10-19-79
Vol. 44—No. 204
BOOK 1:
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# Federal Register

Book 1 of 2 Books
Friday, October 19, 1979

## Highlights

**Briefings on How to Use the Federal Register**—For details on briefings in Washington, D.C., see announcement in the Reader Aids Section at the end of this issue. **An interpreter for hearing impaired persons will be present for the November 16 briefing.**

60664 **Solar in Federal Building Demonstration Program** DOE establishes rules governing programs to conserve energy use and to promote consumption of renewable energy sources; effective 11–19–79 (Part VII of this issue)

60273 **Banking** FDIC issues regulations making early withdrawal from time deposits without penalty, mandatory under certain conditions; effective 10–19–79

60301 **Child Support or Alimony** OPM proposes to provide uniform procedures throughout the Executive branch of the Government for the garnishment of moneys; comments by 12–18–79

60313 **Flour and Bakery Products** HEW/FDA proposes to change the requirements for enrichment of flour and bread with iron; comments by 12–18–79

60415 **Dental Team Practice** HEW/PHS provides notice announcing acceptance of applications for grants

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# Highlights

60634 **Communications** HEW/Secy solicits applications to carry out the Telecommunications Demonstration Program under the Act; comments by 12–17–79 (Part IV of this issue)

60350 **Minority Businesses** Commerce/MBDA solicits applications for a grant under its consultant services program for one project each for a 12-month period (2 documents)

60450 **Privacy Act** OPM publishes notice of adoption of systems of records

60332 **Human Plasma** HEW/FDA proposes to amend certain storage temperature and labeling requirements; comments by 12–18–79

60638 **Energy** DOE/ERA consolidates and revises its petroleum allocation regulations; effective 1–1–80 (Part V of this issue)

60658 **Energy** DOE/ERA gives notice of voluntary guidelines for termination of electric service and gas service standard; comments by 11–19–79 (Part VI of this issue)

60690 **Powerplants and Boilers** DOE/ERA amends rules on use of oil, natural gas, coal, and alternate fuels in major fuel burning installations; effective 11–30–79 (Part IX of this issue)

60310 **Fair Lending Practices** FHLBB proposes to strengthen antidiscrimination monitoring procedures; comments by 12–18–79

60412 **Medicare Program** HEW/HCFA establishes regulations providing new optional method of target rate reimbursement; effective 4–1–79; comments by 12–18–79

60335 **Federal Insecticide, Fungicide, and Rodenticide** EPA intends to develop regulations to implement a program of assistance for pesticide enforcement for States under the Act; comments by 12–18–79

60273 **Small Businesses** SBA issues final rule implementing programs rendering assistance to small businesses in Federal prime and subcontracting; effective 10–19–79

60467 **Sunshine Act Meetings**

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60532 **Part III, FCC**
60634 **Part IV, HEW/Secy**
60638 **Part V, DOE/ERA**
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# Rules and Regulations

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

## OFFICE OF MANAGEMENT AND BUDGET

### 5 CFR Chapter III

### OMB and Federal Management Circulars; Transfer and Redesignation of Regulations

*Cross Reference:* For the page number of a document transferring regulations in 34 CFR Chapter I to 5 CFR Chapter III, see "Management and Budget Office" in the table of contents of this issue of the Federal Register.

BILLING CODE 6820-27-M

## COUNCIL ON WAGE AND PRICE STABILITY

### 6 CFR Parts 705 and 706

### Questions and Answers on the Anti-Inflationary Pay and Price Standards and Procedural Rules

**AGENCY:** Council on Wage and Price Stability.

**ACTION:** Questions and Answers on the Anti-Inflationary Pay and Price Standards and Procedural Rules.

**SUMMARY:** On October 2, 1979, the council published Anti-Inflationary Pay and Price Standards and Procedural Rules for the Anti-Inflation Program and on October 12, 1979, the Council published a set of Questions and Answers. The Council continues to receive many questions concerning the standards and the procedural rules, particularly with respect to reporting and the availability of adjustments for pay compliance. In response to these questions, and to clarify the standards and the procedural rules in the second program year, the Council is publishing the following Questions and Answers. The Council will publish Questions and Answers on a regular basis as questions of general application arise under the Pay and Price Standards, the Procedural Rules, or the Questions and Answers published today.

**EFFECTIVE DATE:** October 19, 1979.

**ADDRESS:** Written comments and/or questions should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, NW., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Pay Standard—Daniel Duff, 456–6210; Price Standard—Al Wurglitz, 456–6286; Procedural Rules—Jane Campana, 456–6210.

Dated: October 9, 1979.

R. Robert Russell,

*Director, Council on Wage and Price Stability.*

### Questions and Answers

*I. The Price Standard*

Q. Should a company with total sales or revenues of $250 million or more but whose domestic operations account for less than $250 million in sales or revenues report its company organization or file Form PM–1's?

A. Not unless specifically requested by the Council to do so.

Q. Should a foreign company whose U.S. business operations account for less than $250 million in sales or revenues report its company organization or file Form PM–1's?

A. Not unless specifically requested by the Council to do so.

Q. Should a foreign company that owns or controls U.S. business operations accounting for $250 million or more in sales or revenues report its company organization or file Form PM–1's?

A. Only the U.S. business operations of the foreign company should do so.

*II. The Pay Standard*

Q. If a collective-bargaining unit is eligible for the one-percent non-COLA catch-up, are there any restrictions on when it may take the catch-up?

A. No; it may be taken in any year of the agreement.

Q. Is an employee unit eligible for the catch-up if it has received an exception during the first program year, either self-administered or approved by the Council?

A. Yes.

Q. If a company seeks more than a 1-percent non-COLA catch-up should it provide the Council with data showing the actual increases granted the employee unit during the first program year?

A. Yes. The Council will consider the following facts in evaluating such requests: (1) The effect of all exceptions approved by the Council or self-administered; (2) the effect of any ongoing pay plan; and (3) the amount of any other nonchargeable item, except for the excluded portion of the increased cost of maintaining existing benefits.

Q. How should catch-up and carry-over adjustments be computed if a company reorganizes its employee units for the second program year?

A. Companies should compute pay-rate increases for the first program year for the reorganized employee units. Carry-over and catch-up adjustments should be based on the pay-rate computations for the reorganized employee units.

Q. What is the base quarter for the second program year for pay-rate computations?

A. The base quarter is the compliance unit's last quarter in the first program year.

*III. Procedures*

Q. Under the procedures for the first year, companies were encouraged to report the same organizational structure for pay and price purposes unless this would involve substantial administrative costs. Does this policy continue to apply?

A. No. Under § 706.21(a) a company's organizational structure may be different for pay and price without regard to administrative costs.

Q. Should State and local governments that meet the sales or revenue thresholds in § 706.21(b) report its company organization?

A. Yes.

[FR Doc. 79-32299 Filed 10-18-79; 8:45 am]
BILLING CODE 3175-01-M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Delegation of Authority by the Secretary of Agriculture and General Officers of the Department

**AGENCY:** Department of Agriculture.

**ACTION:** Final Rule.

**SUMMARY:** This document revises the delegations of authority for the Secretary and General Officers to reflect the establishment of the Director, Science and Education, as a General Officer of the Department. This document also reflects the realignment of the Director, Science and Education, from reporting to the Assistant Secretary of Conservation, Research, and Education to reporting directly to the Secretary of Agriculture. It also reflects a title change of the Assistant Secretary for Conservation, Research, and Education to Assistant Secretary for Natural Resources and Environment.

It has been determined that this action will strengthen the Department's leadership in the food and agricultural sciences as called for in the National Agricultural Research, Extension, and Teaching Policy Act of 1977. (7 USC 3101–3316).

**EFFECTIVE DATE:** October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** Leonard V. Covello, Organization and Management Development Staff, Science and Education Administration, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland 20782 (301–436–8300).

Accordingly, 7 CFR Part 2 is amended as follows;

## Subpart A—General

### §§ 2.4 and 2.5 [Amended]

1. Section 2.4 is amended by deleting the word "and" before the term, "the Judicial Officer," by changing the period at the end of the section to a semicolon and by adding "and the Director, Science and Education."

2. Section 2.4 and § 2.5(b) are amended by deleting the term "Assistant Secretary for Conservation, Research, and Education" and substituting in lieu thereof "Assistant Secretary for Natural Resources and Environment."

## Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

3. Section 2.19 is amended by revising the heading, by revoking and reserving paragraphs (a) and (g) in their entirety and by revising the preamble to read as follows:

### § 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.

The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment:

(a) [Revoked and reserved].

* * * * *

(g) [Revoked and reserved].

* * * * *.

4. Section 2.20 is amended by revoking and reserving paragraph (a) and by adding a preamble to read as follows:

### § 2.20 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a) [Revoked and reserved].

* * * * *

### § 2.21 [Amended]

5. Section 2.21 is amended by deleting the term "Assistant Secretary for Conservation, Research, and Education" in paragraph (d)(2) and substituting in lieu thereof the term "Director, Science and Education."

## Subpart D—Delegations of Authority to Other General Officers and Agency Heads

6. New §§ 2.39 and 2.40 are added as follows:

### § 2.39 Delegations of authority to the Director of Science and Education.

The following delegations of authority are made by the Secretary of Agriculture to the Director, Science and Education.

(a) *Related to science and education.*

(1) Provide national leadership and coordination for agricultural research, extension, and teaching programs in the food and agricultural sciences (includes human nutrition, home economics, consumer services, family life, rural and community development, agricultural energy, agricultural economics, environmental quality, natural and revewable resources, forestry, range management, animal and plant production and protection, aquaculture, and the processing, distribution, marketing and utilization of food and agricultural products) conducted or financed by the Department of Agriculture and, to the maximum extent practicable, by other Federal departments and agencies pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3121).

(2) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture and home economics under the Smith-Lever Act as amended (7 U.S.C. 341–349).

(3) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act as amended (7 U.S.C. 361a–361i).

(4) Support agricultural research at eligible institutions in any State through Federal-grant funds to help finance physical facilities (7 U.S.C. 390–390k).

(5) Conduct research concerning domestic animals and poultry, their protection and use, causes of contagious, infectious, and communicable diseases and means for the prevention and cure of the same (7 U.S.C. 391).

(6) Conduct research related to the dairy industry and dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(7) Conduct research and demonstrations at Mandan, ND and Lewisburg, TN, concerning dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of dairy and livestock industries (7 U.S.C. 421–422).

(8) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(9) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including consumer and food economic research), distribution, processing, utilization of plant and animal commodities, problems of human nutrition, development of markets for agricultural commodities, discovery, introduction, and breeding of new crops, plants, and animals both foreign and native, conservation development, and development of efficient use of farm buildings, homes, and farm machinery, including the application of electricity and other forms of power and research and development related to uses of solar energy with respect to farm buildings, farm homes, and farm machinery (7 U.S.C. 427, 2201, 2204).

(10) Conduct research on varietal improvement of wheat and feed grain to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(11) Advance the livestock and agricultural interests of the United States including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(12) Enter into agreements with and receive funds from any State or political subdivision, organization, or person for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(13) Administer a program of competitive, special, and facilities grants

to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations and individuals to promote research in food, agricultural and related areas (7 U.S.C. 450i).

(14) Conduct research related to soil and water conservation, engineering operations and methods of cultivation to provide the control and prevention of soil erosion (7 U.S.C. 1010, 16 U.S.C. 590a).

(15) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and byproducts (7 U.S.C. 1292).

(16) Conduct a special cotton research program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441-note).

(17) Conduct research, educational and demonstration work related to the distribution and marketing of agricultural products under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627).

(18) Administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences under section 104(b)(1) of the Agricultural Trade, Development, and Assistance Act of 1954, but excluding agricultural economics research; and administer and coordinate a foreign contracts and grants program of agricultural and forestry research under section 104(b)(3) of such act (7 U.S.C. 1704(b)(1), (3)).

(19) Conduct research in tropical and subtropical agriculture for the improvement and development of tropical and subtropical food products for dissemination and cultivation in friendly countries as provided by the Food for Peace Act of 1966 (7 U.S.C. 1736(a)(4)).

(20) Conduct research to develop and determine methods of humane slaughter of livestock (7 U.S.C, 1904).

(21) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for carrying out any of its functions (7 U.S.C. 2264–2265).

(22) Administer in cooperation with the States a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972 as amended (7 U.S.C. 2661–2670).

(23) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(24) Conduct a program of grants to States to establish or expand schools of veterinary medicine (7 U.S.C. 3151).

(25) Conduct a program of (i) competitive grants to colleges and universities and (ii) predoctoral and postdoctoral fellowships, to further education in the food and agricultural sciences (7 U.S.C. 3152).

(26) Administer the National Agricultural Research Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(27) Make grants to colleges and universities for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products and agricultural chemicals and other products from coal derivatives (7 U.S.C. 3154).

(28) Administer a national food and human nutrition research and extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3177).

(29) Administer an animal health and disease research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3191–3193, 3195–3201).

(30) Support continuing agricultural and forestry extension and research at 1890 land-grant colleges including Tuskegee Institute (7 U.S.C. 3221, 3222).

(31) Administer in relation to uses of solar energy (i) a competitive research grants program, (ii) a solar energy research information system, (iii) a cooperative program with the States on model farms and demonstration projects, and (iv) a program of research, extension, and demonstration at regional solar energy research and development centers (7 U.S.C. 3241, 3251, 3261–3263, 3271, 3281–3282).

(32) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities (7 U.S.C. 3291).

(33) Conduct educational and demonstration work in cooperative farm forestry programs (16 U.S.C. 568).

(34) Cooperate with the States for the purpose of encouraging and assisting them in carrying out programs of forestry research (16 U.S.C. 582a-582a-7).

(35) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671).

(36) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(37) Maintain a National Arboretum for the purpose of research and education concerning tree and plant life; accept and administer gifts or devices of real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(38) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(39) Conduct research on control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(40) Conduct research, demonstration, and promotion activities related to farm dwellings and other buildings for the purpose of reducing costs and adapting and developng fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(41) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(42) Administer the Virgin Islands agricultural research program (48 U.S.C. 1409m-0).

(43) Conduct research related to the use of domestic agricultural commodities for the manufacture of any material determined to be strategic and critical or substitute therefore, under section 7(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98f).

(44) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture and home economics in the District of Columbia (D.C. Code Section 31–1719).

(45) Provide leadership and direct assistance to the Cooperative Extension Service in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(46) Exercise responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (pt. 18 of this subtitle).

(47) Represent the Department on the Federal Interagency Council on Education.

(48) Develop and maintain library and information systems and networks and facilitate cooperation and coordination for the agricultural libraries of colleges, universities, Department of Agriculture, and their closely allied information gathering and dissemination units in close conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3126).

(49) Assure the acquisition, preservation and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information system, and the

agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(50) Formulate, write and/or prescribe bibliographic and technically related standards for the library and information service of USDA.

(51) Determine by survey and other appropriate means the information needs of the Department's scientific, professional, technical and administrative staffs, its constituencies and the general public in the areas of food, agriculture, the environment, and solar energy.

(52) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(53) Represent the Department in international organizational activities and on international technical committees concerned with library and information science activities.

(54) Prepare and disseminate computer bibliographic files, indexes and abstracts, bibliographies, reviews, and other analytical information tools.

(55) Copy and deliver on demand selected articles and other materials from its collections by photographic reproduction or other means within the permissions, constraints and limitations of Sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (Title 17, U.S. Code).

(56) Arrange for the consolidated purchasing and dissemination of indexes, abstracts, journals and other widely used information publications and services.

(57) Provide assistance and support to professional organizations concerned with library and information science matters and issues.

(58) Pursuant to authority delegated by the Administrator of the General Services Administration to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18440, and 38 FR 23838, appoint uniformed armed guards as special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties, (not to exceed those prescribed in (40 U.S.C. 318c)), as will ensure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD, and the animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, the Act of June 1, 1948 (62 Stat. 181) as amended, and policies, procedures and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director of the Office of Operations and Finance and the General Counsel prior to issuance.

(59) Control within the Department of Agriculture of the acquisition, use and disposal of material and equipment which may be a source of ionizing radiation hazard.

(60) Administer teaching funds authorized under section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(61) Responsible for representing the Department on the Federal Council for Science and Technology.

(b) *Related to committee management.* Establish and reestablish regional, state and local advisory committees for activities authorized. This authority may not be redelegated.

(c) *Related to defense.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act, as amended (50 U.S.C. App. 2251 et seq.) concerning scientific and educational programs.

(d) *Related to rural development activities.* Provide guidance and direction for the accomplishment of activities authorized under the Rural Development Act of 1972 by programs under the control of the Director, Science and Education, coordinating the policy aspects thereof with the Assistant Secretary for Rural Development.

