278, Harrison, AR 72601. Send protests to: William H. Land, Jr., DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 111545 (Sub-288TA), filed June 21, 1979. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road SE., Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065 *(1) Plastic pipe, tubing, fittings and connections and (2) materials, supplies and accessories used in the manufacturing and installation of (1) above (except commodities in bulk in tank vehicles)* between Cleveland, OH, Stone Mountain, GA, Sun Valley, Bakersville and Santa Ana, CA, on the one hand, and, on the other, points in CA and points in and east of MN, IA, NE, KS, OK and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): R & G Sloane Mfg. Co., 7606 N. Clybourne Ave., Sun Valley, CA 91352. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 113475 (Sub-35TA), filed May 1, 1979. Applicant: RAWLINGS TRUCK LINES, INC., P.O. Box 831, Emporia, VA 23847. Representative: Richard J. Lee, Suite 1222, 700 E. Main Street, Richmond, VA 23219. *Iron and steel articles,* from the facilities of U.S. Steel Corp. located at or near Fairless, Dravosburg, Homestead, Duquesne, Clairton, McKees Rocks, Johnstown, McKeesport and Vandergrift, PA; Lorain, Cleveland and Youngstown, OH; to points in VA, NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Steel Corporation, 600 Grant Street, Room 568, Pittsburgh, PA 15230. Send protests to: Charles F. Myers, DS, ICC Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 113475 (Sub-34TA), filed March 12, 1979. Applicant: RAWLINGS TRUCK LINE, INC., P.O. Box 853, Emporia, Virginia 23847. Representative: Harry J. Jordan, Esquire, 1000 16th Street NW., Washington, D.C. 20036. *Iron and steel and iron and steel articles,* from facilities of Wheeling-Pittsburgh Steel Corporation at Canfield, Martins, Ferry, Mingo Junction, Steubenville, and Yorkville, OH; Allenport and Monessen, PA; Beech Bottom, Benwood, Follansbee, and Wheeling, WV, to destinations, in the states of CT, MD, NJ, NY, PA, and VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wheeling-Pittsburgh Steel Corporation, P.O. Box 118, Pittsburgh, PA 15230. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, Va. 23240.

MC 119384 (Sub-33TA), filed June 25, 1979. Applicant: MORTON TRUCK LINES, INC., 101 W. Willis Ave., Perry, IA 50220. Representative: Robert R. Rydell, 1020 Savings and Loan Bldg., Des Moines, IA 50309. *Meats, meat products, meat by-products, articles distributed by meat packinghouses, and such commodities as are used by meat packers in the conduct or their business, as defined in Appendix I, Sections A, C and D to the Commission's report in Descriptions in Motor Carriers Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* between the facilities of Lauridsen Foods, Inc. located at or near Britt, IA and the facilities of Armour & Company located at or near Mason City, IA, on the one hand, and points in MN, WI, MI, OH, IN, IL, MO, KS, and NE on the other for 180 days. Restricted to the transportation of shipments originating at the above-name origin and destined to the indicated destinations. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85079. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 119704 (Sub-3TA), filed May 18, 1979. Applicant: R. A. HARRIS & SONS, INC., 3501 22nd Street, Menominee, MI 49858. Representative: Dennis R. Harris, 3501 22nd Street, Menominee, MI 49858. Contract Carrier; Irregular Routes; Polyethylene Liner Item 20489 Sub 4; from Oconto, WI to points in MI, IL, MN KY, IA and OH. Applicant intends to tack and interline. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wisconsin Film & Bag, Inc., P.O. Box 259, Oconto, WI 54153. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 120364 (Sub-23TA), filed May 31, 1979. Applicant: A & B FRIEGHT LINE, INC., 2800 Falund St., Rockford, IL 61109. Representative: Robert M. Kaske (same address as applicant). General commodities, except Class A & B explosives, household goods as defined by the Commission, commodities in bulk, and those commodities requiring the use of special equipment between Monroe and Brodhead, WI and northern IL territory it is authorized to serve. Supporting shipper(s): Six Supporting Shippers. Send protests to: Dave Hunt, T/A, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 123194 (Sub-10TA), filed June 11, 1979. Applicant: Enterprise Truck Line, Inc., 1336 West 15th Avenue, Gary, IN 46406. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. *Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses, retail and chain department stores and drug stores* from the facilities of Boyle-Midway located at/near Chicago, IL to points in IN and MI, for 180 days. An underlying ETA was granted for 90 days' authority. Supporting shipper(s): Boyle-Midway, 5151 West 73rd Street, Chicago, IL 60638. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 123294 (Sub-67TA), filed April 27, 1979. Applicant: WARSAW TRUCKING CO., INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Paper and paper products,*

from the facilities of Olinkraft, Inc., at or near Owosso, MI to points in IL, IN and OH, for 180 days. Supporting shipper(s): Olinkraft, Inc., P.O. Box 488, West Monroe, LA 71291. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 125894 (Sub-12TA), filed April 26, 1979. Applicant: J & R SCHUGEL TRUCKING, INC., 301 North Water Street, New Ulm, MN 56073. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Inedible sugar, in bulk,* from Mooreton, ND to points in NE, IA, MN, IL and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Distributing Corporation, 4240 Utah, St. Louis, MO 63116. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 128235 (Sub-23TA), filed July 5, 1979. Applicant: AL JOHNSON TRUCKING, INC., 1516 Marshall, Northeast, Minneapolis, MN 55413. Representative: Earl Hacking, 1700 New Brighton Boulevard, Minneapolis, MN 55413. *Malt beverages, in containers, and mineral water, in bottles, in cases,* from Milwaukee, WI to Minneapolis, MN, for 180 days. Supporting shipper(s): Mark V11 Sales, Inc., 81 St. Anthony Boulevard, Northeast, Minneapolis, MN 55418. Send protests to: District Supervisor, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 128555 (Sub-34TA), filed July 11, 1979. Applicant: MEAT DISPATCH, INC., 2103 17th St., East, Palmetto, FL 33561. Representative: Robert D. Gunderman, Esq., 710 Statler Bldg., Buffalo, NY 14202. *Contract carrier*—Irregular route: *Foodstuffs* (except in bulk) and *materials, supplies and equipment used in the manufacture, sale or distribution* thereof (1) from Atlanta, GA and points in its commercial zone to points in FL, NC, SC and AL; (2) from Merced and North Hollywood, GA and Rochester, NY to Atlanta, GA and points in its commercial zone; (3) from Manchester, NY to points in IL, MI and WI restricted to the transportation of traffic transported under a continuing contract or contracts with Ragu' Foods, Inc., and originating at or destined to the facilities of Ragu' Foods, Inc. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ragu' Foods, Inc., 33 Benedict Place, Greenwich, CT 06830. Send protests to: Donna M. Jones, T/A, ICC-BOp, Monterey Bldg., Room 101, 8410 N.W. 53rd Ter., Miami, FL 33166.

MC 128685 (Sub-28TA), filed July 2, 1979. Applicant: DIXON BROS., INC., P.O. Drawer 8, Newcastle, WY 82701. Representative: Floyd E. Archer, P.O. Box 1794, Sioux Falls, SD 57101. *Cement,* in bulk, from Trident, MT to Sheridan, WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mullinax Concrete, Inc., Box 2044, Sheridan, WY 82801. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Rm 105 Federal Bldg & Crt House, 111 South Wolcott, Casper, WY 82601.

MC 133194 (Sub-8TA), filed June 29, 1979. Applicant: WOODLINE MOTOR FREIGHT, INC., P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr. (same address as applicant). Common carrier, regular route. *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (A) from Springdale, AR over U.S. Hwy 68 West to Siloam Springs and from Siloam Springs over U.S. Hwy 59 North to Noel, MO and return over the same route, serving all intermediate points; (B) from Bentonville, AR over U.S. Hwy 102 West to Decatur, AR to U.S. Hwy 59 North to Noel, MO and return over the same route, serving all intermediate points; (C) from Bentonville, AR over U.S. Hwy 72 to Gravette, AR to U.S. Hwy 59 North to Noel, MO and return over the same route, serving all intermediate points; (D) from Alma, AR over U.S. Hwy 71 North to Bentonville, AR, and return over same route, serving all intermediate points, for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shippers(s): Approximately 8 supporting shippers. Send protests to: William H. Land, Jr., DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 134534 (Sub-11TA), filed July 9, 1979. Applicant: BASTERRECHEA DISTRIBUTING, INC., 341 Colorado, Gooding, ID 83330. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Blincoe's Magic Valley Packing Co., located at or near Gooding, ID to Reno and Sparks, NV and the commercial zones thereof, Ogden and Salt Lake City, UT and the commercial zones thereof and points in CA, for 180 days. Supporting shipper(s): Blincoe's Magic Valley Packing Co., Box 89, Gooding, ID 83330. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 135455 (Sub-2TA), filed June 1, 1979. Applicant: LESLIE G. BOOMGARDEN, AN INDIVIDUAL, d.b.a. SQUARE DEAL TRUCKING, 1931 Dean St., Des Plaines, IL 60018. Representative: Margie Market, 305 Van Buren St., Marengo, IL 60152. *Contract carrier, irregular routes, bank protection equipment, drive-up windows, mechanized file systems, safes, safety deposit boxes, vaults* between Chicago, IL on the one hand, and on the other, points in MI, OH, ND and SD for the account of Diebold, Inc. for 180 days. An E.T.A. has been granted for 90 days. Supporting shipper(s): Diebold, Inc., 6398 W. 74th St., Chicago, IL 60638. Send protests to: Dave Hunt, T/A, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 135524 (Sub-26TA), filed July 12, 1979. Applicant: G. F. TRUCKING COMPANY, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. *Railway car or locomotive wheels, iron or steel, loose or mounted on axles, with or without bearings,* between the facilities of Griffin Wheel Company at or near Keokuk, IA, on the one hand, and, on the other points in OH and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Griffin Wheel Co., Div. of Amsted Industries, Inc., 200 West Monroe St., Chicago, IL 60606. Send protests to: D/S, I.C.C., 101 N. 7th St., Philadelphia, PA 19106.

MC 135575 (Sub-1TA), filed July 5, 1979. Applicant: J. BRUCE LITTLEFIELD, d.b.a. B. LITTLEFIELD & SONS, Lower Main St., North Berwick, ME 03906. Representative: Cole & Daughan, Post Rd., Wells, ME 04090. Contract: Irregular: *Such commodities as are used in the manufacture of jet engines requiring specialized equipment and handling* between North Berwick, ME on the one hand and points in CT on the other. Supporting shipper(s): Pratt & Whitney Aircraft Group, United Technologies Corporation, 400 Main St., East Hartford, CT 06108. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, 76 Pearl St. Rm. 303, Portland, ME 04101.

MC 135714 (Sub-7TA), filed June 7, 1979. Applicant: PAK MOVING, INC., 601 Highway 12 (POB 249), Suisun, CA 94595. Representative: Walter H.

Walker, III, Handler, Baker & Greene, 100 Pine Street, Suite 2550, San Francisco, CA 94111, PH (415) 986-1414. Common carrier, regular routes: general commodities with restrictions against transporting freight having immediately prior or subsequent movement by air. Between all points and places in the San Francisco territory, as described in Note A, below, on the one hand, and, on the other hand, all points in the following routes, all of which are wholly within California: 1. U.S. Highway 101, between San Francisco and Crescent City; 2. Interstate 80 between San Francisco and Vallejo; 3. State Highway 29 between Vallejo and junction with State Highway 20 at Upper Lake, then over State Highway 20 to junction with State Highway 53, then over State Highway 53 to junction with State Highway 29 at Middletown; 4. State Highway 116 between Petaluma and Schellville; 5. State Highway 12 betyween Santa Rosa and Napa; 6. State Highway 20 between Willits and Fort Bragg. Supporting shipper(s): Lifschultz Fast Freight, Inc., 1770 3rd ST. CA, JML Freight, Inc., 3050 Teagarden St., San Leandro, CA 9457. East Texas Motor Freight Operation, 1607 Powell Emeryville, CA 94608. Send protests to: A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

Note A.—San Francisco Territory: San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of an paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning, for 180 days. An underlying ETA seeks 90 days authority.

MC 136315 (Sub-83TA), filed July 12, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Lumber* between the facilities of Holder-Northern Lumber Sales, Inc. Located in Davidson County, TN, on the one hand, and on the other, points in the United States in and east of TX, OK, KS, NE, SD and ND (except ME, VT and NH), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Holder-Northern Lumber Sales, Inc., 5705 New York Ave., Nashville, TN 37209. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 13625 (Sub-7TA), filed June 22, 1979. Applicant: CUFURAY, LTD., Rt. 1, Box 333, Delavan, WI 53115. Representative: David Purcell, 111 E. Wisconsin Ave., Milwaukee, WI 53202. Contract carrier; irregular routes; *Scrap metal* from facilities of Del Monte Corp. at or near Plover, WI to Gary, IN under a continuing contract(s) with Del Monte Corp., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Corp., P.O. Box 89, Rochelle, IL 61068. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 136814 (Sub-7TA), filed June 26, 1979. Applicant: MATLOCK TRANSPORTATION, INC., 1988 W. Valley Blvd., Colton, CA 92324. Representative: Richard C. Celio. *Contract-* Irregular: *(1) Magazines, publications and printer material, and (2) Materials and supplies used in the manufacturing and distribution of those commodities named in (1),* between points in Michigan and on the one hand, and, on the other points in the United States, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Look Magazine, Inc., 150 E. 58th St., New York, NY 10022. Send protests to: Irene Carlos, T/A, I.C.C., P.O. Box 1551, Los Angeles, CA 90053.

MC 138265 (Sub-3TA), filed June 28, 1979. Applicant: W. A. BARNES TRUCKING CO., INC., Route 2, Box 234-D-1, Prince George, VA 23875. Representative: Calvin F. Major, Attorney at Law, 200 West Grace Street, Suite 415, Richmond, VA 23220. Contract-irregular: *Iron and Steel articles, i.e., flat sheets and coils,* from Allenport, Aliquippa, Failess Hills, Irwin and Philadelphia, Pa., Sparrows Point, MD, and Yorkville, OH to the facilities of Hon Industries near Chester, VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hon Industries (The Hon Company), Chester, VA 23831. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 138875 (Sub-218TA), filed June 27, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as above). *Metal Stands* from Chicago, IL to Boise, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hewlett-Packard Co., 11311 Chinden Blvd., Boise, ID 83704. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 139395 (Sub-6TA), filed June 20, 1979. Applicant: BULK TRANSIT CORP., 7177 Industrial Pkwy., Plain City, OH 43064. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Lime, limestone, and lime products, in bulk,* from Mason County, KY to points in IL, IN, OH, PA, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dravo Corp., 1 Oliver Plaza, Pittsburgh, PA 15222. Send protests to: D/S, ICC, 101 N. 7 St., Philadelphia, PA 19106

MC 141094 (Sub-1TA), filed May 16, 1979. Applicant: ACME TRUCKING, INC., 1298 Thurston Dr., Columbus, OH 43227. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. (1)

Fiberglass materials and products, fibrous glass mineral wool products, fiberglass textile materials, fiberglass textile products, and plastic material and products; and (2) *equipment, materials, and supplies used in the installation or erection of such commodities,* between the plant sites of Owens Corning Fiberglass Corp. at Obetz and Newark, OH, on the one hand, and on the other, points in IL, IN, IA, FL, KY, MI, MN, MO, NJ, NY, OH, PA, WV, WI, and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fiberglass Corporation, Fiberglass tower, Toledo, OH 43659. Send protests to: DS/ICC, Room 620, Philadelphia, PA 19106.

MC 141804 (Sub-244TA), filed July 2, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Paper and paper products,* from the facilities of Appleton Paper, Inc., at or near Appleton and Combined Locks, WI and destined to points in AZ, CA, CO, ID, MT, NV, OR, UT, NM, WA, and WY, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Appleton Papers Inc., 825 E. Wisconsin Avenue, Appleton, WI 54912. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 141914 (Sub-58TA), filed June 13, 1979. Applicant: FRANKS & SON, INC., Route 1, Box 108–A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). *Paper and paper products,* from Dummerston, Bellow Falls and Putney, VT, to points in the United States, except CA, CO, FL, GA, IA, KY, MD, OH, SC, TN, TX, UT, & VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Putney Converting Corporation, Putney, VT 05346. Send protest to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

Notice No. 143

August 3, 1979.

MC 117940 (Sub-314TA), filed February 27, 1979 and published in the Federal Register issue of April 23, 1979 republished as corrected this issue. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Canned goods from Picket, WI to points in KS, MI, MO, OH and PA, restricted to traffic originating at named origin and destined to named destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naas Foods, Inc., P.O. Box 1029, Portland, IN 47371. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Bldg. & U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401. The purpose of this republication is to reflect the destination Michigan in lieu of Minnesota.

Republication: Noticed in the Federal Register issue of June 9, 1979 and republished as corrected this issue. MC 120181 (Sub-16TA), filed April 20, 1979. Applicant: MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077. Representative: Ralph Howard (address same as applicant). Hats, caps, containers, container closures, glassware, packaging products, container components, and scrap materials, and materials, equipment and supplies used in the manufacture, sale and distribution of the commodities, except commodities in bulk, in tank vehicles, and those which because of size and weight require the use of special equipment, between Alton, IL, Toledo, OH, Shreveport, LA and AL, AR, GA, IL, IA, KS, KY, LA, MI, MN, MS, MO, NE, NC, OH, OK, SC, TN, TX, VA, WV and WI, for 180 days. An underlying ETA seeks 90 days authority. *The previous publication inadvertently omitted the territorial authority sought. Supporting shipper(s): Paramount Cap Mfg. Co., Bourbon, MO 65441, Libbey Glass, 940 Ash St., Toledo, OH 43693. Send protests to: P. E. Binder, DS, ICC, Room 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 141921 (Sub-35TA), filed January 9, 1979, published in the Federal Register of February 6, 1979 and republished this issue. By decision entered May 1979, the Motor Carrier Board granted Sav-On Transportation, Inc., Manchester, NH, 180-day temporary authority to engage in the transportation of frozen meat, over irregular routes, from Fremont, NE and points within its commercial zone, to Buffalo, NY and points within its commercial zone. John A. Sykas, 143 Frontage Road, Manchester, NH 03108, for applicant. Any interested person may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto.

MC 42040 (Sub-4TA), filed April 24, 1979 and noticed in the Federal Register issue of and republished as corrected this issue. Applicant: AMBER DELIVERY SERVICE INC., 25 Franklin St., Malden, MA 02148. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. *Common carrier:* irregular routes: *general commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) limited to individual shipments not exceeding 500 pounds* between all points in CT, ME, NH, NY, MA, RI and VT for 180 days. Supporting shipper(s): RCA Corp., Burlington, MA, Data General, Westboro, MA, Microwave Associates, Burlington, MA, The Foxboro Co. Foxboro, MA, Gould Inc., Andover, MA and GTE International Sys. Corp., Waltham, MA. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114. *The purpose of this republication is to show the correct authority sought.

Republication: MC 146071 (Sub-8TA), filed April 19, 1979 and published in the Federal Register issue of June 19, 1979 and republished as corrected this issue. Applicant: DEETZ TRUCKING, INC., P.O. Box 2, Strum, WI 54770. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. (1) *gates, corn cribs, grain bins, feed boxes, water troughs, portable augers, front-end loading attachments, and parts and attachments used in farming and agricultural industries, except machinery and commodities, which because of size or weight require special equipment,* from the plantsite and storage facilities of Sioux Steel Co., at or near Hull, IA and Lennox and Sioux Falls, SD to points in North Dakota, South Dakota, Minnesota, Wisconsin, Montana, Iowa, Illinois, Nebraska, Kansas, Missouri, and Colorado; and (2) *materials, supplies, and equipment used in the production and manufacturing of the commodities described under Part (1) above,* from the destination states named in Part (1) above, to the plantsite and storage facilities of Sioux Steel Co., at or near Hull, IA and Lennox and Sioux Falls, SD. Supporting shipper: Sioux Steel Co., 196½ East Sixth St., Sioux Falls, SD 57101. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146360 (Sub-6TA), filed April 18, 1979. Applicant: FLOYD SMITH, JR. TRUCKING, INC., 5303 Valle Grande, Meridian, ID 83642. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Frozen potato and vegetable products and frozen fruits,* from the facilities used by Idaho Frozen Foods at

or near Nampa and Twin Falls, ID and Clearfield, UT to points in AL, FL, GA, NC, SC and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Idaho Frozen Foods, P.O. Box 128, Twin Falls, ID 83301. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146451 (Sub-1TA), filed April 20, 1979. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circle, N.E., Dothan, AL 36302. Representative: William K. Martin, P.O. Box 2069, Montgomery, AL 36103. Authority sought to operate as a common carrier by motor vehicle, over irregular routes, transporting: (A) Tobacco, tobacco products and tobacco display materials, from the facilities of Bayuk Cigars, Inc., at or near Dothan, AL, to all points and places in VA, MD, NJ, PA, NY, RI, MA, OH, IL, MO, MI, IN, TN, UT, AZ, CA, DC and AL (except in AL only to Mobile). (B) tobacco, tobacco products and tobacco display materials, from the facilities of Bayuk Cigars, Inc., at or near Selma, AL, to all points and places in VA, MD, NJ, PA, NY, RI, MA, OH, IL, MO, MI, IN, TN, UT, AZ, CA, DC and AL (except in AL only to Mobile and the Bayuk Cigars, Inc. facilities at or near Dothan). (C)(1) Materials equipment, and supplies used in the manufacturing of tobacco and tobacco products and in the assembling of tobacco display materials, from all points in and east of ND, SD, NE, KS, OK, TX and (2) damaged, rejected or unsaleable tobacco and tobacco products, from all points and places in VA, MD, NJ, PA, NY, RI, MA, OH, IL, MO, MI, IN, TN, VT, AZ, CA, DC and AL (except in AL only from Mobile), to the facilities of Bayuk Cigars, Inc. at or near Dothan and Selma, AL, and (3) Materials and supplies used in packaging and distribution of tobacco products from all points including and east of ND, SD, NE, KS, OK, and TX, to the plants at or near Dothan and Selma. An underlying ETA seeks 90 days authority. Supporting shipper: Bayuk Cigars, Inc., 2150 South Andrews Avenue, P.O. Box 6000, Ft. Lauderdale, FL 33310. Send protests to: Mabel E. Holston, T/A, ICC, RM. 1616-2121 Bldg., Birmingham, AL 35203.

MC 146701 (Sub-4TA), filed April 2, 1979, and noticed in the Federal Register of June 19, 1979 and republished as corrected this issue. Applicant: WEAVER TRUCKING CO., INC., P.O. Box 45, Eton, GA 30724. Representative: Archie B. Culbreth, Suite 202—2200 Century Pwy., Atlanta, GA 30345. Contract Authority: *Aluminum hydrate* (except in bulk) from Chatsworth, GA, to points in FL, IL, IN, MN, MO and TN, under a continuing contract(s) with North Georgia Minerals and Chemicals, Inc., Chatsworth, GA, for 180 days. An underlying ETA seeks 90 days authority. The purpose of this republication is to correctly state the commodity. Supporting shipper: North Georgia Minerals and Chemicals, Inc., Holly St., Chatsworth, GA 30705. Send protests to: Sara K. Davis, TA, 1252 W. Peachtree St. NW, ICC—Rm 300, Atlanta, GA 30309.

MC 146751 (Sub-1TA), filed April 9, 1979. Applicant: J. C. LAWRENCE TRUCKING, INC., P.O. Box 5331, Lake Station, IN. Representative: Fred H. Daly, 2550 M Street NW., Washington, D.C. 20037. (1) Iron and steel and (2) iron and steel articles. From the facilities of United States Steel Corporation located at or near Gary, IN; Chicago, Joliet and Waukegan, IL, to points in AL, GA, MS and TN. Restriction: Restricted to the transportation of traffic originating at the above-named origins and destined to the above-named destinations. An underlying ETA seeks 90 days authority. Supporting shipper: United States Steel Corp., 100 East 80th Place, Merrillville, IN 46410. Send protests to: Annie Booker, TA, Rm. 1386, 219 S. Dearborn, Chicago, IL 60604.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-24821 Filed 8-10-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: August 7, 1979.

In our decisions of July 24 and 31, 1979, an 8-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level. As indicated in the prior decisions, further upward changes were not contemplated until the Commission's weekly fuel index exceeded this 8-percent figure.

Although the weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 8.6 percent, we are authorizing at this time an 8.5 percent surcharge on all owner-operator traffic and on all truckload traffic whether or not owner-operators are employed. All owner-operators are to receive compensation at this 8.5 percent level.

We are expecting additional information shortly from the motor carriers on their percentage of fuel expense to total revenue for truckload traffic. The present surcharge on this traffic is based on a 16.9 percentage of fuel expense to total revenue figure. There have been numerous complaints that this figure is too high. If the statements to be received indicate that this is the case, an appropriate adjustment to the surcharge will be made. In addition, because the surcharge is becoming exceedingly high, we are examining conversion alternatives. Many complaints have been received that the general rate structure is becoming somewhat distorted with this high a surcharge level.

For these reasons and those stated in the July 31 decision, no change will be made in the existing authorization of a 2.7 percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators and an 8.5 percent surcharge is authorized on truckload and all owner-operator traffic.

In addition, we have received numerous inquiries concerning certain household goods movements where inbound movements to storage occurred before a surcharge adjustment, but movements out of storage occurred afterwards. The historic Commission position is that the rate in effect on the date a given shipment begins is the binding rate. See, e.g., *Transcontinental Freight Co.* v. *Director General* 62 I.C.C. 127 (1921). Under the provisions of the Household Goods Carrier Bureau's fuel surcharge tariff, the dates of movement into and out of storage command application of rates. This is contrary to the principle stated above. However, given the circumstances of the fuel emergency and the ownership-operator crisis, we will permit the outbound movement from storage to destination to move under the new surcharge if the shipper has requested the storage and if the shipper receives notice from the carrier that a different rate may apply.

Notice of this decision shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered: This decision shall become effective Friday at 12.01 a.m., August 10, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum and Gaskins.

Agatha L. Mergenovich,

Secretary.

August 6, 1979.

Appendix.—Fuel Surcharge

Base Date and Price Per Gallon (Including Tax)

January 1, 1979 ..... 63.5¢

Date of Current Price Measurement and Price Per Gallon (Including Tax)

August 6, 1979 ..... 95.6¢

Average Percent: Fuel Expenses (Including Taxes) of Total Revenue

(1) From transportation performed by owner operators (apply to all truckload traffic)—16.9%. Percent surcharge 8.6%.

(2) Other (including less-truckload traffic)—6.0%.[1] Percent surcharge—3.0%.

[FR Doc. 79-24818 Filed 8-10-79; 8:45 am]

BILLING CODE 7035-01-M

[Rule 19; Ex Parte No. 241; Exemption No. 169]

Exemption Under Provision of Mandatory Car Service Rules

Because of delays to general service freight cars on railroads in Mexico, these railroads have made arrangements with U.S. railroads to return empty general service freight cars at gateways different from which the loaded car moved enroute to Mexico. This empty movement through these gateways means the empties being returned are out of route and are handled by U.S. Railroads which did not participate in the loaded movement of the car.

In order to assist these U.S. railroads in expediting the turnaround movement of these cars, the four U.S. railroads receiving these empty cars from Mexican railroads have greed to accept these cars at any gateway and will be permitted to load these cars one time without regard to Car Service Rules 1 and 2.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19:

(a) The Atchison, Topeka and Santa Fe Railway Company; Missouri Pacific Railroad Company; Southern Pacific Transportation Company; and The Texas Mexican Railway Company are authorized to accept from shippers general service freight cars described in paragraph (b) owned by other railroads and which have been returned empty out of route from Mexican railroads, regardless of the provisions of Car Service Rules 1 and 2.

(b) The exemption is applicable to general service freight cars bearing reporting marks assigned to railroads listed in the Official Railway Equipment Register, ICC RER 6410-B isued by W. J. Trezise, or successive issues thereof as having the following mechanical designations:

Plain boxcars: "XM", "XMI"

Gondola Cars: "GA", "GB", "GD", "GH", "GS", "GT"

Hopper Cars: "HFA", "HK", "HM", "HMA", "HT", "HTA"

Flat Cars: "FM", less than 200,000 lb. capacity

It is further ordered, That:

(c) This exemption shall not apply to cars of Mexican or Canadian ownership or to cars subject to Interstate Commerce Commission or Association of American Railroads' Orders requiring return of cars to owners.

Effective: July 25, 1979.

Expires: September 30, 1979.

Issued at Washington, D.C. July 25, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-24820 filed 8-10-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC 130]

Special Report by Motor Carriers of Freight Concerning Practices Affecting Owner-Operators

Decided: August 6, 1979.

A petition was filed with the Commission on July 30, 1979, by the Steel Carriers' Tariff Association, Inc., requesting a 30-day extension for the filing of comments on a proposed special report designed to elicit certain information relating to motor carrier practices affecting owner-operators. The proposed report, the subject of this proceeding, was published in the Federal Register on July 9, 1979. The notice permitted public comment on the proposal within the 30 days following the proposal's July 9 publication in the Federal Register.

The Steel Carriers' Tariff Association, Inc., requests the due date for comments be extended from August 8, 1979, to September 7, 1979. The association's petition merely shows that compliance with the August 8 filing would have proved an inconvenience to the association. Thus, the request for a 30-day extension has not been justified. However, since the Commission is anxious to consider pertinent comments on the proposal, the deadline for filing comments will be extended to and including August 20, 1979, and the association's petition is granted to that extent.

Notice of this decision shall be served on petitioner, and be given to the general public by delivering a copy to the Director, Office of the Federal Register, for publication therein.

By the Commission, Chairman O'Neal

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-24813 Filed 8-10-79; 8:45 am]

BILLING CODE 7035-01-M

Decision; Petitions for Service Orders

July 31, 1979.

The Texas Wheat Producers Association has petitioned for two service orders, and the Texas Department of Agriculture has petitioned for one service order involving furnishing of grain cars suitable for hauling grain, restricting the number of grain cars in unit-grain trains, and placing a large percentage of jumbo covered hopper cars in grain service.

The two railroads serving most of the wheat harvest area in West Texas are The Atchison, Topeka and Santa Fe Railroad Company and the Chicago, Rock Island and Pacific Railroad Company. Both of these railroads have a low percentage of jumbo covered hopper cars in unit-grain train service. No evidence has been presented to indicate that these railroads are furnishing a disproportionate share of jumbo covered hopper cars to the terminal elevators instead of the country grain elevators.

The Iowa Department of Transportation filed a petition in opposition to these service orders, and stated they are opposed to any car service order which restricts the number of cars which a railroad may utilize for unit trains or for grain movements.

It is ordered: The petition to issue these service orders entitled Distribution of Covered Hopper Cars and Distribution of Grain Cars is denied.

By the Commission, Chairman O'Neal, Commissioners Stafford, Gresham, Clapp, Christian, Trantum. Commissioner Gaskins absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-24819 Filed 8-10-79; 8:45 am]

BILLING CODE 7035-01-M

[1] The change from 7.5% to 6.0% is the result of additional input received in accordance with the Commission's Decision of June 29, 1979.

Sunshine Act Meetings

Federal Register
Vol. 44, No. 157
Monday, August 13, 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

COPYRIGHT ROYALTY TRIBUNAL.

TIME AND DATE: 10 a.m., Thursday, September 6, 1979.

PLACE: Vanguard Building, 1111 20th Street NW., room 460, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Whether, after giving claimants the opportunity to appear and present arguments, the Copyright Royalty Tribual should declare a controversy concerning the distribution of cable royalty fees:

(a) For the period from January 1 through June 30, 1978.

(b) For the period from July 1 through December 31, 1978.

This is pursuant to 17 U.S.C. 111(d)(5)(B), which requires that after the first day of August the Copyright Royalty Tribual shall determine whether there exists a controversy concerning the distribution of cable royalty fees.

2. Whether the Copyright Royalty Tribual may accept cable claims not timely filed during the month of July as required by 17 U.S.C. 111(d)(5)(A).

FOR MORE INFORMATION CONTACT: Douglas Coulter, Chairman, Copyright Royalty Tribual (202) 653-5175.

Douglas Coulter,

Chairman, Copyright Royalty Tribunal.

[S-1601-79 Filed 8-9-79; 11:13 am]

BILLING CODE 1410-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Friday, August 10, 1979.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special Closed Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item Number, and Subject

Hearing—1—Request for Immediate Grant or for Interim Operating Authority in the Las Vegas, Nevada, television proceeding (Docket Nos. 19519, 19581).

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this item.

Additional information concerning this matter may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: August 7, 1979.

[S-1606-79 Filed 8-9-79; 3:28 pm]

BILLING CODE 6712-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 6, 1979; 44 F.R. 46096.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., August 8, 1979.

CHANGE IN MEETING: Addition to the agenda meeting of August 8, 1979.

Item Number, Docket Number and Company

CP-6(A). RP72-6 and RP76-38 (Storage), et al., El Paso Natural Gas Co. and CP76-87, CP77-289 and CP78-172, El Paso Natural Gas Co.

CP-6(B). RP72-6 and RP76-38 (Storage), El Paso Natural Gas Co. and CP76-87, CP77-289 and CP78-172 (J&R Issues), El Paso Natural Gas Co.

CP-7. CP78-256, Algonquin LNG, Inc., Algonquin Gas Transmission Co.

CP-8. CP75-140, et al., Pacific Alaska LNG Co., et al.

M-15. RM79- , Final Rule Amending Subpart H of Part 271 on Stripper Well Natural Gas and Amendments to Section 274.206 of the Interim Regulations.

[S-1605-79 Filed 8-6-79; 2:45 pm]

BILLING CODE 6450-01-M

4

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, FR page 45818, August 3, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., August 9, 1979.

PLACE: 1700 G Street, NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin D. Bolling (202-377-6677).

CHANGES IN THE MEETING: The following item has been added to the agenda for the open meeting:

Request for Permission to Incur Debt—Financial Corporation of America, Budget Capital Corporation, Los Angeles, Calif.

The following item has been withdrawn from the agenda for the open meeting:

Insurance of Accounts—Southside Savings & Loan Association, Austin, Tex.

No. 263, August 9, 1979.

[S-1607-79 Filed 8-9-79; 3:48 pm]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., August 16, 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:

Branch Office Application—Olmsted Federal Savings & Loan Association, Rochester, Minn.

Branch Office Application—First Federal Savings & Loan Association of Eau Claire, Eau Claire, Wis.

Application for Bank Membership—Attleborough Savings Bank, Attleboro, Mass.

Applications for Bank Membership and Insurance of Accounts—County Savings & Loan Association, Santa Barbara, Calif.

Application for Insurance of Accounts—Balcones Savings Association, San Marcos, Tex.

Application for Amendment to Resolution—Heritage Savings & Loan Association of Elk City, Elk City, Okla.

Application for Preliminary Conversion to a Federal—Piedmont Savings & Loan Association, High Point, N.C.

Application for Permission to Organize a New Federal Association—Robert E. Cassagne, et al., Kenner, La.

Application to Increase Accounts of an Insurable Type Merger—Telford Savings &

Loan Association, Telford, Pa. INTO Red Hill Savings & Loan Association, Red Hill, Pa.

Application for Permission to Convert to Federal Chartered Stock Form—East-West Federal Savings & Loan Association, Los Angeles, Calif.

Application for Permission to Convert to Federal Chartered Stock Form—Valley First Federal Savings & Loan Association, El Centro, Calif.

Application for Permission to Convert to Federal Chartered Stock Form—Haven Federal Savings & Loan Association, Winter Haven, Fla.

Regulation on Mergers and Consolidations for Federal Stock Associations Application for Insurance of Accounts—Southside Savings & Loan Association, Austin, Tex.

No. 262, August 9, 1979.

[S-1608-79, Filed 8-9-79; 3:48 pm]

BILLING CODE 6720-01-M

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: August 9 and 14, 1979.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed (changes).

MATTERS TO BE CONSIDERED:

Thursday, August 9

11 a.m.

2. Affirmation session (5 minutes, public meeting; additional item—Order in restart of TMI-1.)

3. Budget markup session (approximately 1 hour, closed—Ex. 9; continued from Aug. 8.)

2 p.m.

1. Budget markup session (approximately 3 hours, closed—Ex. 9; continued from a.m.)

Tuesday, August 14

9:30 a.m.

1. Affirmation session (10 minutes, public meeting.)

a. Export of certain minor quantities of nuclear material.

b. Generic issue of financial qualifications.

c. Subpoena authority re surry.

d. Authority to administer oaths.

ADDITIONAL INFORMATION: "Discussion of Issues in Restart of TMI-1" (public meeting) was continued at 3:30 p.m., August 7, 1979.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202-634-1410.

Dated: August 7, 1979.

Walter Magee,

Office of the Secretary.

[S-1604-79 Filed 8-9-79; 2:45 pm]

BILLING CODE 7590-01-M

7

POSTAL RATE COMMISSION.

TIME AND DATE: 8:30 a.m., Wednesday, August 15, 1979.

PLACE: Conference room, suite 500, 2000 L Street NW., Washington, D.C. 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Postal Service Notice of Rulemaking on Minimum Presort Quantities.

2. Status of Express Mail Metro Service (Docket No. MC79-2).

Meeting closed pursuant to 5 USC § 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Cyril J. Pittack, Information Officer, Postal Rate Commission, room 500, 2000 L Street NW., Washington, D.C. 20268, telephone (202) 254-5614.

[S-1603-79 Filed 8-9-79; 2:45 pm]

BILLING CODE 7715-01-M

8

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:30 a.m., August 17, 1979.

PLACE: Board's meeting room on the eighth floor of its headquarters building at 844 Rush Street, Chicago, Ill. 60611.

STATUS: The entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

(1) Intra-Board personnel matters—discussion of changes in legislative counsel's operations in Washington, D.C.

(2) Decision of the Board on remand from the U.S. Court of Appeals, District of Columbia Circuit, William J. Goodson.

(3) Decision of the Board on remand from the U.S. Court of Appeals for the Sixth Circuit, Curtis L. Witt.

(4) Appeal of Donald P. Gebbie, Marvin A. Stille and John M. Holmes, class action suit involving interpretation of Railroad Retirement Act of 1974.

(5) Appeal from referee's denial of disability annuity application, John N. Radassao.

(6) Appeal from referee's denial of establishment of a "disability freeze" period, Salvador J. Margiotta.

(7) Appeal from referee's denial of disability annuity application, Manuel R. Medina.

(8) Appeal from referee's denial of establishment of a "disability freeze" period, Joseph Shingola.

(9) Appeal from referee's denial of disability annuity application, Wyndell R. Bunn.

(10) Appeal from referee's denial of establishment of a "disability freeze" period, Burton R. Cobb.

(11) Appeal from referee's denial of widow's insurance annuity, Velma Brown.

(12) Appeal from referee's denial of an occupational disability annuity, George K. Bennett.

(13) Appeal from referee's denial of annuity application, Gladys A. Campbell.

(14) Appeal from referee's denial of disability annuity application, Arteen Glover.

(15) Appeal of Swetto Bruich under the Railroad Unemployment Insurance Act.

[S-1602-01 Filed 8-9-79; 11:13 am]

BILLING CODE 7905-01-M

9

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 2 p.m., CDT, Thursday, August 16, 1979.

PLACE: Ellington Agricultural Center Auditorium, Marchant Drive, Nashville, Tenn.

STATUS: Open.

MATTERS FOR DISCUSSION:

1. Nuclear siting policy.

2. Preliminary rate review.

3. New policy on disposal of certain TVA phosphate land holdings in Tennessee.

MATTERS FOR ACTION:

Old Business

1. Memorandum governing power supply to Office of Agricultural and Chemical Development at Wilson Dam.

New Business

Personnel actions

*1. Appointment of Mohamed T. El-Ashry as Director, Environmental Quality Staff, Office of Natural Resources, Norris, Tenn.

*2. Change of status for Charles Bonine, Jr., from Acting Director, Union-Management Relations Staff, to Manager of Management Services, Knoxville, Tenn.

*3. Change of status for Dwight R. Patterson from Chief, Mechanical Engineering Branch, to Chief, Nuclear Engineering Branch, Office of Engineering Design and Construction, Knoxville, Tenn.

*4. Change of status for Charles A. Chandley, Jr., from Mechanical Engineer to Chief, Mechanical Engineering Branch, Office of Engineering Design and Construction, Knoxville, Tenn.

*5. Change of status for Jean S. Moorefield from Program Analyst, Office of the General Manager, to Assistant to the Manger for Policy Development, Office of Community Development, Knoxville, Tenn.

Consulting and personal services contracts

*1. Renewal of personal service contract

*These items were approved by individual Board members. This would give formal ratification to the Board's action.

with EDS Nuclear, Incorporated, San Francisco, California, for advice and assistance in piping system analyses and related services, requested by the Office of Engineering Design and Construction.

2. Consulting contract with Dr. Menachem Luria, Jerusalem, Israel, for technical advice and counseling concerning atmospheric chemical transformation in coal-fired power plant plumes, requested by the Division of Natural Resources Services.

Purchase awards

1. Req. No. 823766—Cooling towers for heat rejection system for Yellow Creek Nuclear Plant.

2. Req. No. 572865—Indefinite quantity term contract for diesel fuel oil for any TVA project or warehouse.

3. Req. No. 566565—Indefinite quantity term contract for terminals, connectors, lugs, tools and accessories for Phipps Bend Nuclear Plant.

4. Req. No. 98-48-7 and 98-48-8—Barging services and rail-to-barge transfer services for movement of coal to Allen Steam Plant.

*5. Sales Invitation No. 4069—Sale by TVA of scrap condenser tubes and scrap steel located at Bull Run Steam Plant and Hartsville Nuclear Plant.

Project authorizations

1. No. 3417.1—Amendment to project authorization to repair conductor damaged by vibration and install vibration dampers on the 161-kV transmission line emanating from the Paradise Steam Plant.

2. No. 3458—Coal analyzer for Kingston Steam Plant—Phase I—Rapid Sulfur Meter.

3. No. 3456—Rehabilitate and modify boiler, turbine, and controls for Colbert Steam Plant, Unit 5.

4. No. 3466—Expansion of the Solar Water Heater Program.

Power items

1. New power contract with Sequachee Valley Electric Cooperative.

2. New power contract with Tri-County Electric Membership Corporation.

3. New power contract with city of Shelbyville, Tenn.

4. New power contract with town of Clinton, Tenn.

5. New power contract with Mount Pleasant, Tenn.

6. New power contract with city of Athens, Tenn.

7. New power contract with city of Rockwood, Tenn.

8. New power contract with city of LaFollette, Tenn.

Real property transactions

1. Grant of permanent road access easement affecting approximately 1.99 acres of Phipps Bend Nuclear Plant reservation land in Hawkins County, Tennessee—Tract XPBGP-1H.

2. Release and abandonment of city of Dayton's recreation easement affecting 0.54-acre of Chickamauga reservoir land in Rhea County, Tennessee, and sale at public auction of a permanent easement for a parking lot on the land (Tracts XCR-676PL and XTCR-162RE).

Unclassified

1. Letter agreement with Gateway Real Estate of Decatur, Decatur, Alabama, covering relocation of TVA's Hartselle-Hartselle District 46-kV Lines Nos. 1 and 2.

2. Supplement to Interagency Agreement with U.S. Depatment of the Interior, Office of Surface Mining—Aerial photography in surface and underground mining areas.

3. License agreement with Technology Development Corporation covering arrangements for licensing to TVA of a computer code for nuclear fuel rod modeling.

4. Letter agreement with Tishomingo County, Mississippi, for maintenance of Iuka-Red Sulphur Springs Road and Patrick Church Road used by TVA for activities associated with the construction of Yellow Creek Nuclear Plant.

5. Revised TVA Policy Code relating to observance of Government orders and regulations.

Dated: August 9, 1979.

CONTACT PERSON FOR MORE INFORMATION: James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

[S-1609-79 Filed 8-9-79; 3:55 pm]
BILLING CODE 8120-01-M

federal register

Monday
August 13, 1979

Part II

Department of Health, Education, and Welfare

Office of Education

National Direct Student Loan Program; College Work-Study Program; and Supplemental Educational Opportunity Grant Program; Final Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 174, 175, and 176

National Direct Student Loan Program; College Work-Study Program; and Supplemental Educational Opportunity Grant Program

AGENCY: Office of Education, H.E.W.

ACTION: Final Regulations.

SUMMARY: Interim final regulations for the campus-based programs—the National Direct Student Loan (NDSL), College Work-Study (CWS) and Supplemental Educational Opportunity Grant (SEOG) Programs—were published in the Federal Register on August 24, 1978. At that time, a commitment was made to rewrite and republish the regulations in simpler English. In addition, sections 3, 4, 5, 6, 7, and 16 of each regulation were revised and published as a Notice of Proposed Rule Making (NPRM) on November 8, 1978. These sections have been further revised on the basis of comments and recommendations received in writing and at public hearings. There are also several substantive revisions not based on the NPRM. Some result from the Middle Income Student Assistance Act and the Education Amendments of 1978; others clarify various sections of the interim final regulations.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Norman B. Brooks, Bureau of Student Financial Assistance (Room 4018, ROB-No. 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: 202-245-9720.

SUPPLEMENTARY INFORMATION:

General Background

When the interim final regulations for Part 174, NDSL; Part 175, CWS; and Part 176, SEOG were published in the Federal Register on August 24, 1978, a commitment was made to rewrite the regulations in simpler English and republish them. This has been done.

There are also several substantive revisions:

(1) Modification of the requirement for a separate NDSL bank account (§ 174.19).

(2) Clarification of the form of communication for the third overdue notice of NDSL payment (§ 174.44).

(3) Change in the provision prohibiting double-counting of living expenses in determining how much financial aid an independent student needs (previously in section 11 of each regulation but now found in section 14).

(4) Changes required by the Middle Income Student Assistance Act—

a. Guaranteed Student Loan (GSL) overaward provision—eliminating references to non-subsidized GSLs and GSLs for which a need test is required (section 14 of each regulation).

b. Consideration of tuition costs of dependent children in elementary and secondary schools in determining the expected family contribution (EFC) (section 12 of each regulation).

c. Change in the definition of proprietary institution of higher education.

(5) Change in the definition of Title I children for NDSL in § 174.54 as a result of the Education Amendments of 1978.

(6) Change in the definition of an independent student to conform with the new Basic Grant definition.

(7) Elimination of regulations for Federal loans to institutions for institutional capital contribution because the amount the statute authorized the Commissioner to loan has been met.

(8) Change in the hourly wage requirements of § 175.24 to permit an institution to pay a salary or an hourly wage to the graduate students it employs under CWS.

This last change is a liberalization of the previous rules. The Commissioner is making this change in the final regulations without having solicited public comment. Public comment is now requested on this one point.

This liberalization is limited to graduate students only. It is a recognition of the fact that many institutions use graduate students in teaching and similar professional jobs. Persons employed in those professional jobs are expected to work independently in preparing their classroom presentations or laboratory assignments and are paid both for their actual time on the job and their time spent in preparation. Since it is not feasible to monitor preparation time, the Commissioner is permitting an institution to pay graduate students a salary.

Additionally, on November 8, 1978, the Commissioner published proposed regulations for allocating campus-based funds to institutions of higher education. Written comments were solicited, and public hearings on the proposed regulations were held in New York, Little Rock, Chicago, and Seattle. A total of 33 persons commented at the hearings, and institutions and organizations submitted comments and recommendations by letter. The revisions of sections 3, 4, 5, 6, and 7 of each part are based on the suggestions received from all these sources. The preamble summarizes the comments and responses as they relate to the various issues concerned.

Common Provisions

There are some sections in these regulations that are common to all three programs. However, several of these provisions will be deleted in all three regulations and moved to part 168, "General Provisions Relating to Student Financial Assistance Programs." This regulation is currently being prepared in final.

Other sections will be deleted and transferred to the institutional eligibility regulation, part 149. This regulation is currently being prepared as an NPRM.

However, other provisions common to all three programs will be kept in each program regulation because they are key to a complete understanding of that regulation. We believe it is important to keep each regulation complete and understandable in its own right.

To serve those schools that participate in more than one program, these common provisions are indicated in both the table of contents and in the body of each regulation with an asterisk. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provision in the other two.

Summary of Major Issues in the November 8, 1978, NPRM

The November 8 NPRM stated that the Commissioner was revising the procedures for distributing NDSL, CWS, and SEOG funds to participating institutions. The purpose was to achieve a more equitable distribution than in the past. The application form was to be simplified and combined with the fiscal-operations report, regional review panels eliminated, and funds distributed by formulas rather than by panel recommendations. All data submitted in the application were to be auditable.

This procedure was based on the recommendations of a panel of experts in student financial assistance that the Commissioner had appointed to study and recommend changes in the process of distributing funds.

The proposed procedure provided for a conditional guarantee based on actual amounts expended in the programs in 1977–78 or projected expenditures for 1978–79. An institution needing additional funds could request its "fair share" of available funds by submitting data on enrollment, costs, and family income levels of aid applicants.

Central to the determination of an institution's "fair share" were two formulas, one to determine the fair share of SEOG funds and the other for NDSL and CWS funds. A recent study had shown that the average amount of non-returnable aid received by students approximated 70 percent of their costs. Accordingly, the formula used for determining an institution's need for SEOG funds was—

SEOG need=.7 Cost−(EFC+BEOG+State grant aid+⅔ Institutional grant aid)

For NDSL and CWS ("self-help" funds), the formula was—

Self-help=(.3 Undergraduate costs−Undergraduate EFC)+(Graduate costs−Graduate EFC)

This preamble discusses the comments responding to the NPRM in the following order. First, it considers those comments relating to the various aspects of the application process, including the State allotment formula, conditional guarantee, the formulas used for calculating each institution's fair share, and shifting funds between self-help programs. Next are comments relating specifically to the NDSL program, and finally comments relating to verification of data.

Comments and Responses

General Comments Regarding the Application and Application Review

Many positive comments were received concerning the new application and funding process. Some commenters were pleased that the appeals process was accessible at the national level without threat of reduction in funding. Many commenters expressed appreciation for a more streamlined application and funding process with less complication and further emphasis on equitable distribution of funds. Several letters expressed support for the soundness of the operating assumptions. Several commenters viewed the multiple-year phase-in process positively.

One commenter felt that the application should include a space for a narrative. One said that the Office of Education should verify all data on the fiscal-operations report-application (FISAP), while another suggested that the results of the first year should be studied carefully.

The application did not provide space for a narrative, because the procedure was designed so that the applications would be processed by computer. However, a narrative will be part of the appeal process.

Data on the application will be checked by the Office of Education, and questionable entries will be sent back to the institution for verification. It is also important to realize that all information on the fiscal-operations report is subject to the required biennial non-Federal audit. The Commissioner concurs with the suggestion to study the first year's results and has provided for such an evaluation.

Seven commenters suggested that appeals be totally open. Another requested regional representation during the national appeals.

The Commissioner concurs with these suggestions. Any item on the application for the first year of the phase-in process may be appealed. Of course, only items that the appeals panel considers valid are accepted. Also, the National Appeals Panel includes both Regional Program Officers and Financial Aid Administrators from all regions.

A number of commenters expressed concern about the timing of the publication of the NPRM and the application it is intended to regulate. Eight persons stated that there was not enough time to provide a carefully prepared and well-thought-out response. Two went on to express doubts about whether the Office of Education would consider the comments because of time constraints. Some commenters expressed belief that the Office of Education had violated the regulations by failing to publish the proposed rules in a formal manner. One person objected to being required to submit an application without benefit of final regulations.

The entire June, 1978 issue of the BSFA Bulletin was devoted to the recommendations of the panel of experts. It was the Commissioner's view that this publication represented the best means of conveying information on student financial assistance. This issue was mailed to individuals concerned with postsecondary education, some of whom were school presidents, fiscal officers and financial aid administrators. Numerous comments were received, both positive and negative, and were responded to in the NPRM of November 8, 1978. Changes were made in response to these comments. The Commissioner has felt that this method was the best way to provide notice of pending changes in this process.

State Allotment Formulas

Several comments were received concerning the State allotment formulas. A few commenters recommended that those formulas be studied more closely and adjusted more fairly. One indicated that until statutory allotment formulas are changed, disparities in funding among like institutions will continue to exist. Some commenters recommended that the formulas be retained, while others suggested that the formulas be eliminated. One commenter indicated that if the formulas were not retained, the Office of Education would face a stern political fight. One commenter recommended elimination of the formulas on the basis that there would be no room left for "idiosyncratic" differences among States.

The Commissioner cannot accept recommendations to change or eliminate State allotment formulas because they are governed by statute not by regulation. However, as this Administration develops its legislative program, it will certainly take these comments into consideration.

Conditional Guarantee Procedure

A number of comments were received pertaining to the conditional guarantee procedure.

Several commenters recommended that the conditional guarantee procedure be retained in future years. Two persons recommended that the procedure be terminated after the first year of the phase-in process. Two others recommended that the Office of Education ensure that there will be no future reduction of the conditional guarantee. A few commenters indicated that final regulations on the new process should clearly state that a conditional guarantee of 85–90% will be maintained; one recommended it be permanently established at 100%.

At present the Commissioner is not considering the future of the conditional guarantee procedure but rather the procedure in relation to the first year of the phase-in process only. Any decision relating to the future of the conditional guarantee will be based on the evaluation of the first year of the phase-in process. Furthermore, since it is necessary to publish an NPRM for the 1980–81 application process, there will

be opportunity for further comment on the conditional guarantee.

One commenter viewed the utilization rate from year to year as possibly the best indicator of an institution's need for funds.

This comment is accurate only if all institutions receive funding greater than or equal to need; it has less meaning for those institutions whose full need has not been met. Therefore, we have made provision for institutions to request funds above the amount spent.

Another commenter recommended that inflation and increases in enrollment be considered in determining an institution's conditional guarantee.

The Commissioner does not accept this recommendation, because the conditional guarantee is based on the base year's expenditures. The guarantee is not affected by changes in enrollment status or inflation from one year to the next. Supplying fair share data is the vehicle for meeting institutional need that was not met under the conditional guarantee.

One commenter complained that historically underfunded institutions are not helped through the conditional guarantee procedure.

The conditional guarantee procedure does not negatively affect any institution that has been historically underfunded; the conditional guarantee procedure, together with the fair share procedure, should improve funding opportunities for those types of institutions.

The Formulas (70:30 Ratio)

Several commenters expressed concerns about the composition of the split between "gift aid" and "self-help." A few commenters felt that the 70:30 ratio is arbitrary and unrealistic. One felt that this breakdown is an arbitrary assumption of Congressional authority. Another asked for details about the survey on which this ratio was based.

We would point out here that this regulation in no way attempts to influence the individual institutional philosophies regarding packaging of student financial assistance.

The Commissioner does not believe that using this procedure usurps Congressional authority, because each program statute authorizes the Commissioner to establish criteria for distributing funds to institutions within a State as the Commissioner determines will best carry out each program. In the past, an institution's request was based on unauditable, projected data. Student financial aid administrators have criticized this procedure as an inequitable way to distribute funds. As a result, the Commissioner is trying another way based on verifiable data which yields a standard measurement of relative financial need.

The basis for the decision to use a 70:30 ratio between gift and self-help funds is a national survey. This survey showed that between ⅔ and ¾ of the total cost of education is met by a combination of gift aid and expected family contribution and about 30 percent by self-help (work and loans). This finding applied to all categories of institutions, both low cost and high cost. A copy of the report may be obtained by writing to Publications Distribution, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. The title is "Annual Evaluation Report on Programs Administered by the U.S. Office of Education, Fiscal Year 1977."

Cost

Eleven commenters opposed a single national average figure for student living expenses. The proposed figure was $2,250 plus $200 for books and supplies. One commenter, however, was pleased with the idea of a single national figure. All eleven who critically commented believed that inadequate funding would result. Most objected on the grounds that some institutions are located in areas where higher than average costs prevail. As a group, these commenters were proposing varying degrees of flexibility for establishing living costs. Suggestions ranged all the way from complete uniformity to allowing each institution to set its own figure.

While the Commissioner recognized that costs can vary from one locale to another, these recommendations might only serve to return to the inequities of past applications. Recommendations to use standard figures more sensitive to local variations were similarly not accepted. The most "local" of the readily available published cost of living figures are the Department of Labor's figures for standard metropolitan statistical areas (SMSAs). The variation of living costs within each SMSA is at least as great as the difference between the least expensive and the most expensive SMSA. Therefore, while using the cost of living figures for SMSAs would have the potential for correcting some inequities, the SMSA figures would create more inequities than they would resolve.

Two commenters made the point that many graduate students are independent, married, or both, and that they typically need more than $200 for books and supplies. Another stated that institutions with course lengths exceeding the traditional nine-month academic year would not receive adequate funding because their costs could not be properly demonstrated on the application.

The Commissioner is aware that these factors may affect independent students more than dependent students, and therefore we have not counted insured loans into the offset section of the formula (these loans being a primary source of assistance to independent students).

All institutions have students whose costs are both more and less than those of the average student. Therefore, whenever the aggregate costs are significantly understated, these instances should be documented in an appeal.

One commenter said that personal and travel expenses had not been taken into account.

Personal and travel expenses, while not listed as a specific item, are nonetheless provided for in the standard $2,250 figure.

Another commenter believed that the final regulations should make allowances for inflation in future years.

As stated in the NPRM, Phases II and III will be preceded by proposed regulations. Therefore, the figures for living expenses to be used for next year will be published at a later time for comments. Furthermore, since all figures are computed for the most recently completed base year, an allowance for inflation would not be appropriate. In any event, such an allowance would not change the relative need of institutions.

Finally, an objection was raised to the response in the November 8 NPRM that commuter students, with their reduced living costs, counter-balance the higher costs of resident students.

This commenter has raised a good point. However, since no one has quantified the cost of housing for commuter students, accurate data collection becomes a problem. Accurate, verifiable data are not available. However, the Commissioner believes that it is reasonable to say that commuter students have costs less than the average resident student because they often reside with their parents. Therefore, they tend to counter-balance those students whose costs are higher. The Commissioner will consider any comments concerning the NPRM for Phase II of the application process.

Expected Family Contribution

The preamble to the November 8 NPRM stated that the Commissioner was considering two alternatives for calculating the EFC to be used in the formulas. One alternative was to use the

1979–80 Basic Grant family contribution schedule, and the other was to use data furnished by the private need analysis services and the Uniform Methodology method of computing EFCs.

A large number of commenters expressed a preference for the Uniform Methodology approach. They felt that this method will produce a more accurate reflection of need. Other commenters, however, preferred the Basic Grant family contribution schedule, stating that this procedure will treat all institutions fairly. As a third possibility, some of the commenters suggested that neither of these methods be used. Rather, institutions should be able to provide their own EFC tables.

After reviewing these comments, the Commissioner has decided to use the Uniform Methodology System for calculating EFC. This system is an independent way to obtain EFC figures, and it is also the system most frequently used in the campus-based programs.

One commenter asked if costs of elementary and secondary education will be used in the EFC computation.

In response to this comment, these costs were not considered in calculating EFC for the funding process because they were not a standard part of the Uniform Methodology for the base years. However, the Middle Income Student Assistance Act amended the Higher Education Act of 1965 to include consideration of these expenses in determining need under the NDSL and CWS programs. Therefore, consideration of these expenses must become a standard part of need analysis for all the campus-based programs in future years. When calculating an individual student's need, the institution must consider these costs. However, in funding institutions, we are determining aggregate institutional need on a statistical basis, rather than individual student need. The purpose is to have a single EFC figure for all students in a given income cell.

Another suggestion was that if a negative EFC results from a calculation, the negative number should be used rather than raising it to zero.

This suggestion was not accepted. A negative EFC is an artificial mathematical expression of uncertain meaning. Subtracting a negative EFC from a student's cost of education would give a "need" that exceeds the student's total costs. The Commissioner does not accept the proposition that a student's need can exceed his or her total costs.

Many commenters indicated that the Office of Education should treat independent students more fairly than the fair share formula appears to indicate. A particular recommendation pertained to taking family size into consideration.

In creating the EFC's for independent students, family size was taken into consideration by averaging the data of the major need analysis systems.

An institution's fair share will be calculated by using an average living cost for single students. Independent students frequently have dependents. No allowance is made in the computations for those dependents. On the other hand, no deduction is being made for students whose living costs are lower than average, such as students who live in their parents' homes. We are not proposing to forbid an institution from considering an independent student's full living costs in computing that student's individual need, even though the Office of Education does not take these costs specifically into account in computing the institution's fair share.

The proposed EFC's were not available when the NPRM was published but were made available after the NPRM was published. Several commenters objected to what they considered a high EFC at the $30,000 and above income cell.

In response to these objections, the Office of Education recalculated the EFC for this income cell by excluding all incomes above $45,000. This resulted in the following grid:

EFC (Expected Family Contribution) Figures To Be Used In the Campus-Based Funding Process Income Cells

Income level	EFC
Dependent students:	
$0–5,999	$223
$6,000–8,999	284
$9,000–11,999	516
$12,000–14,999	854
$15,000–17,999	1,276
$18,000–20,999	1,906
$21,000–23,999	2,428
$24,000–26,999	3,167
$27,000–29,999	3,992
$30,000–over	5,343
Independent students:	
$0–999	0
$1,000–1,999	658
$2,000–2,999	1,571
$3,000–3,999	2,186
$4,000–4,999	2,513
$5,000–5,999	3,118
$6,000–6,999	3,828
$7,000–7,999	4,831
$8,000–8,999	5,501
$9,000–20,000 and over	10,132

Institutional and State Scholarships

Many comments have been received concerning the formula for determining SEOG need.

One major objection is to the inclusion of ⅔ of the amount of institutional grants and scholarships in the formula. A number of commenters complained that ⅔ is an unfair portion of the institutional aid to be considered and that ½ would be more favorable. It was suggested that the formula should exclude funds from general operating expenses that the school uses for financial aid and non-need based awards. However, if they are included, it was suggested that the portion be reduced to one-half.

In response to both these comments, the Commissioner further analyzed the data and changed the portion of institutional grants and scholarships used in the formula to one-half the total. This amount includes both need and non-need funds.

Another commenter recommended that tuition waivers be excluded from institutional gift aid because public institutions do not report tuition waivers as gift aid on the FISAP.

The Commissioner does not accept this recommendation. Public institutions must report tuition waivers as part of institutional aid, just as private institutions must.

A number of commenters complained that independent and private institutions are being treated unfairly by the formula. The commenters believe that these institutions have made an extra effort to meet the students' financial need so they can be competitive with public institutions.

The distribution of Federal financial aid funds is not based on institutional need; it is based on student need with consideration given to relative costs.

Another objection many commenters had is the inclusion of 100% of State grants and scholarships in the SEOG formula. A few of the commenters who objected to the inclusion of State grants and scholarships stated a concern regarding the SEOG continuing year funds. Since these funds are not controlled by the State allotment formula, they fear that SEOG continuing year (CY) funds will shift from one State to another.

The Commissioner has decided to retain 100% of State grants and scholarships in the formula. The Commissioner believes that the amount of money that will be affected is relatively small since the conditional guarantee will preclude any significant shift of CY funds among States. There is no State allotment formula for continuing year funds; however, because of the conditional guarantee, an institution will receive either (1) its 1977–78 SEOG expenditure, or (2) its projected 1978–79 SEOG expenditure multiplied by its 1977–78 utilization rate.

A number of commenters from private institutions felt that it is not right to require them to include State funds as available resources in determining need since State subsidies to public institutions are not counted in the formula.

This comment appears to confuse student assistance funds with funds that are not designated for student assistance. State funds appropriated for purposes of student financial assistance in public institutions or in private ones must be reported. The formula accounts for the public subsidy through lower tuition rates.

It was stated in the November 8 NPRM that the same State and institutional figures (1977–78 base year) will be used for all the later years of the new process. They will not be recomputed from year to year to reflect increased expenditures for scholarships and grants in later years either by the State or by the institution. This is being done in response to the commenters who objected that deducting State and institutional scholarships and grants from costs to determine the amount of Federal funds an institution will receive is unfair to those States and institutions that have made greater efforts than others to aid their needy students, often at considerable sacrifice to themselves.

In response to the NPRM, several commenters stated that the use of 1977–78 base year data will penalize those States that may be facing future cutbacks in financial aid. One commenter asked what will happen if an institution or State decreased its amount of gift aid. Does the level included in the formula go down or stay at the base year level?

The amount included in the formula will stay at base year level. The use of a base year is to give every institution the same incentive to increase its efforts and prevents them from decreasing their efforts at Federal expense. This is not being done to penalize institutions but to have a common starting point for each institution.

Several commenters suggested that the proposed base year for SEOG be changed from 1977–78 to 1972–73.

This suggestion was not accepted. The base year of 1977–78 is used throughout the funding procedure for calculating the conditional guarantee for NDSL, CWS, and SEOG. Therefore, to be consistent, we must use base year 1977–78 for calculating an institution's fair share of SEOG. In addition, a substantial number of schools in the programs in 1977–78 were not in the program in 1972–73.

Shifting of Funds Between Programs

Several comments were received concerning the shifting of funds between programs.

A few commenters viewed the discontinuation of transferring funds between the CWS and SEOG programs as regressive and detrimental to an institution's ability to spend available funds effectively.

These comments are based on a misunderstanding of the proposal. Once the institution actually receives funding under the SEOG and CWS programs, the institution is permitted by statute to transfer up to 10% of its allocations between the two programs.

Two commenters requested clarification as to whether SEOG and self-help program funds may be shifted, and others recommended a 25% shift allowance between the self-help programs and SEOG. Some commenters indicated that the regulations are contradictory concerning this issue. A few commenters recommended that institutions have a free hand in shifting funds between programs.

Although institutions are not allowed to shift funds indiscriminately between programs, an automated procedure has been established as part of the computer program for the FISAP process to accommodate those institutions filing for an increase that wish to shift a portion of funding from one self-help program to another. Such an automated procedure for shifting of self-help funds into SEOG is not provided in the application process.

In situations in which the institutional formula generates a potential level of NDSL or CWS funding in excess of that requested by an institution, this excess will be "brokered" (within the Office of Education funding process) with other institutions. For example, if the "self-help" formula provides a CWS recommendation that exceeds the maximum amount requested in that program, the difference will be put into an "excess" CWS pool. Assuming that the institution's need for NDSL funds has not been fully met, each of these institutions will have its NDSL Federal capital contribution (FCC) recommendation increased by money in the "excess" NDSL (FCC) pool times its proportionate contribution to the "excess" CWS pool. Similarly, other institutions may have their CWS recommendation increased by the money in the "excess" CWS pool times the proportionate contribution to the "excess" NDSL pool.

In this manner, shifting of funds by one institution between its programs may be possible through the computer program for the FISAP process, but no other institution needing those funds will be adversely affected.

One commenter recommended that "excess pool" sharing should include all institutions, not just those submitting information to determine a fair share or those that contributed to the "excess pool."

The Commissioner considers the "excess pool" concept to be the most equitable means of redistribution.

One commenter complained that the fair share penalizes institutions that are not receiving their share of the available funds by utilizing the excess pool.

The "excess pool" concept does not penalize institutions but rather provides additional funds to institutions whose requests are less than their fair share in a self-help program, hence making the distribution of funds more equitable.

NDSL Collections

A number of commenters complained that 21% improvement in collections over a period of two years is unfair and unrealistic.

One commenter recommended basing improvement in collections on a three-year average.

The Commissioner does not consider 21% improvement in collections over two years unfair or unrealistic. The normal growth in collections is at least 10 percent per year on a national basis. Collections under the NDSL Program have been increasing at approximately $25,000,000 per year from a $200,000,000 base in 1974. In addition, the Office of Education has effectively been using this percentage as a criterion in evaluating applications for a number of years.

One commenter suggested that if an institution can demonstrate implementation of corrective action as a result of a program review, it should receive its full Federal capital contribution (FCC).

The Commissioner does not accept the recommendation that the implementation of corrective action as a result of program reviews should automatically entitle an institution to full FCC. However, an institution in that position may wish to appeal a reduction on this basis.

One commenter suggested that an institution with less than a 10% increase in collections but also with a default rate of less than 10% not be penalized in the determination of FCC.

The computer program in use this year did not have that provision. However, it would be a good basis for an appeal.

Several commenters recommended that the National Appeal Process allow for exceptions to requiring 21% improvement in collections over two years and that the financial aid community be assured of an institution-by-institution disposition.

Appeals of this nature will be considered by the National Appeal Panel.

One commenter recommended that the Office of Education establish a collections tolerance percentage for each year of the new process.

At this time, the Commissioner is concerned only with comments relating to the first year of the phase-in process. Future procedures will be outlined in proposed regulations at the appropriate times.

Default Rate

A number of comments were received concerning the 10% default rate. A few commenters recommended increasing the permissible default rate, e.g., to 20%, on the basis that the higher rate represents a more realistic approach.

One commenter indicated that a 10% rate is too low for the neediest students and that a reasonable level of default is in need of careful study.

The Commissioner sees no need to increase the default rate beyond 10%, and believes this to be a realistic percentage. Careful attention has been given to this matter. Likewise, the Commissioner does not see any need to change the method of arriving at this rate for the current application process. However, consideration will be given to possible future changes.

Two commenters indicated that (a) any attempt to establish a default rate cannot be made until institutions are able to identify which loans may be assigned, (b) the Office of Education has been tardy in accepting assigned notes, and (c) institutions should be given latitude in determining which loans are in defaulted status.

For the first year of the phase-in process the default rate is based on 1977–78 information and will not change as a result of assigning defaulted notes to the Office of Education. All notes, including assigned notes, are considered in determining an institution's default rate. However, a change in this procedure will be made for the 1980–81 year which will be based on information from 1978–79.

Institutions are responsible for determining which notes are in default status. See the definition of "Default" in § 174.2.

Institutions with a default rate in excess of 10% may appeal to the National Appeal Panel. The Panel will consider any documentation that the institution provides to justify a default rate in excess of 10%.

Due Diligence

Two comments were received concerning due diligence. One commenter asked how an institution must go about proving it has exercised due diligence.

A second commenter indicated that Subpart C was erroneously provided as an appendix to the Notice of Proposed Rulemaking, because the due diligence procedures included in the August 24 Interim Final Regulations reflect changes from those in the NPRM.

To prove that it has exercised due diligence, an institution can describe in narrative form on an appeal the due diligence procedures implemented at the institution. Of course, these statements are subject to verification on program review and audit. The person who commented on Subpart C is correct in pointing out that Subpart C in the NPRM differs from the August 24, 1978 Regulations. Since the new regulations were not in effect during the base year (1977–78), the Commissioner has republished Subpart C from the November 24, 1976 regulations as a matter of convenience for the reader, since it was the regulation in effect at the time.

A third commenter indicated that schools need latitude in applying due diligence.

If an institution views the due diligence requirements as too restrictive for that institution, the institution may state the reasons for its view in an appeal.

NDSL Carryover

A few commenters indicated that there should be a carryover provision for NDSL funds. This provision would allow an offset for payments received too late for relending. Some institutions are under State law that prohibits an institution from borrowing a short-term loan and from overspending funds. Therefore, these institutions see a need for a carryover provision.

The Commissioner does not accept this recommendation. Existing fund management procedures prohibit an institution from drawing more new FCC from DFAFS than needed for a thirty-day period. If the institution does not have need for its total FCC prior to June 30, unexpended funds will lapse.

Section 174.19 Fiscal Procedures and Records

A substantive change has been made in the requirement for a separate bank account stated in paragraph (b) of the interim final regulations. An institution with an accounting system and internal controls that assure adequate identification of the cash balance in its NDSL Fund will not be required to maintain a separate bank account for its NDSL Fund. If, however, a program review or audit discloses that an institution's Fund cannot be identified properly, that institution will be required to maintain a separate account for its Fund. No other funds may be deposited in that account.

Section 16 Payments to Students

Note.—The exact heading for this section varies by program.

A few comments were received concerning verification of student application data received prior to January 1. The commenters indicated that January 1 is an arbitrary date that creates an administrative burden, that the majority of early applications are from students whose families are on fixed incomes, and that validation would have little effect on aid.

Income data on student applications received before January 1 is estimated. A number of studies have indicated that the use of estimated income is a very unreliable basis for determining financial need. Because of this statistically demonstrated unreliability of estimated data, the Commissioner has deliberately adopted a conservative approach concerning the use of estimates in campus-based award computations and considers verification of estimated income data received before January 1 necessary.

This requirement applies to estimated income submitted before January 1, 1980, for award year 1980–81 and to following years. It does not apply to estimated income submitted before January 1, 1979, for award year 1979–80.

One commenter recommended that there be a balance maintained between protecting the integrity of the programs and serving the needs of disadvantaged students.

The Commissioner does not view this procedure as detrimental to disadvantaged students in any way.

A few commenters suggested requiring a copy of the 1040 or 1040A and not requiring full validation.

A copy of an IRS form 1040 or 1040A is acceptable but not required.

One commenter suggested omitting independent students from the verification process.

Information submitted on independent student applications is also to be verified if submitted prior to January 1. It should be noted that the regulations do not require applications to be submitted prior to January 1. Receiving applications prior to that date is an institutional option.

Preamble of the November 8, 1978, NPRM

For the convenience of those readers who may not have seen the November 8, 1978, NPRM, we are repeating the substance of the preamble to that NPRM. That preamble reads as follows:

The proposed amendments regarding distribution of campus-based student aid funds are based on recommendations made to the Commissioner by a panel of student financial aid experts and on public comment received on those recommendations. The recommendations were distributed to the public in the June 1978 Bulletin of the Bureau of Student Financial Assistance of the Office of Education (BSFA Bulletin). Written comments were received on those recommendations, and public hearings were held during the first 2 weeks of July in San Francisco, Houston, Washington, D.C., and Chicago.

As a result of public comment on the recommendations of the panel of experts, this proposal varies from those recommendations in several ways. First, this proposal covers only the first year of the recommended 3-year phase-in process.

A later Notice of Proposed Rulemaking will be required to carry out the second and third years of that process. This guarantees that public comment will be received on the results of the first year of the new procedure before the second and third years are incorporated in the regulations. Additionally, changes have been made in some details of the formulas recommended by the panel of experts.

This proposal is similar to the recommendations of the panel of experts in that it gives both current participants in the programs and new applicants a conditionally guaranteed level of funding during the first year of implementation of the new process. In general, the guarantee is conditional on enough money being appropriated for each program. This proposal differs from the recommendations in its definition of funding and in other details discussed below.

Under this proposal an institution's level of funding will be considered the greater of its actual 1977-78 expenditures or its projected 1978–79 expenditures. These amounts will be compared for each program separately.

Each institution's projected 1978–79 expenditures will be calculated by the Office of Education. This will be done in two steps: First, the Office of Education will determine for each institution what percent it spent of the funds available to it in each program during 1977–78. The data for making this determination will be taken from the fiscal-operations report filed by the institution as part of its application. Then, the amount of funds available to the institution in each program during 1978–79 will be multiplied by that percentage to determine its projected expenditures.

If an institution did not participate in a particular program during 1977–78 but has funds available to it in that program during 1978–79, 100 percent use will be assumed..

If an institution is a nonparticipant in all programs during 1978–79, it will also receive a conditional guarantee of funding. Since that guarantee cannot be based on the institution's actual 1977–78 or projected 1978–79 expenditures, a substitute measure will be used. That substitute measure will be the amount of funds awarded in each program to last year's new applicants for their expenditure during 1978–79 divided by the number of enrolled students in those schools. This will give an average award per enrolled student. Averages will be calculated by type and control, using a national data base. (Types of institutions are universities, 4-year schools, 2-year schools, area vocational schools, and others. Control means public, nonprofit private, and proprietary.) The average for each program will be multiplied by a new applicant's current actual enrollment to determine its conditional guarantee in that program for 1979–80.

This approach differs from that recommended by the panel of experts. Their recommendation was that a new applicant's funding level should be its "fair share," computed as described under "Calculation of fair shares."

Each institution, both "new" and "old," therefore will have a conditional guarantee for a specific amount of funding. If it has participated in one or two of the programs, but not all three, its conditional guarantee will cover only the program(s) in which it has participated. It will know this amount before it files its application for funding.

To apply for the funds covered by its conditional guarantee, an institution need only file its fiscal-operations report for 1977–78 (if it had funds for that year) plus an abbreviated application stating its request in each program. First-time applicants and those who had no funds for 1977–78 may file the application form only.

To receive more funds than its conditional guarantee, the institution must file the additional data discussed below in the description of fair shares.

The amount of funding an institution eventually receives may be lower than the amount of its conditional guarantee. There may not be enough money available either in the appropriation nationally or in the funds available for a particular State to honor all conditional guarantees fully. In that case reductions in funding will be made. The amount of reduction may vary State-by-State and program-by-program because of the operation of the various statutory State allotment/apportionment formulas.

To determine whether the conditional guarantees can be honored in full, the Commissioner will total them nationally and by State and compare those totals with the funds available. If available funds are sufficient to honor all conditional guarantees, they will be honored. Otherwise they will be reduced by the amount necessary to make them equal the amount of available funds.

If available funds exceed the amount of the conditional guarantees, the excess funds will be given to those institutions whose fair shares exceed the amount of their conditional guarantees.

Calculation of Fair Shares

The Office of Education will compute by formula an institution's fair share of each appropriation. To have its fair share computed, an institution must supply the actual, verifiable data elements needed to perform the necessary calculations. Those data elements are defined in some detail in section 6 of the three regulations and are discussed further below under "Factors used in the formulas." One formula will be used for SEOG, a second one for NDSL and CWS.

Expressed in simple terms, SEOG need equals 70 percent of cost minus EFC and gift aid. Stated another way, if gift aid funds available to applicant undergraduate students plus their expected family contribution total less than 70 percent of their costs, the institution will be considered to have a need for SEOG funds.

That "need" will then be split between initial year (IY) funds and continuing year (CY) funds in the same proportion as the institution's requests in those two categories. For example, if

the institution requests $100,000 in IY funds and $200,000 in CY funds and is determined to need $150,000 total in SEOG funds, that total will be divided between IY and CY in the proportion of 1:2, which would amount to $50,000 in IY and $100,000 in CY.

To determine an institution's fair share of the IY and CY appropriations, the amount of need for all applicant institutions for IY and CY funds will be divided by the total need for those funds to compute that institution's "IY index" and its "CY index." Those indexes will be multiplied by the appropriations for initial and continuing funds to determine the institution's fair share of those funds. If the institution does not supply the figures needed to make these computations, its fair share of the available funds will be assumed to equal its conditional guarantee.

The "self-help" formula to be used for CWS and NDSL considers both undergraduate and graduate students. The formula totals need for self-help among undergraduates plus need for self-help among graduate students. Self-help is the amount of funds a student receives from work or from loans.

Since 70 percent of undergraduate costs have already been considered in determining an institution's SEOG index, only 30 percent of undergraduate costs will be considered in determining the need for self-help among undergraduates. Need for self-help at an institution is computed by adding the need for self-help among the various income-level categories of students attending the institution.