**§ 2.40 Reservations of authority.**

The following authorities are reserved to the Secretary of Agriculture:

(a) *Related to science and education.* (1) Withholding funds from States and sending notification thereof to the President in accordance with sections 5 and 6 of the Smith-Lever Act, as amended (7 U.S.C. 345–346), section 5 and 7 of the Hatch Act as amended (7 U.S.C. 361 e.g.), section 506 of the Rural Development Act as amended (7 U.S.C. 2666), and sections 1436, 1444, 1445, and 1468 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3198, 3221, 3222 and 3314).

(2) Reapportioning funds under section 4 and apportioning funds under section 5 of the act of October 10, 1962 (16 U.S.C. 582 a–3, a–4).

(3) Appointing an advisory committee under section 6 of the act of October 10, 1962 (16 U.S.C. 582a–5).

(4) Final concurrence of Equal Employment Opportunity programs within the cooperative extension programs submitted under part 18 of this subtitle.

(5) Approving selection of State directors of extension.

(6) Approving the memoranda of understanding between the land-grant universities and the Department of Agriculture related to cooperative extension programs.

7. The heading for Subpart G is amended to read as follows:

## Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment.

8. The heading and text of § 2.56 is amended to read as follows:

**§ 2.56 Deputy Assistant Secretary for Natural Resources and Environment.**

(a) *Delegations.* Pursuant to § 2.19, subject to reservations in § 2.20, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Natural Resources and Environment to the Deputy Assistant Secretary for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Assistant Secretary:

(1) Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Natural Resources and Environment.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Natural Resources and Environment: (1) Approval or concurrence required by section 1(c) of Executive Order 10355 of May 26, 1952 (17 FR 4831), relating to withdrawal or reservation of lands of the United States.

**§ 2.57 [Revoked and reserved]**

9. Section 2.57 is revoked and reserved.

**§ 2.60 [Amended]**

10. Section 2.60 is amended by deleting the terms "Assistant Secretary for Conservation, Research, and Education" and "Assistant Secretary of Agriculture for Conservation, Research, and Education" in paragraphs (a) and (b) respectively and substituting in lieu thereof the term "Assistant Secretary for Natural Resources and Environment".

§ 2.62 [Amended]

11. Section 2.62 is amended by deleting the term "Assistant Secretary for Conservation, Research, and Education" in paragraphs (a) and (b) and substituting in lieu thereof the term "Assistant Secretary for Natural Resources and Environment."

## Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

§ 2.68 [Amended]

12. Section 2.68 is amended by deleting the term "Assistant Secretary for Conservation, Research, and Education" in paragraph (a)(2) and substituting in lieu thereof the term "Director of Science and Education".

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subparts A, C and D:

Dated: October 16, 1979.

Bob Bergland,

*Secretary of Agriculture.*

For Subpart G:

Dated: October 16, 1979.

M. Rupert Cutler,

*Assistant Secretary for Natural Resources and Environment.*

For Subpart H:

Dated: October 16, 1979.

Dale E. Hathaway,

*Under Secretary for International Affairs and Commodity Programs.*

[FR Doc. 79-32387 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-01-M

## Animal and Plant Health Inspection Service

## 7 CFR Part 354

## Overtime Services Relating to Imports and Exports; Overtime Work at Border Ports, Seaports, and Airports

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulation which establishes charges for overtime work at border ports, seaports, and airports. Agricultural quarantine inspectors of the U.S. Department of Agriculture are charged with performing inspection duties relating to imports and exports at border ports, seaports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following document amends the regulation entitled, "Overtime Work at Border Ports, Seaports, and Airports," by increasing the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12165 dated October 9, 1979.

**EFFECTIVE DATE:** October 7, 1979.

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

Pursuant to the authority conferred by the Act of August 28, 1950, (64 Stat. 561; 7 U.S.C. 2260) and the Airport and Airways Development Act Amendments of July 12, 1976, (90 Stat. 882; 49 U.S.C. 1741), § 354.1 of Part 354 Title 7, Code of Federal Regulations, the first sentence of § 354.1(a) is amended as set forth below:

**§ 354.1 Overtime work at border ports, seaports, and airports.**

(a) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal products, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of the Plant Protection and Quarantine Programs, on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine Program inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, and shall pay the Government therefor at the rate of $24.20 per man-hour per employee on a Sunday and at the rate of $16.08 per man-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. or a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $20.64 and for work performed outside of the regularly established hours of service for holiday or any other period will be $12.52 per hour, which charges exclude administrative overhead costs.

* * * * *

(64 Stat. 561 (7 U.S.C. 2260); (Sec. 15 of P.L. 94-353, 90 Stat. 882) (49 U.S.C. 1741))

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternative to raising the overtime rate. By law, importers and exporters are required to reimburse the Agency for its costs associated with the services rendered. Unless the rate is raised, it will not cover the pay raise which commences October 7, 1979. Accordingly, pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the Federal Register.

This final rule has been reviewed under the provisions of Executive Order 12044, "Improving Government Regulations." A determination has been made that this action is a matter related to Agency management and is, therefore, exempt from the provisions of the Order (E.O. 12044, Section 6(b)(3)).

Done at Washington, D.C., this 16th day of October 1979.

James O. Lee, Jr.,

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

[FR Doc. 79-32492 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-34-M

## Agricultural Stabilization and Conservation Service

## 7 CFR Part 722

## 1980 Crop of Extra Long Staple Cotton: Acreage Allotments and Marketing Quotas

**AGENCY:** Agricultural Stabilization and Conservation Service, Department of Agriculture.

**ACTION:** Final Rule.

**SUMMARY:** The purpose of this rule is to (1) determine and proclaim a national marketing quota and national acreage allotment for the 1980 crop of extra long staple cotton (referred to as "ELS" cotton), (2) apportion the national acreage allotment to States; and (3) establish the period for holding the national marketing quota referendum in order to find whether farmers are in favor of, or opposed to, the announced marketing quota for ELS cotton. The need for this rule is to satisfy the statutory requirements of the Agricultural Adjustment Act of 1938, as amended (referred to as the "Act"). The latest available statistics of the Federal Government have been used in making determinations under this rule.

**EFFECTIVE DATE:** October 15, 1979.

**ADDRESS:** Production Adjustment Division, ASCS, USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013

**FOR FURTHER INFORMATION CONTACT:** Charles V. Cunningham (ASCS) 202–447–7873.

**SUPPLEMENTARY INFORMATION:** A notice that the Secretary was preparing to make determinations with respect to these provisions of the 1938 Act was published in the Federal Register on August 14, 1979, (44 FR 47543) in accordance with 5 U.S.C. 553. One comment was received recommending that the national acreage allotment be established at 120,000 acres. After considering the comment received, it was determined the national marketing quota for the 1980 crop of ELS cotton should be 137,000 bales and that the national acreage allotment for such crop should be 112,027 acres.

It is essential that these provisions be made effective as soon as possible since the proclamation of the quota and the national allotment is required by statute to be made not later than October 15, 1979. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, this amendment to 7 CFR 722.558 to 722.561 shall become effective upon the filing of this document with the Director, Office of the Federal Register, with respect to the 1980 crop of ELS cotton. The material previously appearing in these sections under centerhead "1979 Crop of Extra-Long Staple Cotton; Acreage Allotments and Marketing Quotas" remains in full force and effect with respect to the crop to which it was made applicable.

## Final Rule

Accordingly, the provisions of 7 CFR §§ 722.558 through 722.561 are amended to read as follows:

### § 722.558 National marketing quota for the 1980 crop of ELS cotton.

The marketing quota for the 1980 crop of ELS cotton is hereby proclaimed to be an amount of 137,000 standard bales determined in accordance with section 347(b) of the Act. The quota is based on the following data:

| | |
|---|---|
| (1) Estimated domestic consumption, 1980–81 | 65,000 |
| (2) Estimated exports, 1980–81 | +40,000 |
| (3) Adjustment to assure adequate stocks | +34,000 |
| (4) Estimated imports 1980–81 | −2,000 |
| Total | 137,000 |

### § 722.559 National acreage allotment for the 1980 crop of ELS cotton.

It is hereby determined and proclaimed that a national acreage allotment shall be in effect for the 1980 crop of ELS cotton. The amount of such national allotment is 112,027 acres calculated by multiplying the national marketing quota in bales by 480 pounds (net weight of a standard bale) and dividing the result by the national average yield of 587 pounds per planted acre of ELS cotton for the four calendar years 1975, 1976, 1977 and 1978.

### § 722.560 Apportionment of national acreage allotment to the States.

The national acreage allotment of 112,027 acres is apportioned to the States in accordance with section 344(b) of the Act as follows:

| State | State Allotment (Acres) |
|---|---|
| Arizona | 48,557 |
| California | 488 |
| Florida | 136 |
| Georgia | 146 |
| New Mexico | 22,599 |
| Texas | 40,101 |

### § 722.561 National marketing quota referendum for the 1980 crop of ELS cotton.

The national marketing quota referendum for the 1980 crop of ELS cotton shall be held during the referendum period December 3 to 7, 1979, inclusive, by mail ballot in accordance with Part 717 of this chapter.

(Secs. 301, 343, 344, 347, 375; 52 Stat. 38, as amended; 63 Stat. 670, as amended; 63 Stat. 675, as amended; 52 Stat. 66, as amended; 7 U.S.C. 1301, 1343, 1344, 1347, 1375.)

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Charles V. Cunningham, ASCS, 202–447–7873.

Signed at Washington, D.C., on October 15, 1979.

Bob Bergland,

*Secretary of Agriculture.*

[FR Doc. 79-32197 Filed 10-15-79; 5:10 pm]

BILLING CODE 3410-05-M

## Agricultural Marketing Service

## 7 CFR Part 910

**[Lemon Reg. 222]**

## Lemons Grown in California and Arizona; Limitation of Handling

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period October 21–27, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATE:** October 21, 1979.

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

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handing of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The Committee met on October 16, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is considerably easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective

date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

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

**§ 910.522 Lemon Regulation 222.**

*Order.* (a) The quantity of lemons grown in California and Arizona which may be handled during the period October 21, 1979, through October 27, 1979, is established at 200,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: October 18, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-? Filed 10-18-79; ? am]

BILLING CODE 3410-02-M

## Animal and Plant Health Inspection Service

## 9 CFR Part 75

## Contagious Equine Metritis (CEM); Quarantine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of these amendments is to limit the quarantine of certain equidae to various premises in the Commonwealth of Kentucky because of the existence of contagious equine metritis (CEM). CEM, a communicable disease of equidae has been diagnosed among breeding thoroughbred horses in certain areas of the Commonwealth of Kentucky. In order to protect the equine industry of the United States from this highly contagious communicable disease and the integrity of the export of equidae from the United States, it is necessary to quarantine certain premises in the Commonwealth of Kentucky and to permit the interstate movement of such quarantined animals only in accordance with the provisions established in the regulations. The intended effect of these amendments is to stop the spread of CEM in the United States.

**EFFECTIVE DATE:** October 12, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph C. Knowles, USDA, APHIS, VS, Federal Building, Room 738, Hyattsville, MD 20782, 301–436–8433.

**SUPPLEMENTARY INFORMATION:** Contagious equine metritis (CEM), a highly contagious, communicable disease of equidae, has been diagnosed in the Commonwealth of Kentucky among breeding horses of the thoroughbred breed. In order to protect the equine population of the United States from the spread of this highly contagious disease of equidae, it was necessary to quarantine the entire Commonwealth of Kentucky and to regulate the interstate movement of certain animals from and through the Commonwealth.

Section 75.7(a) of the regulations (9 CFR 75.7(a)), is amended to remove the quarantine because of the existence of CEM from the entire Commonwealth of Kentucky and to give notice that horses of the Thoroughbred breed in the areas of Boone, Bourbon, Boyle, Fayette, Graves, Jessamine, Kenton, Oldham, Scott, and Woodford Counties, Kentucky, are affected with or exposed to CEM, and that certain premises therein are quarantined as a result thereof.

This amendment reduces the CEM quarantine from the entire Commonwealth of Kentucky to the described individual premises that contain animals to be affected or exposed to CEM. Epidemiological studies have shown that it is no longer necessary to maintain a Commonwealth-wide CEM quarantine and that the quarantine of the individual premises will be effective to prevent the spread of CEM.

Accordingly, Part 75, Title 9, Code of Federal Regulations, is amended as follows:

1. In § 75.7, paragraph (a) is amended to read:

**§ 75.7 Areas quarantined.**

(a) * * *

(1) *Kentucky.*

(i) *Boone County.* That portion of the premises of Liberty Hill Farm, located in the northwest corner of the intersection of U.S. 42 and Cleek Lane, with an entrance off the west side of Cleek Lane 300′ north of U.S. 42, described as beginning at a point on the south side of a lake which is 300′ due west of the farm entrance, then along a single fence running west 100′, then south approximately 125′ along a fence line, then east approximately 150′ along a fence line following a ravine and then along an irregular fence approximately 300′ back to the lake approximately 100′ east of the point of beginning, then following the south edge of the lake to the point of beginning containing approximately two acres with an open barn.

(ii) *Bourbon County.* (A) That portion of the premises of Bradyleigh Farm located one mile west of Ruddles Mill on Ardery Pike lying on the north side of Ardery Pike described as beginning at the southwest corner of the metal barn building, then south approximately 60 feet along a fence line, then approximately 500 feet in a northwesterly direction along a fence line, then along an irregular fence line to the northwest corner of the metal barn building, then along the outside wall of the metal building to the point of beginning including the space enclosed in the metal building containing a total area of approximately 4.5 acres.

(B) That portion of the premises of Claiborne Farm located 1.4 miles south of the intersection of U.S. Highway 68 and Kentucky Highway 627 on the east side of Kentucky Highway 627 to the entrance, then travel 0.8 mile due south to the north corner of paddock No. 31, described as beginning at the north corner, then in a southeast direction approximately 300 feet along a fence line; then in a southwest direction approximately 175 feet along a fence line; then in a northwest direction approximately 300 feet along a fence line; then in a northeast direction approximately 175 feet along a fence line to the point of beginning, containing approximately 1.2 acres area with a black barn inside the enclosure.

(C) That portion of the premises of Elmendorf Farm No. 2, located 0.5 mile east of intersection of Bethleham Pike and Iron Works Pike on the north side of Iron Works Pike described as beginning at the northwest corner of barn No. 1, then, north along a double fence approximately 500 feet, then, west along a double fence approximately 200 feet, then south along a double fence approximately 500 feet, then east along a double fence to the point of beginning, containing approximately 4 acres.

(D) That portion of the premises of Miracle Acres located 4.5 miles west of Esconida Road from its intersection with Kentucky State Road 627, lying on the north side of Esconida Road described as beginning at a point on the northeast side of the round pond, then along a

double fence line north approximately 600 feet, then east approximately 2000 feet along a fence line, then southwest approximately 1800 feet along a fence line, then north approximately 800 feet along a fence line back to the point of beginning, containing approximately 8 acres.

(E) That portion of the premises of Steven's Point Farm located 2.4 miles east of the intersection of Kentucky Highway 627 and Stony Point Road on the south side of Stony Point Road, then proceed 0.6 mile south from farm entrance to the entrance to the paddock with the new fence described as beginning at the entrance gatepost, then, west approximately 200 feet along a double fence; then, southeast approximately 206 feet along a double fence line; then approximately 135 feet southeast along a double fence line; then, north approximately 272 feet along a double fence to the point of beginning, containing approximately one acre.

(F) That portion of the premises of Stonereath Farm located 1.8 miles north of the intersection of U.S. Highway 460 and Clay Kiser Road on the west side of Clay Kiser Road described as beginning at the entrance of the farm from Clay Kiser Road; then, north approximately 1200 feet along a single fence; then, west approximately 1,175 feet along a single fence; then, approximately 1,175 feet south along a single fence; then, southeast along an irregular single fence back to the point of beginning, containing approximately 30 acres including a pump house in the southwest corner, a creek running southeast through the southwest corner and a round pond in the southeast corner of the field.

(G) That portion of the premises of Spring Place Farm located on the west side of Redmon Road, 3.6 miles north of the intersection of Redmon Road and U.S. Highway 68, then proceed northwest approximately 200 feet from the northwest corner of the main house to a fence corner described as beginning at the fence corner; then, north approximately 320 feet along the fence line; then, northeast approximately 240 feet along the fence line; then, east approximately 280 feet along the fence line to the fence along Redmon Road; then, south along this fence approximately 240 feet; then, southwest around the north edge of the pond approximately 180 feet; then, south along the west edge of the pond approximately 180 feet; then, west approximately 280 feet to the point of beginning, containing approximately 3.8 acres.