Specifically, for each undergraduate income cell (all of which are displayed in section 6 of the proposed regulations), need for self-help equals the lesser of (1) 30 percent of cost, or (2) cost minus expected family contribution (but not less than zero). As an example, suppose at one institution the average undergraduate cost is $4,000 and the expected family contribution (EFC) is $2,500 per student in one income cell. The per capita need for self-help funds is the lesser of (1) 30 percent of the cost, which is $1,200 (30 percent of $4,000), or (2) cost minus EFC, which is $1,500 ($4,000 minus $2,500). Since $1,200 is less than $1,500, the per capita need for self-help in that cell will be considered to be $1,200. If for another income cell the EFC is $3,900 per student, the per capita need for self-help funds is the lesser of (1) 30 percent of cost ($1,200), or (2) cost minus EFC ($100) or $100. Finally, if the EFC in a cell is $5,000 per student, the per capita need for self-help is zero.

For graduate students 100 percent of cost will be considered in determining the need for self-help funds. Thus, for each graduate student income cell the per capita need for self-help funds will be cost minus EFC (but not less than zero). An institution's total need for self-help funds is the sum of undergraduate and graduate need for those funds. An institution's self-help index will be computed by dividing its need for self-help funds by the total need of all institutions, nationally, for those funds.

The institution's fair share of the CWS appropriation will be calculated by multiplying the CWS appropriation by its self-help index. If the institution does not file the information needed by the Office of Education to make this calculation, its fair share will be assumed to equal its conditional guarantee.

For the NDSL program, each institution will receive a fair share of the amount available for lending in 1979–80. Funds available for lending include collections, other Fund income, and reimbursements of cancelled Direct loans as well as the appropriation and the matching institutional capital contributions. This amount will be multiplied by the institution's self-help index to give the institution's total approved level of expenditure (LOE), which is its fair share of the total funds available. If the institution does not file the information the Office of Education needs to compute its fair share of available funds, its LOE will be considered to equal its conditionally guaranteed amount.

The amount of new Federal capital contribution for any institution will be derived from its LOE, by subtracting from that amount its projected collections, other Fund income, and Federal reimbursements to its Fund of Direct Loans cancelled by its borrowers. The difference obtained by making that subtraction will be multiplied by 90 percent to determine its Federal Capital Contribution.

Institutions can expect the full amount of their calculated FCC if they can fulfill one of the following three requirements:

(1) The institution's default rate is less than 10 percent;

(2) The institution's default rate is more than 10 percent, but the number of loans made by that institution which are in default for less than 2 years on June 30, 1978, is at least 10 percent less than the number of loans made by that institution and in default for less than 2 years on June 30, 1977;

(3) The institution's default rate is more than 10 percent, but the institution can document, under § 144.7, that it has exercised due diligence as set forth in Subpart C of the NDSL regulations published in the Federal Register of November 24, 1976, for the past 2 award years.

In projecting an institution's collections, the Commissioner will consider its default rate. If its default rate is 10 percent or below, its collections will be projected by multiplying its actual 1977–78 collections by 121 percent. If its default rate is greater than 10 percent, it will be expected to increase its 1977–78 collections by 121 percent plus the excess overdue amount.

The excess overdue amount will be computed as follows: First, the Commissioner will determine the amount of defaulted loans which would equal a 10 percent rate. This will be done by multiplying the total amount of matured loans by 10 percent. Second, the Commissioner will determine the ratio between this amount and the unpaid principal balance of defaulted loans, which the institution will report on line IIC6.8E of its fiscal-operations report. Third, this ratio will be subtracted from one. Fourth, the principal amount past due on defaulted loans (which is reported on line IIC6.8F) will be multiplied by this difference to determine the excess overdue amount.

As an example, suppose that an institution's Loan Fund has matured loans totalling $1,000,000. Further suppose that the unpaid principal balance of defaulted loans reported by the institution on line IIC6.8E of its fiscal-operations report equals $150,000. Then suppose that the past-due principal amount in line IIC6.8F of the institution's fiscal-operations report is $90,000. Using these figures, the institution's excess overdue amount would be calculated as follows:

1. Ten percent of $1,000,000 equals $100,000.
2. The ratio of $100,000 to $150,000 equals ⅓.
3. One minus ⅔ equals ⅓.
4. One-third times $90,000 equals $30,000, the excess overdue amount.

Shifting Funds in Self-Help Programs

A procedure will be established to accommodate those institutions filing under Part B which wish to shift a portion of funding from one self-help program to another.

In situations where the institutional formula generates a potential level of NDSL or CW–S funding in excess of that requested by an institution, this excess will be "brokered" (within the Office of Education funding process) with other institutions. For example, if the Self-Help formula provides a CW–S recommendation which exceeds the

maximum amount requested in that program, the difference will be put into an "excess" CW-S pool. Assuming that the institution's need for NDSL funds has not been fully met, each of these institutions will have its NDSL (FCC) recommendation increased by money in the "excess" NDSL (FCC) pool times its proportionate contribution to the "excess" CW-S pool. Similarly, other institutions may have their CW-S recommendation increased by the money in the "excess" CW-S pool times the proportionate contribution to the "excess" NDSL pool.

In this manner, shifting of funds by one institution between programs may be possible but no other institution needing those funds will be adversely affected. Shifting of self-help funds into SEOG will not be permitted.

Factors Used in the Formulas

There was considerable public confusion concerning the meaning of various terms used in the formulas recommended by the panel of experts, as those formulas were explained in the *BSFA Bulletin*. We are therefore offering the following clarification of the terms used in this proposal.

"Undergraduate costs" and "graduate student costs" will be computed as follows:

First, the institution will determine the number of "applicant students" in each category and report those numbers to the Office of Education. The institution will do this by counting the number of undergraduate and graduate students from whom it received completed applications for financial aid for 1977-78 (or comparable information in another form) and subtracting from these numbers the number of students who did not meet the requirements of (a) being a citizen or permanent resident of the United States and (b) being enrolled as at least a half-time student in an eligible program.

Second, the institution will tell the Office of Education its total tuition and fee revenue from all undergraduate students and its total tuition and fee revenue from all graduate students and the total numbers of those students. Using these numbers the Office of Education will compute the institution's average tuition and fee revenue per undergraduate student and its average tuition and fee revenue per graduate student. The Office of Education will then multiply these averages by the number of applicant students in each category to determine the total amount of tuition and fee revenue from applicant students in each category.

Third, the Office of Education will multiply the number of applicant students in each category by a single national average figure for living expenses plus books and supplies. The living expenses figure used will be the Basic Grant family size offset for 1977-78 for single persons, multiplied by three-fourths to cover 9 months rather than 12. For the 1979-80 application the living expense figure used will be $2,250. The Office of Education will add $200 to this figure for books and supplies.

Fourth, the Office of Education will add together the amounts its computes for total tuition and fee revenues from applicant students and for their living expenses and books and supplies to determine their total costs. This will be done separately for undergraduate and graduate students.

A number of commenters objected to the use of a single national figure for living expenses and suggested other figures they considered to be more sensitive to local variations in the cost of living. These recommendations were not accepted. The most "local" of the readily available published cost of living figures are the Department of Labor's figures for standard metropolitan statistical area (SMSA's). The variation of living costs within each SMSA is at least as great as the difference between the least expensive and the most expensive SMSA. Therefore using the cost of living figures for SMSA's would not eliminate the inequity identified by the commenters.

"Expected family contribution" will be computed by the Office of Education. To do this, the Office of Education will multiply the number of students reported by the institution in each family income category by the national average expected family contribution for that income category. The Office of Education is considering two different alternatives for computing these averages. One alternative is to use data furnished us by the major private need analysis services and their method of computing expected family contributions. The other is to use the 1979-80 family contribution schedule for Basic Grants, which is currently under development, and Basic Grant data.

For the SEOG formula, "gift aid" is defined as including Basic Grants and State scholarships and grants plus all the categories of gift aid used by the institution in determining its maintenance of effort figures for CWS and SEOG. The amount to be deducted from cost will be 100 percent of the grant and scholarship funds received by the institution's students during 1977-78 from Basic Grants and from State scholarships and grants, plus two-thirds of the other scholarships and grants paid out by the institution during that year. The same State and institutional figures will be used for all of the later years of the new process. They will not be recomputed from year to year to reflect increased expenditures for scholarships and grants in later years either by the State or by the institution. This is being done in response to several commenters who objected that deducting State and institutional scholarships and grants from costs to determine the amount of Federal funds an institution will receive is unfair to those States and institutions which have made greater efforts than others to aid their needy students, often at considerable sacrifice to themselves. Some of these commenters complained that the recommended procedures would move funds out of their States to other States whose financial aid programs have been less commendable.

Since funds for the campus-based programs are allotted among the States by statutory formula, the amount of funds being reallotted from one State to another will be minimal. Furthermore, the Office of Education will be using a permanent base year (1977-78) to determine the amount of State and institutional gift aid it will deduct from costs. As a result institutions and States may increase their scholarship and grant expenditures without fear of losing future Federal funds.

On the other hand, the campus-based programs are not intended to replace State and institutional funds. That is the very meaning of the statutory requirement for maintenance of effort in the SEOG and CWS programs. Also, some institutions and States are much richer than others and therefore better able to provide scholarships and grants to their students. It would not be fair to ignore these differences in ability to pay. For both these reasons State and institutional expenditures for scholarships and grants must be considered. Using 1977-78 as a permanent base year accomplishes this purpose with a minimum of undesirable side effects.

"State scholarships and grants" include funds given by a State on a case-by-case basis to individual students. They do not include the "implicit" scholarships given to all students in public institutions in the form of low tuition and fees.

Other Comments

A number of commenters objected to implementing these proposed changes for the application which they must file

in October 1978. They stated that the Office of Education is not giving them enough leadtime to collect the new information that will be required.

If an institution is not able to file these new figures, it will still receive its conditional guarantee, but it may not apply for an amount greater than its guarantee. Thus an institution's inability to supply these figures will not keep it from receiving funds but will prevent it from receiving any increase.

A few commenters objected to basing an institution's conditional guarantee on its actual expenditures or use rate in 1977–78, because that 1 year could have shown an abnormally low use, for a number of good reasons. Several other commenters objected to the fact that the recommendations made by the panel of experts did not include provisions to increase funding levels for inflation.

In response to these commenters, it should be noted that any institution, even one with a low use rate, may request additional funding and have the Office of Education compute its fair share. If an institution's fair share exceeds its conditional guarantee, it will share in any funds that remain available after all conditional guarantees have been funded. Any additional amount an institution receives as its fair share may or may not be enough to compensate for the amount of inflation it has experienced, much of which may be reflected in increased tuition and fees. However, these programs are not intended to help an institution increase its tuition and fees. In fact, proprietary institutions may not, by statute, increase their tuition and fees as a result of the aid their students receive under these programs.

Several commenters complained that the recommendations made by the panel of experts discriminated against independent students. Others complained that the recommendations would prevent an institution from shifting a portion of its CWS award to its SEOG award and *vice versa,* which is permitted by statute.

Both of these commenters appear to misunderstand the recommendations. An institution's fair share will be calculated by using an average living cost for single students. Independent students frequently have dependents. No allowance is made in the computations for those dependents. On the other hand, no deduction is being made for students whose living costs are lower than average, such as students who live in their parents' home. We are not proposing to forbid an institution to consider an independent student's full living costs in computing that student's individual need, even though the Office of Education does not take them specifically into account in computing the institution's fair share. We are also not proposing to amend the statute to forbid an institution to shift a portion of its SEOG award to its CWS award and *vice versa.*

A number of commenters objected to the fact that the panel of experts recommended that Regional Panels should be abolished. These commenters believed that it is desirable to use a "human element" in evaluating applications and that the recommended process is excessively mechanized.

In response to these commenters we must state that the previous application procedures were tried for a number of years and failed to distribute funds fairly among all institutions, despite the fact that those procedures relied heavily on use of the "human element."

Several commenters claimed that the effect of the recommended changes would be to shift funds from low-cost schools to high-cost ones and therefore from disadvantaged students to students from middle-income families.

It should be emphasized that the only funds shifted under the proposed system will be those above the conditional guarantees. Each institution will continue to receive the amount of funds it has been spending. The formulas will only distribute funds above the conditional guarantees.

Preliminary computer simulations indicate that these additional funds are not likely to be distributed proportional to current funding. These simulations do not indicate an overall shift from low-cost to high-cost schools or *vice versa.* Rather, funds will be shifted from some low-cost schools to others and from some high-cost schools to others, reflecting the inequities in the old system.

We do not believe that our proposal will penalize disadvantaged students. If they are in low-cost institutions, Basic Grants will pay up to half their costs. Campus-based funds can be used to pay the remaining half of costs. If they are in high-cost institutions, their Basic Grants will not pay as much as half of their costs, because those costs are greater than $3,600, and a Basic Grant may not exceed $1,800. At a high-cost institution a student from a low-income family needs much larger amounts of campus-based funds than he or she would at a low-cost institution. These factors are all considered in the formulas.

The Office of Education used a survey to decide that 70 percent of undergraduate costs should be met with gift aid and family contributions. One commenter claimed that the survey is unreliable.

In response to this commenter, the Office of Education acknowledges that all surveys are fallible. For the purpose of this fund-distribution procedure, however, it is not essential that the survey data be absolutely accurate. The survey was adequate to show that nationally the share of need met with gift aid is between two-thirds and three-fourths of need. This is true in all categories of institution, both low-cost and high-cost. It is plainly apparent that it is not fair to give some institutions enough SEOG funds to enable them to meet the full need of all their needy students with gift aid, while other institutions are not able to do so. This would give the favored schools a competitive advantage. Therefore a value judgment has been made that SEOG funds will be restricted to those institutions which cannot meet approximately 70 percent of their students aggregate need with gift aid. This figure may be changed in the final regulation as additional facts become known concerning the amount of the appropriation and other pertinent factors.

One commenter observed that the recommended changes would encourage grantsmenship by the "numbers gameplayers."

In reply to this commenter it must be stated that all the data which institutions furnish to the Office of Education under these new procedures will be audited. The HEW Audit Agency's audit guidelines will be amended to require the institution's independent auditors to verify these numbers as part of the audit procedures now required by all three of the campus-based programs.

Verification of Estimated Income Data

The verification proposal in section 16 is not related to the changes being made in the institutional application process and the consequent changes being made in the methods of distributing funds among the States and among the institutions within a State. It is being included in this Notice of Proposed Rule Making only to avoid issuing a separate Notice.

Studies have shown that families make errors when they file application for financial aid using estimated income data for a year which has not yet been completed. Lower-income families tend to believe that they will make more money than they actually do. Higher-income families believe the opposite. To avoid these problems, the Office of Education is proposing that no campus-

based funds may be disbursed to a student whose need has been computed using estimated data submitted before January 1. Institutions may continue to accept applications before January 1, but they must verify the estimates before disbursing campus-based funds. They may do this by requiring families which apply before January 1 to submit a copy of their Federal income tax form 1040 which proves that their estimate of income data was correct. If the estimate was not correct, the institution must make the appropriate adjustments in need analysis. Verification of data on applications submitted after January 1 is optional with the institution.

Dated: April 30, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: July 12, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.471 National Direct Student Loan; 13.463 College Work-Study; and 13.418 Supplemental Educational Opportunity Grant.)

1. Part 144 of Title 45 of the Code of Federal Regulations is moved to Part 174 and amended to read as follows:

PART 174—NATIONAL DIRECT STUDENT LOAN PROGRAM

Subpart A—General Provisions

Sec.
174.1 Purpose, identification of common provisions, and nondiscrimination.
174.2 Definitions.
*174.2a Institution of higher education.
174.2b Eligible program.
174.3 Apportionment and reapportionment of Federal capital contributions to States.
174.4 Allocation, reallocation, and payment to institutions.
174.5 Application.
174.6 Funding procedures.
174.7 Application review—approval of request.
174.8 Institutional agreement.
174.9 Student eligibility.
174.10 Special sessions.
*174.11 Cost of education.
*174.11a Programs of study abroad.
*174.12 Expected family contribution.
*174.13 Approved need analysis systems.
*174.14 Coordination of student financial aid programs, loan amount, and overaward.
174.15 Coordination with BIA grants.
174.16 Making and disbursing loans.
174.17 Federal interest in allocated funds—Transfer of loan Fund.
174.18 Use of funds.
174.19 Fiscal procedures and records.
174.20 Compliance with truth in lending and equal credit opportunity requirements.
174.21 Deposit of institutional capital contributions into Fund.

Subpart B—Terms of Loans

Sec.
174.31 Defense and Direct loan maximums for students.
174.32 Promissory note—loan repayment.
174.33 Minimum repayment rates.
174.34 Deferment of repayment.
174.35 Postponement of loan repayments in anticipation of cancellation.
174.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

Subpart C—Loan Collection—Due Diligence

174.41 [Reserved]
174.42 Due diligence.
174.43 Contact with the borrower prior to repayment period.
174.44 Billing procedures.
174.45 Address searches.
174.46 Collection and litigation procedures.
174.47 Other collection and litigation costs.
174.48 Use of fiscal agent.
174.49 Commonly owned billing service and collection agency.
174.50 Bankruptcy of borrower.

Subpart D—Loan Cancellation

174.51 Special definitions.
174.52 Cancellation procedures.
174.53 Teacher cancellation—Defense loan.
174.54 Teacher cancellation—Direct loan.
174.55 Cancellation for service in a Head Start Program.
174.56 Cancellation for military service.
174.57 Cancellation for death or disability.
174.58 No cancellation for prior service. No repayment refunded.
174.59 Reimbursement to institutions for loan cancellation.

Appendix A—Allotment of funds to States for fiscal year 1972.
Appendix B—Sample promissory note.
Appendix C—Examples for computing penalty charges.
Appendix D—From: Federal Register, Volume 41, No. 228—Wednesday, November 24, 1976. (Subpart C—Loan Collection—Due Diligence.)

Authority: Title IV, Part E of the Higher Education Act of 1965, as added by section 137(b) of Pub. L. 92-318, 86 Stat. 273, as amended (20 U.S.C. 1087aa-1087ff), and Title II of the National Defense Education Act of 1958, as amended (20 U.S.C. 421-429), unless otherwise noted.

Subpart A—General Provisions

§ 174.1 Purpose, identification of common provisions, and nondiscrimination.

(a) The National Direct Student Loan Program (NDSL) establishes revolving loan funds at institutions of higher education so that institutions may provide low-interest loans to help financially needy students pay their educational costs.

(b)(1) The National Direct Student Loan Program authorized by Title IV-E of the Higher Education Act of 1965 is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Commissioner considers any student loan fund established under Title II to have been established under Title IV-E. The assets of an institution's student loan fund established under Title II are assets of the institution's student loan fund established under Title IV-E.

*(c) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

(20 U.S.C. 1087aa, Pub. L. 92-318, section 137(d)(1))

*(d) An institution must comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	45 CFR Part 80.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	45 CFR Part 86.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90

(20 U.S.C. 1221e-3(a)(1))

(20 U.S.C. 1087aa-1087ff)

§ 174.2 Definitions.

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV-E of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Basic Educational Opportunity Grant Program (BEOG):* A grant program authorized by Title IV-A-1 of the HEA.

Campus Based Programs: (a) The National Direct Student Loan Program (NDSL–45 CFR 174);

(b) The College Work-Study Program (CWS–45 CFR 175); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–45 CFR 176).

Clock Hour: The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV–C of the HEA.

(42 U.S.C. 2751–2756)

Commissioner: The U.S. Commissioner of Education or the Commissioner's designee.

(20 U.S.C. 1141(f))

Default or in-default: (a) The failure of a borrower to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) Notwithstanding paragraph (a), if the institution reasonably concludes from written contacts with the borrower that he or she intends to repay the loan, the borrower is not considered in default.

(c) Except as provided in § 174.9, the Commissioner considers a loan discharged in bankruptcy not to be in default.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: The total amount borrowed that has reached the repayment stage minus any principal amount repaid or canceled on loans—

(a) Repayable monthly and in default at least 120 days; and

(b) Repayable less frequently and in default at least 180 days.

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act (20 U.S.C. 421–429).

Dependent student: A student who does not qualify as an independent student (see independent student).

Direct loan: A loan made after June 30, 1972, under the Act.

Expected family contribution: The amount a student and his or her spouse and family are expected to pay toward his or her cost of education.

Federal capital contribution: The portion of a Fund allocated to an institution under § 174.4.

Financial need: The difference between a student's cost of education and his or her expected family contribution.

Fund (National Direct Student Loan Fund): A fund established and maintained according to § 174.8.

Good standing: The eligibility of a student to continue attending the institution in which he or she is enrolled in accordance with the standards of the institution.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

Guaranteed Student Loan Program (GSL): The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1979): A student—

(a) Who is a veteran; or

(b) Who—

(1) Has not and will not be claimed as an exemption for Federal income tax purposes by any person except his or her spouse for the calendar year(s) in which aid is received or the calendar year prior to the academic year for which aid is requested;

(2) Has not received and will not receive financial assistance of more than $600 from his or her parent(s) in the calendar year(s) in which aid is received or the calendar year prior to the academic year for which aid is requested; and

(3) Has not lived or will not live for more than 2 consecutive weeks in the home of a parent during the calendar year in which aid is received or the calendar year prior to the academic year for which aid is requested.

(c) For purposes of this paragraph, a student will not be considered to have been claimed as an exemption by a parent, or to have received $600 from a parent, or to have lived with a parent if that parent has died prior to the student's submission of an application for a loan, and if no person, other than the student's spouse, provides or will provide more than one-half of the student's support for the first calendar year in which aid is requested.

Independent student (effective July 1, 1979): (a) A student—

(1) Who is a veteran; or

(2) Who for the calendar year(s) of the award year for which aid is requested or the calendar year before the first calendar year of that award year—

(i) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for any one of these years;

(ii) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years; and

(iii) Has not lived and will not live for more than 6 weeks in the home of his or her parent(s) for any one of these years.

(b) However, the Commissioner considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent, and will not have lived in the parent's home for more than 6 weeks if that parent dies before the student submits his or her loan application.

Institutional capital contribution: The portion of a Fund contributed by the institution under § 174.8(a)(2).

Matured loans: The total principal amount of all loans made minus the principal amount of loans to students who are—

(a) Enrolled as at least half-time students in institutions of higher education; or

(b) Still in their grace period (The grace period is the 9-month period beginning when a student ceases half-time attendance in an institution of higher education).

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Recognized equivalent of a high school diploma:* (a) A General Educational Development certificate (GED); or

(b) A State certificate received after passing a State authorized examination, that that State recognizes as the equivalent of a high school diploma.

**Regular student:* A person who enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c-et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV–A–2 of the HEA.

(20 U.S.C. 1070b et seq.)

Veteran: A person who served on active duty in the U.S. Armed Forces and was discharged or released under conditions other than dishonorable.

(38 U.S.C. 101(2).)

(20 U.S.C. 1087-aa-ff unless otherwise noted.)

§ 174.2a Institution of higher education.

An institution of higher education is a public, private nonprofit, or proprietary institution.

(a) A public or private nonprofit institution of higher education is an educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of a standardized written test, other measurement instrument, non-written examination for practical course work (practicum examination), or other verifiable indicators such as written recommendations from professional educators and counselors who are not employed by or affiliated with the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, bachelor, advanced, or professional degree;

(ii) At least a 2 year program that is acceptable for full credit toward a bachelor degree; or

(iii) At least a 1 year training program that leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency the Commissioner recognizes as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution that has satisfactorily assured the Commissioner that it will meet the accreditation standards of an agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated, and its efforts to meet accreditation standards; or

(iv) An institution whose credits are accepted for credit on transfer by at least 3 accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) A proprietary institution of higher education is an educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of a standardized written test, other measurement instrument, non-written examination for practical course work (practicum examination), or other verifiable indicators such as written recommendations from professional educators and counselors who are not employed by, or affiliated with, the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides at least a 6 month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a nationally recognized accrediting agency or association;

(6) Has been in existence at least 2 years. The Commissioner considers an institution to have been in existence for 2 years if it is legally authorized to provide, and has provided, a continuous (except for normal vacation periods) training program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the application date for eligibility; and

(7) Has entered into an agreement that insures that the availability of assistance to students under Title IV of HEA has not resulted in, and will not result in, increased tuition, fees, or other charges to its students.

(c) *One year training program.* A one year program is an instructional program that is at least—

(1) 24 semester or trimester hours or 36 quarter hours at an institution using credit hours to measure progress;

(2) 900 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 900 hours of preparation in a correspondence program.

(d) *Six month training program.* A six month program is an instructional program that is at least—

(1) 16 semester or trimester hours or 24 quarter hours at an institution using credit hours to measure progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 600 hours of preparation in a correspondence program.

(20 U.S.C. 1141(a), 1088(b))

§ 174.2b Eligible program.

An eligible program is a program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a certificate of graduation from secondary school (high school diploma);

(2) Have the recognized equivalent of a high school diploma (see definitions); and

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered. (An institution must document a student's ability to benefit from the training offered in accordance with the procedures set forth in § 174.2a(a)(2)(iii); and

(b)(1) Leads to a bachelor, associate, graduate, or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation (a 1 year program is defined in § 174.2a(c)); or

(4) Is, for a proprietary institution, at least a 6 month program of study leading to a certificate, that prepares students for gainful employment in a recognized occupation (a 6 month program is defined in § 174.2a(d)).

(20 U.S.C. 1141(a), 1088(b)(3))

§ 174.3 Apportionment and reapportionment of Federal capital contributions to States.

(a) *Apportionment.* (1) The Commissioner apportions 90% of appropriated funds for Federal capital contributions according to section 462(a)(1) of the Act. (This section requires the Commissioner to apportion additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Commissioner apportions the remaining funds so that each institution in each State receives the Federal capital contribution computed under §§ 174.6 or 174.7.

(b) *Reapportionment.* (1) The Commissioner reapportions the amount of a State's apportionment that exceeds the sum of—

(i) The amount of approved requests of institutions in that State; and

(ii) The amount to be transferred to carry out the State Student Financial Assistance Training Program.

(2) The Commissioner reapportions those funds among the remaining States according to institutional need for Federal capital contributions as computed under §§ 174.6 or 174.7.

(c) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) If a State has submitted an approved application, the Commissioner transfers an amount equal to .05% of its apportionment under paragraph (a) or $10,000 (whichever is less) to that State's Student Financial Assistance Training Program authorized under Section 493C of HEA.

(2) The Commissioner allocates, on an equitable basis, to other institutions in that State those funds reserved for the State's Student Financial Assistance Training Program not granted for the fiscal year for which appropriated.

(20 U.S.C. 1087bb and 1088b-3.)

§ 174.4 Allocation, reallocation, and payment to institutions.

(a) (1) If funds available for Federal capital contributions within a State are insufficient to honor all requests for funds by institutions in that State, the Commissioner distributes the funds as described in § 174.6.

(2) Allocations to proprietary institutions may not exceed the difference between $190,000,000 and the amount appropriated for Federal capital contributions. If the amounts approved for proprietary institutions exceed that difference, the Commissioner reduces their allocations proportionately.

(b) (1) If an institution anticipates not lending all its allocated funds by the end of an award year, it must specify the anticipated unused amount to the Commissioner, who reduces the institution's allocation accordingly.

(2) The Commissioner will reallocate unused Federal capital contributions proportionately to other institutions in a State but only when enough accumulate to make a significant increase in the amount awardable to those other institutions.

(c) The Commissioner allocates new Federal capital contributions for a specific period of time. The Commissioner pays funds to an institution in advance or by reimbursement. The Commissioner bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1087bb.)

§ 174.5 Application.

(a) To participate in the NDSL program, an institution must file an application with the Commissioner for an approved level of expenditure before an annually established closing date. In the application the institution may request—

(1) A Federal capital contribution;

(2) Authority to spend the income of its Fund (that income includes repayments made by borrowers and interest earned on Fund cash); or

(3) Both (1) and (2).

(b) The application must be on a form approved by the Commissioner and contain information needed to determine the institution's—

(1) Level of expenditure; and

(2) Federal capital contribution.

(20 U.S.C. 1087bb.)

§ 174.6 Funding procedures.

(a) (1) The Commissioner computes—

(i) An approved level of expenditure, called a conditional guarantee, for each institution applying under paragraph (b); and

(ii) An amount of funding, called a fair share, for each institution seeking a higher level of expenditure than its conditional guarantee.

(2) The terms "conditional guarantee" and "fair share" refer only to the level of expenditure. The Commissioner computes the Federal capital contribution (FCC) according to § 174.6(f).

(b) *Conditional guarantee.* The Commissioner computes a conditional guarantee for the 1979–1980 award year in the following way:

(1) An institution that participated in the NDSL program in award years 1977–1978 and 1978–1979 receives for 1979–1980 the greater of its—

(i) 1977–1978 level of expenditure; or

(ii) Projected 1978–1979 level of expenditure.

(2) An institution's 1977–1978 level of expenditure equals the amount of loans made in that award year plus the amount it claimed for administrative expenses.

(3) *Projected level of expenditure.* The Commissioner computes an institution's projected 1978–1979 level of expenditure

by multiplying its NDSL funds available in 1978–1979 by its 1977–1978 utilization rate.

(4) NDSL funds available in 1978–1979 include—

(i) The FCC awarded for 1978–1979;

(ii) The matching institutional capital contributions;

(iii) 110 percent of 1977–1978 loan repayments;

(iv) Reimbursements for 1977–1978 Direct loan cancellations; and

(v) Cash on hand as of June 30, 1978.

(5) *Utilization rate.* An institution's 1977–1978 NDSL utilization rate equals—

$$\frac{\text{its 1977–1978 level of expenditure}}{\text{its NDSL funds available in 1977–1978}}$$

NDSL funds available in 1977–1978 include—

(i) The FCC awarded for 1977–1978;

(ii) The matching institutional capital contribution;

(iii) Loan repayments received in 1977–1978;

(iv) Reimbursement for 1976–1977 Direct loan cancellations; and

(v) Cash on hand as of June 30, 1977.

(6) *Conditional guarantee for an institution participating in NDSL in 1978–1979 but not in 1977–1978.* The Commissioner considers an institution to have a 100% utilization rate if it participated in the NDSL program in award year 1978–1979 but not in 1977–1978.

(7) *Conditional guarantee for an institution not participating in any campus based programs in 1978–1979.* (i) If an institution did not participate in any campus based program in 1978–1979, the Commissioner computes its conditional guarantee by comparing it to similar institutions of the same type and control participating in NDSL for the first time in 1978–1979, as follows:

$$\frac{\text{Authorized level of expenditure of similar institutions}}{\text{Their number of enrolled students}} = \text{amount per student}$$

$$\text{Conditional guarantee} = \text{per student amount} \times \text{number of students enrolled at applicant institution}$$

(ii) Control: public, nonprofit private, and proprietary.

(iii) Type: university, 4-year institution, 2-year institution, and other.

(8) The Commissioner does NOT compute a conditional guarantee for an institution that applies to participate in the NDSL program for the award year 1979–1980 if it participated in either CWS or SEOG but not NDSL in 1978–1979. The institution, however, may apply for a level of expenditure under paragraph (c), "fair share."

(c) *Fair share calculation.* (1) (i) The Commissioner computes an institution's fair share of the NDSL funds available in award year 1979–1980 by multiplying the NDSL funds available in award year 1979–1980 by the institution's self help relative national index.

(ii) "NDSL funds available in the 1979–1980 award year" include—

(A) The 1979 appropriation for FCC;

(B) The matching institutional capital contribution;

(C) 121 percent of 1977–1978 loan repayments; and

(D) Reimbursement for 1977–1978 Direct loan cancellation.

(2) *Self help relative national index calculation.* An institution's self help relative national index equals—

$$\frac{\text{its self help need}}{\text{the self help need of all institutions}}$$

(3) *Self help need of all institutions.* The self help need of all institutions equals—

(i) The self help need of all institutions applying under this paragraph or under § 175.6(c) of the CWS regulation; and

(ii) The NDSL conditional guarantee for all institutions not applying under this paragraph or under § 175.6(c) of the CWS regulation.

(4) *Self help need of an institution.* An institution's self help need equals the self help need of its graduate students and undergraduate students.

(5) *Self help need of graduate students.* To determine the self help need (need for funds from work and loan sources) of an institution's graduate students, the Commissioner—

(i) Establishes various income categories for dependent and indepenent graduate students;

(ii) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students using a need analysis method approved under § 174.13;

(iii) Determines the average cost of education for graduate students;

(iv) Subtracts from the average cost of education for graduate students, the computed EFC for each income category of dependent students and each income category of independent students;

(v) Multiplies those amounts by the number of students in each category;

(vi) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(vii) Totals those two amounts.

(6) *Self help need of undergraduate students.* To determine the self help need (need for funds from work and loan sources) of an institution's undergraduate students, the Commissioner—

(i) Establishes various income categories for dependent and independent undergraduate students;

(ii) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 174.13;

(iii) Computes 30 percent of the average cost of education for undergraduate students;

(iv) Multiplies the number of dependent students in each income category by the lesser of—

(A) 30 percent of the average cost of education for undergraduate students; or

(B) The average cost of education for undergraduate students minus the EFC determined under (ii) for that income category;

(v) Adds the amounts obtained for each category of dependent students;

(vi) Multiplies the number of independent students in each income category by the lesser of—

(A) 30 percent of the average cost of education for undergraduate students; or

(B) The average cost of education of undergraduate students minus the EFC determined under (ii) for that income category;

(vii) Adds the amounts obtained for each income category of independent students; and

(viii) Adds the amounts obtained under (v) and (vii).

The following charts show the income categories and calculations for graduate and undergraduate students.

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DETERMINATION OF SELF HELP NEED FOR DEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	6 SELF HELP NEED COL.4 x COL.5
$ 0 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - OVER					
7 TOTAL SELF HELP NEED FOR DEPENDENT GRADUATE STUDENTS					$

DETERMINATION OF SELF HELP NEED FOR INDEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	6 SELF HELP NEED COL.$ x COL.5
$ 0 - $ 999					
$ 1,000 - $ 1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - OVER					
7 TOTAL SELF HELP NEED FOR INDEPENDENT GRADUATE STUDENTS					$

7 TOTAL SELF HELP NEED FOR DEPENDENT GRADUATE STUDENTS	$
7 TOTAL SELF HELP NEED FOR INDEPENDENT GRADUATE STUDENTS	$
TOTAL SELF HELP NEED FOR ALL GRADUATE STUDENTS	$

DETERMINATION OF SELF HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2. EFC	3 30% x AVG COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	NEED: LESSER OF COL. 3xCOL. 5 or COL. 4xCOL. 5
0 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - OVER					
7 TOTAL SELF HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS $_____					

DETERMINATION OF SELF HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 30% x AVG COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	NEED: LESSER OF COL 3xCOL 5 or COL 1xCOL 5
$ 0 - $ 999					
$ 1,000 - $ 1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - OVER					
7 TOTAL SELF HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS $ _____					

7 TOTAL SELF HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS $_____
7 TOTAL SELF HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS $_____
TOTAL SELF HELP NEED FOR ALL UNDERGRADUATE STUDENTS $_____

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(7) *Cost of education* means attendance costs for eligible undergraduate and graduate students including tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Commissioner pro rates this amount for eligible students.)

(8) *Eligible students* means students who satisfy the eligibility requirements of § 174.9 (a)(1) through (a)(4).

(9) For purposes of subparagraphs (5) and (6), the average cost of education minus EFC may not be less than zero.

(d) *Increases within State apportionment ("State increase").* (1) The Commissioner increases levels of expenditure ("State increase") for those institutions in a State applying for a higher level of expenditure if the combined FCC's of all institutions in the State are less than than the State apportionment computed under § 174.3(a). To compute this State increase, the Commissioner—

(i) Subtracts the FCC awards for all institutions within the State from the State apportionment for FCC. The Commissioner determines those FCC awards under subparagraph (f)(1)(i) on the basis of the conditional guarantees;

(ii) Multiplies the remainder by the relative State index for self help (see subparagraph (2)) of each institution applying under paragraph (c); and

(iii) Increases an institution's approved level of expenditure by 1.11 times the amount computed in (ii).

(2) *Relative State index for self help:* An institution's relative State index for self help equals—

$$\frac{\text{its self help need}}{\text{the self help need of all institutions in the State applying under paragraph (c)}}$$

(e) *Increase of level of expenditure based on fair share shortfall ("National increase").* (1) The Commissioner further increases levels of expenditure ("National increases") for institutions applying under paragraph (c) if all conditional guarantees and State increases are less than the total NDSL funds available for 1979–1980 (see subparagraph (c)(1)(ii)).

(2) The Commissioner determines—

(i) *NDSL available funds for shortfall* by—

(A) Adding the conditional guarantees for all institutions and all State increases; and

(B) Subtracting that sum from the NDSL funds available for 1979–1980;

(ii) *An institution's shortfall* by—

(A) Adding the institution's conditional guarantee and State increase; and

(B) Subtracting that amount from its fair share amount; and

(iii) *The total shortfalls of all institutions.*

(3) *An institution's National increase* equals—

$$\frac{\text{its shortfall}}{\text{the total shortfalls of all institutions}} \times \text{NDSL available funds for shortfall}$$

(f) *Determination of Federal capital contribution.* (1) An institution's Federal capital contribution (FCC) for award year 1979–1980 is equal to the sum of the following:

(i) 90 percent of: An institution's conditional guarantee minus the reimbursements for Direct loan cancellations for award year 1977–1978 and loan repayments.

(ii) Its State FCC increase (paragraph (d)).

(iii) 90 percent of its National increase (paragraph (e)).

(2) To compute FCC for award year 1979–1980, the Commissioner considers loan repayments to be 121 percent of the amount collected in the 1977–1978 award year if—

(i) The institution's default rate is 10 percent or less;

(ii) The institution's default rate is more than 10 percent, but the number of loans in default 1 to 2 years on June 30, 1978, has declined by at least 10 percent from the number of loans in default 120 days to 1 year on June 30, 1977;

(iii) The institution's default rate is more than 10 percent, but the institution shows under § 174.7, that it has exercised due diligence for the 1976–1977 and 1977–1978 award years. The due diligence requirements for those two years were set forth in Subpart C of the NDSL regulations published in the Federal Register of November 24, 1976 (see appendix D).

(3) If an institution does not qualify under subparagraph (2), the Commissioner considers its loan repayments to be—

(i) 121 percent of the amount collected in the 1977–1978 award year; plus

(ii) The amount it would have collected through June 30, 1978, if its default rate were 10 percent.

(g) (1) If an institution's approved NDSL Federal capital contribution (FCC) exceeds its request for FCC, the Commissioner places the excess in the "Excess FCC Pool." Similarly if an institution's recommended CWS funding exceeds its request for CWS funds, the Commissioner places the excess in an "Excess CWS Pool."

(2) (i) If an institution contributes to the Excess FCC Pool and its need for CWS funds is not met, it may receive additional funds from the Excess CWS Pool.

(ii) If an institution contributes to the Excess CWS Pool and its need for FCC is not met, it may receive additional FCC from the Excess FCC Pool.

(iii) The amount of additional FCC an institution may receive under this subparagraph is proportional to its contribution to the Excess CWS Pool. The amount of additional CWS funds an institution may receive under this subparagraph is proportional to its contribution to the Excess FCC Pool. Stated as an equation—

$$\text{Additional FCC} = \frac{W}{Pw} \text{ times } Pl;$$

and

$$\text{Additional CWS} = \frac{L}{Pl} \text{ times } Pw.$$

Where

W means the institution's contribution to Excess CWS Pool;

L means the institution's contribution to Excess FCC Pool;

Pw means Excess CWS Pool; and

Pl means Excess FCC Pool.

(h) No institution may receive more Federal capital contribution than it requested.

(20 U.S.C. 1087bb.)

§ 174.7 Application review—approval of request.