(H) That portion of the premises of Weathering Farm located on the south side of Ferguson Lane 1.3 miles northwest of the intersection of U.S. Highway 68 and Ferguson Lane, then, from the main entrance to the farm, proceed along the right (south) side of the fence along the lane for approximately 1000 feet to a gate, then south across the field to the north corner of a fence surrounding a pond described as beginning at the north corner; then, southeast approximately 100 feet along a fence line; then, south approximately 400 feet along a fence line; then, northwest approximately 300 feet along a fence line; then, north approximately 400 feet along a fence line to the point of beginning, containing approximately 1.8 acres including a pond in the quarantined area.

(iii) *Boyle County.* That portion of the premises of Happy Valley Farm located on the southwest side of Bluegrass Pike 0.5 mile northwest of the intersection of Kentucky Highway 1915 and Bluegrass Pike, intersection is located 0.9 mile west of U.S. Highway 127, then, proceed from the farm entrance southwest 0.8 mile to a structure known as the concrete barn, then proceed southeast from the southwest corner of the concrete barn approximately 600 feet to the corner post of the paddock, described as beginning at the corner post; then, approximately 400 feet southwest along a double fence line; then, approximately 220 feet southeast along a single fence; then, approximately 400 feet northeast along a single fence; then, approximately 220 feet northwest along a single fence line to the point of beginning, containing approximately 2 acres.

(iv) *Fayette County.* (A) That portion of the premises of Belair Farm, Ltd. located on the west side of Walnut Hill Pike 300 feet south of the intersection of Walnut Hill Pike and Delong Pike, then, proceed west on entrance road 0.2 mile to a house trailer to the entrance of the paddock at the north end of this house trailer described as beginning at entrance gate; then, north approximately 45 feet along a single fence; then, west approximately 375 feet along a single fence; then, south approximately 400 feet along a single fence line; then, east approximately 315 feet along a single fence line; then, north approximately 300 feet back to the point of beginning, containing approximately 4.0 acres including a round pond near the center of the paddock.

(B) That portion of the premises of Bluegrass (Houston) Farm located 0.5 mile south of the intersection of Fort Springs Pinchard Road and Parkers Mill Road on the Fort Springs Pinchard Road lying on the west side of said road described as beginning at the southeast corner of a building known as Fayette Barn #5, then south approximately 1,800 feet along a double fence line, then west approximately 2,400 feet along the fence line, then north paralleling Shannon Run Creek along the fence line approximately 550 feet, then along an irregular fence line which borders a pond in an easterly direction to the point of beginning, containing approximately 14 acres.

(C) That portion of the premises of Crescent Farm located 5.2 miles northeast of New Circle Road on the east side of Bryan Station Pike described as beginning at the northwest corner of a building known as the Five Stall Barn, then north approximately 500 feet along a fence line, then east approximately 500 feet along a fence line, then south approximately 500 feet along a fence line, then west approximately 500 feet along a fence line to the point of beginning, containing approximately 5 acres.

(D) That portion of the premises of the Hagyard Farm located approximately 0.3 mile northwest of the intersection of U.S. 27 and Hughes Lane with entrance on the Northeast side of Hughes Lane. The premises has two quarantined areas consisting of two paddocks. The first quarantined area is described as beginning at a point at the southeast corner of the entrance barn; then approximately 450 feet east along a double fence, then approximately 250 feet south along a double fence and tree line, then approximately 300 feet west along a double fence, then approximately 300 feet along an irregular single fence back to the point of beginning, containing approximately 1.5 acres.

The second quarantined area is described as beginning at a point at the southwest corner of the same entrance barn, then running approximately 200 feet west along a double fence, then approximately 400 feet south along a double fence and tree line, then approximately 300 feet east along a double fence, then in a northerly direction along a single fence to the point of beginning, containing approximately one acre.

(E) That portion of the premises of Heatherway Farm located one mile north of the intersection of Kentucky Highway 418 and Cleveland Pike on the east side of Cleveland Pike described as beginning at the entrance gate to the farm; then, south approximately 200 feet along a single fence line; then, east approximately 1,200 feet along a single fence line; then, north approximately 1,000 feet along a single fence line; then, west approximately 1,100 feet along a

single fence line; then, south approximately 700 feet along a single fence line; then, west approximately 90 feet along a single fence line; then, south approximately 100 feet along a single fence line to the point of beginning, containing approximately 30 acres including a hay barn and a round pond near the center of the quarantined area.

(F) That portion of the premises of Mereworth Farm located 1.3 miles north of U.S. Highway 421 on the east side of Bethel Pike where it intersects with Dolan Road, then east from Dolan-Bethel intersection 0.3 mile, then northeast 600 yards to stallion row, then to the southernmost barn described as beginning at the north corner of this barn, then northeast approximately 900 feet along the fence line, then southeast approximately 900 feet along the double fence to the alley way, then southwest approximately 900 feet along the fence line paralleling the alley way, then northwest approximately 900 feet along the double fence line to the point of beginning, containing approximately 3.1 acres.

(G) That portion of the premises of Mill Ridge Farm located 0.7 mile south of Parkers Mill and Bowmans Mill Pike intersection on the east side of Bowmans Mill Pike then, to an area known as the training barn, then approximately 250 yards to the northeast and paddock No. 6, adjacent to stallion barn No. 1 described as beginning at the southeast corner of stallion barn No. 1, then approximately 300 feet in a southeasterly direction along the double fence line, then approximately 200 feet southwest along the fence line, then approximately 300 feet northwest along the fence line, then approximately 200 feet in a northeasterly direction along the fence line to the point of beginning, containing approximately 1.8 acres.

(H) That portion of the premises of North Ridge Farm located in the southeast corner of the intersection of Yarnallton Pike and Interstate Highway 64, then, from the entrance road on Yarnallton Pike east 800 feet to a structure known as the isolation barn described as beginning at the northwest corner of the isolation barn; then north approximately 120 feet to the interstate right-of-way fence; then, along this fence northwest approximately 200 feet; then, along the double fence line south approximately 130 feet; then, along a fence approximately 50 feet southeast around the north edge of a marsh area; then continue south approximately 100 feet along this fence line along a lane; then east approximately 180 feet along a fence line; then, north approximately 80 feet along a fence line to the point of beginning, containing approximately 1.1 acres.

(I) That portion of the premises of Spendthrift Farm No. 2 located north of the Council of State Government Building on Iron Works Pike, four-tenths of a mile east of the entrance of the Kentucky State Horse Park described as beginning at the farm's entrance on Iron Works Pike, then along the fence line in a northwesterly direction approximately 500 feet; then, along the fence line in a northeasterly direction approximately 1,300 feet; then along the fence line in a southwesterly direction approximately 320 feet; then, in a southeasterly direction along the fence line approximately 1,100 feet to and including the horse barn and lot, then from the barn along an irregular fence line paralleling the entrance road to the point of beginning containing approximately 36 acres.

(J) That portion of the premises of Spendthrift Farms known as Hayes Place Farm, that adjoins Spendthrift Farm No. 2 located approximately seven-tenths of a mile east of the entrance to the Kentucky State Horse Park on Iron Works Pike described as beginning at the paved farm entrance to Hayes Place on Iron Works Pike, then in a northeasterly direction along the fence line approximately 400 feet; then, along the fence line approximately 2,000 feet in a northwesterly direction; then, along the fence line approximately 650 feet in a southwesterly direction to a double fence line and follow it approximately 1,650 feet in a southeasterly direction; then along the fence line in a northeasterly direction for approximately 250 feet to a fence line which parallels the entrance road for approximately 400 feet in a southeasterly direction back to the point of beginning, containing approximately 29.4 acres including a barn.

(K) That portion of the premises of Twin Eagles Farm located on the west side of Rice Pike 1.4 miles northeast of the intersection of U.S. Highway 60 and Rice Pike, then west on entrance road 0.5 mile to a trailer labeled office, then to Paddock No. 10 located north of and directly behind the office trailer and connected to barn No. 3, described as beginning at the northeast corner of barn No. 3; then, east approximately 185 feet along a single fence; then, northeast approximately 490 feet along a single fence; then, west approximately 335 feet along a double fence; then, south approximately 490 feet along a single fence to the point of beginning, containing approximately 3.2 acres.