(a) An institution may request a review of its computed level of expenditure or its Federal capital contribution.

(b) A National Review Panel appointed by the Commissioner reviews each institution's request. The panel consists of student financial aid officers and OE personnel.

(c) In establishing an institution's level of expenditure and Federal capital contribution, the Commissioner considers the panel's recommendations and its reasons for the recommendations.

(d) The Commissioner establishes an approved level of expenditure and Federal capital contribution based on procedures in § 174.6 and the review panel's recommendations.

(20 U.S.C. 1087bb.)

§ 174.8 Institutional agreement.

An institution, to participate in the NDSL program, must enter into an agreement with the Commissioner that specifies that—

(a) The institution will establish and maintain a Student Loan Fund (Fund).

It must deposit into the Fund—

(1) Federal capital contributions;

(2) Institutional capital contributions equal to at least one-ninth of the Federal contribution;

(3) Principal and interest collected on student loans made from the Fund;

(4) Payments to the institution as the result of Direct loan cancellations under section 465(b) of the Act;

(5) Penalty charges collected under § 174.32(f);

(6) Any other Fund earnings; and

(7) Any short term, no interest loans it makes to the Fund in anticipation of collections.

(b) The institution may use the money in the Fund only for—

(1) Making National Direct Student Loans to students;

(2) Student consumer information services and administrative expenses, as provided for in § 174.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs;

(5) Other collection costs, agreed to by the Commissioner, in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund (see "Other collection costs" § 174.47); and

(6) Repayment of the short term, no interest loans made to the Fund by the institution in anticipation of collections;

(c) Where a promissory note has been in default at least 2 years despite due diligence, the institution may assign its rights to the United States without recompense, and any amount collected on the loan will be deposited in the general fund of the Treasury;

(d) The institution must submit a report to the Commissioner at least twice a year that shows the total number of loans made from its Fund that are in default—

(1) 120 days for loans repayable in monthly installments; or

(2) 180 days for loans repayable in less frequent installments; and

(e) The institution must make loans from the Fund reasonably available to all eligible students in the institution to the extent that funds are available.

(20 U.S.C. 427, 1087bb, 1087cc.)

§ 174.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an NDSL if the student—

*(1) Is a regular student;

*(2) Is enrolled in good standing as at least a half-time student at an institution of higher education. If an eligible student fails to maintain good standing, the institution must suspend his or her eligibility and may not make a loan payment to that student until he or she regains good standing;

*(3) Is enrolled in an eligible program as defined in § 174.2b;

*(4) (i) Is a U.S. Citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(5) Has financial need.

*(b) *Member of a religious order—financial need.* The Commissioner considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(c) *Selection.* (1) An institution must make NDSLs reasonably available to all eligible students.

(2) If applications for loans exceed available funds, the institution must base the order of selection on need.

(3) The institution's selection procedures must be—

(i) In writing;

(ii) Available for public inspection; and

(iii) Maintained in the files of the student financial assistance office.

(4) The institution may not make a loan under NDSL to a student who is unwilling to repay that loan. Default on a previous loan is evidence of that unwillingness.

*(d) *Conditions for payment.* An institution may make an NDSL advance ONLY AFTER determining that the student—

(1) Is enrolled in good standing;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Does not owe a refund on a Basic Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution; and

(4) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan received for attendance at that institution.

*(e) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may make an NDSL advance to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT advance any funds to the student for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(f) *Overpayment of grants.* Conditions under which an institution may make an NDSL payment to a student who is overpaid a grant:

(1) *Overpayment of a Basic Grant.* If an institution makes an overpayment of a Basic Grant to a student, it may continue to disburse an NDSL to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Basic Grant payments for that award year.

(2) *Overpayment of a Basic Grant due to institutional error.* If the institution makes an overpayment of a Basic Grant as a result of its own error and can not correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to disburse an NDSL to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Basic Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(g) *Default on loans.* Conditions under which an institution may make an NDSL to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan.* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a Guaranteed Student Loan if the Commissioner (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(h) *Bankruptcy.* The Commissioner considers a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

*(i) *GSL—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1087dd; and 1088f)

§ 174.10 Special sessions.

A student enrolled at an institution in a special session (e.g., summer school) is eligible for an NDSL if he or she—

(a) Is otherwise eligible (see eligibility §174.9);

(b) (1) Is registered as at least a half-time student at that institution for that session; or

(2) Is taking all of the courses required to complete his or her certificate or degree; and

(c) (1) Was attending that institution as at least a half-time student during the preceding term; or

(2) Has been accepted as at least a half-time student for the subsequent term.

(20 U.S.C. 1087aa-ff)

***§ 174.11 Cost of education.**

(a) A student's educational costs include—

(1) Tuition and fees;

(2) Reasonable expenses for room and board, books, supplies, transportation, and miscellaneous personal expenses; and

(3) Expenses for support of the student's dependents.

(b) The Commissioner considers only tuition and fees to be costs of education for correspondence students. However, travel and room and board are allowed for a required period of residential training.

(20 U.S.C. 1087dd.)

***§ 174.11a Programs of study abroad.**

(a) The Commissioner considers a student who is studying abroad to be enrolled in an eligible program if his or her home institution—

(1) Approves the student's program of study in advance; and

(2) Treats the student's academic performance exactly as if completed at the home institution.

(b)(1) If a student is enrolled in an eligible program outside the United States, the cost of education used to compute financial need may be no greater than the cost of education on the home campus.

(2) However, a student may have related additional costs that do not qualify as educational costs. The Commissioner does NOT consider funds used to pay these costs to be student resources if they come from sources other than the Basic Grants and Campus Based Programs. (This paragraph is effective retroactively to Nov. 3, 1976.)

(20 U.S.C. 1087dd.)

***§ 174.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of education, the financial aid officer must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of education.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of education, the financial aid officer must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of education.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid officer must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of education, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's educational costs, the financial aid officer must determine whether his or her parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid officer must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's

need at least annually except for a correspondence student whose total program extends over more than one year and costs $1,000 or less. In this case, an institution may determine need only once at the beginning of the course.

(20 U.S.C. 1087dd)

***§ 174.13 Approved need analysis systems.**

(a) An institution must use a Commissioner approved need analysis system or calculation method in complying with the requirements in § 174.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Commissioner has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the BEOG program (45 CFR Part 190).

(2) The income tax system if adjusted to reflect the number of the parent's dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Commissioner approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Commissioner.

(2) The Commissioner computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Commissioner will publish annually with the sample cases.

(3) (i) In developing sample cases, the Commissioner selects cases where the main wage earner is 45 years of age.

(ii) The Commissioner does not select cases that involve medical and dental expenses, casualty and theft loses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Commissioner treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Commissioner revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Commissioner approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the BEOG program (45 CFR Part 190).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Commissioner by June 30.

(2) The Commissioner lists approved systems in the Federal Register by the following September 1.

(3) Applications for approval must include—

(i) Information the Commissioner needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid officer believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1087dd)

***§ 174.14 Coordination of student financial aid programs, loan amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its NDSL and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award an NDSL to a student if the NDSL, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the NDSL, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of education.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that a borrower has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Basic Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of education the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2) of this paragraph, and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Commissioner considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from BEOG, regardless of whether the student applies for them;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL, where indicated under paragraph (e);

(7) Long-term loans, excluding GSL, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL).* (1) A student may use a GSL to replace his or her expected family contribution.

(2) However, if the GSL exceeds the student's expected family contribution, the Commissioner considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards NDSL funds to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1087dd)

§ 174.15 Coordination with BIA grants.

*(a) To determine the amount of an NDSL for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Basic Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid officer is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(20 U.S.C. 1087dd)

§ 174.16 Making and disbursing loans.

(a)(1) Before an institution makes its first advance to a student, it must inform the borrower of his or her obligations to—

(i) Repay the loan; and

(ii) Apply the proceeds only to educational expenses.

(2) An institution may inform the student of his or her obligations by mail.

(b)(1) An institution using a semester, trimester, or quarter system must advance each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{NDSL}{N}$$

Where NDSL=total NDSL award and N=the number of semesters, trimesters, or quarters in that year.

(3) If the total NDSL award is to a student attending less than a full academic year, the institution determines the amount of each advance by the following fraction:

$$\frac{NDSL}{R}$$

Where NDSL=total NDSL award and R=the number of semesters, trimesters, or quarters remaining in the academic year.

(c) Notwithstanding paragraph (b), if a student incurs uneven costs during an academic year and needs additional funds in a particular payment period, the institution may advance NDSL funds to the student for that purpose.

(d)(1) An institution NOT using a semester, trimester, or quarter system must advance funds to the student at least twice during an academic year.

(2) The institution must make one advance at the beginning and another at the midpoint of the academic year.

(3) The institution may not advance more than half the loan before the midpoint.

(e)(1) Within each payment period, an institution may advance funds to the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the borrower directly by check or by crediting his or her account with the institution.

(3) However, if it credits the account, the institution must give the borrower a receipt.

(4) In either case, the borrower must sign for the funds in the Schedule of Advances part of the note.

(f) Only one advance is necessary if the total amount the institution awards

a student under the Campus Based Programs is less than $301.

(g) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(h) A correspondence student must submit his or her first completed lesson before receiving an advance.

(i) An institution may not disburse loan funds unless the student files a notarized affidavit with the institution he or she attends that—

(1) Is on a form approved by the Commissioner;

(2) States that the student will use the loan proceeds solely for educational expenses at the institution; and

(3) Is notarized by someone who does not recruit students for the institution.

(j) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(20 U.S.C. 424, 1087cc, 1088g.)

§ 174.17 Federal interest in allocated funds—Transfer of loan fund.

*(a) Except for funds received for the administrative cost allowance (see § 174.18(b)), funds received by an institution under the NDSL program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b) (1) If an institution responsible for an NDSL Fund closes or no longer wants to participate in the program, the Commissioner will take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) The undertaking of a capital distribution of the liquid assets of the Fund according to § 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution in the same State.

(iii) The transfer of the outstanding loans to the Office of Education if no institution in that State wishes to receive them.

(2) The Commissioner considers the cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Commissioner transfers the outstanding loans to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Commissioner considers the first institution's share of those collections to be the second institution's institutional capital contribution.

(4) If the Commissioner transfers the outstanding loans to the Office of Education, the Commissioner may use the institutional share of those collections to pay collection costs.

(c) If more than one institution in the State offers to collect the outstanding loans, the Commissioner will transfer the loans to one or more of the competing institutions on the basis of—

(1) Primarily, the institution's demonstrated loan collection capability; and

(2) Secondarily, the number of students of the first institution expected to enroll in the second institution.

(d) No audit exception will be taken against the second institution on account of actions or omissions of the first institution in the administration of its Fund. The second institution must segregate the transferred Fund account until an audit satisfactory to the Commissioner is performed on the operation of the first institution's program.

(20 U.S.C. 1087aa–ff; 1087cc(a)(5) and (6).)

§ 174.18 Use of funds.

(a) *General.* An institution must deposit the funds it receives under the NDSL program into its Student Loan Fund. It may use these funds only for making loans and the other activities specified in § 174.8(b).

(b) *Administrative cost allowance.* (1) An institution is entitled to an administrative cost allowance of 4% of the principal amount of loans made from the Fund for each award year. However, the maximum administrative cost allowance permitted an institution for its campus based programs (SEOG, CWS, and NDSL) is $325,000 for any award year.

(2) An institution must use the administrative cost allowance first to provide student consumer information in accordance with 45 CFR 178. It may then use any funds remaining to administer its Title IV financial aid programs.

(20 U.S.C. 424, 1087cc, 1088b.)

§ 174.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its NDSL program, an institution must establish and maintain an internal control system of checks and balances that insures that no person can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b). However an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for NDSL Fund.* (1) An institution must maintain all the cash of its NDSL Fund in a separate bank account that contains no other funds if the Commissioner determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c), paragraph (d), or both;

(ii) Identify the cash balance of the NDSL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Commissioner makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's NDSL Fund account and must contain all the cash of the institution's NDSL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, Direct loan cancellation payments, and any earnings of the Fund.

(c) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program;

(iv) Show the amount of need and how the need was met for each student; and

(v) Identify the officer who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Commissioner requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Commissioner.

(d) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent, and the records specified in § 174.9(c).

*(2) *Period of retention.* Except for loan records and audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Report for that year.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal and interest respectively.

(ii) This history must also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution must include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution must retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's assignment or final repayment or cancellation.

*(4) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(5) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(e) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (d) (1), (2), and (3) and to any other pertinent books, documents, papers, and records.

(f) *Separate records.* An institution need not maintain separate records for National Defense Student Loans and National Direct Student Loans except for loan cancellation records.

*(g) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, NDSL transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with HEW's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Commissioner approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(h) *Audit reports.* The institution must submit audit reports to its local regional office of HEW's Audit Agency. It must give the Audit Agency and the Commissioner access to records or other documents necessary to the audit's review.

(i) *Safekeeping.* An institution must keep promissory notes and student loan ledgers in good order in a locked, fire proof container. Only authorized personnel may have access to these documents.

(20 U.S.C. 424, 1087cc, 1232c.)

§ 174.20 Compliance with truth in lending and equal credit opportunity requirements.

In making an NDSL, an institution must comply with the truth in lending requirements of Regulation Z (12 CFR 226) and with the equal credit opportunity requirements of Regulation B (12 CFR 202). With regard to Regulation B, the Commissioner considers the NDSL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature. (12 CFR 202.8(d)).

(20 U.S.C. 1087aa-ff.)

§ 174.21 Deposit of institutional capital contributions into Fund.

When an institution deposits any Federal capital contribution to its Fund it must deposit its institutional capital contribution at the same time.

(20 U.S.C. 1087cc.)

Subpart B—Terms of Loans

§ 174.31 Defense and direct loan maximums for students.

(a) The maximum amount of Defense and Direct loans an eligible student may borrow is—

(1) $2,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(2) $5,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has NOT received the degree. The $5,000 includes Defense and Direct loans the student borrowed before completing the 2 years of study toward a bachelor's degree; and

(3) $10,000 for study toward professional or graduate degrees. The $10,000 includes Defense and Direct loans a student borrowed for undergraduate study.

(20 U.S.C. 1087dd.)

§ 174.32 Promissory note—loan repayment.

(a) *Promissory note.* (1) To receive a loan a student must sign a promissory note before the institution makes any advance.

(2) The Commissioner must approve the promissory note used by the lending institution.

(3) The note in appendix B is acceptable. The institution must not change the meaning of the note without the Commissioner's approval.

(4) The lending institution must give a copy of the signed note to the borrower at or before the exit interview.

(b) *Interest rate.* The promissory note must state that—

(1) The rate of interest on the loan is 3 percent a year on the unpaid balance; and

(2) No interest may be charged before the repayment period begins or during a deferment period authorized under § 174.34 (a) and (b).

(c) *Repayment.* (1) The promissory note must state that the repayment period—

(i) Begins 9 months after the borrower ceases to be a least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Commissioner, and ends 10 years later;

(ii) May begin earlier if the borrower requests it; and

(iii) May vary because of minimum monthly repayments (see § 174.33) or deferments (see § 174.34).

(2) The promissory note must state that the borrower must repay the loan—

(i) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(ii) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Commissioner for approval, and the Commissioner approves it.

(3) A repayment plan must be established before the student ceases to be at least a half-time student.

(4) The institution must give the borrower a copy of the promissory note with a copy of the repayment plan attached.

(5) If the last repayment is $10 or less the institution may add it the next-to-last repayment.

(6) A loan repayment must first be applied to interest due on the loan, with the remainder applied to principal.

(d) *Minimum rates of repayment—deferments.* (1) The promissory note may, at the option of the institution, state that the monthly repayments may vary according to the minimum monthly repayment provision (see § 174.33).

(2) The promissory note must include the deferment provisions set forth in § 174.34.

(e) *Prepayment.* (1) The promissory note must state that the borrower may prepay all or part of the loan at any time without penalty.

(2) Amounts repaid during the academic year in which the loan was made will be used to reduce the original loan amount and will not be considered prepayments.

(3) If a borrower repays more than the amount due for any repayment period, the excess must be used to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(f) *Penalty charge.* (1) An institution may state in the promissory note that a penalty will be charged if the borrower does not—

(i) Repay all or part of a scheduled repayment when due;

(ii) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(2) The institution may include the following penalty charges in the promissory note. If the loan is repayable—

(i) Monthly, the maximum monthly charge is $1 for the first month and $2 for each additional month, for each overdue payment;

(ii) Bimonthly, the maximum bimonthly charge is $3 for each overdue payment; and

(iii) Quarterly, the maximum charge per quarter is $6 for each overdue payment.

(3) *Applying penalty charges.* The institution may—

(i) Add the penalty charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after the borrower receives notice of the penalty charge.

(g) *Security and endorsement.* The promissory note must state that the loan must be made without security and endorsement unless—

(1) The borrower is a minor; and

(2) Under applicable State law, a note signed by a minor would not create a binding obligation.

(h) *Assignment.* The promissory note must state that a note may only be assigned to—

(1) The United States or an institution approved by the Commissioner; or

(2) An institution the borrower has transferred to, if that institution—

(i) Is participating in the NDSL program; or

(ii) Is not participating, but has been approved by the Commissioner to receive the notes.

(i) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any penalty charges and accrued interest, if the borrower does not—

(1) Make a scheduled repayment on time; or

(2) File cancellation or deferment form(s) with the institution on time.

(j) *Cost of collection.* The promissory note may state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(20 U.S.C. 425 and 1087dd.)

§ 174.33 Minimum repayment rates.

In this section monthly repayment amounts also apply to bimonthly or quarterly equivalents.

(a)(1) *Defense loan.* An institution may require a borrower to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(2) *Direct loan.* The institution may require a borrower to pay a $30 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10 year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(b) *Minimum repayment of loans from more than one institution.* (1) *Defense loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $15 option when the repayment is less than $15, that institution will receive the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(2) *Direct loan.* If a borrower has received loans from more than one institution and—

(i) Only one institution exercises the $30 option when the repayment is less than $30, that institution will receive the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercises the $30 minimum option, the minimum repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(c) *Minimum repayment of both Direct and Defense loans from one or more institutions.* If a borrower has received both a Direct and a Defense loan, the following rules apply. In all cases the repayment includes principal and interest.

(1) If the total monthly repayment is at least $30 for both a Defense and a Direct loan, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct loan repayment is less than $30.

(2) If the total monthly repayment is less than $30 for both the Defense and Direct loans, an institution may exercise either minimum repayment option. The maximum monthly repayment, however, may not exceed $30 a month.

(3) If—

(i) The total monthly repayment is less than $30; and

(ii) The amount owed on a Defense loan is less than $15, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan ONLY if the institution exercises the minimum option on the Defense loan.

(20 U.S.C. 425 and 1087dd; section 137d of Pub. L. 92-318.)

§ 174.34 Deferment of repayment.

(a) Principal need not be repaid and interest will not accrue during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Commissioner for this purpose.

(b) Principal need not be repaid and interest will not accrue for a period of

up to 3 years during which time the borrower is—

(1) A member of the U.S. Armed Forces (see § 174.56);

(2) A Peace Corps volunteer; or

(3) A VISTA volunteer under the Domestic Volunteer Service Act of 1973.

(c) The institution must not include the deferment periods described in paragraphs (a) and (b) when determining the 10 year repayment period.

(d)(1) The institution may defer repayments under extraordinary circumstances. Interest, however, (unlike in paragraphs (a) and (b)) continues to accrue during this deferment period.

(2) If a borrower is unable to make a scheduled repayment due to extraordinary circumstances such as a prolonged illness or unemployment, he or she may ask the institution to change the repayment schedule within the 10 year repayment period.

(3) If a change in the repayment schedule of a Defense loan would extend the repayment period beyond 10 years, the institution must notify the Commissioner of the change. If a change in the repayment schedule of a Direct loan would extend the repayment period beyond 10 years, the institution must notify the Commissioner of the change and receive the Commissioner's approval before making it.

(4) The institution may defer a borrower's Direct loan repayments or revise his or her repayment schedule for up to 1 year if—

(i) The institution exercised the minimum monthly repayment rate;

(ii) The borrower is unable, due to extraordinary circumstances, to make repayment when due; and

(iii) The borrower has applied for deferment or a revised repayment schedule.

(5) If, at the end of the 1 year period, the borrower is still unable to repay at the minimum monthly rate because of extraordinary circumstances, the institution may defer repayment or revise repayments for up to another year.

(6) If the institution defers repayment on a loan or revises a repayment schedule under subparagraphs (2), (3), (4), or (5) of this paragraph, interest continues to accrue.

(7) The institution may not defer a loan or revise a repayment schedule under subparagraphs (4) or (5) of this paragraph if the revision or deferment results in a repayment period of more than 10 years.

(8) The institution may defer Defense loan repayments up to 3 years for a less than half-time student borrower taking courses that are creditable toward a degree.

(i) Interest accrues during this deferment period.

(ii) The institution may exclude these deferment periods in computing the 10 year repayment period.

(20 U.S.C. 425 and 1087dd.)

§ 174.35 Postponement of loan repayments in anticipation of cancellation.

(a) An institution must postpone loan repayments for a 12 month period if the borrower—

(1) Teaches or provides other services eligible for loan cancellation; and

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received both Defense and Direct loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(20 U.S.C. 425 and 1087dd-ee.)

§ 174.36 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received both Defense and Direct loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 174.32(c), loan repayment terms or § 174.33(a), minimum repayment rates.

(20 U.S.C. 425 and 1087dd-ee.)

Subpart C—Due Diligence

§ 174.41 [Reserved]

§ 174.42 Due diligence.

Each institution must be diligent and forceful in collecting loans. In exercising this responsibility it must—

(a) Inform each borrower before he or she signs the note that he or she must repay the loan and apply the proceeds only to educational expenses;

(b) Conduct an exit interview with each borrower (described in § 174.43) before he or she leaves the institution and, again, explain his or her obligation to repay the loan;

(c) In or before the exit interview—

(1) Give a copy of the signed promissory note and the repayment schedule to the borrower; and

(2) Have the borrower sign the schedule. A repayment schedule shows the borrower the total amount of his or her loan and states the repayment amount and the date each repayment is due;

(d) Keep a signed copy of the repayment schedule in the institution's files;

(e) Mail a copy of the note and two copies of the repayment schedule to a borrower who leaves the institution without notice, requesting that the borrower sign and return one of the schedules to the institution;

(f) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(g) Respond promptly to all inquiries from the borrower or any endorser.

(20 U.S.C. 1087cc.)

§ 174.43 Contact with the borrower prior to repayment period.

(a) *Information coordination.* An institution must coordinate information among its offices, e.g. the registrar, student financial aid, business and alumni offices. Doing so will enable it to determine—

(1) When a borrower will graduate so an exit interview may be scheduled; or

(2) Whether a borrower has left the institution without notice so that required information may be mailed to him or her.

(b) *Exit interview.* An institution must, if possible, conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, a group interview is permitted. During the interview the institution must tell the borrower again, as it did when the loan was made, that the borrower received a loan and the loan must be repaid in accordance with the repayment schedule. Furthermore, the institution must explain, in detail, the borrower's rights and obligations under the loan including the following:

(1) The borrower must inform the institution immediately of any address change.

(2) The full amount of the loan and the interest rate.

(3) The first repayment amount and when it is due.

(4) The borrower must contact the institution before the due date of any repayment he or she cannot make.

(5) His or her deferment, cancellation or postponement rights and the procedures for filing for these benefits.

(6) The right to prepay without penalty.

(7) The loan note's optional features such as minimum monthly repayment, penalty and collection charges.

(c) *The institution's contact with the borrower.* An institution must contact a borrower at least 3 times before the first repayment is due as follows:

(1) 90 days into the grace period, the institution must send to the borrower the information in paragraph (b) plus other information necessary to satisfy Truth in Lending Act regulations. A "grace period" is a 9-month period between the date the student ceases to be at least a half-time student and the date interest starts to accrue.

(2) 180 days into the grace period, the institution must notify the borrower of the date his or her grace period ends.

(3) Approximately 30 days before the first repayment is due, the institution must notify the borrower of that repayment date and the amount due. (see § 174.44(a)(1).)

(d) *Address search.* If an institution discovers that a borrower's address has changed, it must conduct the search required under § 174.44(a)(6) to find the correct address.

(20 U.S.C. 425 and 1087cc.)

§ 174.44 Billing procedures.

(a) An institution must establish and maintain the following billing and follow-up procedures until all loans are repaid:

(1) Unless a coupon system is established, the institution must send to each borrower—

(i) A letter of notice and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account 10 days before the due date of each repayment after the first.

(2) An institution must contact a borrower and demand repayment if it has not received from the borrower within 15 days of a due date—

(i) A repayment;

(ii) A request for a deferment; or

(iii) A cancellation request form.

(3) An institution must demand repayment as follows:

(i) Within 15 days of a missed due date, the institution must contact the borrower by telephone or in writing to demand repayment (first overdue notice).

(ii) Within 30 days of the first overdue notice, it must contact the borrower again, by telephone or in writing, if there is no satisfactory response to the first notice (second overdue notice).

(iii) Within 15 days of the second overdue notice, if there is no satisfactory response, it must contact the borrower again—

(A) By telephone; or

(B) By mailgram or similar written communication that demonstrates a response rate higher than that for routine mail (third overdue notice).

(iv) Within 15 days of the third overdue notice, it must send the borrower the final demand letter if there is no satisfactory response to the third overdue notice. In this letter the institution must inform the borrower that the loan will be referred for collection or litigation if repayment, or a proper form, is not received within 30 days of the letter's date.

(v) If an institution accelerates a loan (makes the entire unpaid amount, including accrued interest and penalty charges, payable immediately), it must give the borrower advance, written notice. The notice may be given separately or in the final demand letter.

(4) An institution may omit any or all the overdue notices before the final demand letter if—

(i) The borrower's repayment history has been unsatisfactory, e.g., the borrower has often failed to repay or file proper forms on time or has previously received a final demand letter; or

(ii) The institution believes the borrower does not intend to repay the loan or file the proper form.

(5) The institution must maintain a list of borrowers with overdue payments, updated monthly.

(6) If mail is returned, an institution must conduct a thorough search to locate the borrower's address, including—

(i) Checking records in all appropriate institutional offices;

(ii) Checking telephone directories or information operators in the location of the borrower's last known address;

(iii) Telephoning the borrower if a number is found; and

(iv) Using the Office of Education's free skip-tracing service.

(b) (1) The Commissioner considers billing and follow-up collection procedure costs (as required in paragraph (a)) to be routine administrative expenses that are NOT chargeable to the Fund.

(2) However, the costs of phone calls to the borrower are considered other collection costs that MAY be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 174.45 Address searches.

(a) An institution, unable to locate a borrower in spite of its efforts under § 174.44(a)(6), must either—

(1) Hire a commercial skip-tracing organization; or

(2) Attempt to locate the borrower with its own personnel.

(b) If the institution locates the borrower, it must first try to collect the overdue amount before referring the loan for collection or litigation.

(20 U.S.C. 424 and 1087cc)

§ 174.46 Collection and litigation procedures.

(a) If an institution is still unable to collect a payment after following the procedures under §§ 174.44 and 174.45, it must telephone or personally contact the borrower to determine why the borrower has not paid. If this final contact fails to obtain payment, the institution must—

(1) Hire a collection agency;

(2) Sue the borrower; or

(3) Use its own personnel to collect the amount due.

(b) If the institution uses a collection agency, the agency must—

(1) Be bonded in an amount covering the part of the Fund under its control at any particular time; or

(2) Deposit the collection funds, immediately upon receipt, in a bank account in the institution's name—a "lock-box" deposit.

(c) (1) An institution must sue a borrower or any proper endorser if collection efforts have failed and it determines that the borrower or endorser—

(i) Has assets that may cover all or most of the outstanding debts;

(ii) Has no known defense;

(iii) Can be located and easily served; and

(iv) Owes more than $500.

(2) The institution may sue the borrower even if the conditions of subparagraph (c)(1) are not met.

(d) If the principal and interest outstanding on a loan are $10 or less, an institution may write it off.

(20 U.S.C. 424 and 1087cc)

§ 174.47 Other collection and litigation costs.

(a) The Commissioner considers the reasonable costs of carrying out §§ 174.45(a) and 174.46 and telephone costs in §§ 174.44(a), 174.45(b), and 174.48(b) to be "other collection costs" chargeable to the Fund. Collection costs paid by the borrower are NOT chargeable to the Fund.

(b)(1) For audit purposes, an institution must support "other collection costs" with financial statements, e.g., phone and collection agency bills.

(2) A collection agency's statement must list specific amounts collected and the amount it retains.

(c)(1) If an institution performs its own collections, the Commissioner considers the institution's actual collection costs, including salaries of its personnel, to be "other collection costs";

(2) However, these costs may not exceed the costs that would be permitted if the institution used a collection agency.

(d) An institution's reasonable litigation costs, incurred in carrying out this subpart, may be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 174.48 Use of fiscal agent.

(a)(1) An institution is responsible for all decisions in administering an NDSL program, e.g., decisions about collecting, cancelling, or deferring loans.

(2) A fiscal agent may perform only ministerial acts.

(b) A billing service used by an institution to carry out billing procedures under § 174.44—

(1) May not deduct its fees from the amount it receives from borrowers;

(2) May telephone and perform skip-tracing activities to prevent a borrower from defaulting on a loan; and

(3) Must provide the institution with at least a monthly documentation of its charges for skip-tracing activities and telephone calls.

(20 U.S.C. 424 and 1087cc)

§ 174.49 Commonly owned billing service and collection agency.

If an institution uses a billing service to carry out § 174.44 (billing procedures), it may not use a collection agency that—

(a) Owns or controls the billing service;

(b) Is owned or controlled by the billing service; or

(c) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 174.50 Bankruptcy of borrower.

(a) An institution must refrain from carrying out this subpart on a loan which has been discharged in bankruptcy.

(b) An institution may not write off a loan until it has received an official notice of the bankruptcy discharge and must keep the notice in the borrower's file to support its writeoff entry.

(c) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

(20 U.S.C. 424 and 1087cc)

Subpart D—Loan Cancellation

§ 174.51 Special definitions.

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* One complete school year or two half years from different school years excluding summer sessions that are complete and consecutive and that generally fall within a 12-month period.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Commissioner, if the school is not in a State.

(d) *Handicapped children:* Children who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed; or

(7) Otherwise health impaired.

(e) *Local educational agency:* An agency defined in section 1201(g) of the Act.

(f) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Commissioner, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(g) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(h) *Teacher:* (1) A professional who provides direct and personal services to students for their educational development through—

(i) Direct classroom teaching; or

(ii) Non-teaching positions of an educational nature such as a librarian and a guidance counselor.

(2) A teacher is not a supervisor, administrator, researcher, or curriculum specialist, unless he or she primarily provides direct and personal services to students.

(3) A teacher in an institution of higher education does not include a person teaching elementary or secondary education unless that person teaches a remedial education program specifically designed to prepare high school graduates for postsecondary education.

(i) *Title I children:* Persons of age 5 through 17 counted under section 111(c) of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 425, 1087ee, and 1141.)

§ 174.52 Cancellation procedures.

(a) *Application for cancellation:* (1) To apply for cancellation, a borrower must complete and file a form, obtained from the lending institution, by the date the institution establishes.

(2) If a borrower fails to file the form on time, the institution must follow the billing procedures in § 174.44 for contacting the borrower.

(3) If the borrower still fails to file the form, the institution may determine that the loan is in default and require immediate repayment of the unpaid balance, accrued interest, and penalty charges.

(b) The institution that makes the loan decides whether a borrower is entitled to cancellation.

(c)(1) An institution may refuse cancellation for simultaneous teaching in two or more schools or institutions if it cannot easily determine that the teaching was full-time.

(2) However, cancellation must be granted if one school official certifies that a teacher worked full-time for a full academic year under his or her supervision.

(20 U.S.C. 425, 1087cc.)

§ 174.53 Teacher cancellation—Defense loan.

The following rules apply to Defense loan borrowers:

(a) *Cancellation. Ten percent rate.* (1) An institution must cancel up to 50 percent of a borrower's Defense loan, plus the interest on the unpaid balance, for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original loan principal, plus the interest on the unpaid balance, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Defense loan, plus interest on the unpaid balance, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Commissioner selects, after determining it to be a school with a high concentration of students from low-income familes.

(2) (i) The Commissioner will not select more than 25% of the eligible schools in a State for any year unless at least 50% of the enrollment of each school selected is made up of Title I children.

(ii) However, in making this calculation for Defense loans, the Commissioner will use a low-income factor of $3,000.

(3) (i) The Commissioner selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Commissioner. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Commissioner will notify participating institutions of the schools selected under this paragraph.

(4) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(5) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching.

(3) Cancellation for full-time teaching under this paragraph is available only for teaching beginning with the academic year 1967–68.

(20 U.S.C. 425(b)(3))

§ 174.54 Teacher cancellation—Direct loan.

The following rules apply to Direct loan borrowers:

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district the qualifies for funds, in that year, under Title I of the Elementary and Secondary Education Act of 1965; and

(ii) The Commissioner selects after determining it to be a school in which at least 30 percent of the school's total enrollment is made up of Title I children.

(2) However, the Commissioner will not select more than 50 percent of the schools in that State receiving Title I assistance.

(3) (i) The Commissioner selects schools under subparagraph (1) based on a ranking by the State Education Agency.

(ii) The State Education Agency must base its ranking of the schools on objective standards and methods approved by the Commissioner. These standards take into account the numbers and percentages of Title I children attending those schools.

(iii) For each academic year, the Commissioner will notify participating institutions of the schools selected under this paragraph.

(b) *Cancellation for full-time teaching of the handicapped.* (1) The institution must cancel the borrower's entire Direct loan, plus the interest on the loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped), a borrower must teach full-time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original loan principal, plus the interest on the unpaid balance, for the first and second years of full-time teaching;

(ii) 20 percent of the original loan principal, plus the interest on the unpaid balance, for the third and fourth years of full-time teaching; and

(iii) 30 percent of the original loan principal, plus the interest on the unpaid balance, for the fifth year of full-time teaching.

(20 U.S.C. 1087ee.)

§ 174.55 Cancellation for service in a Head Start program.

(a) An institution must cancel a borrower's entire Direct loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local school district.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance, for each complete academic year, or its equivalent, of full-time teaching service.

(c) (1) "Head Start" is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(20 U.S.C. 1087ee.)

§ 174.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution must cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of consecutive service.

(b) *Cancellation on a Direct loan.* (1) An institution must cancel up to 50 percent of a Direct loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area that qualifies for special pay under section 310 of Title 37 of the U.S. Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance, for each complete year of qualifying service.

(c) The Commissioner considers a borrower's loan deferment under § 174.34 to run concurrently with any

period for which a cancellation for military service is granted.

(20 U.S.C. 425(b)(3) and 1087ee.)

§ 174.57 Cancellation for death or disability.

(a) *Death.* An institution must cancel the unpaid balance of a borrower's Defense or Direct loan, including interest, if the borrower dies. The lending institution cancels the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution must cancel the unpaid balance of a Defense or Direct loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution decides whether to cancel the loan based on medical evidence supplied by the borrower or his or her representative.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement will be made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense and Direct loans whenever made.

(20 U.S.C. 425 and 1087dd and section 130(g)(2) of the Educational Amendments of 1976, Pub. L. 94-482)

§ 174.58 No cancellation for prior service—No repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, or military service if the borrower's service is performed before the date he or she signs the promissory note.

(b) No repayment may be refunded unless it was made because of institutional error.

(20 U.S.C. 425 and 1087ee)

§ 174.59 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Commissioner pays an institution each award year its share of the principal and interest cancelled under § 174.53 or 174.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct loan cancellation.* The Commissioner pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 174.54, 174.55, and 174.56(b). The institution must deposit this amount in its Fund.

(20 U.S.C. 428 and 1087ee)

Appendix A.—*Allotment of Funds to States for Fiscal Year 1972*

Alabama	$4,329,838
Alaska	143,019
Arizona	3,025,951
Arkansas	2,457,919
California	30,963,291
Colorado	4,169,216
Connecticut	3,790,537
Delaware	663,468
District of Columbia	2,167,676
Florida	7,872,683
Georgia	4,919,990
Hawaii	1,137,048
Idaho	1,220,847
Illinois	14,264,322
Indiana	7,496,071
Iowa	5,075,628
Kansas	4,125,849
Kentucky	4,117,819
Louisiana	4,863,504
Maine	1,175,287
Maryland	4,453,166
Massachusetts	10,510,277
Michigan	12,724,387
Minnesota	6,340,123
Mississippi	3,232,103
Missouri	6,686,416
Montana	1,233,084
Nebraska	2,719,537
Nevada	443,641
New Hampshire	1,228,222
New Jersey	5,036,568
New Mexico	1,570,800
New York	23,755,497
North Carolina	6,796,494
North Dakota	1,339,610
Ohio	13,556,996
Oklahoma	4,489,951
Oregon	3,944,044
Pennsylvania	14,233,876
Rhode Island	1,591,312
South Carolina	2,631,033
South Dakota	1,322,457
Tennessee	5,330,193
Texas	15,359,640
Utah	2,976,511
Vermont	991,213
Virginia	4,928,349
Washington	5,811,583
West Virginia	2,635,339
Wisconsin	7,000,992
Wyoming	578,575
Canal Zone	19,503
Guam	50,369
Puerto Rico	2,114,959
Virgin Islands	18,082
Total	286,000,000

Appendix B—Promissory Note

National Direct Student Loan Program

(Bracketed clause may be included at option of institution)

I, _____ promise to pay to _____, (hereinafter called the Lending Institution) located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below [together with all attorney's fees and other costs and charges necessary for the collection of any amount not paid when due].

I further understand and agree that:

General

I. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, hereinafter called the Act and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note must be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Lending Institution.

Repayment

II. (1) Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF THREE PERCENT (3%) on the unpaid balance except that no interest shall accrue during any period described in paragraph III (3).

(Bracketed clause must be included if the institution uses paragraph II(3))

(2) [Except as provided in paragraph II (3)] I promise to repay the principal, and the interest which accrues on it, over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Commissioner of Education (hereinafter called the Commissioner), and ending, unless paragraph III (3) (deferment) applies, 10 years later.

I may, however, request that the repayment period start on an earlier date.

I promise to repay the principal and interest over the course of the repayment period in EQUAL monthly, bimonthly or quarterly installments, as determined by the Lending Institution. However, if I request, repayments may be made in GRADUATED INSTALLMENTS determined in accordance with schedules approved by the Lending Institution and the Commissioner. In either case, a schedule of repayment shall be attached to and made part of this note.

(Bracketed paragraphs may be included at option of institution)

[(3) If the repayment schedule established under paragraph II(2) provides for repayment of principal and interest at a rate of less than $30 per month, I shall repay the total amount of this loan plus the interest thereon at the rate of $30 per month, which shall include repayment of principal and interest.

If I receive or have received National Direct or Defense Student Loans from other lending institutions, I shall repay this note at a monthly rate equal to not less than the amount by which $30 exceeds the total monthly rate of principal and interest repaid on the other loans.

A schedule of repayment will be attached to and made part of this note.

The Lending Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph 2 of this article.]

III. This note is also subject to the following conditions:

Prepayment

(1) I may at my option and without penalty prepay all or any part of the principal, plus the accrued interest thereon, at any time. Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment. If I repay more than the amount due for any repayment period, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

Default

(2) If I fail to meet a scheduled repayment of any installment, the entire unpaid indebtedness including interest due and accrued thereon, plus any applicable penalty charges, will, at the option of the Lending Institution, become immediately due and payable.

Deferment

(3) Interest will not accrue, and installments need not be paid—

(A) while I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Commissioner, or

(B) for a period not in excess of 3 years during which time I am—

(i) on full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard),

(ii) in service as a Volunteer under the Peace Corps Act, or

(iii) a VISTA volunteer under Title I—Part A of the Domestic Volunteer Service Act.

The Lending Institution may, upon my application, defer or reduce any scheduled repayments if, in its opinion, extraordinary circumstances, such as prolonged illness or unemployment, prevent me from making such repayments. However, interest will continue to accrue.

Cancellation for Teaching

(4) I am entitled to have the entire amount of this loan plus the interest thereon cancelled if I undertake service

(A) as a full-time teacher in a public or other non-profit elementary or secondary school which is in a school district of a local educational agency which is eligible for funds under Title I of the Elementary and Secondary Education Act of 1965 and which has been designated by the Commissioner in accordance with the provisions of Section 465(a)(2) of the Higher Education Act as a school with a high enrollment of students from low-income families, or

(B) as a full-time teacher of handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or other health-impaired children who by reason thereof require special education) in a public or other nonprofit elementary or secondary school system.

This loan will be cancelled at the following rates: 15 percent of the total principal amount of the loan plus interest on the unpaid balance will be cancelled for the first and second complete academic years of that teaching service; 20 percent of the total principal amount plus interest on the unpaid balance for the third and fourth complete academic years of that teaching service; and 30 percent of the total principal amount plus interest on the unpaid balance for the fifth complete academic year of that teaching service.

Head Start Cancellation

(5) I am entitled to have the entire amount of this loan plus the interest thereon canceled if I undertake service as a full-time staff member in a Head Start program if

(A) that Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) my salary is not more than the salary of a comparable employee of the local educational agency.

Cancellation will be at the rate of 15 percent of the total principal amount plus the interest on the unpaid balance for each complete school year or the equivalent of service in a Head Start program.

Head Start is a preschool program carried out under section 222(a)(1) of the Economic Opportunity Act of 1964.

Military Cancellation

(6) If I serve as a member of the Armed Forces of the United States, up to 50 percent of the principal amount of this loan plus the interest thereon will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of service in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

Death and Disability Cancellation

(7) If I should die or become permanently and totally disabled, the entire amount of this loan plus the interest thereon shall be canceled.

Address Change

(8) I am responsible for informing the Lending Institution of any change or changes in my address.

Penalty Charge

(Bracketed paragraphs may be included at option of institution)

[(9) If I fail to make timely payment of all or any part of a scheduled installment, or if I am eligible for deferment or cancellation under paragraphs III (3), (4), (5), or (6), but fail to submit the appropriate request on time, I promise to pay the charge assessed against me by the Lending Institution.

No charge may exceed (1) where the loan is repayable in monthly installments, $1 for the first month or part of a month by which the installment or evidence is late, and $2 for each month or part of a month thereafter; or (2) in the case of a loan which is repayable in bimonthly or quarterly installments, $3 and $6, respectively, for each installment interval or part thereof by which the installment or evidence is late.

If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.]

Assignment

IV. This note may be assigned by the Lending Institution only (A) to another institution upon my transfer to that institution if that institution is participating in this program (or, if not so participating, is eligible to do so and is approved by the Commissioner for that purpose) or (B) to the United States or to an institution approved by the Commissioner. The provisions of this note that relate to the Lending Institution shall, where appropriate, relate to an assignee.

Prior Loans

V. I hereby certify that I have listed below all of the National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of National Direct Student Loans and National Defense Student Loans at other institutions

	Amount	Date	Institution
1	$		
2	$		
3	$		
4	$		

VI. Schedule of Advances

	Amount	Date	Signature of maker
1	$		
2	$		
3	$		
4	$		

Signature _____

Date _____, 19____

Permanent address _____

(Street or Box Number, City, State, and Zip Code)

Caveat—This note is to be executed without security and without endorsement, except that if I am a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation, either security or endorsement may be required. The Lending Institution shall supply a copy of this note to me.

Signature of endorser _____

Date _____, 19____

Permanent Address _____

(Street or Box Number, City, State, and Zip Code)

BILLING CODE 4110-02-M

Appendix C. -Example for computing penalty charges-6 mo

	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	Total per payment
Monthly:							
1st past due	$1	$1+$2	$3+$2	$5+$2	$7+$2	$9+$2	$11
2d past due		1	1+2	3+2	5+2	7+2	9
3d past due			1	1+2	3+2	5+2	7
4th past due				1	1+2	3+2	5
5th past due					1	1+2	3
6th past due						1	1
Total, all payments							36
Bimonthly:							
1st past due		3	3+3		6+3		9
2d past due			3		3+3		6
3d past due					3		3
Total, all payments							18
Quarterly:							
1st past due		6		6+6			12
2d past due				6			6
Total, all payments							18

BILLING CODE 4110-02-C

Appendix D

This is the due diligence requirement for the 1977–1978 academic year used in § 174.6.

From: Federal Register, Volume 41, No. 228—Wednesday, November 24, 1976

Subpart C—Loan Collection—Due Diligence

§ 144.41 General.

Each institution at which a Fund is established shall exercise due diligence as described in this subpart in the collection of the amounts due and payable to its Fund. In the exercise of such responsibility each institution must consistently utilize extensive and forceful collection practices. In particular, an institution shall:

(a) Provide to each borrower, not later than the time when he signs his promissory note, full disclosure of his rights and obligations thereunder.

(b)(1) Conduct an exit interview as described in § 144.42 with each borrower prior to his leaving the institution and provide the borrower at that time with a copy of his repayment schedule specifying the total amount of the loan and the dates and amounts of installments as they become due.

(2) If a borrower leaves the institution without notice, the institution shall mail the borrower a copy of his note and 2 copies of his repayment schedule and shall request the borrower to sign and return one of the copies of the repayment schedule.

(c) Maintain a written record of the exit interview, including a repayment schedule signed by the borrower which shall be made a part of the borrower's file;

(d) Maintain contact with the borrower after his leaving the institution in order to facilitate billing and in order to keep him informed on a timely basis of all changes in the program affecting his rights and obligations.

§ 144.42 Contact with the borrower prior to repayment period.

(a) *Coordination of institutional offices.* Each institution shall provide for the exchange of information among all appropriate institutional offices, e.g., the registrar, student financial aid, business, and alumni offices in order to determine (1) the approximate time a borrower will graduate in order that an exit interview may be conducted, or (2) whether a student has left school without proper notice so that it may mail the borrower required information.

(b) *Exit interview.* (1) Each institution shall, if possible, conduct an exit interview with each borrower prior to the time the borrower leaves the institution. The exit interview shall be conducted on an individual basis, except that, if individual interviews are not feasible, the institution may conduct group exit interviews.

(2) During the exit interview the institution shall provide the borrower with a detailed explanation of his obligations and rights. It shall advise the borrower: (i) Of the fact that he has received a loan which must be repaid on a timely basis as called for in his repayment schedule, (ii) of his responsibility to inform the institution immediately of any change of address, (iii) of the full amount of his loan including the interest rate, (iv) of the date and amount when the first payment becomes due, (v) of his responsibility to contact the institution prior to the due date of any installment if payment cannot be made for any reason, (vi) of his rights to deferment pursuant to 144.34, postponement pursuant to 144.35, and/or cancellation pursuant to 144.51 through 144.56 as well as his responsibility to submit timely certification of such right to the deferment, postponement, cancellation, (vii) of his right to accelerate loan repayments without penalty; (viii) of any optional features which the institution has inserted in its note including the minimum monthly repayment provision pursuant to § 144.32(e), total costs of collection chargeable to the borrower pursuant to § 144.32(j), and penalty charges pursuant to § 144.32(f).

(c) The institution shall contact each borrower no less than three times during the borrower's 9 month grace period as follows: (1) 90 days into the grace period the institution shall transmit to the borrower in writing the information described in paragraph (b)(2) of this section and such other information as is necessary to satisfy Truth in Lending Act regulations; (2) 180 days into the grace period the institution shall notify the borrower of the date of expiration of the borrower's grace period; and (3) no less than 30 days preceding the due date of the first repayment installment the institution shall notify the borrower of the date when his first payment become due and of the amount of principal and interest due at that time.

(d) If the instituiton finds that a borrower's address has changed, it shall implement the procedures set forth in 144.43(a)(4) in order to secure the borrower's correct address.

(20 U.S.C. 425 and 1087cc.)

§ 144.43 Billing procedures.

(a) Each institution shall establish and maintain regular billing and follow up procedures during the period in which any outstanding balance remains unpaid, including:

(1) The sending of:

(i) A letter of notice and a statement of account to each borrower no later than 30 days preceding the date on which the first repayment installment is due;

(ii) A statement of account to each borrower no fewer than 10 days preceding the due date of each payment subsequent to the first payment, unless a coupon system is established;

(iii) When any payment is not received within 15 days of the due date, a telephoned or written demand to the borrower for payment followed by two more such demands spaced 30 days apart if no response to the initial demand is received;

(2) The maintenance of a monthly list of payments in arrears with respect to loans not paid when due;

(3) Other procedures for effecting prompt and regular repayment including personal or telephonic contact where possible;

(4) In the case of a borrower whose address is no longer known, which may be evidenced by return of mail, performance of a thorough search of all reasonably accessible information which may lead to the borrower's current address, including records checks in all appropriate institutional offices, checks of the telephone directory or information operator in the city or town of the borrower's last known address, long distance phone calls to the borrower if a phone has been obtained and the use of the Office of Education's skip-tracing service, which will be provided free of charge to the institution.

(b) Costs incurred by the institution in carrying out the activities enumerated in paragraph (a) of this section shall be considered routine administrative expenses which may not be charged to the Fund, except for the costs of long distance phone calls to the borrower described in paragraphs (a)(3) and (a)(4) of this section which may, in accordance with 144.46, be considered other collection costs chargeable to the Fund.

(20 U.S.C. 424 and 1087cc.)

§ 144.44 Skip-tracing activities.

(a) If an institution is still unable to locate a borrower, in spite of its efforts pursuant to § 144.43(a)(4), it shall engage the services of a commercial skip tracing organization or perform equivalent skip tracing activities with its own personnel.

(b) If the borrower's address is located as a result of the activities described in paragraph (a) of this section, the institution shall immediately contact the borrower for the purpose of collecting amounts past due.

(20 U.S.C. 424 and 1087cc.)

§ 144.45 Collection procedures.

(a) If an institution is still unable to obtain payment from a borrower after performing all of the activities set forth in § 144.43 and § 144.44, it shall utilize the services of a collection agency or perform such collection activities with its own personnel or shall resort to litigation.

(b) If a collection agency is used it must be bonded in an amount to cover those particular assets of the Fund which are under the control of the agency at any particular time.

(c) Notwithstanding the provisions of paragraph (a) of this section, if the amount of principal and interest outstanding on a loan is not more than $2, the institution may write-off that amount and need not take any further collection action with regard to that loan.

(20 U.S.C. 424 and 1087cc.)

§ 144.46 Other collection costs—litigation costs.

(a) Reasonable costs incurred in carrying out the activities described in §§ 144.44(a) and 144.45 and the costs of long distance calls incurred in carrying out §§ 144.43 (a)(3) and (a)(4) and § 144.44(b) shall be considered other collection costs and may be charged to the Fund, except that any collection costs paid by the borrower may not be charged to the Fund. For audit purposes, such costs must be supported by appropriate financial statements (e.g. telephone bills and collection agency bills). The statement of the collection agency shall indicate specific amounts collected and charges retained.

(b) If an institution elects to perform its own collections, rather than using a

collection agency, its actual costs of collection may be considered another collection cost and charged to the Fund, so long as such costs do not exceed the costs that would have been permitted under paragaph (a) of this section if the institution had used a commercial collection agency.

(c) Reasonable litigation costs incurred in carrying out this subpart may be charged to the Fund.

(20 U.S.C. 424 and 1087 cc)

§ 144.47 Utilization of fiscal agent.

(a) If an institution utilizes a billing service, collection agency or any other type of fiscal agent in carrying out its functions under this part, the function of such service or agency must be limited solely to the performance of ministerial acts. The ultimate responsibility of the institution to make determinations relative to the making and collection of loans and decisions relative to cancellation and deferment of loans cannot be delegated.

(b) If a billing service is used to carry out the functions pursuant to 144.43, the billing service may not deduct its fee from the funds it receives from borrowers.

(20 U.S.C. 424 and 1087cc)

§ 144.48 Use of commonly owned billing service and collection agency prohibited.

If in carrying out the activities required under 144.43 an institution uses a commercial billing service, it may not utilize a collection agency pursuant to 144.45 which owns or controls, or is owned or controlled by, the billing service or which is owned and controlled by a corporation, partnership, association or individual which also owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 144.49 Bankruptcy of borrower.

An institution shall refrain from collection activity with respect to a loan in the event the borrower is adjudicated a bankrupt and such loan has been discharged. However, no such loan shall be written off until an official notice of the adjudication has been received by the institution. Such notification must be maintained in the file of that borrower to support the writeoff entry. If the institution receives any payment from a borrower subsequent to his adjudication as a bankrupt, it shall deposit such payment in its Fund.

(20 U.S.C. 424, 1087cc)

2. Part 175 of Title 45 of the Code of Federal Regulations is amended to read as follows:

PART 175—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

Subpart A—College Work-Study Program

Sec.
175.1 Purpose, identification of common provisions, and nondiscrimination.
175.2 Definitions.
*175.2a Institution of higher education.
175.2b Eligible program.
175.3 Allotment and reallotment.
175.4 Allocation, reallocation, and payment to institutions.
175.5 Application.
175.6 Funding procedures.
175.7 Application review—approval of request.
175.8 Institutional agreement.
175.9 Student eligibility.
175.10 Special sessions.
*175.11 Cost of education.
*175.11a Programs of study abroad.
*175.12 Expected family contribution.
*175.13 Approved need analysis systems.
*175.14 Coordination of student financial aid programs, award amount, and overaward.
175.15 Coordination with BIA grants.
175.16 Payments to students.
*175.17 Federal interest in allocated funds.
175.18 Use of funds.
175.19 Fiscal procedures and records.
175.20 Maintenance of effort.
175.21 Transfer of funds.
175.22 Project eligibility.
175.23 Eligible jobs.
175.24 Establishment of wage rates under CWS.
175.25 Earnings applied to cost of education.
175.26 CWS Federal share limitations.
175.27 Nature and source of institutional share.
175.28 Multi-institutional arrangements.

Subpart B—Job Location and Development Program

175.31 Purpose.
175.32 Definition of institution.
175.33 Federal contribution allowed.
175.34 Allowable costs.
175.35 Federal share of allowable costs.
175.36 Institutional share.
175.37 Multi-institutional job location and development project; arrangements with nonprofit organizations.
175.38 Restrictions.
175.39 Agreement.
175.40 Maintenance of effort.
175.41 Procedures and records.
175.42 Termination and suspension.
Appendix A—Allotment of funds to States for fiscal year 1972.
Appendix B—Model off-campus agreement.

Authority: Sec. 441–447 of Pub. L. 89–329, Title IV, 79 Stat. 1219, as amended (42 U.S.C. 2751–2756a), unless otherwise noted.

Subpart A—College Work-Study Program

§ 175.1 Purpose, identification of common provisions, and nondiscrimination.

(a) The College Work-Study Program (CWS) provides part-time employment to students who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based regulations are identified with an asterisk.

*(c) An institution must comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	45 CFR Part 80.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e–3(a)(1))

(42 U.S.C. 2751–2756 unless otherwise noted)

§ 175.2 Definitions.

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV–C of the Higher Education Act of 1965 (HEA).

Area vocational school: A school defined in the Vocational Education Act of 1963, section 195(2), as amended.

(20 U.S.C. 2461(2).)

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Basic Educational Opportunity Grant Program (BEOG):* A grant program authorized by Title IV–A–1 of the HEA.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL–45 CFR 174);

(b) The College Work-Study Program (CWS–45 CFR 175); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG–45 CFR 176).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

**Commissioner:* The U.S. Commissioner of Education or the Commissioner's designee.

(20 U.S.C. 1141(f).)

**Dependent student:* A student who does not qualify as an independent student (see independent student).

Eligible institution: (a) An institution of higher education;

(b) An area vocational school; or

(c) A proprietary institution of higher education.

(42 U.S.C. 2753(b).)

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of education.

**Financial need:* The difference between a student's cost of education and his or her expected family contribution.

**Good standing:* The eligibility of a student to continue attending the institution in which he or she is enrolled in accordance with the standards of the institution.

Graduate or professional student: A student enrolled in an academic program of study above the baccalaureate level at an institution of higher education, including—

(a) A program leading to a first professional degree if the institution requires at least 3 years of study at the college level for entrance into the program; and

(b) The fifth and later years of any program requiring more than 4 years of study at the college level.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV-B of the HEA.

(20 U.S.C. 1071 et seq.)

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

**Half-time undergraduate student:* An enrolled undergraduate student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or quarter hours per academic term in an institution using standard semester, trimester, or quarter systems;

(b) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 clock hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1979): A student who—

(a) Has not and will not be claimed as an exemption for Federal income tax purposes by any other person except his or her spouse for the calendar year(s) in which aid is received or the calendar year prior to the academic year for which aid is requested;

(b) Has not received and will not receive financial assistance of more than $600 from his or her parent(s) in the calendar year(s) in which aid is received or the calendar year prior to the academic year for which aid is requested; and

(c) Has not lived or will not live for more than 2 consecutive weeks in the home of a parent during any calendar year in which aid is received or the calendar year prior to the academic year for which aid is requested.

(d) For purposes of this paragraph, a student will not be considered to have been claimed as an exemption by a parent, or to have received $600 from a parent, or to have lived with a parent if that parent has died prior to the student's submission of an application for employment under the College Work-Study program; and if no person, other than the student's spouse, provides or will provide more than one-half of the student's support for the first calendar year in which assistance is requested.

Independent student (effective July 1, 1979): (a) A student who for the calendar year(s) of the award year for which aid is requested or the calendar year before the first calendar year of that award year—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for any one of these years;

(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in any one of these years; and

(3) Has not lived and will not live for more than 6 weeks in the home of his or her parent(s) for any one of these years.

(b) However, the Commissioner considers that a student will not have been claimed as an exemption by a parent, will not have received more than $750 from a parent, and will not have lived in the parent's home for more than 6 weeks if that parent dies before the student submits his or her CWS application.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV-E of the HEA.

(20 U.S.C. 1087aa-ff)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 175.16.

**Recognized equivalent of a high school diploma:* (a) A General Educational Development Certificate (GED); or

(b) A State certificate received after passing a State authorized examination, that that State recognizes as the equivalent of a high school diploma.

**Regular student:* A person who enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV-A-3 of the HEA.

(20 U.S.C. 1070c et seq.)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV-A-2 of the HEA.

(20 U.S.C. 1070b.)

(42 U.S.C. 2751-2756, unless otherwise noted.)

* 175.2a Institution of higher education

An institution of higher education is a public, private nonprofit, or proprietary institution.

(a) A public or private nonprofit institution of higher education is an educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of a standardized written test, other measurement instrument, non-written examination for practical course work (practicum examination), or other verifiable indicators such as written recommendations from professional educators and counselors who are not employed by or affiliated with the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, bachelor, advanced, or professional degree;

(ii) At least a 2 year program that is acceptable for full credit toward a bachelor degree; or

(iii) At least a 1 year training program that leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency the Commissioner recognizes as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution that has satisfactorily assured the Commissioner that it will meet the accreditation standards of an agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated, and its efforts to meet accreditation standards; or

(iv) An institution whose credits are accepted for credit on transfer by at least 3 accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) A proprietary institution of higher education is an educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of a standardized written test, other measurement instrument, non-written examination for practical course work (practicum examination), or other verifiable indicators such as written recommendations from professional educators and counselors who are not employed by, or affiliated with, the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides at least a 6 month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a nationally recognized accrediting agency or association;

(6) Has been in existence at least 2 years. The Commissioner considers an institution to have been in existence for 2 years if it is legally authorized to provide, and has provided, a continuous (except for normal vacation periods) training program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the application date for eligibility; and

(7) Has entered into an agreement that insures that the availability of assistance to students under Title IV of HEA has not resulted in, and will not result in, increased tuition, fees, or other charges to its students.

(c) *One year training program.* A one year program is an instructional program that is at least—

(1) 24 semester or trimester hours or 36 quarter hours at an institution using credit hours to measure progress;

(2) 900 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 900 hours of preparation in a correspondence program.

(d) *Six month training program.* A six month program is an instructional program that is at least—

(1) 16 semester or trimester hours or 24 quarter hours at an institution using credit hours to measure progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 600 hours of preparation in a correspondence program.

(20 U.S.C. 1141(a), 1088(b))

§ 175.2b Eligible program.

An eligible program is a program of education or training that—

(a) Admits as regular students only persons who—

(1) Have a certificate of graduation from secondary school (high school diploma);

(2) Have the recognized equivalent of a high school diploma (see definitions); and

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered. (An institution must document a student's ability to benefit from the training offered in accordance with the procedures set forth in § 175.2a(a)(2)(iii)); and

(b) (1) Leads to a bachelor, associate, graduate, or professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation (a 1 year program is defined in § 175.2a(c)); or

(4) Is, for a proprietary institution, at least a 6 month program of study leading to a certificate, that prepares students for gainful employment in a recognized occupation (a 6 month program is defined in § 175.2a(d)).

(20 U.S.C. 1141(a), 1088(b)(3))

§ 175.3 Allotment and reallotment.

(a) *Initial allotment.* The Commissioner allots two percent of the CWS appropriation according to section 442(a) of the Act. The Commissioner allots an additional amount according to section 442(f) of the Act.

(b) *Initial allotment to States.* (1) The Commissioner allots 90% of the amount remaining according to the Act, 442(b). (If necessary the Commissioner allots additional amounts to each State to make that State's allotment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A.)

(2) The Commissioner allots the remaining amount so that each institution in each State receives the CWS funds computed under §§ 175.6 or 175.7.

(c) *Reallotment.* (1) The Commissioner reallots the amount of a State's allotment that exceeds the sum of—

(i) Approved requests of institutions in that State; and

(ii) Funds to be transferred to carry out the State Student Financial Assistance Training Program.

(2) The Commissioner reallots those funds among the remaining States according to institutional need for CWS funds as computed under §§ 175.6 or 175.7.

(d) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) If a State has submitted an approved application, the Commissioner transfers an amount equal to .05% of its initial allotment under paragraphs (a) and (b) or $10,000 (whichever is less) to the State's Student Financial Assistance Training Program authorized under Section 493C of HEA.

(2) The Commissioner allocates, on an equitable basis, to other institutions in that State those funds reserved for the State's Student Financial Assistance Training Program not granted for the fiscal year for which appropriated.

(20 U.S.C. 1088b-3; 42 U.S.C. 2752)

§ 175.4 Allocation, reallocation, and payment to institutions.

(a) If funds available within a State are insufficient to honor all requests for funds by institutions in that State, the Commissioner distributes the funds as described in § 175.6

(b) (1) If an institution anticipates not using all its allocated funds by the end of an award period, it must specify the anticipated unused amount to the Commissioner, who reduces the institution's allocation accordingly.

(2) The Commissioner may reallocate those funds equitably to other institutions in a State. If no institution in the State needs those funds, the Commissioner may reallot them according to § 175.3 for use in other States.

(c) The Commissioner allocates funds for a specific period of time. The Commissioner pays funds to an institution in advance or by reimbursement. The Commissioner bases the amount to be paid on periodic fiscal reports.

(42 U.S.C. 2756)

§ 175.5 Application.

(a) To participate in the CWS program, an institution must file an application with the Commissioner before an annually established closing date.

(b) The application must be on a form approved by the Commissioner and contain information needed to determine the institution's allocation under § 175.6

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements under § 175.20

(42 U.S.C. 2756)

§ 175.6 Funding procedures.

(a) The Commissioner computes—

(1) A funding level, called a conditional guarantee, for each institution applying for CWS funds; and

(2) A funding level, called a fair share, for each institution seeking a higher funding level than its conditional guarantee.

(b) *Conditional guarantee.* The Commissioner computes a conditional guarantee for the 1979–1980 award year in the following way:

(1) An institution that received CWS funds in award years 1977–1978 and 1978–1979 receives for 1979–1980 the greater of its—

(i) 1977–1978 CWS expenditure; or

(ii) Projected 1978–1979 CWS expenditure.

(2) *Projected expenditure.* The Commissioner computes an institution's projected 1978–1979 CWS expenditure by multiplying its 1978–1979 allocation by its 1977–1978 utilization rate.

(3) *Utilization rate.* An institution's 1977–1978 CWS utilization rate equals—

$$\frac{\text{its 1977–1978 CWS expenditures}}{\text{its CWS allocation for 1977–1978}}$$

(4) *Conditional guarantee for an institution participating in CWS in 1978–1979 but not in 1977–1978.* The Commissioner considers an institution to have a 100% utilization rate if it received CWS funds for award year 1978–1979 but did not participate in the CWS program in 1977–1978.

(5) *Conditional guarantee for an institution not participating in any campus based programs in 1978–1979.*

(i) If an institution did not participate in any campus based program in 1978–1979, the Commissioner computes its conditional guarantee by comparing it to similar institutions of the same type and control participating in CWS for the first time in 1978–1979, as follows:

$$\frac{\text{CWS funds of similar institutions}}{\text{Their number of enrolled students}} = \text{per student amount}$$

$$\text{Conditional guarantee} = \text{per student amount} \times \text{number of students enrolled at applicant institution}$$

(ii) Control: public, nonprofit private, and proprietary.

(iii) Type: university, 4-year institution, 2-year institution, and other.

(6) The Commissioner does NOT compute a conditional guarantee for an institution that applies to participate in the CWS program for the award year 1979–1980 if it participated in either SEOG or NDSL but not CWS in 1978–1979. The institution, however, may apply for funds under paragraph (c), "Fair share."

(c) *Fair share calculation.* (1) The Commissioner computes an institution's fair share of the CWS appropriation by multiplying the CWS appropriation by the institution's self help relative national index.

(2) *Self-help relative national index calculation.*

(i) An institution's self help relative national index equals—

$$\frac{\text{its self help need}}{\text{the self help need of all institutions}}$$

(3) *Self help need of all institutions.* The self need of all institutions equals—

(i) The self help need of all institutions applying under this paragraph or under § 174.6(c) of the NDSL regulations; and

(ii) The CWS conditional guarantee for all institutions not applying under this paragraph or § 174.6(c) of the NDSL regulations.

(4) *Self help need of an institution.* An institution's self help need equals the self help need of its graduate students and undergraduate students.

(5) *Self help need of graduate students.* To determine the self help need (need for funds from work and loan sources) of an institution's graduate students, the Commissioner—

(i) Establishes various income categories for dependent and independent graduate students;

(ii) Establishes an expected family contribution (EFC) for each income category of dependent and independent graduate students, using a need analysis method approved under § 175.13;

(iii) Determines the average cost of education for graduate students;

(iv) Subtracts from the average cost of education for graduate students, the computed EFC for each income category of dependent students and each income category of independent students;

(v) Multiplies those amounts by the number of students in each category;

(vi) Adds the amounts obtained for each income category of dependent students and each income category of independent students; and

(vii) Totals those two amounts.

(6) *Self help need of undergraduate students.* To determine the self help need (need for funds from work and loan sources) of an institution's undergraduate students, the Commissioner—

(i) Establishes various income categories for dependent and independent undergraduate students;

(ii) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 175.13;

(iii) Computes 30 percent of the average cost of education for undergraduate students;

(iv) Multiplies the number of dependent students in each income category by the lesser of—

(A) 30 percent of the average cost of education for undergraduate students; or

(B) The average cost of education for undergraduate students minus the EFC determined under (ii) for that income category;

(v) Adds the amounts obtained for each income category of dependent students;

(vi) Multiplies the number of independent students in each income category by the lesser of—

(A) 30 percent of the average cost of education for undergraduate students; or

(B) The average cost of education for undergraduate students minus the EFC determined under (ii) for that income category;

(vii) Adds the amounts obtained for each income category of independent students; and

(viii) Adds the amounts obtained under (v) and (vii).

The following charts show the income categories and calculations for graduate and undergraduate students.

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DETERMINATION OF SELF HELP NEED FOR DEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	6 SELF HELP NEED COL.4 x COL.5
$ 0 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - OVER					
7 TOTAL SELF HELP NEED FOR DEPENDENT GRADUATE STUDENTS					$

DETERMINATION OF SELF HELP NEED FOR INDEPENDENT GRADUATE STUDENTS

1 INCOME	2 EFC	3 AVERAGE COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	6 SELF HELP NEED COL.5 x COL.5
$ 0 - $ 999					
$ 1,000 - $ 1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - OVER					
7 TOTAL SELF HELP NEED FOR INDEPENDENT GRADUATE STUDENTS					$

7 TOTAL SELF HELP NEED FOR DEPENDENT GRADUATE STUDENTS	$
7 TOTAL SELF HELP NEED FOR INDEPENDENT GRADUATE STUDENTS	$
TOTAL SELF HELP NEED FOR ALL GRADUATE STUDENTS	$

DETERMINATION OF SELF HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 30% x AVG COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	NEED: LESSER OF COL.3xCOL.5 or COL.4xCOL.5
0 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - OVER					
7 TOTAL SELF HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS $_____					

DETERMINATION OF SELF HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 EFC	3 30% x AVG COST	4 AVG COST LESS EFC	5 NUMBER STUDENTS	NEED: LESSER OF COL 3xCOL 5 or COL 4xCOL 5
$ 0 - $ 999					
$ 1,000 - $ 1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - OVER					
7 TOTAL SELF HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS $ _____					

7 TOTAL SELF HELP NEED FOR DEPENDENT UNDERGRADUATE STUDENTS $_____
7 TOTAL SELF HELP NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS $_____
TOTAL SELF HELP NEED FOR ALL UNDERGRADUATE STUDENTS $_____

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(7) *Cost of education* means attendance costs for eligible undergraduate and graduate students including tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Commissioner pro rates this amount for eligible students.)

(8) *Eligible students* means students who satisfy the eligibility requirements of § 175.9(a)(1) through (a)(4).

(9) For purposes of subparagraphs (5) and (6) of this paragraph, the average cost of education minus EFC may not be less than zero.

(d) *Increases within State allotments ("State increase").* (1) The Commissioner increases awards ("State increase") for those institutions in a State applying for additional funds if the combined conditional guarantees of all institutions in the State are less than the State allotment computed under § 175.3(b). To compute this State increase, the Commissioner—

(i) Subtracts the conditional guarantees for all institutions within the State from the State allotment; and

(ii) Multiplies the remainder by the relative State index for self help (see subparagraph (2) of this paragraph) of each institution applying under paragraph (c).

(2) *Relative State Index for self help.* An institution's relative State index for self help equals—

$$\frac{\text{its self help need}}{\text{the self help need of all institutions in the State applying under paragraph (c)}}$$

(e) *Increase based on fair share shortfall ("National increase").*

(1) The Commissioner further increases awards ("National increase") to institutions applying under paragraph (c) if all CWS conditional guarantees and State increases are less than the 1979–1980 CWS appropriation.

(2) The Commissioner determines—

(i) *CWS available funds for shortfall* by—

(A) Adding the conditional guarantees for all institutions and all State increases; and

(B) Subtracting that sum from the 1979–1980 CWS appropriation;

(ii) *An institution's shortfall* by—

(A) Adding the institution's conditional guarantee and State increase; and

(B) Subtracting that amount from its fair share amount; and

(iii) *The total shortfalls of all institutions.*

(3) *An institution's National increase equals—*

$$\frac{\text{its shortfall}}{\text{the total shortfalls of all institutions}} \times \text{CWS available funds for shortfall}$$

(f) (1) If an institution's recommended CWS funding exceeds its request for CWS funds, the Commissioner places the excess in an "Excess CWS Pool." Similarly if an institution's approved NDSL Federal capital contribution (FCC) exceeds its request for FCC, the Commissioner places the excess in the "Excess FCC Pool."

(2) (i) If an institution contributes to the Excess CWS Pool and its need for FCC funds is not met, it may receive additional funds from the Excess FCC Pool.

(ii) If an institution contributes to the Excess NDSL Pool, and its need for CWS funds is not met, it may receive additional funds from the Excess CWS Pool.

(iii) The amount of additional FCC an institution may receive under this subparagraph is proportional to its contribution to the Excess CWS Pool. The amount of additional CWS funds an institution may receive under this subparagraph is proportional to its contribution to the Excess FCC Pool. Stated as an equation—

$$\text{Additional CWS} = \frac{L}{Pl} \text{ times } Pw;$$

and

$$\text{Additional FCC} = \frac{W}{Pw} \text{ times } Pl,$$

Where

L means the institution's contribution to Excess FCC Pool;

W means the institution's contribution to Excess CWS Pool;

Pw means Excess CWS Pool; and

Pl means Excess FCC Pool.

(g) No institution may receive more CWS funds than it requested.

(42 U.S.C. 2756)

§ 175.7 Application review—approval of request.

(a) An institution may request a review of its approved request.

(b) A National Review Panel appointed by the Commissioner reviews each institution's request. The panel consists of student financial aid officers and OE personnel.

(c) In setting an award amount, the Commissioner considers the panel's recommendations and its reasons for the recommendations.

(d) The Commissioner sets an award amount based on procedures in § 175.6 and the review panel's recommendations.

(42 U.S.C. 2756)

§ 175.8 Institutional agreement.

An institution, to participate in the CWS program, must enter into an agreement with the Commissioner that specifies that—

(a) The institution will operate a project for the part-time employment of its students in work—

(1) For the institution itself (except for a proprietary institution); or

(2) In the public interest for a Federal, State, or local public agency or a private nonprofit organization under an arrangement between the institution and the off-campus employer;

(b) CWS work—

(1) May not displace employees;

(2) May not impair existing service contracts;

(3) Must be governed by employment conditions that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region; and

(iii) Employee proficiency; and

(4) May not involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction;

(c) The institution must use CWS funds solely for the purposes and in accordance with the provisions of the CWS program;

(d) In selecting students for CWS employment, the institution will base its order of selection on need, taking into account grant assistance;

(e) The institution will provide work only to a student who—

(1) Has financial need;

(2) Shows evidence of academic or creative promise and is able to maintain good standing in his or her course of study while employed; and

(3)(i) Is enrolled in the institution and attending as at least a half-time student in good standing; or

(ii) Has been accepted for enrollment as at least a half-time student;

(f) The institution will comply with the maintenance of effort provisions in § 175.20 and administrative cost provision in § 175.18;

(g) The Federal share of CWS compensation paid to a student will not exceed 80% unless the Commissioner approves a higher share under § 175.26;

(h) The Commissioner does not require an institution to terminate a student's CWS employment when the

student's financial need is met. However, when the income from employment equals $200 above need, the institution may not continue to use CWS funds to pay the student;

(i) The institution must make CWS jobs reasonably available to all eligible students in the institution to the extent that funds are available. The institution will make non-CWS institutional jobs reasonably available to the extent of available funds to all students in the institution who want to work; and

(j) A student in an area vocational school is eligible to participate in CWS only if the student—

(1) Has a high school diploma or the recognized equivalent of a high school diploma; and

(2) Is pursuing at least a 6-month program of education or training that prepares students for gainful employment in a recognized occupation.

(20 U.S.C. 2754)

§ 175.9 Student eligibility.

(a) *Eligibility.* A student is eligible for part-time employment under CWS if the student—

*(1) Is a regular student;

*(2) Is enrolled in good standing as at least a half-time student at an institution of higher education;

*(3) Is enrolled in an eligible program as defined in § 175.2b;

*(4) (i) Is a U.S. Citizen or National;

*(ii) Is a permanent resident of the U.S.;

*(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(5) Has financial need.

(b) *Eligibility of area vocational school students.* A student enrolled in an area vocational school is eligible for part-time CWS employment if the student—

(1) Satisfies the conditions under subparagraphs (a)(1) through (5);

(2) Has a high school diploma or the recognized equivalent of a high school diploma; and

(3) Is pursuing at least a 6-month program of education or training that prepares students for gainful employment in a recognized occupation.

*(c) *Member of a religious order—financial need.* The Commissioner considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

(d) *Institutional responsibility for determining eligibility.* The institution is responsible for determining the eligibility of the students participating in its program whether the students work on- or off-campus.

(e) *Selection.* (1) An institution must make work under CWS reasonably available to all eligible students.

(2) If requests for work exceed available funds, the institution must base the order of selection on need, taking into account grant assistance.

(3) In determining financial need the institution must take into account any grant assistance provided to the student. This grant assistance includes grant funds that the student is entitled to receive under BEOG, even if the student does not apply for those funds.

(4) The institution's selection procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the files of the student financial assistance office.

(5) The institution must maintain on file all CWS employment applications for the period specified in § 175.19(c)(2).

*(f) *Conditions for payment.* An institution may award CWS employment ONLY AFTER determining that the student—

(1) Is enrolled in good standing;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Does not owe a refund on a Basic Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution; and

(4) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan received for attendance at that institution.

*(g) *Determination of satisfactory progress.* (1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may give a CWS job to the student for the entire period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT provide the student employment for that period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(h) *Overpayment of grants.* Conditions under which an institution may allow a student who is overpaid a grant to continue his or her CWS job:

(1) *Overpayment of a Basic Grant.* If an institution makes an overpayment of a Basic Grant to a student, it may continue to employ that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Basic Grant payments for that award year.

(2) *Overpayment of a Basic Grant due to institutional error.* If the institution makes an overpayment of a Basic Grant as a result of its own error and cannot correct it as specified in subparagraph (1), it may continue to make payments to that student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to employ a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Basic Grants) in the same award year in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(i) *Default on loans.* Conditions under which an institution may provide CWS employment to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan.* An institution may provide CWS employment to a student who is in default on a Guaranteed Student Loan if the Commissioner (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may provide CWS employment to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements,

satisfactory to the institution, to repay the loan.

*(j) *Bankruptcy.* The Commissioner considers a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student loan that is discharged in bankruptcy to be in default for purposes of this section.

*(k) *GSL—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(42 U.S.C. 2754; 20 U.S.C. 1088f)

§ 175.10 Special sessions.

(a) During a special session (e.g., summer school) or during a full-time work period of a cooperative education program, a student is eligible for employment under CWS if he or she—

(1) Is otherwise eligible (see eligibility § 175.9); and

(2)(i) Was enrolled at that institution as at least a half-time student during the preceding term and will complete his or her course of study during the special session; or

(ii) Has been accepted as at least a half-time student for the subsequent term.

(b) The Commissioner considers a student to be accepted for the subsequent term if the student will be studying in an eligible program of study abroad.

(c)(1) If an institution provides CWS employment to a student during a special session when the student was not enrolled as a half-time student during the preceding term, it must maintain a written record demonstrating—

(i) That it accepts the student as at least a half-time student for the subsequent term; and

(ii) That the student accepts its offer.

(2) The institution may not provide CWS employment to a student if it believes the student does not intend to enroll in the subsequent term.

(3) It must immediately terminate a student's work if it becomes aware after work begins that the student does not intend to enroll in the subsequent term.

(42 U.S.C. 2754)

***§ 175.11 Cost of education.**

(a) A student's educational costs include—

(1) Tuition and fees;

(2) Reasonable expenses for room and board, books, supplies, transportation, and miscellaneous personal expenses; and

(3) Expenses for support of the student's dependents.

(b) The Commissioner considers only tuition and fees to be costs of education for correspondence students. However, travel and room and board are allowed for a required period of residential training.

(45 U.S.C. 2754)

***§ 175.11a Programs of study abroad.**

(a) The Commissioner considers a student who is studying abroad to be enrolled in an eligible program if his or her home institution—

(1) Approves the student's program of study in advance; and

(2) Treats the student's academic performance exactly as if completed at the home institution.