(L) That portion of the premises of the University of Kentucky Experiment Station located on the west side of Newtown Pike 100 yards north of Interstate 75 underpass, then, on entrance road to a barn marked "B" described as beginning at the south corner of the lot of barn "B"; then, north approximately 944 feet along double fence; then, east approximately 1326 feet along a double fence line; then, south approximately 950 feet along a double fence line; then, west approximately 1326 feet along a double fence line to the point of beginning, containing approximately 40 acres including a barn marked "C" which is located on the east end of the enclosed quarantine area.

(M) That portion of the premises of Walmac Farm located 0.6 mile southwest of the U.S. 27 and Iron Works Pike intersection on the northwest side of U.S. 27, then a part of that farm approximately 75 feet southwest of a building known as the tobacco barn described as beginning at a gate, then, south along a fence line approximately 300 feet, then, in a westerly direction along the fence line approximately 500 feet, then, approximately 300 feet north along a fence line, then east approximately 500 feet to the point of beginning, containing approximately one acre.

(N) That portion of the premises of White Horse Acres located on the east side of Newtown Pike 1.6 miles north of the intersection of Interstate 64 and Newtown Pike described as beginning at a corner post at the south side of the main entrance to the farm; then, southeast approximately 240 feet along a fence line paralleling Newtown Pike; then, east approximately 500 feet along a fence line; then, northwest approximately 220 feet along a fence line; then, south approximately 200 feet along a fence line; then, west approximately 300 feet along a fence line; then, north and northwest approximately 200 feet along a fence line to the point of beginning, containing approximately 2.6 acres.

(O) That portion of the premises of Wimbleton Farm No. 2 located on the east side of Walnut Hill Pike 1.1 miles south of the intersection of U.S. Highway 25 and Walnut Hill Pike, then, from the farm entrance, approximately 1,400 feet along the paved road, then, turn right and proceed approximately 2,500 feet on the paved road to a structure known as the training barn, then, proceed southwest approximately 75 feet from the southwest corner of this training barn to the northeast corner of a paddock (paddock No. 2) described as beginning at the northeast corner of this paddock (paddock No. 2); then, south approximately 540 feet along the fence

line; then, west approximately 410 feet along the fence line; then, north approximately 540 feet along the fence line; then, east approximately 410 feet to the point of beginning, containing approximately 5.1 acres.

(v) *Graves County.* That portion of the premises of the Harrison Evans Farm located on the south side of Macedonia Road 1.5 miles east of the intersection of U.S. 45 S, described as beginning at a post on the south side of Macedonia Road, then approximately 700 feet south along a fence line, then approximately 700 feet east along a fence line, then approximately 700 feet north along a fence line, then paralleling Macedonia Road west approximately 700 feet along a fence line back to the point of beginning, containing approximately 8.5 acres.

(vi) *Jessamine County.* That portion of the premises of Taylormade Farm located five miles due east of the intersection of U.S. 27 and State Highway 169 lying on the north side of Highway 169, then, from the southeast corner of the building known as the new barn, proceed southeasterly approximately 300 yards to a paddock consisting of approximately three acres described as beginning at a gate, then approximately 300 yards in a southerly direction along a fence line, then east approximately 200 feet along a fence line, then along an irregular fence line to the point of beginning, containing approximately three acres.

(vii) *Kenton County.* That portion of the premises of Charles Deters Farm located 1.5 miles due South of the intersection of Walton-Nickelson and Green Road on the west side of Green Road, described as beginning at a point on the west side of barn No. 1, then along a fence line running west approximately 200 feet, then south along a fence line approximately 300 feet, then east approximately 250 feet along a fence line running through the center of a lake, then approximately 300 feet north to the point of beginning, containing about three acres.

(viii) *Mercer County.* (A) That portion of the premises of Bellows Mill Farm located on the north side of Bellows Mill Road 2.8 miles east of the intersection of Beaumont Road and Bellows Mill Road then proceed 0.4 mile northwest from the entrance of the farm to the southeast corner of a paddock described as beginning at the entrance to the paddock at the southeast corner; then, north approximately 250 feet along a single fence line; then, west approximately 560 feet along a single fence line; then, south approximately 250 feet along a single fence line; then, east approximately 560 feet along a single fence to the point of beginning, containing approximately 8 acres including a tobacco barn and a stripping building on the north central portion of the paddock.

(B) That portion of the premises of Shawnee Farm located in the northwest corner of the intersection of Chinn Lane and Curry Road located 1.3 miles north on Curry Road from U.S. Highway 68, then from the intersection of Curry Road and Chinn Lane go one-half mile east to farm entrance on the north side of Chinn Lane, then one-half mile north to foaling barn, then approximately 200 feet in the northeast direction to the southwest corner post of a paddock, the quarantined area being described as beginning at the southwest corner post of the paddock, then east approximately 120 feet along a double fence, then north approximately 900 feet along a double fence, then west approximately 150 feet along a single fence, then south approximately 900 feet to the point of beginning and including stall No. 9 in the northeast corner of the foaling barn, containing a total of approximately 2.8 acres.

(ix) *Oldham County.* That portion of the premises of Hermitage Farm located 3 miles northeast of Goshen, on the southeast side of U.S. Highway 42, described as beginning at a post on the southeast side of Circle Drive, then in a southeasterly direction along a single fence approximately 1,000 feet, then in a south direction along a double fence. approximately 400 feet, then in a northwestern direction along a single fence approximately 400 feet to corner post, then along an irregular single fence line to the point of beginning, containing approximately 3 acres.

(x) *Scott County.* (A) That portion of the premises of Beaconsfield Farm located in the northwest corner of intersection U.S. Highway 460 and Kentucky Highway 922, then from the entrance barn (barn No. 2), proceed 150 feet due west to the gate of the paddock, described as beginning at the paddock gate; then, north along the fence along the west side of the lane approximately 320 feet; then, west along the double fence approximately 300 feet; then, south approximately 800 feet along the fence bordering the east side of the pond; then, east approximately 300 feet along a fence line; then along the fence line on the west side of the lane approximately 450 feet to the point of beginning, containing approximately 5.5 acres.

(B) That portion of the premises of Elkhorn Stud Farm located in the southwest corner of the intersection of Interstate 75 and U.S. Highway 460, then proceed due west from the northwest corner of the concrete barn approximately 150 feet to the northeast corner of the second paddock on the south side of the lane described as beginning at a corner post; then, west approximately 120 feet along the fence line; then, south approximately 160 feet along the fence line; then, east approximately 120 feet along the fence line; then, north approximately 160 feet along the fence line to the point of beginning, containing approximately 0.35 acre.

(C) That portion of the premises of High View Farm located on the south side of the Rogers Gap Road 0.9 mile east from the intersection of Rogers Gap Road and U.S. Highway 25, then proceed 150 feet southeast from the southeast corner of barn No. 3 to the corner post of a paddock, described as beginning at a corner post; then, east approximately 150 feet along a fence line; then, approximately 450 feet south along a fence line; then, west approximately 150 feet along a fence line; then, north approximately 450 feet along a fence line to the point of beginning, containing approximately 1.5 acres.

(D) That portion of the premises of Hollingsworth Farm on the west side of Kentucky Highway 922 north 4.8 miles from the intersection of Kentucky Highway 1973 and Kentucky Highway 922, then proceed from the farm entrance due west approximately 200 feet to a barn, then proceed northwest approximately 50 feet from the northwest corner of the barn to the northeast corner of a paddock described as beginning at the northeast corner post; then, west approximately 250 feet along a single fence line; then, south approximately 200 feet along a single fence line; then, east approximately 250 feet along a single fence line; then, north approximately 200 feet along a single fence line to the point of beginning, containing approximately 1.2 acres.

(E) That portion of the premises of McMillan Brothers Farm located on the north side of the Leesburg-Newtown Pike 2.9 miles northeast of the intersection of U.S. Highway 460 and Leesburg-Newtown Pike then proceed from the main entrance to the farm due north approximately 1.0 mile to the east corner post of field number 2 at the property line with the closed county lane described as beginning at the east corner post; then, south approximately 1,240 feet along a fence line; then, west approximately 1,150 feet along a fence line; then, north approximately 1,240 feet along a fence line; then, east approximately 1,170 feet along a fence line to the point of beginning, containing approximately 33 acres.