(b)(1) If a student is enrolled in an eligible program outside the United States, the cost of education used to compute financial need may be no greater than the cost of education on the home campus.

(2) However, a student may have related additional costs that do not qualify as educational costs. The Commissioner does NOT consider funds used to pay these costs to be student resources if they come from sources other than the Basic Grants and Campus Based Programs. (This paragraph is effective retroactively to Nov. 3, 1976.)

(42 U.S.C. 2754)

***§ 175.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of education, the financial aid officer must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of education.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of education, the financial aid officer must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of education.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid officer must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of education, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's educational costs, the financial aid officer must determine whether his or her parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid officer must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's

need at least annually except for a correspondence student whose total program extends over more than one year and costs $1,000 or less. In this case, an institution may determine need only once at the beginning of the course.

(42 U.S.C. 2754)

***§ 175.13 Approved need analysis systems.**

(a) An institution must use a Commissioner approved need analysis system or calculation method in complying with the requirements in § 175.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Commissioner has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the BEOG program (45 CFR Part 190).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Commissioner approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Commissioner.

(2) The Commissioner computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Commissioner will publish annually with the sample cases.

(3)(i) In developing sample cases, the Commissioner selects cases where the main wage earner is 45 years of age.

(ii) The Commissioner does not select cases that involve medical and dental expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Commissioner treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Commissioner revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Commissioner approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the BEOG program (45 CFR Part 190).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Commissioner by June 30.

(2) The Commissioner lists approved systems in the Federal Register by the following September 1.

(3) Applications for approval must include—

(i) Information the Commissioner needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for the sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid officer believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(42 U.S.C. 2754)

***§ 175.14 Coordination of student financial aid programs, award amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its CWS and other Federal and non-Federal student financial aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award CWS assistance to a student if the CWS, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the CWS, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of education.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it

learns that a CWS recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Basic Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of education the following year; or

(ii) A substitute for the student's expected family contribution for the current year unless a GSL is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Commissioner considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from BEOG, regardless of whether the student applies for them;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL, where indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL, made by the institution;

(8) Net earnings from employment, including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL).* (1) A student may use a GSL to replace his or her expected family contribution.

(2) However, if the GSL exceeds the student's expected family contribution, the Commissioner considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards CWS assistance to the student.

(2) An institution must take reasonable steps to stay informed about the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(42 U.S.C. 2754)

§ 175.15 Coordination with BIA grants.

*(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b) (1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c) (1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Basic Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid officer is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(42 U.S.C. 2754)

§ 175.16 Payment to students.

(a)(1)(i) An institution must pay a student at least once a month. The Federal share of each payment must be paid to the student by check, or similar instrument, that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere to pay expenses or bills.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed during the previous payroll period.

(3) A student's CWS wages are obligated when the student performs the work.

(b)(1) If an institution pays a student its share of his of her CWS wages by check, it must pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) Before an institution employs a student under CWS, it must—

(1) Get a written employment acceptance statement from the student; and

(2) Give the student a statement listing—

(i) The amount of the student's CWS award;

(ii) All other student financial aid it made available to the student; and

(iii) The condition that continued CWS employment depends upon the student's maintaining satisfactory academic progress as at least a half-time student during the academic year.

(d) An institution may not pay a student CWS wages unless he or she has filed a notarized affidavit with the institution that—

(1) Is on a form approved by the Commissioner;

(2) States that the student will use all CWS wages solely for educational expenses at that institution; and

(3) Is notarized by someone who does not recruit students for the institution.

(e) *Correspondence study.* A correspondence student must submit his or her first completed lesson before receiving a payment.

(f) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student unless it verifies that information.

(42 U.S.C. 2754; 20 U.S.C. 1088g)

*§ 175.17 Federal interest in allocated funds.

Except for funds received for the administrative cost allowance (see § 175.18(b)), funds received by an institution under the CWS program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(42 U.S.C. 2751–56.)

§ 175.18 Use of funds.

(a) Funds allocated to an institution under the CWS program may only be used to—

(1) Pay the Federal share of CWS wages;

(2) Transfer to the intitution's SEOG program (see § 175.21);

(3) Carry out the activities described in paragraph (b); and

(4) Meet the cost of a job location and development program under Subpart B.

(b) *Administrative cost allowance.* (1) An institution is entitled to an administrative cost allowance of 4% of the compensation earned by its students for each award year including the Federal share and the institutional share for both on- and off-campus programs. However, the maximum administrative cost allowance permitted an institution for its campus based programs (SEOG, CWS, and NDSL) is $325,000 for any award year.

(2) An institution must use the administrative cost allowance first to provide student consumer information in accordance with 45 CFR 178. It may then use any funds remaining to administer its Title IV financial aid programs.

(42 U.S.C. 2754, 20 U.S.C. 1088b.)

§ 175.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its CWS program, an institution must establish and maintain an internal control system of checks and balances that insures that no person can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3) A separate bank account for CWS funds is not required. However an institution must notify any bank in which it deposits CWS funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, must sign the certification. The certification must include—

(A) For students paid on an hourly basis, a time record showing the hours each student worked; and

(B) For all students, a statement of whether the work was performed in a satisfactory manner.

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 175.27(a));

(iv) Identify each student's account and status;

(v) Show the eligibility of each student aided under the program;

(vi) Show the amount of need and how the need was met for each student;

(vii) Identify the officer who determined the need; and

(viii) Are reconciled at least monthly.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Commissioner requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Commissioner.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent, and the records specified in § 175.9(e).

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits-Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, CWS transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with HEW's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Commissioner approves a *longer interval.*

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of HEW's Audit Agency. It must give the Audit Agency and the Commissioner access to records or other documents necessary to the audit's review.

(42 U.S.C. 2754; 20 U.S.C. 1232c)

§ 175.20 Maintenance of effort.

(a) For each award year it receives a CWS allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the 3 award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061–1067, 1069).

(4) The award year the institution received its first SEOG allocation (20 U.S.C. 1070b–1070b–3) if it did not participate in the Educational Opportunity Grant Program during the 1972–1973 award year.

(b) The Commissioner may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the 3-year base period.

(3) Voluntary withdrawal as a GSL lender. The Commissioner waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its students at least equal to the amount the Commissioner waives.

(4) Termination as a GSL lender by the Commissioner.

(i) The Commissioner waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period.

(ii) The Commissioner also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the 3-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Commissioner waives.

(5) The Commissioner considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Commissioner—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (1) and (2) apply to both the base year period and current expenditures. Any change must have the Commissioner's written approval.

(20 U.S.C. 1088c)

§ 175.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its CWS program to its SEOG program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program they were transferred to.

(b) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(c) An institution must report any funds transferred on the Fiscal-Operations Report required under § 175.19(b).

(20 U.S.C. 1088e)

§ 175.22 Project eligibility.

(a)(1) College Work-Study employment, except for students attending a proprietary institution, may involve work—

(i) For the institution itself, i.e., the institution is the employer; or

(ii) In the public interest for a Federal, State, or local public agency or a private nonprofit organization.

(2) *Proprietary institution eligibility.* (i) CWS employment for students attending a proprietary institution may involve only work in the public interest for a Federal, State, or local public agency or for a private nonprofit organization.

(ii) A proprietary institution of higher education, for the purposes of this paragraph, also includes any nonprofit organization owned or controlled by the proprietary institution or by a corporation, association, partnership, or individual that owns or controls the proprietary institution.

(b) Work for the institution itself also includes work in those operations the institution typically performs directly for its students but sometimes contracts for if—

(1) The work contracted for is in food service, cleaning, maintenance, or security; and

(2) The contract specifies—

(i) The number of students to be employed; and

(ii) That the institution selects the students to be employed and determines each student's pay rate.

(c) *CWS employment in the public interest.* The Commissioner considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is NOT in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) A student works for an elected official outside the regular administration of Federal, State, or local government; or

(3) A student's political support or party affiliation is taken into account in hiring him or her.

(d) *Non-related profitmaking activities of institutions.* (1) Employment connected with an institution's non-related profitmaking activities does not qualify as "work for the institution" or "work in the public interest." Activities conducted as part of the institution's own educational, cultural, or athletic programs are not considered "non-related."

(2) Non-related profitmaking activities include the operation or rental of athletic fields, auditoriums, theaters, and parking lots.

(3) This restriction also applies to administrative functions at the institution connected with the non-related profitmaking activities.

(e) *CWS employment limitations and conditions.* (1) CWS employment must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction;

(v) Involve any partisan or nonpartisan political activity associated with a faction in an election for public or party office;

(vi) involve lobbying on the Federal level; or

(vii) Include employment for the U.S. Office of Education.

(f) *Agreement between an institution and an organization.* (1) The institution must enter into a written agreement with a Federal, State, or local public agency or with a nonprofit organization that employs its students. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement).

(2) The institution may enter into an agreement ONLY with a reliable agency or organization that has professional direction and staff.

(3) The institution is responsible for insuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised in accordance with CWS requirements.

(42 U.S.C. 2754)

§ 175.23 Eligible jobs.

(a) *General.* (1) A CWS eligible job is a job that an employer normally has paid other persons to do outside the CWS program.

(2) If no other person has held that job for that employer, it must be a job for which other employers would normally pay.

(b) *Work for academic credit.* Work that is otherwise eligible is not ineligible because it satisfies a requirement for a degree or certificate.

(42 U.S.C. 2754.)

§ 175.24 Establishment of wage rates under CWS.

(a) *Wage rate.* (1) Except as provided in subparagraph (2) of this paragraph, CWS compensation must be computed on an hourly wage basis for actual time on the job. Fringe benefits may not be counted as part of the wage rate. An institution may not pay a student a salary, commission, or fee.

(2) An institution may pay a graduate student it employs a salary or on an hourly basis, in accordance with its usual practices.

(b) *Minimum wage rate.* (1) *General.* Except as provided in subparagraphs (2), (3), and (4) of this paragraph, the minimum wage rate for a student employed under the CWS program, unless a higher minimum rate is required under an applicable Federal, State, or local law, is—

(i) $2.90 an hour from January 1, 1979 through December 31, 1979;

(ii) $3.10 an hour from January 1, 1980 through December 31, 1980; and

(iii) $3.35 an hour after December 31, 1980.

(2) *Public institutions.* Except as provided in subparagraphs (3) and (4), the minimum wage rate for a student employed under the CWS program by a public institution, unless a higher rate is required under an applicable Federal, State, or local law, is—

(i) $2.65 an hour from September 28, 1978 through June 30, 1979;

(ii) $2.90 an hour from July 1, 1979 through June 30, 1980;

(iii) $3.10 an hour from July 1, 1980 through June 30, 1981; and

(iv) $3.35 an hour after June 30, 1981.

(3) The Commissioner may approve a rate lower than the minimum if that rate is—

(i) Warranted by unusual circumstances;

(ii) Consistent with the purpose of the CWS program;

(iii) Not precluded by law; and

(iv) At least 85 percent of the minimum.

(4) If the Secretary of Labor approves a subminimum rate under the Fair Labor Standards Act for any category of students at an institution, the subminimum rate is the minimum rate under CWS for those students for the duration of the Secretary of Labor's approval.

(c) Even if the Commissioner permits a subminimum wage rate, the rate of pay for each CWS position must be appropriate in terms of—

(1) Type of work;

(2) Geographic region;

(3) Employee proficiency; and

(4) Any applicable Federal, State, or local law.

(42 U.S.C. 2754)

§ 175.25 Earnings applied to cost of education.

(a) *Attribution.* (1) The institution determines the amount of earnings from a CWS job to be applied to a student's cost of education (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution applies the attributed earnings to the cost of education for the next period of enrollment except as specified in paragraph (c).

(b) *Job related costs.* (1) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Another example is room and board during vacation periods, except as provided in paragraph (c).

(2) If a student is on an academic year budget, job related costs, including room and board during a vacation period, are the lesser of—

(i) $300; or

(ii) 20% of net earnings.

(3) If all reasonably available jobs during the vacation period require the student to exceed the job related limits in subparagraph (2), the institution may allow a higher limit up to the lesser of—

(i) $600; or

(ii) 40% of net earnings.

(c) *12-month budget.* An institution may compute a student's budget for an academic year or for 12 months. If the institution uses a 12 month budget—

(1) The student's room and board costs for the entire 12 months are a cost of education rather than job related costs; and

(2) The institution must compute the student's expected family contribution on a 12-month basis.

(42 U.S.C. 2754)

§ 175.26 CWS Federal share limitations.

(a)(1) The Federal share of CWS compensation paid to a student may not exceed 80%, unless the Commissioner approves a higher share (see paragraph (e)).

(2) An institution may not use CWS funds to pay a student after he or she has earned $200 over his or her financial need.

(b) The institution may NOT include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workmen's compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) Either the institution or the student's employer may pay a student employed off-campus. The employment agreement between the institution and

the employing agency or organization may require the employer to pay—

(1) The non-Federal share of the student earnings;

(2) Required employer costs such as the employer's share of social security or workmen's compensation; and

(3) The institution's administrative costs not already paid from the institution's administrative cost allowance.

(d) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and its CWS administrative costs, excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(e)(1) The Commissioner may approve a Federal share greater than 80% of CWS compensation if the institution—

(i) Is designated a "developing institution of higher education" under 45 CFR Part 169; or

(ii) Proves that at least 50% of its students who are at least half-time students have parents whose annual adjusted gross income is less than $7,500 a year.

(2) The Commissioner pays a 100% Federal share for that part of CWS compensation that exceeds—

(i) The amount of CWS compensation paid to students during the 1975–1976 award years; or

(ii) An amount the Commissioner specifies for institutions not participating in the CWS program during the 1975–1976 award year.

(3) An institution, in order to receive a Federal share of more than 80% for an award year, must indicate its intent to request the additional funds as part of its regular funding application for that year.

(42 U.S.C. 2754 and 20 U.S.C. 1055)

§ 175.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution must document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) A school may not solicit or accept fees, commissions, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(42 U.S.C. 2754.)

§ 175.28 Multi-institutional arrangements.

(a) *General.* (1) Eligible institutions, in conducting their CWS projects, may form a consortium by—

(i) Entering into a cooperative arrangement with each other; or

(ii) Designating or creating a public or private nonprofit organization to direct their CWS projects.

(2) Institutions in a consortium must—

(i) Sign a written agreement with each other; and

(ii) Designate an administrator "grantee" to receive each institution's allocation.

(3) The agreement must contain the terms, conditions, and assignment of responsibilities, including those for audit, required under CWS.

(b) *Consortium of institutions in one State not participating in SEOG or NDSL.* The Commissioner considers a consortium of institutions located within a single State that do not participate in the NDSL or SEOG programs to be a single institution for purposes of—

(1) Entering into a single agreement required under § 175.8;

(2) Filing a single application under § 175.5;

(3) Allocating, disbursing, and reporting funds; and

(4) Complying with record and reporting requirements of § 175.19.

(c) *Consortium of institutions in more than one State not participating in SEOG or NDSL.* In a consortium of institutions located in different States—

(1) Funds apportioned to an institution in one State may not be used to pay a student from an institution in a different State; and

(2) The Commissioner considers only those institutions in the consortium that are in one State to be a single institution for the purpose of—

(i) Entering into an agreement under § 175.8; and

(ii) Fund allocation, expenditure, and reporting.

(d) *Consortium that includes institutions participating in NDSL or SEOG or both.* If any institution in a consortium participates in NDSL or SEOG or both, that institution must—

(1) Enter into its own separate agreement with the Commissioner under § 175.8;

(2) File its own application under § 175.5 specifying that its designated grantee administers its CWS request;

(3) List, in its CWS application, all other institutions in its consortium; and

(4) Comply with record and reporting requirements of § 175.19.

(42 U.S.C. 2753)

Subpart B—Job Location and Development Program

§ 175.31 Purpose.

The purpose of the job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions who want jobs, regardless of their financial need.

(42 U.S.C. 2756a.)

§ 175.32 Definition of institution.

An institution is defined in §175.2a. It also includes a group of institutions participating in a CWS consortium under § 175.28.

(42 U.S.C. 2756a.)

§ 175.33 Federal contribution allowed.

To create a job location and development project or expand an existing one, an institution may use, from its CWS allocation for each award year, the lesser of—

(a) 10%; or

(b) $15,000.

(42 U.S.C. 2756a.)

§ 175.34 Allowable costs.

(a) Costs reasonably related to carrying out a CWS job location and development project are allowable.

(b) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are NOT allowable.

(42 U.S.C. 2756a.)

§ 175.35 Federal share of allowable costs.

An institution may use Federal funds allowed it under § 175.33 for a job location and development project to pay up to 80% of allowable costs.

(42 U.S.C. 2756a.)

§ 175.36 Institutional share.

An institution's share of allowable costs may be in cash or in the form of services. However, the institution may not use Federal funds as the institution's share of its job location and development project. The institution must keep records documenting the amount and source of its share.

(42 U.S.C. 2756a.)

§ 175.37 Multi-institutional job location and development project; arrangements with nonprofit organizations.

(a) Institutions participating in CWS may enter into a cooperative arrangement to establish and operate a job location and development project for their students.

(b) An institution participating in CWS may, separately or in combination with other participating institutions, arrange for a nonprofit organization to establish and operate a job location and development project for the institution's students. The nonprofit organization, however, must have professional direction and staff.

(c) Each institution must sign a written agreement with all other institutions in the cooperative arrangement or with the nonprofit organization acting on its behalf. The agreement must—

(1) Designate the administrator of the job location and development project;

(2) Specify the terms, conditions, and performance standards of the project; and

(3) Provide for an audit, as required in paragraph (d) of this section.

(d) The administrator of a cooperative arrangement or the nonprofit organization operating a project on an institution's behalf, must provide—

(1) For an audit, as required in § 175.19(d); and

(2) One copy of the audit report to each participating institution.

(e) Each institution retains responsibility for the proper disbursement of its Federal funds administered through a cooperative arrangement or by a nonprofit organization.

(42 U.S.C. 2756a)

§ 175.38 Restrictions.

A job location and development project may not—

(a) Locate or develop jobs for any institution;

(b) Locate or develop jobs for students upon graduation;

(c) Displace employees; or

(d) Impair existing contracts for services.

(42 U.S.C. 2756a)

§ 175.39 Agreement.

(a) A CWS-participating institution, to establish or expand a job location and development project, must enter into a agreement with the Commissioner.

(b) The agreement must provide—

(1) That the Federal share of the project's cost not exceed 80%;

(2) That the institution submit to the Commissioner an annual report on the use of the funds and an evaluation of the project's effectiveness in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use project funds to develop jobs at the institution;

(ii) The institution will continue to spend in it own job location and development project (from sources other than CWS funds) in each award year at least ⅓ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of the agreement;

(iii) The institution will use project funds to locate and develop jobs for students during and between periods of attendance at the institution, NOT upon graduation;

(iv) The project will not displace employees or impair existing service contracts;

(v) Project funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(vi) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(42 U.S.C. 2756a)

§ 175.40 Maintenance of effort.

(a) An institution must continue to spend in each award year on its own job location and development project (from sources other than CWS funds) at least ⅓ of its expenditures for locating jobs for its students during the 3 most recent fiscal years preceding the date of its agreement with the Commissioner.

(b) An institution's "own job location and development project" includes any expenditures of institutional funds to create off-campus jobs for enrolled students. This includes costs for staff salaries, travel, printing and mailing, telephone calls, and project equipment furnished by the institution.

(42 U.S.C. 2756a)

§ 175.41 Procedures and records.

Procedures and records concerning the administration of a job location and development project established and operated under this subpart are governed by applicable provisions of § 175.19.

(42 U.S.C. 2756a)

§ 175.42 Termination and suspension.

(a) If the Commissioner terminates or suspends an institution's CWS project, the action also applies to the institution's job location and development project.

(b) The Commissioner pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(42 U.S.C. 2756a)

Appendix A.—*Allotments of Funds to States for Fiscal Year 1972*

Alabama	$5,802,379
Alaska	222,401
Arizona	2,163,180
Arkansas	3,357,696
California	19,625,311
Colorado	2,643,202
Connecticut	2,537,476
Delaware	520,542
District of Columbia	1,110,472
Florida	6,830,771
Georgia	6,390,308
Hawaii	796,559
Idaho	839,577
Illinois	10,371,320
Indiana	5,396,896
Iowa	3,925,939
Kansas	2,844,022
Kentucky	4,770,515
Louisiana	5,759,805
Maine	1,156,396
Maryland	3,549,625
Massachusetts	5,863,354
Michigan	9,157,777
Minnesota	4,773,195
Mississippi	4,885,174
Missouri	5,420,293
Montana	933,670
Nebraska	2,015,607
Nevada	335,527
New Hampshire	767,114
New Jersey	5,111,397
New Mexico	1,548,112
New York	16,923,121
North Carolina	8,181,440
North Dakota	1,067,895
Ohio	10,424,770
Oklahoma	8,522,127
Oregon	2,401,584
Pennsylvania	12,087,462
Rhode Island	995,991
South Carolina	4,483,023
South Dakota	1,185,126
Tennessee	5,964,544
Texas	14,171,730
Utah	1,532,910
Vermont	613,709
Virginia	5,605,999
Washington	3,641,590
West Virginia	2,934,188
Wisconsin	5,012,671
Wyoming	416,528
Outlying areas [1]	4,748,000
Total	237,400,000

[1] Outlying areas include Puerto Rico, Virgin Islands, Guam, American Samoa, and Trust Territory of the Pacific Islands.

Appendix B.—Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the college work-study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ——————, hereinafter known as the "Institution," and ——————,

hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study Program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay; and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Health, Education, and Welfare which implement those Acts.

(Where appropriate any of the following 3 paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)[1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the student for the organization. It also has the responsibility to determine that the students meet the eligibility requirements for employment under the college work-study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the student, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining that the students meet the eligibility requirements for employment under the college work-study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workmen's compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workmen's compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week and containing the supervisor's certification as to the accuracy of the hours reported and of satisfactory performance on the part of the students;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll;[2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

3. Part 176 of Title 45 of the Code of Federal Regulations is amended to read as follows:

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Sec.
176.1 Purpose, identification of common provisions, and nondiscrimination.
176.2 Definitions.
*176.2a Institution of higher education.
176.2b Eligible program.
176.3 Apportionment and reapportionment.
176.4 Allocation, reallocation, and payment to institutions.
176.5 Application.
176.6 Funding procedures.
176.7 Application review—approval of request.
176.8 Institutional agreement.
176.9 Student eligibility.
176.10 Special sessions.
*176.11 Cost of education.
*176.11a Programs of study abroad.
*176.12 Expected family contribution.
*176.13 Approved need analysis systems.
*176.14 Coordination of student financial aid programs, award amount, and overaward.
176.15 Coordination with BIA grants.
176.16 Payment of grant.
*176.17 Federal interest in allocated funds.
176.18 Use of funds.
176.19 Fiscal procedures and records.
176.20 Maintenance of effort.
176.21 Transfer of funds.
176.22 Duration of student eligibility.
176.23 Types of grant awards.
176.24 Amount of grant.

Appendix A—Allotment of funds to States for fiscal year 1972.

Authority: Sec. 413A-413D of Title IV-A-2 of HEA, Pub. L. 89-329.

(20 U.S.C. 1070b-1070b-3), unless otherwise noted.

§ 176.1 Purpose, identification of common provisions, and nondiscrimination.

(a) The Supplemental Educational Opportunity Grant Program (SEOG) awards grants to students with exceptional financial need to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based

[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workmen's compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

[2] These forms, when accepted, must be countersigned by the institution as to hours worked and satisfactory performance, as well as to the accuracy of the total Federal share which is to be reimbursed to the off-compus organization.

regulations are identified with an asterisk.

*(c) An institution must comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	45 CFR Part 80.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	45 CFR Part 86.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e-3(a)(1))

(20 U.S.C. 1070b, unless otherwise noted)

§ 176.2 Definitions.

**Academic year:* A period of time in which a full-time student is expected to complete—

(a) The equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(b) At least 900 clock hours of training for each program at an institution using clock hours.

Act: Title IV-A-2 of the Higher Education Act of 1965 (HEA).

**Award year:* The period of time between July 1 of one year and June 30 of the following year.

**Basic Educational Opportunity Grant Program (BEOG):* A grant program authorized by Title IV-A-1 of the HEA.

**Campus Based Programs:* (a) The National Direct Student Loan Program (NDSL-45 CFR 174);

(b) The College Work-Study Program (CWS-45 CFR 175); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG-45 CFR 176).

**Clock Hour:* The equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV-C of the HEA.

(42 U.S.C. 2751-2756)

**Commissioner:* The U.S. Commissioner of Education or the Commissioner's designee.

(20 U.S.C. 1141(f))

Continuing grant: A Supplemental Grant that follows and continues an initial grant (see initial grant).

**Dependent student:* A student who does not qualify as an independent student (see independent student).

**Expected family contribution:* The amount a student and his or her spouse and family are expected to pay toward his or her cost of education.

**Financial need:* The difference between a student's cost of education and his or her expected family contribution.

**Good standing:* The eligibility of a student to continue attending the institution in which he or she is enrolled in accordance with the standards of the institution.

**Guaranteed Student Loan Program (GSL):* The student loan program authorized by Title IV-B of the HEA.

(20 U.S.C. 1071 *et seq.*).

**Half-time student:* An enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(a) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester, or quarter systems.

(b) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 year.

(c) 12 clock hours per week for an institution using clock hours.

(d) 12 hours of preparation per week for a student enrolled in a program of study by correspondence.

Independent student (effective through June 30, 1979): A student who—

(a) Has not and will not be claimed as an exemption for Federal income tax purposes by any other person except his or her spouse for the calendar year(s) in which aid is received or the calendar year prior to the academic year for which aid is requested;

(b) Has not received and will not receive financial assistance of more than $600 from his or her parent(s) in the calendar year(s) in which aid is received or the calendar year prior to the academic year for which aid is requested, and

(c) has not lived or will not live for more than 2 consecutive weeks in the home of a parent during the calendar year in which aid is received or the calendar year prior to the academic year for which aid is requested.

(d) For purposes of this paragraph, a student will not be considered to have been claimed as an exemption by a parent, or to have received $600 from a parent, or to have lived with a parent if that parent has died prior to the student's submission of an application for a grant and if no person, other than the student's spouse, provides or will provide more than one-half of the student's support for the first calendar year in which assistance is requested.

Independent student (efffective July 1, 1979): (a) A student who for the calendar year(s) of the award year for which aid is requested or the calendar year before the first calendar year of that award year—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for any one of these years;

(2) Has not received or will not receive financial assistance of more than $750 from his or her parent(s) for any one of these years; and

(3) Has not lived and will not live for more than 6 weeks in the home of his or her parent(s) for any one of these years.

(b) However, the Commissioner considers that a student will not have claimed as an exemption by a parent, will not have received more than $750 from a parent, and will not have lived in the parent's home for more than 6 weeks if that parent dies before the student submits his or her grant application.

Initial grant: The first SEOG awarded and paid to a student by any institution for either—

(a) An academic year; or

(b) A portion of an academic year if the student was not enrolled for the entire year.

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV-E of the HEA.

(20 U.S.C. 1087aa-ff)

**National of the United States:* A citizen of the United States or a noncitizen who owes permanent allegiance to the United States.

(8 U.S.C. 1101(a)(22))

**Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the

institution benefits any private shareholder or individual.

(20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

**Recognized equivalent of a high school diploma:*

(a) A General Educational Development Certificate (GED); or

(b) A State certificate received after passing a State authorized examination, that that State recognizes as the equivalent of a high school diploma.

**Regular student:* A person who enrolls in an eligible program in an institution of higher education for the purpose of obtaining a degree or certificate.

**State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

**State Student Incentive Grant Program (SSIG):* The program authorized by Title IV-A-3 of the HEA.

(20 U.S.C. 1070c et seq.)

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(a) Has not been awarded a bachelor or first professional degree; and

(b) Is in an undergraduate course of study that usually does not exceed 4 years, or is enrolled in a 5 year program designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first 4 years.

(20 U.S.C. 1070b-1070b-3 unless otherwise noted.)

***§ 176.2a Institution of higher education.**

An institution of higher education is a public, private nonprofit, or proprietary institution.

(a) A public or private nonprofit institution of higher education is an educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of a standardized written test, other measurement instrument, non-written examination for practical course work (practicum examination), or other verifiable indicators such as written recommendations from professional educators and counselors who are not employed by or affiliated with the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, bachelor, advanced, or professional degree;

(ii) At least a 2 year program that is acceptable for full credit toward a bachelor degree; or

(iii) At least a 1 year training program that leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency the Commissioner recognizes as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution that has satisfactorily assured the Commissioner that it will meet the accreditation standards of an agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated, and its efforts to meet accreditation standards; or

(iv) An institution whose credits are accepted for credit on transfer by at least 3 accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) A proprietary institution of higher education is an educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of a standardized written test, other measurement instrument, non-written examination for practical course work (practicum examination), or other verifiable indicators such as written recommendations from professional educators and counselors who are not employed by, or affiliated with, the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides at least a 6 month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a nationally recognized accrediting agency or association;

(6) Has been in existence at least 2 years. The Commissioner considers an institution to have been in existence for 2 years if it is legally authorized to provide, and has provided, a continuous (except for normal vacation periods) training program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the application date for eligibility; and

(7) Has entered into an agreement that insures that the availability of assistance to students under Title IV of HEA has not resulted in, and will not result in, increased tuition, fees, or other charges to its students.

(c) *One year training program.* A one year program is an instructional program that is at least—

(1) 24 semester or trimester hours or 36 quarter hours at an institution using credit hours to measure progress;

(2) 900 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 900 hours of preparation in a correspondence program.

(d) *Six month training program.* A six month program is an instructional program that is at least—

(1) 16 semester or trimester hours or 24 quarter hours at an institution using credit hours to measure progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 600 hours of preparation in a correspondence program.

(20 U.S.C. 1141(a), 1088(b))

§ 176.2b Eligible program.

An eligible program is an undergraduate program of education or training that—

*(a) Admits as regular students only persons who—

(1) Have a certificate of graduation from secondary school (high school diploma);

(2) Have the recognized equivalent of a high school diploma (see definitions); and

(3) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered. (An institution must document a student's ability to benefit from the training offered in accordance with the procedures set forth in § 176.2a(a)(2)(iii)); and

(b) (1) Leads to a bachelor, associate, or undergraduate professional degree;

(2) Is at least a 2 year program that is acceptable for full credit toward a bachelor degree;

(3) Is at least a 1 year program leading to a certificate or degree that prepares a student for gainful employment in a recognized occupation (a 1 year program is defined in § 176.2a(c)); or

(4) Is, for a proprietary institution, at least a 6 month program of study leading to a certificate, that prepares students for gainful employment in a recognized occupation (a 6 month program is defined in § 176.2a(d)).

(20 U.S.C. 1141(a), 1088(b)(3))

§ 176.3 Apportionment and reapportionment.

(a) *Apportionment—Initial grants.* The Commissioner apportions—

(1) 90% of appropriated funds for initial grants according to 413D(a) of the Act. If necessary, the Commissioner apportions additional amounts to each State to make that State's apportionment equal to its allotment for fiscal year 1972. The 1972 allotments are shown in Appendix A; and

(2) The remaining funds so that each institution in each State receives the amount for initial grants computed under § 176.6 or 176.7.

(b) *Apportionment—Continuing grants.* The Commissioner apportions funds appropriated for continuing grants so that each institution receives the amount computed under § 176.6 or 176.7.

(c) *Reapportionment—Initial grants.* (1) The Commissioner reapportions the amount of a State's apportionment that exceeds the sum of—

(i) Approved requests for initial grants of institutions in the State; and

(ii) Funds to be transferred to the State Student Financial Assistance Training Program.

(2) The Commissioner reapportions those funds among the remaining States according to institutional need for initial year funds as computed under § 176.6 or 176.7.

(d) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) If a State has submitted an approved application, the Commissioner transfers an amount equal to .05% of its apportionment under paragraphs (a) and (b) or $10,000 (whichever is less) to that State's Student Financial Assistance Training Program authorized under Section 493C of HEA.

(2) The Commissioner returns to a State's apportionment and allocates, on an equitable basis, to other institutions in that State those funds reserved for the State's Student Financial Assistance Training Program not granted for the fiscal year for which appropriated.

(20 U.S.C. 1070b-3 and 1088b-3.)

§ 176.4 Allocation, reallocation, and payment to institutions.

(a) If funds available within a State are insufficient to honor all requests for funds by institutions in that State, the Commissioner distributes the funds as described in § 176.6.

(b)(1) If an institution anticipates not using all its allocation for initial and continuing grants by the end of an award period, it must specify the anticipated unused amount to the Commissioner, who reduces the institution's allocation accordingly.

(2) The Commissioner may reallocate those funds equitably to other institutions in a State. If no institution in that State needs those funds, the Commissioner may reapportion them according to § 176.3 for use in other States.

(c) The Commissioner allocates funds for initial and continuing grants for a specific period of time. The Commissioner pays funds to an institution in advance or by reimbursement. The Commissioner bases the amount to be paid on periodic fiscal reports.

(20 U.S.C. 1070b-3.)

§ 176.5 Application.

(a) To participate in the SEOG program, an institution must file an application with the Commissioner before an annually established closing date.

(b) The application must be on a form approved by the Commissioner and contain information needed to determine the institution's allocation under § 176.6.

(c) The application must contain the information needed to determine whether the institution is complying with maintenance of effort requirements under § 176.20.

(20 U.S.C. 1070b-3.)

§ 176.6 Funding procedures.

(a) The Commissioner computes—

(1) A funding level, called a conditional guarantee, for each institution applying for SEOG funds; and

(2) A funding level, called a fair share, for each institution seeking a higher funding level than its conditional guarantee.

(b) *Conditional guarantee.* The Commissioner computes a conditional guarantee for the 1979–1980 award year in the following way:

(1) An institution that received SEOG funds in award years 1977–1978 and 1978–1979 receives for 1979–1980 the greater of its—

(i) 1977–1978 SEOG expenditure; or

(ii) Projected 1978–1979 SEOG expenditure.

(2) *Projected expenditure.* The Commissioner computes an institution's projected 1978–1979 SEOG expenditure by multiplying its 1978–1979 allocation by its 1977–1978 utilization rate.

(3) *Utilization rate.* An institution's 1977–1978 SEOG utilization rate equals—

$$\frac{\text{its 1977–1978 SEOG expenditures}}{\text{its SEOG allocation for 1977–1978}}$$

(4) *Conditional guarantee for an institution participating in SEOG in 1978–1979 but not in 1977–1978.* The Commissioner considers an institution to have a 100% utilization rate if it received SEOG funds for award year 1978–1979 but did not participate in the SEOG program in 1977–1978.

(5) *Conditional guarantee for an institution not participating in any campus based programs in 1978–1979.* (i) If an institution did not participate in any campus based programs in 1978–79, the Commissioner computes its conditional guarantee by comparing it to similar institutions of the same type and control participating in SEOG for the first time in 1978–1979, as follows:

$$\frac{\text{SEOG funding of similar institutions}}{\text{Their number of enrolled students}} = \text{per student amount}$$

$$\text{Conditional guarantee} = \text{per student amount} \times \text{number enrolled at applicant institution}$$

(ii) Control: public, nonprofit private, and proprietary.

(iii) Type: university, 4-year institution, 2-year institution, and other.

(6) The Commissioner does NOT compute a conditional guarantee for an institution that applies to participate in the SEOG program for the award year 1979–1980 if it participated in either CWS or NDSL but not SEOG in 1978–

1979. The institution, however, may apply for funds under paragraph (c), "Fair share."

(7) *Initial and continuing grants.* The Commissioner divides each institution's conditional guarantee between initial grants and continuing grants. The Commissioner bases this division on the percentage that the institution's request for each type of grant bears to its total request.

Example: An institution that requests $100,000, $45,000 in initial grants and $55,000 in continuing grants, has a conditional guarantee of 45% for initial grants and 55% for continuing grants.

(c) *Fair share calculation.* (1) The Commissioner computes an institution's fair share of the SEOG appropriation for both initial and continuing grants by multiplying—

(i) SEOG initial grant appropriation by the institution's relative national index for initial grants; and

(ii) SEOG continuing grant appropriation by the institution's relative national index for continuing grants.

(2) *Relative national index calculation.*

(i) An institution's relative national index for initial grants equals—

$$\frac{\text{its need for initial grants}}{\text{the need for initial grants of all institutions}}$$

(ii) An institution's relative national index for continuing grants equals—

$$\frac{\text{its need for continuing grants}}{\text{the need for continuing grants of all institutions}}$$

(3) *Need calculation.* (i) If an institution applies under paragraph (c), the Commissioner computes the institution's need for initial and continuing SEOG funds by the following formula: SEOG need = 70% of cost of education − (Total expected family contribution + Basic Grants + State Grants + 50% of Institutional Grants).

(ii) The Commissioner divides each institution's need between initial grants and continuing grants based on the institution's request for each (see subparagraph (b)(7)).

(iii) If an institution does not apply for additional funds under this paragraph, the Commissioner considers the institution's need for funds to be its conditional guarantee.

(4) *Total expected family contribution (EFC) calculation:* The Commissioner—

(i) Establishes various income categories for dependent and independent undergraduate students;

(ii) Establishes an EFC for each income category of dependent and independent undergraduate students, using a need analysis method approved under § 176.13;

(iii) Multiplies the number of dependent students in each income category by the EFC for that income category;

(iv) Multiplies the number of independent students in each income category by the EFC for that income category; and

(v) Adds the amounts obtained in all categories.

The following chart shows the income categories and calculations.

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DETERMINATION OF SEOG NEED FOR DEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 70% x COST	3 EFC	4 NEED COL2 LESS COL 3	5 NUMBER STUDENTS	6 COL 4 x COL 5
$ 0 - $ 5,999					
$ 6,000 - $ 8,999					
$ 9,000 - $11,999					
$12,000 - $14,999					
$15,000 - $17,999					
$18,000 - $20,999					
$21,000 - $23,999					
$24,000 - $26,999					
$27,000 - $29,999					
$30,000 - OVER					
7 TOTAL FOR DEPENDENT UNDERGRADUATE STUDENTS					$

DETERMINATION OF SEOG NEED FOR INDEPENDENT UNDERGRADUATE STUDENTS

1 INCOME	2 70% x COST	3 EFC	4 NEED COL2 LESS COL 3	5 NUMBER STUDENTS	6 COL 4 x COL 5
$ 0 - $ 999					
$ 1,000 - $ 1,999					
$ 2,000 - $ 2,999					
$ 3,000 - $ 3,999					
$ 4,000 - $ 4,999					
$ 5,000 - $ 5,999					
$ 6,000 - $ 6,999					
$ 7,000 - $ 7,999					
$ 8,000 - $ 8,999					
$ 9,000 - OVER					
7 TOTAL FOR INDEPENDENT UNDERGRADUATE STUDENTS					$

7 TOTAL	FOR DEPENDENT UNDERGRADUATE STUDENTS	$
7 TOTAL	FOR INDEPENDENT UNDERGRADUATE STUDENTS	$
8 TOTAL	FOR ALL UNDERGRADUATE STUDENTS	$

9 ALL BEOG	$	
10 ALL STATE GRANT AID	$	
11 50% OF ALL INSTITUTIONAL GRANT AID	$	
12 TOTAL OF ITEM 9 + 10 + 11		$
ITEM 8 (TOT. ALL UNDERGRAD. STUDENTS) LESS ITEM 12		
EQUALS TOTAL SEOG NEED		$

BILLING CODE 4110-02-C

(d) For purposes of this section:

(1) *Cost of education* means attendance costs for eligible undergraduate students including tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Commissioner prorates this amount for eligible students.)

(2) *Eligible students* means students who satisfy the eligibility requirements of § 176.9(a)(1) through (a)(4).

(3) *State grants* means the sum of all State grants and scholarships received by undergraduate students at an institution during the award year 1977–1978.

(4) *Institutional grants* means the sum of undergraduate gift aid included in determining the maintenance of effort amount under § 176.20.

(5) Seventy percent of the average cost of education minus EFC may not be less than zero.

(e) *Increases within initial grant State allotments ("State increase").* (1) The Commissioner increases awards ("State increase") for those institutions in a State applying for additional initial year funds if the combined initial year conditional guarantees of all institutions in the State are less than the State initial grant apportionment computed under § 176.3(a). To compute this State increase, the Commissioner—

(i) Subtracts the initial year conditional guarantees for all institutions within the State from the State initial grant apportionment; and

(ii) Multiplies the remainder by the relative State initial grant index (see subparagraph (2) of this paragraph) of each institution applying for additional funds.

(2) *Relative State index:* An institution's relative State initial grant index equals—

$$\frac{\text{its need for initial year grants}}{\text{the initial year grant need of all institutions in the State applying under paragraph (c)}}$$

(3) For purposes of this paragraph the Commissioner does not deduct State grants from the cost of education in calculating an institution's need for initial year grants.

(f) *Increase based on initial year fair share shortfall ("National increase").* (1) The Commissioner further increases awards ("National increase") to institutions applying for additional funds if all SEOG initial year conditional guarantees and State increases are less than the SEOG initial year appropriation.

(2) The Commissioner determines—

(i) *SEOG available funds for initial year shortfall* by—

(A) Adding the initial year conditional guarantees for all institutions and all State increases; and

(B) Subtracting that sum from the 1979–1980 SEOG appropriation for initial year grants;

(ii) *An institution's shortfall* by—

(A) Adding the institution's initial year conditional guarantee and State increase; and

(B) Subtracting that amount from its initial year fair share amount; and

(iii) *The total initial year shortfalls of all institutions.*

(3) *An institutions's National increase* equals—

$$\frac{\text{its initial year shortfall}}{\text{the initial year shortfalls of all institutions}} \times \text{the SEOG available funds for initial year shortfalls}$$

(g) *Increase based on continuing year fair share shortfall.*

(1) The Commissioner further increases awards to institutions applying for additional funds if all SEOG continuing year conditional guarantees are less than the SEOG continuing year appropriation.

(2) The Commissioner determines—

(i) *SEOG available funds for continuing year shortfall* by—

(A) Adding the continuing year conditional guarantees for all institutions; and

(B) Subtracting the sum from the 1979–1980 SEOG appropriation for continuing year grants;

(ii) *An institution's shortfall* by subtracting its continuing year conditional guarantee from its continuing year fair share; and

(iii) *The total continuing year shortfalls of all institutions.*

(3) *An institution's increase equals*—

$$\frac{\text{its continuing year shortfall}}{\text{the continuing year shortfalls of all institutions}} \times \text{the SEOG available funds for continuing year shortfalls}$$

(h) No institution may receive more SEOG funds than it requested for initial or continuing grants.

(20 U.S.C. 1070b–3.)

§ 176.7 Application review—Approval of request.

(a) An institution may request a review of its approved request.

(b) A National Review Panel appointed by the Commissioner reviews each institution's request. The panel consists of student financial aid officers and OE personnel.

(c) In setting an award amount, the Commissioner considers the panel's recommendations and its reasons for the recommendations.

(d) The Commissioner sets an award amount based on procedures in § 176.6 and the review panel's recommendations.

(20 U.S.C. 1070b–3.)

§ 176.8 Institutional agreement.

An institution, to participate in the SEOG program, must enter into an agreement with the Commissioner that provides that the institution will—

(a) Use SEOG funds solely for the purposes and in accordance with the provisions of the SEOG program;

(b) Consider a student's income sources and assets and the income sources and assets of person(s) who provide the student's primary support in determining a student's exceptional financial need;

(c) Vigorously try to identify, in cooperation with other institutions when appropriate, qualified youths of exceptional need and encourage them to continue their education through such programs and activities as—

(1) Working with secondary school principals and guidance and counseling personnel in motivating those students to complete secondary school and pursue postsecondary education; and

(2) Making feasible conditional commitments for student financial aid to promising secondary school students, especially in grades 11 or lower, who would otherwise be unable to pursue higher education;

(d) Make SEOG's reasonably available to all eligible students to the extent that funds are available; and

(e) Comply with the maintenance of effort provision in § 176.20 and administrative cost provisions in § 176.18.

(20 U.S.C. 1070b–2)

§ 176.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an SEOG if the student—

*(1) Is a regular student;

*(2) Is enrolled in good standing as at least a half-time undergraduate student at an institution of higher education;

*(3) Is enrolled in an eligible program as defined in § 176.2b;

*(4)(i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the U.S.;

(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands;

(5) Has exceptional financial need (see paragraph b); and

(6) Would be financially unable to pursue his or her education without an SEOG.

(b) *Exceptional financial need.* The Commissioner considers a student to have exceptional financial need if—

(1) The student's expected family contribution is not more than 50% of his or her cost of education; or

(2) The institution's financial aid officer believes the student cannot meet his or her financial need with loans, employment, or other grants. (The institution must include the reason for such a decision in its records.)

*(c) *Member of a religious order—financial need.* The Commissioner considers that a member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education has no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) (i) Directs the member to pursue the course of study; or

(ii) Provides subsistence support to its members.

*(d) *Conditions for payment.* An institution may pay an SEOG ONLY AFTER determining that the student—

(1) Is enrolled in good standing;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Does not owe a refund on a Basic Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution; and

(4) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan received for attendance at that institution.

*(e) *Determination of satisfactory progress.*

(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay an SEOG to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may NOT pay the student an SEOG for that payment period OR make adjustments in subsequent financial aid payments to compensate for the loss of aid for that period.

*(f) *Overpayment of grants.* Conditions under which an institution may pay an SEOG to a student who is overpaid a grant:

(1) *Overpayment of a Basic Grant.* If an institution makes an overpayment of a Basic Grant to a student, it may continue to make SEOG payments to that student if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment in the award period in which it occurred by adjusting the subsequent Basic Grant payments for that award year.

(2) *Overpayment of a Basic Grant due to institutional error.* If the institution makes an overpayment of a Basic Grant as a result of its own error and can not correct it as specified in subparagraph (1) of this paragraph, it may continue to make payments to a student if the student—

(i) Is otherwise eligible; and

(ii) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment of an SEOG.* An institution may continue to make SEOG payments to a student who receives an overpayment on an SEOG if—

(i) The student is otherwise eligible; and

(ii) It can eliminate the overpayment by adjusting financial aid payments (other than Basic Grants) in the same award period in which the overpayment occurred.

(4) *Definition.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive.

*(g) *Default on loans.* Conditions under which an institution may pay an SEOG to a student who is in default on loans made for attendance at that institution:

(1) *Guaranteed loan.* An institution may pay an SEOG to a student who is in default on a Guaranteed Student Loan if the Commissioner (for a Federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay an SEOG to a student who is in default on a National Defense/Direct Student Loan made at that institution if the student has made arrangements, satisfactory to the institution, to repay the loan.

*(h) *Bankruptcy.* The Commissioner considers a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

*(i) *GSL—Reliance on student's statement.* An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(20 U.S.C. 1070b-2 and 1088f)

§ 176.10 Special sessions.

(a) A student enrolled at an institution in a special session (e.g., summer school) is eligible for an SEOG if he or she—

(1) Is otherwise eligible (see eligibility § 176.9);

(2) (i) Is registered as at least a half-time student at that institution for that session; or

(ii) Is taking all of the courses required to complete his or her certificate or degree; and

(3) (i) Was attending that institution as at least a half-time student during the preceding term; or

(ii) Has been accepted as at least a half-time student for the subsequent term.

(b) A grant for a special session uses at least one half of a semester, trimester, or quarter of grant eligibility.

(20 U.S.C. 1070b-1)

***§ 176.11 Cost of education.**

(a) A student's educational costs include—

(1) Tuition and fees;

(2) Reasonable expenses for room and board, books, supplies, transportation, and miscellaneous personal expenses; and

(3) Expenses for support of the student's dependents.

(b) The Commissioner considers only tuition and fees to be costs of education for correspondence students. However, travel and room and board are allowed for a required period of residential training.

(20 U.S.C. 1070b-2)

***§ 176.11a Programs of study abroad.**

(a) The Commissioner considers a student who is studying abroad to be

enrolled in an eligible program if his or her home institution—

(1) Approves the student's program of study in advance; and

(2) Treats the student's academic performance exactly as if completed at the home institution.

(b)(1) If a student is enrolled in an eligible program outside the United States, the cost of education used to compute financial need may be no greater than the cost of education on the home campus.

(2) However, a student may have related additional costs that do not qualify as educational costs. The Commissioner does NOT consider funds used to pay these costs to be student resources if they come from sources other than the Basic Grants and Campus Based Programs. (This paragraph is effective retroactively to Nov. 3, 1976.)

(20 U.S.C. 1070b-2)

***§ 176.12 Expected family contribution.**

(a) *Dependent students.* In determining the amount a dependent student and his or her spouse and parents are expected to contribute to the student's cost of education, the financial aid officer must consider—

(1) Any serious illness in the family. (Family members include the student, the student's parents and spouse, and any other persons the parents may claim as exemptions under the Internal Revenue Code);

(2) The number of the parents' dependent children;

(3) The number of the parents' dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student, the student's spouse, and the student's parents to contribute to his or her cost of education.

(b) *Independent students.* In determining the amount an independent student and spouse are expected to contribute to the student's cost of education, the financial aid officer must consider—

(1) Any serious illness in the family. (Family members include the student, his or her spouse, and any other persons the student or spouse may claim as exemptions under the Internal Revenue Code);

(2) The number of the student's dependent children;

(3) The number of the student's dependent children attending institutions of higher education;

(4) Tuition costs of dependent children attending elementary and secondary schools; and

(5) Any other circumstances that could affect the ability of the student or spouse to contribute to the student's cost of education.

(c) *Special determination of dependent student-parent relationship.* (1) The student financial aid officer must determine whether the relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of education, regardless of their ability to do so, if requested by a student who does not—

(i) Live with his or her parents;

(ii) Visit his or her parents for periods longer than typical for other adult family members; or

(iii) Receive gifts from his or her parents more valuable than those typically given to other adult nondependent offspring.

(2) Before determining that it is unreasonable for a parent of a dependent student to contribute to the student's educational costs, the financial aid officer must determine whether his or her parents are, in fact, willing to contribute toward those costs.

(3) The student financial aid officer must make that determination part of the institution's written record.

(d) *Native American students.* To determine a Native American's expected family contribution, an institution may not consider the following as income or assets of the student or his or her family:

(1) Awards made under the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust for the student or his or her family by the U.S. Government.

(e) *Annual determinations.* An institution must determine a student's need at least annually except for a correspondence student whose total program extends over more than one year and costs $1,000 or less. In this case, an institution may determine need only once at the beginning of the course.

(20 U.S.C. 1070b-2.)

***§ 176.13 Approved need analysis systems.**

(a) An institution must use a Commissioner approved need analysis system or calculation method in complying with the requirements in § 176.12 (expected family contribution).

(b) *Preapproved systems for dependent students.* The Commissioner has approved the following systems for dependent students:

(1) The method of computing an expected family contribution used in the BEOG program (45 CFR Part 190).

(2) The income tax system if adjusted to reflect the number of the parents' dependent children who are attending institutions of higher education. The expected family contribution produced under this system is the sum of—

(i) The money the student is reasonably able to contribute;

(ii) The amount of Federal income tax paid by the student's parents;

(iii) 5% of the parents' net assets in excess of $17,000 if there are no farm or business assets; or

(iv) 5% of the parents' net assets in excess of $50,000 if there are farm and business assets. However, no more than $17,000 may be deducted for assets other than farm and business assets.

(c) *Criteria for other systems for dependent students.* (1) The Commissioner approves other need analysis systems for dependent students that are properly submitted (see paragraph (e)), if the system produces expected family contribution figures that—

(i) Increase incrementally as the parents' financial strength, measured in constant dollars, increases;

(ii) Are equal for families of equal financial strength; and

(iii) Are within $50 of the expected family contribution figures in 75% of the sample cases supplied by the Commissioner.

(2) The Commissioner computes the sample cases by:

(i) Deducting from the sum of the parents' adjusted gross income and nontaxable income—

(A) The amount of Federal income taxes and social security taxes;

(B) An 8% allowance on total income for State and local taxes; and

(C) A family maintenance allowance (excluding the student during the academic year) using Department of Labor estimates at a low standard of living;

(ii) Adding to this remainder, 12% of the net market value of the parents' assets, after deducting a standard asset reserve; and

(iii) Applying a rate schedule that the Commissioner will publish annually with the sample cases.

(3) (i) In developing sample cases, the Commissioner selects cases where the main wage earner is 45 years of age.

(ii) The Commissioner does not select cases that involve medical and dental

expenses, casualty and theft losses, housekeeping allowances, farm or business assets, more than one family member attending a postsecondary institution as an undergraduate, social security or veteran's benefits, or any unusual circumstances.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Commissioner treats an expected parental contribution of less than zero as zero.

(5) In order to insure measurement in constant dollars, the Commissioner revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(d) *Systems for independent students.* The Commissioner approves the following systems for independent students:

(1) The method of computing an expected family contribution used in the BEOG program (45 CFR Part 190).

(2) The systems of need analysis for independent students published by those organizations approved for dependent students under paragraph (c).

(e) *Application procedures for system approval.* (1) An organization or individual wishing to have a system for dependent students approved must also submit a system for independent students. Both systems must be submitted to the Commissioner by June 30.

(2) The Commissioner lists approved systems in the Federal Register by the following September 1.

(3) Applications for approval must include—

(i) Information the Commissioner needs to determine whether or not the system meets the requirements of paragraph (c); and

(ii) The expected family contribution amounts produced by that system for sample cases.

(f) *Duration of approval.* (1) There is no specified expiration date for need analysis systems for dependent students approved under paragraph (b).

(2) An institution may use the need analysis systems for dependent and independent students approved under paragraphs (c) and (d) to determine student eligibility and amount of assistance under Campus Based Programs for an academic year that begins—

(i) No earlier than the following June 1; or

(ii) No later than 12 months after that June 1 date.

(g) *Adjustments.* The institution, in individual cases, may further adjust expected family contributions computed according to one of the approved systems if—

(1) The student financial aid officer believes the expected family contribution does not accurately reflect the student's (or parent's) ability to contribute; and

(2) The institution documents all adjustments in writing with an accompanying explanation and makes them part of the institution's records.

(20 U.S.C. 1070b-1 and 1070b-2)

***§ 176.14 Coordination of student financial aid programs, award amount, and overaward.**

(a) *Coordinating official.* An institution must appoint a coordinating official for its SEOG and other Federal and non-Federal student financial-aid programs.

(b) *Overaward prohibited, general rule.* (1) An institution may not award an SEOG to a student if the SEOG, when combined with all other resources, exceeds the student's financial need. The institution, however, does NOT violate this rule if—

(i) The student receives additional funds after the institution awards aid, and total resources exceed his or her financial need by $200 or less by the end of the academic year; or

(ii) The student earns more money from employment than the institution anticipated when it awarded the SEOG, and it treats the earnings in accordance with paragraph (c) (prevention of overaward).

(2) A student's financial need may not exceed his or her cost of education.

(3) If a student's resources exceed his or her need by more than $200, and the excess is not from employment, the overaward is the amount that exceeds the $200.

(c) *Prevention of overaward by treatment of earnings.* An institution must take the following steps when it learns that an SEOG recipient has earned, or will earn, more than $200 over his or her financial need:

(1) It must decide whether the student needs the money to pay for necessary additional educational costs, unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it must cancel any unpaid loan or grant (other than Basic Grants) to avoid exceeding need by more than $200.

(3) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution must use the amount that exceeds $200 as—

(i) A resource to help pay the student's cost of education the following year; or

(ii) A substitute for the student's expected family contribution ("EFC") for the current year unless a GSL is used for that purpose.

(4) If the student's earnings still exceed his or her need by more than $200 after the institution takes the steps required in subparagraphs (1) and (2), and the student is NOT enrolled for the next academic year, no further action is necessary.

(d) *Resources.* The Commissioner considers that "resources" include, but are not limited to, any—

(1) Funds the student is entitled to receive from BEOG, regardless of whether the student applies for them;

(2) Waiver of tuition and fees;

(3) Scholarship or grant, including an SEOG or athletic scholarship;

(4) Fellowship or assistantship;

(5) Insurance programs for the student's education, including any social security educational benefits not included in computing EFC;

(6) GSL, where indicated under paragraph (e);

(7) Long-term loans, including NDSL but excluding GSL, made by the institution;

(8) Net earnings from employment including any part of an independent student's net earnings not included as part of the student's EFC. ("Net earnings" means gross earnings minus taxes and job related costs); and

(9) Veterans benefits (except that part included as part of the student's EFC).

(e) *Treatment of Guaranteed Student Loans (GSL).* (1) A student may use a GSL to replace his or her expected family contribution.

(2) However, if the GSL exceeds the student's expected family contribution, the Commissioner considers the excess to be a resource.

(f) *Administrative responsibility.* (1) An institution is responsible ONLY for the resources it—

(i) Makes available to its students;

(ii) Knows about; or

(iii) Can reasonably anticipate at the time it awards SEOG funds to the student.

(2) An institution must take reasonable steps to stay informed about

the earnings of a student employed outside the institution.

(g) The provisions of paragraph (b) of this section are retroactive to October 12, 1976.

(20 U.S.C. 1070b—1070b-3.)

§ 176.15 Coordination with BIA grants.

*(a) To determine the amount of a Supplemental Grant for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution must prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

*(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

*(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution must deduct the excess in the following sequence: loans, work-study awards, and grants other than Basic Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

*(d) To determine the financial need of a BIA-eligible student, a financial aid officer is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(e) The Commissioner considers educational grants made under a BIA program to be financial aid made through the institution if the institution—

(1) Reviews grant applications;

(2) Selects grant recipients; and

(3) Determines grant amounts.

(20 U.S.C. 1070b-1)

§ 176.16 Payment of grant.

(a)(1) An institution using a semester, trimester, or quarter system must pay each term a portion of a Supplemental Grant awarded for a full academic year.

(2) The institution determines the amount paid each term by the following fraction:

$$\frac{SEOG}{N}$$

Where SEOG=total SEOG award and N=the number of semesters, trimesters, or quarters in that year.

(3) If the total SEOG award is to a student attending less than a full academic year, the institution determines the amount of each payment by the following fraction:

$$\frac{SEOG}{R}$$

Where SEOG=total SEOG award and R=the number of semesters, trimesters, or quarters remaining in the academic year.

(b)(1) An institution NOT using a semester, trimester, or quarter system must pay a Supplemental Grant at least twice during an academic year.

(2) The institution must make one payment at the beginning and another at the midpoint of the academic year.

(3) The institution may not pay more than half the award before the midpoint payment.

(c)(1) Within each payment period, an institution may pay the student at such time and in such amounts as it determines best meets the student's needs.

(2) It may pay the student directly by check or by crediting his or her account with the institution. However, if it credits the account, the institution must give the student a receipt.

(d) Only one payment is necessary if the total amount the institution awards a student under the Campus Based Programs is less than $301.

(e) A 6 month training program that prepares students for gainful employment in a recognized occupation equals a full academic year for purposes of disbursement.

(f) Before making the first SEOG payment for any year, an institution must get written acceptance of the grant amount from the student and give the student a statement explaining—

(1) That the SEOG will not exceed 50% of the student's financial aid made available through that institution;

(2) The nature and sources of other financial aid made available through the institution; and

(3) That payment of the SEOG depends upon the student's—

(i) Maintaining satisfactory progress in his or her course of study, according to the institution's prescribed standards; and

(ii) Remaining at least a half-time student.

(g) A correspondence student must submit his or her first completed lesson before receiving an SEOG payment.

(h) An institution may not pay an SEOG unless the student files a notarized affidavit with the institution he or she attends that—

(1) Is on a form approved by the Commissioner;

(2) States that the student will use the grant money solely for educational expenses at the institution; and

(3) Is notarized by someone who does not recruit students for the institution.

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous award year, the institution may not pay the student an SEOG unless it verifies that information.

(U.S.C. 1070b, 1088g)

***§ 176.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 176.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(20 U.S.C. 1070b—1070b-3)

§ 176.18 Use of funds.

(a) *General.* Funds allocated to an institution under the SEOG program may be used only to—

(1) Make grants to eligible students;

(2) Transfer to the institution's CWS program (see § 176.21); and

(3) Carry out the activities described in paragraph (b).

(b) *Administrative cost allowance.* (1) An institution is entitled to an administrative cost allowance of 4% of the Supplemental Grants it pays its students for each award year. However, the maximum administrative cost allowance permitted an institution for its campus based programs (SEOG, CWS, and NDSL) is $325,000 for any award year.

(2) An institution must use the administrative cost allowance first to provide student consumer information in accordance with 45 CFR 178. It may then use any funds remaining to administer its Title IV financial aid programs.

(20 U.S.C. 1070b-1; 1088b)

§ 176.19 Fiscal procedures and records.

*(a) *Fiscal procedures.* (1) In administering its SEOG program, an institution must establish and maintain an internal control system of checks and balances that insures that no person can

both authorize payments and disburse funds to students.

(2) A separate bank account for SEOG funds is not required. However an institution must notify any bank in which it deposits SEOG funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(20 U.S.C. 1070b; 20 U.S.C. 1232c)

(b) *Records and reporting.* (1) An institution must establish and maintain on a current basis financial records that reflect all program transactions. The institution must establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Identify each student's account and status including separation of initial and continuing grant amounts;

(ii) Show the eligibility of each student aided under the program;

(iii) Show the amount of need and how the need was met for each student; and

(iv) Identify the officer who determined the need.

(3) Each year an institution must submit a Fiscal-Operations Report plus other information the Commissioner requires. The institution must comply with requirements to insure the information reported is accurate and must submit it on the form and at the time specified by the Commissioner.

(c) *Retention of records.* (1) *Records.* Each institution must keep intact and accessible records of the receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution must keep records for an award year for five years after it submits its Fiscal-Operations Reports for that year.

*(3) *Microfilm copies.* An institution may substitute microfilm copies for original records in meeting the requirements of this section.

*(4) *Audit questions.* An institution must keep records in any claim or expenditure questioned by Federal audit until resolution of any audit questions. However, the institution does not have to retain records beyond 5 years if the actions taken by the United States to recover funds are barred by the Federal statute of limitation in 28 U.S.C. 2415(b).

*(d) *Audits—Federal.* An institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records specified in paragraphs (c) (1) and (2) and to any other pertinent books, documents, papers, and records.

*(e) *Audits—Non-Federal.* (1) An institution must audit, or have audited under its direction, SEOG transactions to determine at a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) If those transactions are in compliance with the applicable laws and regulations.

(2) The audits must be performed in accordance with HEW's "Audit Guide" for student financial aid programs.

(3) The institution must have an audit performed at least once every two years unless the Commissioner approves a longer interval.

(4) Each audit must cover the entire period of time since the last audit.

*(f) *Audit reports.* The institution must submit audit reports to its local regional office of HEW's Audit Agency. It must give the Audit Agency and the Commissioner access to records or other documents necessary to the audit's review.

(42 U.S.C. 1070b; 1232c)

§ 176.20 Maintenance of effort.

(a) For each award year it receives an SEOG allocation, an institution must spend from its own scholarship and student financial aid program at least one-third its aid program expenditures for the 3 award years preceding the latest of the following:

(1) The effective date of any agreement required by section 443 of the College Work-Study Program (42 U.S.C. 2753) or section 407 of the Educational Opportunity Grants Program (20 U.S.C. 1067) that was in effect on June 30, 1973.

(2) The award year the institution received its first CWS allocation.

(3) The award year the institution received its first Educational Opportunity Grant Program allocation (20 U.S.C. 1061–1067, 1069).

(4) The award year the institution received its first SEOG allocation if it did not participate in the Educational Opportunity Grant Program during the 1972–1973 award year.

(b) The Commissioner may waive the maintenance of effort requirements for an award year because of the following special circumstances:

(1) Fund withdrawals from outside sources (Public appropriations are not considered outside sources for public institutions).

(2) An enrollment decline if the institution continues to spend from its own scholarship and student financial aid program the average amount it spent per student during the 3-year base period.

(3) Voluntary withdrawal as a GSL lender. The Commissioner waives that portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period. However, to have this portion waived, the institution must arrange alternate sources of financing for its students at least equal to the amount the Commissioner waives.

(4) Termination as a GSL lender by the Commissioner.

(i) The Commissioner waives, for the year the institution is terminated as a lender, the portion of the failure that equals one-third the amount of loans the institution made as a lender during the 3-year base period.

(ii) The Commissioner also waives, for succeeding years, the portion of the failure that equals one-third of the amount of loans the institution made as a lender during the 3-year base period if the institution arranges alternate sources of assistance for its students at least equal to the amount the Commissioner waives.

(5) The Commissioner considers that an institution has provided alternate sources of assistance for its students if it provides the assistance under a written agreement between the funding source and the institution.

(c) An institution, to obtain a waiver, must submit to the Commissioner—

(1) A request for a waiver; and

(2) A description of circumstances justifying the waiver.

(d) An institution's "own scholarship and student financial aid program" includes—

(1) Any expenditures of its own funds for scholarships, grants, loans, tuition waivers, fee waivers, and fee remissions;

(2) The institution's employment of its graduate and undergraduate students, whether or not they are eligible for the SEOG or CWS programs; and

(3) Any funds donated to the institution for student financial aid if the institution chooses the recipients and the award amounts. However, the institution may not claim funds from Federal sources as part of its "own

scholarship and student financial aid program."

(e) (1) According to an institution's stated practices, scholarships and other student financial aid given to faculty members' dependents or to institution employees may be considered as either—

(i) Student financial aid; or

(ii) Employee benefits.

(2) Fellowships and assistantships count as financial aid unless it is the institution's stated practice to consider the holders faculty members.

(3) Alternatives in subparagraphs (1) and (2) apply to both the base year period and current expenditures. Any change must have the Commissioner's written approval.

(20 U.S.C. 1088c)

§ 176.21 Transfer of funds.

(a) An institution may transfer up to 10% of its allocation for an award year from its SEOG program to its CWS program and vice versa. The institution must use the funds, when transferred, according to the requirements of the program they are transferred to.

(b) An institution may transfer SEOG funds without regard to whether they were allocated for initial or continuing grants.

(c) An institution may use CWS funds transferred to the SEOG program for initial or continuing grants, as the institution sees fit.

(d) An institution must report any funds transferred on the Fiscal-Operations Report required under §176.19(b).

(20 U.S.C. 1088e)

§ 176.22 Duration of student eligibility.

(a) A student is eligible to receive a Supplemental Grant during the time required to complete an undergraduate course of study. This time is usually 4 academic years.

(b) The institution may extend that period of time up to one additional year if—

(1) The student is pursuing a 5 year course of study designed to lead to a first degree; or

(2) Because of special circumstances, the institution determines the student needs an additional year to complete his or her course of study.

(20 U.S.C. 1070b-1)

§ 176.23 Types of grant awards.

(a) An institution may award only one initial grant to a student. The maximum duration of an initial grant is one academic year.

(b) However, if a student receives an initial grant from one institution and transfers to another, the Commissioner considers any Supplemental Grant awarded by the second institution to be a continuing grant.

(20 U.S.C. 1070b)

§ 176.24 Amount of grant.

(a) As a general rule, a Supplemental Grant awarded for an academic year equals the amount the institution determines necessary for a student to continue his or her studies. However, no grant may be awarded for a full academic year that is—

(1) Less than $200; or

(2) More than the lesser of—

(i) $1,500; or

(ii) One-half the total amount of student financial aid made available to the student through the institution.

(b) If a student is enrolled for less than a full academic year, the institution reduces the grant awarded for that period in proportion to the length of the period of attendance compared to the length of the full academic year.

(c) "Student financial aid made available through the institution" includes payments received under the BEOG, CWS, and NDSL programs and State and private scholarship programs.

(d)(1) Except as provided in subparagraphs (2) and (3), to qualify as "financial aid made available through the institution," the aid must be disbursed by the institution before the end of the academic year for which the student received the Supplemental Grant.

(2) However, the Commissioner considers State or private scholarships to be aid that is made available through the institution even if paid after the end of the academic year if the institution does not control the disbursement of those funds.

(3) With regard to student financial aid in the form of earnings for work performed for an institution, or an outside employer under an agreement with the institution, the Commissioner considers the earnings to be financial aid made available through the institution even if it was paid to the student after the end of the academic year if it was—

(i) Earned by the student before the academic year ends; and

(ii) Paid to the student no later than the next regular payday following the end of the last eligible payroll period.

(e) The total amount of Supplemental Grants that an institution may award any one student for 4 years is $4,000 except where the institution has extended a student's eligibility an additional year under § 176.22. In that case the 5-year maximum is $5,000.

(20 U.S.C. 1070b-1)

Appendix A.—*Allotment of Funds to States for Fiscal Year 1972*

Alabama	$1,136,295
Alaska	37,532
Arizona	794,102
Arkansas	645,033
California	8,125,711
Colorado	1,092,555
Connecticut	994,752
Delaware	174,114
District of Columbia	568,864
Florida	2,066,032
Georgia	1,291,155
Hawaii	298,396
Idaho	320,368
Illinois	3,743,393
Indiana	1,967,198
Iowa	1,331,999
Kansas	1,082,749
Kentucky	1,080,641
Louisiana	1,276,332
Maine	308,431
Maryland	1,168,652
Massachusetts	2,758,217
Michigan	3,339,267
Minnesota	1,663,842
Mississippi	863,948
Missouri	1,754,719
Montana	323,599
Nebraska	713,689
Nevada	116,425
New Hampshire	322,323
New Jersey	1,321,749
New Mexico	412,226
New York	6,234,166
North Carolina	1,783,607
North Dakota	351,555
Ohio	3,569,791
Oklahoma	1,178,300
Oregon	1,035,037
Pennsylvania	3,751,149
Rhode Island	393,990
South Carolina	690,479
South Dakota	347,053
Tennessee	1,399,607
Texas	4,038,448
Utah	781,127
Vermont	236,500
Virginia	1,293,349
Washington	1,525,136
West Virginia	707,338
Wisconsin	1,916,003
Wyoming	151,836
Guam	13,218
Puerto Rico	555,030
Virgin Islands	4,745
Total	75,050,000

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Federal Register

Monday
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Part III

Department of Housing and Urban Development

Office of the Secretary

Uniform Relocation Assistance and Real Property Acquisition

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary, Department of Housing and Urban Development

24 CFR Part 42

[Docket No. R-79-686]

Uniform Relocation Assistance and Real Property Acquisition

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule and request for comments.

SUMMARY: HUD is issuing an interim rule containing the Department's policies governing the relocation of mobile home occupants displaced by a HUD-assisted project that is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

DATES: The effective date of this rule is September 26, 1979. However, all public comments on this rule which are received before October 12, 1979 will be considered before issuance of a final rule.

ADDRESS: All written comments on this rule should refer to Docket No. R-79-686, and should be submitted to the Rules Docket Clerk, Room 5218, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All written comments received by the Department will be available for public inspection during normal business hours at this office.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. Huecker, Director, Relocation and Real Estate Division, HUD/Community Planning and Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202-755-6330.

SUPPLEMENTARY INFORMATION: On May 29, 1979 (44 FR 13836), the Department adopted in the Federal Register a final rule containing comprehensive revisions of 24 CFR Part 42 (Uniform Relocation Assistance and Real Property Acquisition). However, since the Department's policies governing the relocation of mobile home occupants under the Uniform Act had not been previously published as a proposed rule for public comment, they could not be adopted as part of that final rule. (These mobile home policies had been excluded from the prior publication of 24 CFR Part 42 as a proposed rule for public comment (43 FR 13836; March 31, 1978) while the Department sought certain advice from the Comptroller General).

The rule set forth below is a new Subpart H which contains the Department's rules governing the relocation of mobile home occupants displaced by a HUD-assisted project that is subject to the Uniform Act.

Generally, the policies in Subpart H are the same as those set forth in Chapter 5, Section 6 of the HUD Relocation Handbook 1371.1 REV. The most basic change that has been made reflects the Department's determination that a mobile home occupant's eligibility for a replacement housing payment is dependent upon whether or not the person was actually displaced from the mobile home which he occupies. If the mobile home is determined to be personal property which is capable of being moved without substantial damage or unreasonable cost, the displaced person will not be eligible for a replacement housing payment because he has not been displaced from his dwelling. (Under prior policy, the owner-occupant of a mobile home which was personal property that he retained and moved to a replacement site was eligible for a replacement housing payment based on the cost of a replacement site.)

The Department encourages State agencies to provide appropriate assistance to mobile homeowner-occupants who are required to move their mobile homes but who are not eligible for a replacement housing payment under Subparts F or G of 24 CFR Part 42. It should also be noted that each such mobile homeowner is eligible under 24 CFR Part 42 for a payment for the cost of moving his mobile home and other personal property.

The present HUD regulations at 24 CFR Part 42 do not contain policies expressly govering the relocation of mobile home occupants. As indicated above, mobile home policies could not be issued as part of the revised 24 CFR Part 42 issued by HUD on May 29, 1979. Therefore, to ensure that a mobile home occupant's eligibility for relocation assistance can be properly determined and related payment claims properly processed, the Department finds it impractical to provide for public comment in advance of the effective date of this rule. The Department is therefore publishing Subpart H as an interim rule. However, although the rule is being published for immediate effect, the Department is providing for a 60-day public comment period as indicated above. The rule may be changed after consideration of comments received.

OTHER INFORMATION: A finding of Inapplicability with regard to the Environmental Impact of these rules has been prepared in accordance with HUD Handbook 1390.1. A copy of the Finding is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

For the reasons described above, 24 CFR Part 42 is amended to include a new Subpart H as set forth below.

(Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

Subpart H—Mobile Homes

Sec.
42.501 Purpose.
42.503 Moving and related expenses.
42.505 Replacement housing payments for 180-day owner-occupants.
42.507 Replacement housing payments for tenants and certain others.

* * * * *

Subpart H—Mobile Homes

§ 42.501 Purpose.

This subpart sets forth basic policies governing the application of Subparts D, E, F and G to displaced persons who own and/or occupy mobile homes.

§ 42.503 Moving and related expenses.

(a) *General.* A displaced person is entitled to payment for the cost of moving his personal property, including his mobile home if it is personal property, on an actual cost basis in accordance with Subpart D or, as an alternative, on the basis of a fixed payment under Subpart E as described in the applicable Federal Highway Administration schedule (49 CFR 25.153, Appendix A). However, if the mobile home is personal property and the owner obtains a replacement housing payment because the mobile home is not decent, safe and sanitary or cannot be moved without substantial damage or unreasonable cost, the owner is not eligible for payment of moving expenses under Subpart D or E for moving the mobile home.

(b) *Mobile home park entrance fee.* A displaced home occupant, who elects to obtain a moving expense payment on an actual cost basis in accordance with Subpart D, is entitled to payment for the reasonable entrance fee that he must pay in order to relocate to a mobile home park. However, no part of an entrance fee which is returnable to the person shall be paid.

§ 42.505 Replacement housing payments for 180-day owner-occupants.

(a) *Eligibility.* A displaced owner-occupant of a mobile home is entitled to a replacement housing payment under Subpart F if—

(1) He actually owned the mobile home and occupied it on the site acquired by the State agency for at least 180 days prior to the initiation of negotiations. A person who does not meet this requirement does not qualify for a replacement housing payment under Subpart F, regardless of how long he owned or rented the acquired mobile home site;

(2) He meets the other basic eligibility under Subpart F; and

(3) The mobile home is acquired as real property or is personal property which (i) is not decent, safe and sanitary or (ii) cannot be moved without substantial damage or unreasonable cost. In the latter case, when the mobile home is not actually acquired, the "acquisition cost" used for purposes of computing the differential amount (described at § 42.405), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(b) *Person did not own acquired site and/or did not buy replacement site.* If a displaced person meets the eligibility criteria in paragraph (a) of this section but did not own the acquired mobile home site and/or does not buy the replacement site, the computation of the differential amount (described at § 42.405) shall be based on a comparision of (1) the "acquisition cost" of the acquired mobile home, exclusive of the cost of the acquired site, and (2) the purchase price of the replacement mobile home, exclusive of the replacement site.

(c) *Basic limitation.* A payment under Subpart F to a displaced mobile home owner-occupant shall not exceed the amount to which he would be entitled if he purchased a comparable replacement mobile home and site.

§ 42.507 Replacement housing payments for tenants and certain others.

(a) *Eligibility.* A displaced occupant of a mobile home is eligible for a replacement housing payment under Subpart G if—

(1) He actually occupied the mobile home on the site acquired by the State agency for at least 90 days prior to the initiation of negotiations. A person who does not meet this requirement does not qualify for a replacement housing payment under Subpart G, regardless of how long he owned or rented or occupied the acquired site;

(2) He meets the other eligibility requirements of § 42.451; and

(3) In the case of an owner-occupant of a mobile home, the mobile home is acquired as real property or is personal property which (i) is not decent, safe and sanitary, or (ii) cannot be moved without substantial damage or unreasonable cost.

(b) *Person rents replacement home.* A displaced mobile home occupant, who meets the eligibility criteria discribed in paragraph (a) of this section and who rents a replacement home, is entitled to a payment determined under § 42.453 (Replacement housing payment for rental assistance) and the following rules—

(1) The payment shall be based on the actual rent for the decent, safe and sanitary replacement dwelling actually rented, or the rent for a comparable replacement mobile home, whichever is less;

(2) If the person purchases the replacement site, the computation of his new monthly housing cost for the replacement dwelling (see § 42.453) shall include the estimated fair market rent for the replacement site or for a comparable replacement site, whichever is less; and

(3) If the person owned the acquired mobile home and/or site, the computation of the monthly housing cost for the acquired dwelling (see § 42.453 (b) or (c)) shall include the estimated fair market rent for the acquired mobile home and/or site, as the case may be.

(c) *Person buys replacement home.* If a displaced mobile home occupant meets the eligibility criteria described in paragraph (a) of this section and buys a replacement dwelling, he is entitled to a payment determined under § 42.455 (Replacement housing payment for downpayment assistance). The payment shall be based on the required downpayment for the decent, safe and sanitary replacement dwelling and/or site actually purchased. However, if the replacement dwelling is a conventional home, the payment shall not exceed the amount payable if the person purchased a comparable replacement mobile home.

* * * * *

Issued at Washington, D.C., July 17, 1979.

Patricia Roberts Harris,

Secretary, Housing and Urban Development.

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community, Planning and Development

Section 312 Rehabilitation Loan Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community, Planning and Development

24 CFR Part 510

[Docket No. R-79-688]

Section 312 Rehabilitation Loan Program; Interim Rule

AGENCY: Department of Housing and Urban Development (HUD), Office of Community Planning and Development.

ACTION: Interim rule and Request for Comments.

SUMMARY: HUD is revising the requirements which apply when a tenant (not an owner-occupant) is displaced as a result of a Section 312 Rehabilitation Loan or is permitted to continue in occupancy of the property. The maximum rent that may be charged to a residential tenant who is permitted to continue in occupancy after the rehabilitation will, in some cases, be increased. Also, small residential rehabilitation projects that do not exceed $2,500 per dwelling unit and do not displace any tenants are being exempted from the rules.