(F) That portion of the premises of Westgrove Farm located at the end of a lane 1.2 miles east of Kentucky Highway 922, then the lane turns off Kentucky Highway 922 south of the intersection of Kentucky Highway 922 and U.S. Highway 62 approximately 1.1 miles, there the yearling barn is located at the end of the entrance lane, then proceed approximately 30 feet southwest from the southwest corner of the yearling barn to the northeast corner post of a paddock described as beginning at the northeast corner post; then, approximately 140 feet south along the fence line; then, west approximately 200 feet along the fence line; then, north approximately 140 feet along the fence line; then, east approximately 200 feet along the fence line to the point of beginning, containing approximately 0.64 acre.

(xi) *Woodford County.* (A) That portion of the premises of Buck Pond Farm located on the west side of Paynes Mill Road 1.1 miles north of intersection of Paynes Mill Road and U.S. 60, then proceed from the farm entrance by the railroad track and along the entrance road to the paddock with a large maple tree by the entrance gate, described as beginning at the entrance gate; then, northeast approximately 200 feet along an irregular fence; then, west approximately 384 feet along a double fence line; then, south approximately 280 feet along a double fence line; then, east approximately 352 feet along a single fence line to the point of beginning, containing approximately 2 acres.

(B) That portion of the premises of Crescent Hill Farm located in the southwest corner of the intersection of U.S. Highway 60 and Shannon Run Road, then proceed approximately 165 feet southwest from the northwest corner of the garage behind the main house to an old barn described as beginning at the south corner of the old barn; then, northeast approximately 575 feet along a fence line to the right-of-way fence line on U.S. Highway 60; then, northwest along this fence line approximately 425 feet; then, southwest approximately 475 feet along a double fence line; then, southeast approximately 425 feet along a fence line to the point of beginning, containing about 5.3 acres with the old barn included in the south corner of the quarantined area.

(C) That portion of the premises of Shadowlawn Farm located in the northwest corner of the intersection of U.S. Highway 62 and Kentucky Highway 1681 then proceed from the U.S. Highway 62 entrance along the paved farm road approximately 1,000 feet northwest to a structure known as the yearling barn; the, proceed along the same road another 800 feet to a corner post on the right side of the road described as beginning at a corner post; then, northeast approximately 680 feet along a double fence line; then, northwest approximately 560 feet along a single fence line; then, southwest approximately 680 feet along a double fence line; then, southeast approximately 560 feet along a fence line paralleling the entrance road to the point of beginning, containing approximately 8.6 acres.

(D) That portion of the premises of Kinirey Stud Farm, a division of Three Chimneys Farms located on the south side of Grassy Spring Road 1.1 miles west of the intersection with U.S. Highway 60 described as beginning at the corner post on the east side of the main entrance to Kinirey Stud Farm from Grassy Spring Road; then, east along a fence line paralleling Grassy Spring Road approximately 264 feet; then, south approximately 720 feet along a fence line; then, west approximately 264 feet along a fence line; then, north approximately 720 feet along a fence line to the point of beginning, containing approximately 4.4 acres.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended; (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126), 37 FR 28464, 28477; 38 FR 19141.)

CEM is a highly contagious and communicable disease of equidae. However, it is believed that the Commonwealth-wide quarantine is too broad and that it is possible to reduce the restrictions and quarantine only certain areas within the Commonwealth without undue threat of disseminating CEM. The reduction of the quarantine would also permit the interstate movement of certain equidae which are presently unnecessarily restricted to Kentucky. Consequently, this amendment must be made effective immediately to accomplish its purpose in the public interest.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less then 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Dr. J. K. Atwell, Assistant Deputy Administrator, APHIS, VS, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 75. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 12th day of October 1979.

E. A. Schilf,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 79-32158 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-34-M

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## 9 CFR Part 97

## Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulation which established charges for overtime work at laboratories, border ports, ocean ports, and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following amendment increases the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), and Executive Order 12165 dated October 9, 1979.

**EFFECTIVE DATE:** October 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dr. E. R. Mackery, USDA, APHIS, VS, Room 870, Federal Building, Hyattsville, Md. 20782, 301–436–8695.

Pursuant to the authority conferred by the Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), and the Airports and Airways Development Act Amendments

of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), the first sentence of § 97.1, Part 97, Title 9, Code of Federal Regulations, is amended to read:

**§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]**

(a) Any person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or holiday or Sunday period, except as provided in paragraph (b) of this section, shall pay the Administrator of the Animal and Plant Health Inspection Service at a rate of $24.20 per man hour per employee on a Sunday and at a rate of $16.08 per man hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture.* * *

* * * * *

(64 Stat. 561 (7 U.S.C. 2260))

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternative to raising the overtime rate. By law, importers/exporters are required to reimburse the Agency for its costs associated with the services rendered. Unless the rate is raised, it will not cover the pay raise which commences October 7, 1979.

Note.—Accordingly, pursuant to the Administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the Federal Register.

This final rule has been reviewed under the provisions of Executive Order 12044, "Improving Government Regulations." A determination has been made that this action is a matter related to Agency management and is therefore exempt from the provisions of the order (E.O. 12044, Section 6(b)(3)).

Done at Washington, D.C., this 16th day of October 1979.

M. T. Goff,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 79-32386 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-34-M

[1] For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs see 9 CFR 92.1 through 92.3; and for designated ports of entry for certain purebred animals see 9 CFR 151.1 through 151.3.

## 9 CFR Part 113

## Standard Requirement for Bursal Disease Vaccine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new section to the regulations under the Virus-Serum-Toxin Act regarding the requirements for purity, safety, potency, and efficacy to be met by all biological products containing Bursal Disease Vaccine. At the present time, such requirements appear in each Outline of Production for these products filed with Veterinary Services. This amendment makes uniform requirements available to all licensees.

**EFFECTIVE DATE:** This amendment becomes effective November 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dr. R. J. Price, Biologics Licensing and Standards staff, USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, MD 20782, 301-436-8245.

**SUPPLEMENTARY INFORMATION:** Standard requirements consist of test methods, procedures, and criteria established by Veterinary Services (VS) for evaluating biological products for purity, safety, potency, and efficacy.

Until such standard requirements are developed by VS and are codified in the regulations (9 CFR Part 113), the test methods, procedures, and criteria to be used in the evaluation of a product are developed by the licensee and are written into the applicable Outline of Production, which is required to be approved and filed with VS.

Codification assures uniformity and general availability of such standard requirements to all licensees and to the general public. This amendment contains the standard requirements for evaluating all licensed products containing Bursal Disease Vaccine.

On November 25, 1977, a notice of the proposed amendment to Part 113 (which appears in this document as final rulemaking) was published in the Federal Register at 42 FR 60158.

Comments on the proposal were solicited and three responses were received. One response was favorable to the proposal as published.

Two responses supported the proposed amendment but indicated concern about the application of the requirements to vaccines prepared with all strains of bursal disease virus. This concern was considered to be appropriate and constructive. Further investigation was initiated at the National Veterinary Services Laboratories to determine if the proposed standards could be used with all Bursal Disease Vaccines. These investigations indicated the need for some relaxations in the proposed amendment, which have been incorporated in this final rule and are explained in the discussion of changes below.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), the amendment of Part 113, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted with the following exceptions:

Paragraph (b)(1)(i) and the introductory portion of paragraphs (b)(2) and (c)(3) have been corrected by changing the word "intraocularly" to "by eye-drop" to clarify the meaning.

Paragraph (d)(1) has been corrected by changing the word "virus" to "serial."

Paragraph (d)(2) has been revised by deleting the requirement that all vaccinates and controls be necropsied and examined for gross lesions of bursal disease, and by providing for new general safety test procedures that are applicable to all Bursal Disease Vaccines, the basis of which is gross clinical observation only. Although the safety test in the proposed amendment would be satisfactory for modified live virus vaccines, it was not considered to be appropriate for live virus vaccines which may cause lesions of the bursa that are evident upon necropsy. Since the proposed amendment provides that the safety of the Master Seed Virus be

established, further indepth evaluation was not considered to be appropriate for release of serials of product.

A printing error has been corrected in paragraph (d)(3) by inserting a parenthesis after "$ID_{50}$'s" in the last sentence.

The first letter of each word in the heading for § 113.166 shall be capitalized. Part 113 is amended by adding a new section § 113.166 to read:

**§ 113.166 Bursal disease vaccine.**

Bursal Disease Vaccine shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed Virus which has been established as pure, safe, and immunogenic in accordance with the requirements in paragraphs (a), (b), and (c) of this section shall be used for preparing the production seed virus for vaccine production. All serials shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.135 and the requirements prescribed in this section.