EFFECTIVE DATE: September 26, 1979. Comments due: October 12, 1979.

ADDRESSES: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by the docket number indicated in the heading, and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of Rules Docket Clerk, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. Huecker, Director, Relocation and Real Estate Division, HUD/Community Planning and Development, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-6336.

SUPPLEMENTAL INFORMATION: By memorandum dated July 11, 1978, the Department directed that no Section 312 rehabilitation loan involving the displacement of a tenant shall be approved unless the tenant is provided adequate relocation assistance. On April 11, 1979, that requirement was published as an interim rule at 24 CFR 510.105(g)(2)(ii) (44 FR 21752). Under that rule tenants occupying property to be rehabilitated are afforded the same rights and assistance prescribed for tenants occupying property to be rehabilitated or to be acquired for a Section 8 substantial rehabilitation project under the Neighborhood Strategies Area (NSA) Program (see 24 CFR 881.309; 43 FR 4236).

The relocation rules under the NSA substantial rehabilitation program are in most respects the same as those provided under HUD regulations at 24 CFR Part 42 (44 FR 30946; May 29, 1979) which implement the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 (Uniform Act). To make the Section 312 relocation rules easier to read and understand, the Department is eliminating the reference to the NSA rules and replacing it with a reference to the Uniform Act rules and a specific statement of the differences between the Uniform Act relocation rules and the Section 312 relocation rules.

In issuing relocation rules implementing various HUD-assisted programs the Department has attempted to ensure as much uniformity as is practical. However, to facilitate needed rehabilitation while ensuring that no tenant will suffer disproportionate hardships as a result of Section 312 financed rehabilitation, the Department has determined that two basic modifications to the Section 312 relocation rules are necessary. These modifications are discussed below.

Limitation on Rent of Tenants not Displaced

Under the Section 312 rehabilitation loan program relocation rules at 24 CFR 510.105(g)(2)(ii), the maximum rent, including utility costs, of a residential tenant, who continued to occupy a rehabilitated dwelling unit after the rehabilitation, was limited to 25% of his adjusted income for a 4-year period. In some cases, this rule required the local government to provide a subsidy to reduce the rent of a tenant occupying such a dwelling unit or to declare the person to be displaced if he moved. However, because the Section 312 program does not contain a source of funding to provide this subsidy, the rehabilitation of many tenant-occupied dwelling units which require rehabilitation has become infeasible.

For this reason, the Department is adopting at § 510.113(g) a rule under which the tenant's maximum rent, including utility charges, for the first year of the 4-year guarantee shall be limited to the *greater* of (1) 25 percent of the tenant's gross income, or (2) the actual rent for the dwelling, including utility charges, prior to loan approval. The tenant's rent may be increased at the end of the first, second, and third years by an amount not to exceed the sum of (1) the average monthly increase in utility charges and property taxes over the previous year, plus (2) five (5) percent of the monthly contract rent (excluding utilities) charged during the prior year.

The Department believes that the rent charged to a tenant who is already paying a rent that exceeds 25% of his income would be no more than could normally be expected if the rehabilitation did not take place. For this reason, a person who moves following establishment of such a rent is not considered to have been displaced as a result of the rehabilitation.

The Department believes that the application of a mandatory 25% income ceiling on rents makes many needed rehabilitation projects infeasible. Where such rehabilitation is prevented, tenant-occupants receive neither the benefits of Section 312 financed repairs nor any rent protection. Under the modification being adopted, the tenant benefits from the rehabilitation while paying a rent not generally different than he would pay if the Section 312 rehabilitation did not take place.

Tenant not Eligible for Relocation Assistance if Section 312 Loan does not exceed $2,500.

At § 510.113(c)(2), the Department is adopting a rule stating that if the Section 312 rehabilitation loan financing provided for a dwelling unit does not exceed $2,500 and the local government determines that the tenant will not be required to move (permanently or temporarily) because of the rehabilitation work, the tenant will not be eligible for relocation assistance.

The amortization of a $2,500 loan at 3% interest is approximately $13 per month. The Department believes that the resulting increase in a tenant's rent would generally not force the person to move from the property and therefore he should not be eligible for relocation assistance if he should move anyway.

Given the administrative and financial costs of applying relocation requirements, the Department does not believe that projects with such minimal impact on the occupants should be governed by the Section 312 relocation rules.

Provision of Assistance under the Section 8 Existing Housing Program to Displaced Tenants

The Department is retaining the present rule under which a displaced tenant who voluntarily elects to rent a specific replacement dwelling unit may be given a Certificate of Family Participation under the Section 8 Existing Housing Program in lieu of the rental assistance payment described in § 42.453 of the Department's regulations implementing the Uniform Act. If a Certificate is offered under the conditions described in § 510.113(f), the displaced tenant does not have the right to insist on a payment computed under 24 CFR 42.453.

However, the Department wishes to make it clear that the tenant has complete freedom of choice in selecting a replacement dwelling unit. Moreover, a tenant who meets applicable eligibility criteria must be given a rental assistance payment under 24 CFR 42.453, unless under the conditions described at § 510.113(f) the Public Housing Agency (PHA) administering the Section 8 Existing Housing Program (24 CFR Part 882) is able to issue the displaced tenant a Certificate of Family Participation under that program. However, it is emphasized that a displaced residential tenant cannot automatically receive a Certificate. First, the tenant must meet Section 8 eligibility requirements in 24 CFR Part 889. Second, the PHA must have sufficient units to issue the tenant the Certificate, based on selection criteria described in its Administrative Plan and approved by the HUD Field Office.

Waiver Procedure

The purpose of the Section 312 relocation rules is to assure that tenant-occupants do not suffer undue hardship as a result of Section 312 financed rehabilitation. The Department recognizes that there are circumstances where the complexity of the rules and the potential cost of applying the rules could deter a property owner from participating in the program. In some cases, this could preclude rehabilitation work that, in the absence of the rules, would be advantageous to both the owner and the tenant.

To assure that the rules do not create hardships for the tenants whom they are designed to help, the Department has included a waiver provision at § 510.113(h) that permits a fully informed tenant to waive his rights under the rules. It is expected that tenants will take advantage of the rule in those cases where the owner offers a lease agreement which, in the tenant's judgment, provides suitable protections. The waiver provision might also be used to deal with limited rehabilitation that might cause the tenant to temporarily relocate for a short period.

Under the existing rules, very few tenant-occupied dwellings are being rehabilitated under the Section 312 Rehabilitation Loan Program. The changes discussed above are urgently needed to enable the rehabilitation of these dwellings, particularly under the Section 312 multi-family program, to proceed. Because of this pressing need, the Department finds it impractical to provide for public comment in advance of the effective date of this rule. The Department is therefore publishing the following requirements as an interim rule effective on the date. However, the Department is providing for a 60-day public comment period as indicated above. The rule may be changed after consideration of comments received.

A finding of inapplicability regarding environmental impact has been prepared in accordance with Procedures for Protection and Enhancement of Environmental Quality. A copy of this finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

(Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))).

Accordingly, 24 CFR Part 510 is amended as follows:

§ 510.105 [Amended]

1. Section 510.105(g)(2) has been rewritten to read as follows:

* * * * *

(g) * * *

(2) Prior to approval of a Section 312 loan, the locality shall certify to HUD that, in carrying out the rehabilitation of tenant-occupied properties, it will comply with the provisions of § 510.113.

* * * * *

2. Section 510.105(g)(3) is deleted.

* * * * *

3. Section 510.113 is established as follows:

§ 510.113 Relocation.

(a) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 apply to the displacement of certain persons as a result of a Section 312 rehabilitation loan provided in connection with an urban renewal project or neighborhood development program under Title I of the Housing Act of 1949, as amended, or a comprehensive city demonstration program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) *Rehabilitation not subject to the Uniform Act.* To ensure appropriate assistance to all tenants occupying property to be rehabilitated under a Section 312 loan, HUD has determined that requirements identical to those contained in 24 CFR Part 42 (Uniform Relocation Assistance and Real Property Acquisition), as modified by paragraphs (c) through (h) of this section, shall apply with respect to any tenant (not an owner-occupant) who is displaced as a result of rehabilitation financed by a Section 312 loan when the Uniform Act does not apply to the rehabilitation. The special modifications in paragraphs (c) through (h) of this section apply only when the rehabilitation is not subject to the Uniform Act.

(c) *Eligibility—residential tenants.* (1) Except as provided in paragraph (c)(2) of this section, each residential tenant occupying the property to be rehabilitated shall be issued either a notice of displacement (discribed at 24 CFR 42.205) or a notice of right to continue in occupancy (described at 24 CFR 42.207). The local government shall issue the appropriate notice within thirty (30) days after it receives HUD notification of loan approval and reservation of funds. If the tenant is not issued either of these notices within such 30-day period, he shall automatically be eligible for relocation assistance as described at 24 CFR 42.205(b).

(2) If the Section 312 rehabilitation loan financing provided for a dwelling unit does not exceed $2,500 and the local government determines that the tenant will not be required to move because of the rehabilitation work, the tenant is not eligible for either a notice of displacement or a notice of right to continue in occupancy.

(d) *Eligibility—nonresidential tenants.* The local government shall determine whether or not a nonresidential tenant will be required to move as a result of the rehabilitation. If a nonresidential tenant is ordered to vacate the premises in connection with the rehabilitation or the local government determines that undue hardships (e.g., substantial increase in rent or costly suspension of operations) will result from the rehabilitation, it shall promptly issue the tenant a notice of displacement (described at 24 CFR 42.205).

(e) *Definition of "initiation of negotiations".* For purposes of applying the relocation requirements described at 24 CFR Part 42 to Section 312 rehabilitation activities described in paragraph (b) of this section, the date of HUD notification of loan approval and reservation of funds shall be considered to be the "initiation of negotiations."

(f) *Section 8 rental assistance.* A displaced residential tenant who elects to rent a replacement dwelling, is entitled to a rental assistance payment computed in accordance with 24 CFR 42.453, unless a Public Housing Agency administering the Section 8 Existing Housing Program (24 CFR Part 882) determines in accordance with the Section 8 eligibility criteria in 24 CFR Part 889 and selection criteria described in its Administrative Plan approved by HUD that the displaced tenant can be issued a Certificate of Family Participation under that program. Assistance under the Certificate can only occur when the tenant has voluntarily selected a replacement dwelling which (1) meets the housing quality standards and other requirements of that program and (2) the landlord of the replacement dwelling unit is willing to participate in the program. If a tenant who meets the eligibility criteria at § 42.451 elects to rent a replacement dwelling that cannot be assisted under the Section 8 Existing Housing Program, he/she must be offered the rental assistance payment described at § 42.453.

(g) *Maximum rent under notice of right to continue in occupancy.* A residential tenant who receives a notice of right to continue in occupancy (described at § 42.207) is assured that his maximum housing cost (defined at 24 CFR 42.67) will be controlled for a four-year period.

(1) During the first year of the four-year period, the tenant's monthly housing cost shall not exceed (i) twenty-five percent (25%) of the gross income of all adult members of the household, or (ii) the actual rent and utility charges prior to HUD notification of loan approval and reservation of funds, whichever is greater.

(2) At the end of the first, second, and third years, the rent may be increased. The monthly increase, however, shall not exceed the sum of (i) the average monthly increase in the owner's costs for utility charges and property taxes over the previous year, plus (ii) five percent (5%) of the monthly contract rent (exclusive of utilities) charged during the prior year.

(h) *Waiver of right to continue in occupancy.* Nothing in these regulations shall prevent a fully informed tenant, who will not be required to relocate permanently, from waiving his right to be issued a notice of right to continue in occupany. The waiver shall be in a format prescribed by HUD.

Issued at Washington, D.C., July 17, 1979.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79-24812 Filed 8-10-79; 8:45 am]

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Part V

Equal Employment Opportunity Commission

Employee Responsibilities and Conduct; Revision of Regulations

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR PART 1600

Employee Responsibilities and Conduct

AGENCY: Equal Employment Opportunity Commission.

ACTION: Revision of Regulations on Employee Responsibilities and Conduct.

SUMMARY: The Equal Employment Opportunity Commission has revised its regulations governing employee responsibilities and conduct in order to provide its employees with clearer and more complete guidance, to maintain high standards of ethical conduct at the Commission, and to assure the proper performance of Commission business and citizen confidence in the impartiality and integrity of the Commission.

EFFECTIVE DATE: August 13, 1979.

FOR FURTHER INFORMATION CONTACT: Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 2401 E Street, NW., Washington, D.C. 20506, (202) 634-6595.

SUPPLEMENTARY INFORMATION: Under these regulations, the Associate General Counsel, Legal Counsel Division, has been designated the EEOC Ethics Official and Counselor to the Commission.

One area of substantial change is § 1600.735-204, concerning outside interests, business and professional activities. Under this section, employees are generally prohibited from accepting any compensation for any activity which is devoted substantially to the responsibilities, programs or operations of the Commission. Employees are also restricted from engaging in the outside practice of law, with certain exceptions.

In connection with outside speeches or writing related to an employee's official duties, the Commission has decided to follow the principles of the Department of Justice regulations. The regulations regarding financial interests have been changed to conform to the Ethics in Government Act of 1978.

The revised regulations appear below. Signed at Washington, D.C., this 8th day of August, 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Part 1600 of Title 29 CFR is revised to read as follows:

PART 1600—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.
1600.735-101 Purpose and policy.
1600.735-102 Definitions.
1600.735-103 Applicability and scope.
1600.735-104 Responsibilities.
1600.735-105 Disciplinary and other remedial action.
1600.735-106 Appeal.

Subpart B—Employee Responsibilities and Limitations on Employee Conduct

1600.735-201 Proscriptions on conduct.
1600.735-202 Administrative approval.
1600.735-203 Accepting gifts and expenses from outside sources.
1600.735-204 Outside interests, employment, business and professional activities.
1600.735-205 Financial interests.
1600.735-206 Other standards of conduct.

Subpart C—Conduct and Responsibilities of Special Government Employees

1600.735-301 Standards.

Subpart D—Statement of Employment and Financial Interests

1600.735-401 Employees required to submit statements.
1600.735-402 Time and place of submission of employee statement.
1600.735-403 Review of statement of employment and financial interests.
1600.735-404 Interests of employees' relatives.
1600.735-405 Information not known by employees.
1600.735-406 Information not required.
Appendix A—Index to Some Statutes and Executive Orders Related to Conflict of Interest and Other Prohibited Activities.

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

SUBPART A—GENERAL PROVISIONS

§ 1600.735-101 Purpose and policy.

(a) *Purpose.* The purpose of this part is to implement appropriate requirements of law—Executive Order 11222, 3 CFR 1964 (May 8, 1965), and Part 735 of the Civil Service Commission Regulations adopted pursuant thereto (5 CFR Part 735), with respect to conduct and standards of behavior required of employees and former employees of the Equal Employment Opportunity Commission.

(b) *Policy.* All Government employees and special Government employees, shall maintain high standards of ethical conduct to assure the proper performace of the Government's business and the citizens' confidence in and respect for their Government. The avoidance of misconduct and conflicts of interests, apparent or real, on the part of all employees, through their exercise of informed judgment, is indispensable to the maintenance of the standards in this part.

§ 1600.735-102 Definitions.

(a) "Chair" means the Chairman of the Equal Employment Opportunity Commission.

(b) "Commissioner" means a Commissioner of the Equal Employment Opportunity Commission.

(c) "Commission" means the Equal Employment Opportunity Commission.

(d) "Employee" means an officer or employee of the Equal Employment Opportunity Commission, but does not include a special Government employee.

(e) "Executive Order" means Executive Order 11222 of May 8, 1965.

(f) "Person" means an individual, government, labor union, corporation, company association, firm, partnership, society, joint stock company, or any other organization or institution as defined in 42 U.S.C. 2000e(a).

(g) "Special Government employee" means a temporary employee, with or without compensation, appointed to perform temporary duties for not to exceed 130 days during any period of 365 consecutive days on either a full-time or intermittent basis. Such employees are generally consultants or experts.

(h) "Teaching" means a series of instructions given at and under the auspices of an academic institution as part of its curriculum. Teaching is distinguished from lecturing or speechmaking in that lectures and speeches are not generally given under the auspices of an academic institution, are not normally given in series, and do not usually constitute part of the academic curriculum of the institution.

§ 1600.735-103 Applicability and scope.

(a) *Applicability.* This part applies to all employees of the Commission (including those in leave-without-pay status) but does not apply to special Government employees except to the extent stated in Subpart C of this part or as otherwise specified herein.

(b) *Scope.* This part prescribes standards of conduct for employees of the Commission relating to conflicts of interests arising out of outside employment, private business and professional activities, financial interests and participation in charitable and civic activities. It sets forth requirements for the disclosure of such financial interests by employees. In addition, it states basic principles regarding employees' conduct on the job and the ethics of their relationship to the Commission as their employer. This part, among other things, reflects

prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes in no way constitute an interpretation or construction thereof that is binding upon the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive Order, regulations or otherwise upon federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement.

§ 1600.735-104 Responsibilities.

(a) The Associate General Counsel, Legal Counsel Division, has been designated the EEOC Ethics Official and Counselor to the Commission in matters within the scope of the regulations in this Part. The Associate General Counsel, Legal Counsel Division shall:

(1) Serve as the Commission's designee to the Office of Personnel Management and the Merit Systems Protection Board on matters covered by the regulations in this part.

(2) Coordinate the Commission's counseling services and assure that counseling and interpretations on questions of conflict of interest and other matters covered by the regulations in this part are available as needed to deputy counselors.

(3) Render authoritative advice and guidance on matters covered by the regulations in this part which are presented by employees, special Government employees, the Director of Personnel or other management officials of the Commission's headquarters offices, or by deputy counselors.

(4) Receive information on and forward to the Chair for consideration, conflicts or appearance of conflicts which appear in the Statements of Employment and Financial Interests submitted under Subpart D of this part.

(b) District Office Directors are hereby designated Deputy Counselors for their respective field areas and the heads of offices are hereby designated Deputy Counselors for headquarters, except that the Associate General Counsel, Legal Counsel Division shall perform all such duties for the Office of General Counsel, Headquarters. Deputy Counselors are responsible for advising employees on questions of ethics, conduct and conflicts of interests, in consultation with the Associate General Counsel, Legal Counsel Division.

(c) All employees shall be responsible for acquainting themselves with and observing all generally accepted rules of conduct and the specific provisions of law and the regulations in this part. Employees who have doubts about any provision shall consult their supervisor.

(d) The Director, Personnel Division, shall be responsible for acquainting employees with these regulations within 90 days of their publication in the Federal Register and thereafter, new employees at the time of their entrance on duty. The Director, Personnel Division shall also be responsible for assuring employee's familiarity with any internal directives relating to these regulations.

(e) Personnel employed regularly and full-time in the immediate offices of Commissioners shall be subject to the standards of conduct and the procedural provisions set forth herein. Each Commissioner shall be responsible for his or her own conduct and the conduct of the employees in his or her immediate office, and shall take whatever disciplinary action deemed appropriate in individual cases of misconduct by said employees. He or she may, if so desired, refer any cases arising among his or her immediate staff to the Chair to be administered in accordance with this order and any policies or procedures adopted pursuant thereto.

§ 1600.735-105 Disciplinary and other remedial action.

An employee or special Government employee of the agency who violates any of the regulations in this part may be disciplined in accordance with any applicable laws, Executive Orders and regulations. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of the conflicting interest; or

(c) Disqualification for a particular assignment.

§ 1600.735-106 Appeal.

Any employee or group of employees who disagree with the application of the provisions of this part to them have the right to request a review of their complaint through the appropriate grievance procedure.

Subpart B—Employee Responsibilities and Limitations on Employee Conduct

§ 1600.735-201 Proscriptions on conduct.

An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 1600.735-202 Administrative approval.

Administrative approval is the authorization by the Chair (or such person or persons either designated by the Chair or identified in this part) for employees to engage in certain outside activities or to participate in their Government capacity in a matter in which they have a direct or indirect financial interest. In the case of the immediate staff of a Commissioner, such approval shall be obtained directly from the Commissioner. Administrative approval is required in advance for:

(a) Any outside employment for compensation as specified in § 1600.735-204(b);

(b) All outside legal work, as specified in § 1600.735-204(d);

(c) Certain professional and consultative services as described at § 1600.735-204(c), to the extent such services fall within the scope of § 1600.735-204(d);

(d) Certain writing, editing, publishing, teaching, lecturing and speechmaking activities as specified in § 1600.735-204 (b) and (e);

(e) Certain office-holding activities in professional societies as specified in § 1600.735-204(f);

(f) Participation of employees in their Government capacity in any matter in which they have a direct or indirect financial interest, on grounds that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government might expect, as specified in Subpart D of this part;

(g) Any other outside activity or financial interest for which the Chair imposes an internal requirement for administrative approval.

§ 1600.735-203 Accepting gifts and expenses from outside sources.

(a) *General limitations.* Employees shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with this agency;

(2) Conducts operations or activities that are regulated by this agency except as permitted by this part or by agency directive;

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) *Exception.* The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships such as those between employees and their parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors.

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may be properly in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(5) The acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service or civic organization.

(6) Acceptance of reimbursement pursuant to 5 U.S.C. 4111(a), in cash or in kind, for travel, subsistence, and other expenses incident to official attendance at meetings. Such reimbursements can be made directly to the employee. An employee may accept reimbursement under this subsection only if:

(i) The Chair or his or her disignee, or in the case of the immediate staff of a Commissioner, the Commissioner, has authorized in advance the employee's official participation in the meeting as being in the interest of the Government and has determined that such participation is consistent with the conditions specified in 5 CFR 410.702(b);

(ii) Payment is to be made by an organization determined by the Secretary of the Treasury to be an organization described in 26 U.S.C. 501(c)(3) as exempt from taxation under section 501(a) of that title;

(iii) The employee is not reimbursed by the Government for any expenses for which outside reimbursement is received.

Notwithstanding any other provision of this part, employees may not be reimbursed, and payment may not be made on their behalf by outside sources for excessive personal living expenses, gifts, entertainment, or other personal benefits, or for travel on official business.

(c) *Gifts to superiors.* An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself or herself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this does not prohibit a solicitation for or a voluntary gift of nominal value or donation in a nominal amount made on a special occasion, e.g., marriage, illness, or retirement.

(d) *Gifts from foreign governments.* An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in Pub. L. 89-673, 5 U.S.C. 7342.

§ 1600.735-204 Outside interests, employment, business and professional activities.

(a) *General limitations.* Employees shall not engage in outside activities, including employment, not compatible with the full and proper discharge of the duties and responsibilities of their Government employment whether or not in violation of any specific provision of a statute. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, honorarium, gift, payment of expense, or any other thing of monetary value in any circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;

(2) Acceptance of a fee, compensation, honorarium, gift, or any other thing of monetary value for any activity or material produced thereby (with certain exceptions permitted below), the subject matter of which is devoted substantially to the responsibilities, programs or operations of the Commission, or which draws on official data or ideas which have not become part of the body of public information;

(3) Outside employment or activity which tends to impair mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;

(4) Work which identifies the Commission or employees in their official capacity with any organization commercializing products relating to work conducted by the Commission or with any commercial advertising matter, or work performed under such circumstances as to give the impression that it is an official act of the Commission or represents an official point of view;

(5) Outside work or activity that takes an employee's time and attention during official work hours; and

(6) Employment or activity rendered to persons to whom the official duties of the employees are directly related, or indirectly related if the indirect relationship is significant enough to permit the existence of a conflict or an apparent conflict of interest.

(b) *Advance approval.* Employees must obtain advance written approval from their supervisor before undertaking outside employment for compensation or engaging in any outside activity or producing any material which is directly related to their position with the Commission or which is devoted substantially to the responsibilities, programs or operations of the Commission.

(c) *Professional and consultative services.* Employees may engage in outside professional or consultative services subject to the limitations of § 1600.735-204 (a) and (b). The term "consultative services" includes employees' membership on a Board of Directors or on any other body which provides professional advice, counsel, or consultation. Such work may not be rendered for compensation to help persons prepare or aid in the preparation of grant applications, contract proposals, program reports, affirmative action plans, complaints of discrimination, and/or other materials which are designed to become the subject of dealings between the person and the Federal Government.

(d) *Practice of law.* No employee of the Commission shall engage in the private practice of law including representation of parties at administrative hearings, except as authorized below and with the advance approval of his or her immediate

supervisor and the Associate General Counsel, Legal Counsel Division. Specific exceptions to this subsection may be made for compelling reasons.

(1) An employee may, on off duty hours, engage in legal work for compensation which does not involve litigation, the work of this Commission, or any equal employment law. Permissible work could include, for example, real estate transactions, drafting of wills, and review of contracts.

(2) An employee may, on off duty hours, provide legal representation on a pro bono basis. Such representation may not include assisting in any matter in which the United States is a party or has a direct or substantial interest, unless the OPM and/or the Justice Department have approved such activity for Government employees, or in any matter or proceeding involving employment discrimination; however, nothing contained herein prevents an employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of administrative proceedings.

(e) *Writing, editing, publishing, teaching, lecturing and speechmaking*—(1) *General.* Employees may engage in outside writing, editing, publishing, teaching, lecturing and speechmaking: *Provided,* That:

(i) Government-financed time, equipment, supplies or funds shall not be used by any employee in connection with such activity;

(ii) Official Commission support is not expressed or implied in the activity or in material produced therein;

(iii) Such activity is not dependent on specific information which has not previously been made public, unless the Chair of the Commission gives written authorization for use of nonpublic information on the basis that the use is in the public interest;

(iv) The activity is not for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of Government service, unless that information has been made available to the public, and

(v) The activity does not involve knowingly instructing persons on dealing with specific matters pending before the Commission or other Government organizations with which the employee is associated in an official capacity.

(2) *Additional restrictions applicable to outside lecturing and speechmaking.* No employee shall receive compensation or anything of monetary value for any lecturing, speechmaking or appearance the subject matter of which is devoted substantially to the responsibilities, programs or operations of the Commission. An employee is permitted to accept reimbursement in a reasonable amount to cover the expenses of travel and lodging in connection with such a lecture, speech or appearance. The provision in § 1600.735-204(b) concerning authorization to engage in certain outside activities for compensation with advance approval is not applicable to such outside lecturing and speechmaking.

(3) *Additional restrictions applicable to outside writing, editing and publishing.* (i) Disclaimers shall be used in all writing, editing and publishing related to the employee's official duties, the work of the Commission, or responsibilities and programs of the Federal Government. Disclaimers shall also be used whenever the employee is identified by official title or affiliation with the Commission or when the prominence of the employee, his or her position, or other reason might lead the public to make an association with the Commission, even without identification other than name.

(ii) Disclaimers shall read as follows unless a different wording is approved by the General Counsel: "This (article, book, etc.) was written (rewritten, edited, published) by (employee's name), in his/her private capacity. No official support or endorsement by the United States Equal Employment Opportunity Commission or any other agency of the United States Government is intended or should be inferred."

(f) *Holding office in professional societies and civic, charitable, religious, and social organizations.* Employees are encouraged to be members of professional societies and civic, charitable, religious and social organizations and be elected or appointed to office in such an organization, subject to the following restrictions:

(1) They must not directly or indirectly commit the Commission on any matter;

(2) They must not act as agent or attorney for a non-Government organization in dealing with the United States Government.

(3) They must not undertake any office or function beyond ordinary membership in an association, if to do so could create a real or apparent conflict of interest with their responsibilities as Commission employees; and

(4) They may not hold any elected or appointed position in an association whose activities are subject to the jurisdiction of the Commission, or whose activities are devoted substantially to the responsibilities, programs or operations of the Commission, without prior written approval from their supervisors and the Associate General Counsel, Legal Counsel Division.

This restriction, however, does not preclude a Commission employee from holding an elected or appointed position in a professional society or organization merely because such society or organization merely because such society or organization is subject to the jurisdiction of the Commission.

§ 1600.735-205 Financial interests.

(a) Employees shall not have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with their Government duties and responsibilities and may be required to divest themselves of such conflicting financial interests.

(b) Employees shall not participate in their Government capacity in any matter in which they, their minor children, their spouse, or an outside business associate or organization (profit or non-profit) with which they are connected or are negotiating employment has an interest, unless the outside financial interest is insubstantial and would not affect or appear to affect the integrity of the employee's official services. This determination should be made on a case by case basis by the employee's supervisor or if necessary, referred to the employee's deputy counselor.

(c) Employees shall not engage directly or indirectly in financial transactions as a result of, or primarily relying on information obtained through their employment.

§ 1600.735-206 Other standards of conduct.

(a) *Legislative relations.* An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of the Commission on pending legislative proposals before Congressional committees on request or

(2) Assisting Congressional committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical

expert under the direction of committee leadership.

Nothing in this section precludes an employee from petitioning a Member of Congress while off duty with respect to any matters of personal concern, as long as no use of Government funds is involved.

(b) *Use of Government funds.* Several laws, referred to in Appendix A to this part, carry penalties for misuse of Government funds. These apply to:

(1) Improper use of official travel;

(2) Improper use of payroll and other vouchers and documents on which Government payments are based;

(3) Taking or failing to account for funds with which employees are entrusted in their official positions; and

(4) Taking other Government funds for personal use.

(c) *Use of Government property.* Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a positive duty to protect and conserve Government property, including equipment, supplies and other property entrusted or issued to them.

(d) *Conduct in Federal buildings.* (1) Employees shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities involving fund raising within the Federal service under section 3 of Executive Order 10927 and similar agency-approved activities.

(2) General Services Administration regulations on "Conduct on Federal Property" are applicable to all property under the control of the General Services Administration and are applied to all buildings and space under the control of this Commission. These regulations prohibit, among other things, gambling and consumption of intoxicating beverages on the premises. (See GSA Regulations at 41 CFR 101-20.300 *et seq.*)

(e) *Use of official information*—(1) *Classified information.* Employees who have access to information which is classified for security reasons in accordance with Executive Order 10501, as amended, are responsible for its custody and safekeeping, and for assuring that it is not disclosed to unauthorized persons.

(2) *Security and investigative information.* Security and investigative data received from Government agencies or other sources for official use only within the Commission or developed under a pledge of confidence is not to be divulged to unauthorized persons or agencies.

(f) *Fair treatment of employees.* Employees shall not be discriminated against in their employment because of race, color, religion, national origin, sex, age, politics, marital status, or on the basis of physical handicap with respect to any position the duties of which may be efficiently performed by a person with such a physical handicap.

(g) *Participation in management of employee organizations.* Employees shall not participate in the management of an employee organization as an officer of the organization or represent it in dealings with management when such activity might result in a conflict of interest or otherwise be incompatible with law or the official duties of the employee.

(h) *Political activity.* All employees in the Executive Branch of the Federal Government are subject to basic political activity restrictions. (See subchapter III of Chapter 73 of title 5, U.S.C. (the former Hatch Act) and Civil Service Rule IV.) Employees are individually responsible for refraining from prohibited political activity.

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 1600.735-301 Standards.

Special Government employees shall be subject to the same standards of conduct and limitations prescribed in Subpart B of this part for other employees except:

(a) A special Government employee may accept compensation for an outside activity including a lecture or speech the subject matter of which is related to the responsibilities, programs or operations of the Commission as long as such outside activity does not draw on official data or ideas which have not become part of the body of public information.

(b) A special Government employee may engage in the private practice of law subject to the restrictions set forth in 18 U.S.C. 205.

Subpart D—Statement of Employment and Financial Interests

§ 1600.735-401 Employees required to submit statements.

(a) The following categories of employees are determined by the EEOC to be subject to the financial disclosure requirements of the Ethics in Government Act of 1978, (Pub. L. 95-521, Oct. 26, 1978) and are required to file the Financial Disclosure Report for Executive Branch Personnel.

(1) Employees paid at a level of the Executive Scheduled in Subchapter II of Chapter 53 of Title 5, United States Code.

(2) Employees whose positions are classified at GS-16 or above of the General Schedule.

(3) All Schedule C employees except those who have been exempted from the disclosure requirements by the Office of Government Ethics.

(b) The following categories of employees are determined by the EEOC, subject to the right of appeal under § 1600.735-106, to be within the scope of 5 CFR Parts 735-403 and 735-404, and are therefore required to submit Statements of Employment and Financial Interests:

(1) All professional employees of the State and Local Programs Division, Office of Field Services.

(2) All professional employees in the Contracts and Procurement Division, Office of Administration.

(3) All professional employees in the Office of Internal Audit.

(4) All District Directors and Deputy Directors regardless of their GS grade level, and who are not required to file the Financial Disclosure Report for Executive Branch Personnel.

(c) Each special Government employee shall submit a Statement of Employment and Financial Interest showing all other employment and such financial interests as the Commission determines are relevant in the light of the duties to be performed, except when this requirement is waived under 5 CFR 735.412(c).

§ 1600.735-402 Time and place of submission of employee statement.

Financial disclosure reports shall be submitted by employees covered by § 1600.735-401 within 30 days of assuming office and annually on May 15 of each year thereafter. Special Government employees will complete forms at the time of entrance on duty. The completed original of these forms will be sent to the Director, Personnel Division, who will forward them to the Associate General Counsel, Legal Counsel Division for review. The Personnel Division shall retain files of the Financial Disclosure Reports after this review is completed.

§ 1600.735-403 Review of statement of employment and financial interests.

The Associate General Counsel, Legal Counsel Division shall review these statements for the purpose of disclosing any conflict of interest or apparent conflict of interest. When a question of conflict of interest arises, the reviewing officer shall consult with the employee to resolve the matter. If the indicated conflict cannot be resolved, the Associate General Counsel, Legal Counsel Division should submit a written report with the recommendation for appropriate remedial action to the the Chair through the General Counsel.

§ 1600.735-404 Interest of employees' relatives.

The interest of a spouse and dependent child is considered to be an interest of the employee.

§ 1600.735-405 Information not known by employees.

If any information which is required to be included on a Financial Disclosure Report or supplementary statements, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his or her behalf.

§ 1600.735-406 Information not required.

This subpart does not require an employee to submit on a Statement of Employment and Financial Interests or supplementary statement any information relating to the employee's connection with, or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other entities which do research and development or related work involving grants of money from or contracts with the Government or organizations, including civil rights organizations, which have or might have matters pending before the Commission are deemed "business enterprises" and are required to be included in an employee's financial disclosure report.

Appendix A—Index to Some Statutes and Executive Orders Related to Conflict of Interest and Other Prohibited Activitie.

Subject and Citation

A. Relating to Present Employees. (1) Ethics In Government Act of 1978 (Pub. L. 95-521, Oct. 26, 1978).

(2) Acceptance of gift of favor made with intent of influencing decision or action on any official matter (18 U.S.C. 201).

(3) Compensation from outside sources for services rendered in relation to any application, proceeding, contract, etc., in any matter in which the United States has a direct and substantial interest (18 U.S.C. 203).

(4) Acting as agent or attorney (1) for prosecution or aiding in prosecution of any claim against the United States, or (2) for anyone before any Department, agency, court, etc., in connection with a particular matter in which the United States is a party or has a direct and substantial interest (18 U.S.C. 205).

(5) Participating personally and substantially as a Government employee in any application, request for a ruling, contract or other particular matter in which he, to his knowledge, or his spouse, minor child, or any organization with which he is negotiating, has a financial interest, direct or indirect (18 U.S.C. 208).

(6) Receipt of any salary or contribution to or supplementation of salary as compensation for services as a Government employee from any source other than the Government (18 U.S.C. 209).

(7) Use of appropriated funds, services, or communications with intent to influence any member of Congress to favor or oppose any legislation or appropriation (18 U.S.C. 1913).

(8) Participation in strike against Government (5 U.S.C. 1918).

(9) Advocating the overthrow of the constitutional form of Government in the United States or being a member of an organization that so advocates (5 U.S.C. 7311).

(10) Disclosing confidential information or classified information (18 U.S.C. 798, 50 U.S.C. 783, 18 U.S.C. 1905).

(11) Habitual use of intoxicants to excess (5 U.S.C. 7352).

(12) Using or authorizing the use of Government automobiles for other than official purposes (31 U.S.C., 638a(c)).

(13) Using official envelopes or labels to avoid payment of postage (18 U.S.C. 1719).

(14) Deceiving in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(15) Practicing fraud or making false statements in a Government matter (18 U.S.C. 1001).

(16) Mutilating or destroying a public record (18 U.S.C. 2071).

(17) Falsely making, forging, or attempting to pass a forged or altered travel request (18 U.S.C. 508).

(18) Taking for own use or use of another any government record, voucher, money, or thing of value (18 U.S.C. 641).

(19) Failure to account for public money received (18 U.S.C. 643).

(20) Embezzling money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(21) Taking or attempting to use vouchers or documents intended to be used to procure payments by the United States (18 U.S.C. 285).

(22) Prohibition against certain political activities (subchapter III of Chapter 73) of title 5 U.S.C. (the former Hatch Act), 18 U.S.C. 602, 603 and 607, and 2 U.S.C. 441a.

(23) Making or soliciting gifts for official superiors, or accepting gifts from employees receiving a lower salary (5 U.S.C. 7351).

(24) Conviction for participating in or organizing or inciting a riot or civil disorder (5 U.S.C. 7313).

(25) Non-discrimination in Government employment (42 U.S.C. 2000e-16 and E.O. 11246).

(26) Acting as an agent of a foreign principal registered under the foreign Agent Registeration Act (18 U.S.C. 219).

(27) Making public charges filed with the Commission (42 U.S.C. 2000e-5(b)).

(28) Making public information obtained by the Commission pursuant to 42 U.S.C. 2000e-8 prior to the commencement of a proceeding (42 U.S.C. 2000e-8(e)).

(29) Accepting: (a) An honorarium of more than $2,000 for any speech, article, or appearance.

(b) Honorariums aggregating more than $25,000 in any calendar year (2 U.S.C. 441i).

(30) Knowing acts of self-dealing with private foundations, which can include even the acceptance of reimbursement for travel (26 U.S.C. 4941).

B. Relating to Former Employees. (1) At any time after employment has ceased, acting as agent or attorney for anyone other than the Government in connection with any application, contract, claim, proceeding or other matter against the United States, involving a specific party, in any matter in which the United States has an interest, and in which the employee had participated personally and substantially when with the Government (18 U.S.C. 207).

(2) Within two years after employment has ceased, appearing personally before any agency in connection with any application, contract, claim, proceeding, or other matter against the United States, involving a specific party, which was under the employee's official

responsibility when with the Government (18 U.S.C. 207).

(3) For one year after employment has ceased, a former Senior Employee may not represent another person or himself in attempting to influence his or her former agency on a matter pending before, or of substantial interest to, such agency or, with the intent to influence, make any oral or written communication on behalf of another person or himself to his or her former agency (18 U.S.C. 207).

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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
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DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
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DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLS	HEW/FDA		DOT/SLS	HEW/FDA
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

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

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

32854 6-7-79 / National Pollutant Discharge Elimination System; revisions to regulations

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

40868 7-12-79 / College housing program loans for fiscal year 1979

40860 7-12-79 / Environmental criteria and standards

40889 7-13-79 / Multifamily housing projects financial with tax-exempt obligations

Community Planning and Development—Office of Assistant Secretary—

41089 7-13-79 / Community development block grants use of debarred, suspended or ineligible contractors or subrecipients

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

40888 7-13-79 / Debenture interest rates; retroactive to 7-1-79

List of Public Laws

Last Listing August 8, 1979

This is a continuing listing 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).

S. 976 / Pub. L. 96-47 To authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1980. (Aug. 8, 1979; 93 Stat. 344) Price $.75

H.R. 1786 / Pub. L. 96-48 "National Aeronautics and Space Administration Act, 1980". (Aug. 8, 1979; 93 Stat. 345) Price $.75