(b) Each lot of Master Seed Virus shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly. Each lot of Master Seed Virus used in the preparation of modified live virus vaccines shall also be nonpathogenic to chickens as determined by the following procedures:

(1) Each of twenty-five 1-day-old bursal disease susceptible chickens (vaccinates) shall be injected subcutaneously with 10 times the recommended dose of vaccine virus and observed for 21 days. Fifteen chickens of the same source and hatch shall be kept isolated as controls.

(i) Seventeen days postvaccination, each of five controls shall be administered at least $10^{2.0}EID_{50}$ of a virulent bursal disease virus by eye-drop, isolated, and used as positive controls. The remaining controls shall be used as negative controls.

(ii) If the vaccinates do not remain free of clinical signs of bursal disease, the Master Seed Virus is unsatisfactory. If unfavorable reactions which are not attributable to the Master Seed Virus occur in more than two of the vaccinates, the test shall be declared inconclusive and may be repeated.

(iii) Twenty-one days postvaccination, the vaccinates and the controls shall be necropsied and examined for gross lesions of bursal disease. If more than two of the vaccinates have such lesions, the Master Seed Virus is unsatisfactory, except that, if any of the negative controls or less than four of the positive controls have such lesions, the test is inconclusive and may be repeated. For purposes of this test, gross lesions shall include obvious pathological processes and/or obvious reduction in size of the bursa from normal.

(2) Each of thirty-five 3- to 4-week-old bursal disease susceptible chickens (vaccinates) shall be vaccinated with approximately one minimum protective dose of vaccine virus as determined in paragraph (c) of this section. Each of 10 chickens of the same source and hatch shall be administered at least $10^{2.0}EID_{50}$ of a virulent bursal disease virus by eye-drop, isolated, and used as positive controls. Also, each of 20 additional chickens of the same source and hatch shall be isolated and held as negative controls.

(i) Three or four days postvaccination, 10 of the vaccinates, the 10 positive controls, and 10 of the negative controls shall be necropsied and examined for gross lesions of bursal disease. If any of the vaccinates have such lesions, the Master Seed Virus is unsatisfactory, except that, if any of the negative controls or less than 8 of the positive controls have such lesions, the test is inconclusive and may be repeated. For purposes of this test, gross lesions shall include peri-bursal edema and/or edema and/or macroscopic hemorrhage in the bursal tissue.

(ii) Fourteen days postvaccination, the remaining vaccinates and negative controls shall be necropsied and examined for obvious bursal atrophy. If any of the vaccinates have such atrophy, the test is inconclusive and may be repeated.

(c) Each lot of Master Seed Virus shall be tested for immunogenicity and the selected virus dose to be used shall be established as follows:

(1) Bursal Disease susceptible chickens, all of the same age (3 weeks or younger) and from the same source, shall be used. Twenty or more chickens shall be used as vaccinates for each method of administration recommended on the label. Ten additional chickens of the same age and from the same source shall be held as unvaccinated controls.

(2) A geometric mean titer of the vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. Each vaccinate shall receive a predetermined quantity of vaccine virus. Five replicate virus titrations shall be conducted on an aliquot of the vaccine virus to confirm the amount of virus administered to each chicken used in the test. At least three appropriate (not to exceed tenfold) dilutions shall be used to conduct the titrations by a method acceptable to Veterinary Services.

(3) When the test chickens are 28 to 35 days of age but not less than 14 days postvaccination, each vaccinate and each control shall be challenged by eye-drop with a virulent bursal disease virus provided or approved by Veterinary Services.

(i) Three to five days postchallenge, all vaccinates and controls shall be necropsied and examined for gross lesions of bursal disease as described in paragraph (b)(2)(i) of this section.

(ii) If at least 19 of 20, or 27 of 30, or 36 of 40 vaccinates in each group are not free from such lesions, the Master Seed Virus is unsatisfactory, except that, if less than 90 percent of the controls have such lesions, the test is inconclusive and may be repeated.

(4) The Master Seed Virus shall be retested for immunogenicity in 3 years from the original testing and each 5 years thereafter, unless use of the lot previously tested is discontinued. Only one method of administration recommended on the label need be used in the retest. The vaccinates and the controls shall meet the criteria prescribed in paragraph (c)(3) of this section.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed Virus shall be granted by Veterinary Services.

(d) After a lot of Master Seed Virus has been established as prescribed in paragraphs (a), (b), and (c) of this section, each serial and subserial shall meet the applicable requirements in § 113.135 and the requirements prescribed in this paragraph.

(1) *Tests for pathogens.* Final container samples from each serial shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the serial judged accordingly.

(2) *Safety tests.* (i) Final container samples of completed product from each serial shall be tested to determine whether the vaccine is safe as follows:

(A) For vaccines intended for parenteral administration, each of twenty-five 1-day-old bursal disease susceptible chickens shall be vaccinated with the equivalent of 10 doses by subcutaneous injection.

(B) For vaccines intended for drinking water administration, each of twenty-five 4- to 5-week-old bursal disease

susceptible chickens shall be vaccinated orally with the equivalent of 10 doses.

(C) Ten chickens of the same source and hatch shall be maintained in isolation as negative controls. The vaccinates and controls shall be observed each day for 21 days.

(ii) If unfavorable reactions which are attributable to the biological product occur during the observation period, the serial is unsatisfactory. If unfavorable reactions occur in more than one of the controls or if unfavorable reactions which are not attributable to the biological product occur in more than two of the vaccinates, the test shall be declared inconclusive and repeated, except that, if the test is not repeated, the serial shall be unsatisfactory.

(3) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer of log $10^{0.7}$ greater than that used in such immunogenicity test, but not less than log $10^{2.0}$ titration units (PFU or $ID_{50}$'s) per dose.

(e) Until a lot of Master Seed Virus is established as prescribed in paragraphs (a), (b), and (c) of this section, each serial and subserial prepared with such lot shall meet the applicable requirements prescribed in § 113.135 (except paragraph (c) of that section) and shall meet the requirements prescribed in the filed Outline of Production for the product.

(21 U.S.C. 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 15th day of October 1979.

This rule has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations." Under those criteria, this action has been designated for Agency oversight. A Final Impact Analysis Statement has been prepared and is available from USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, MD 20782.

M. T. Goff,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 79-32193 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF ENERGY

## 10 CFR Part 205

## Administrative Procedures and Sanctions; 1979 Interpretations of the General Counsel

**AGENCY:** Department of Energy.

**ACTION:** Notice of Interpretations.

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

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

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

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

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The interpretations published below are not subject to appeal.

Issued in Washington, D.C., October 12, 1979.

Everard A. Marseglia, Jr.,

*Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.*

**Appendix A.**—*Interpretations*

| No. | To | Date | Category | File No. |
|---|---|---|---|---|
| 1979-17 | L. O. Ward | August 9 | Price | A-204 |
| 1979-18 | Arizona Fuels Corp. | August 13 | Allocation | A-385 |
| 1979-19 | General American Oil Co. of Texas | August 17 | Price | A-270 |
| 1979-20 | Shell Oil Co. | August 17 | Allocation | A-309 |
| 1979-21 | Indiana Farm Bureau Cooperative Association, Inc. | September 6 | Price | A-354 |
| 1979-22 | Monsanto Co. | September 20 | Price and allocation | A-343 |

**Interpretation 1979-17**

*To:* L. O. Ward

*Regulations and Rulings Interpreted:* 10 CFR 212.72; Rulings 1975-15, 1977-1, 1977-2

*Code:* GCW-PI-Part 212, Subpart D; Definition of Property; Base Production Control Level

*Facts*

L. O. Ward (Ward) is the lessee under oil and gas leases in Oklahoma and a working interest owner in wells producing crude oil in that state. Ward is, therefore, a "producer" of crude oil subject to the provisions of 10 CFR Part 212, Subpart D.

In June 1972, by assignment in one instrument Ward acquired the oil and gas rights [1] to two contiguous lots, Lots 8 and 9, in Pontotoc County, Oklahoma.[2] In May 1972, prior to this transfer of interests, Ward drilled a crude oil well on Lot 9 and designated it the "Chanute 1-A" well. The Chanute 1-A has been producing crude oil from the Hunton and Misener formations since that date. In October 1972, the Corporation Commission of Oklahoma (the Commission) recognized Lots 8 and 9 as a single drilling and spacing unit (the Chanute Unit), consisting of about 79 acres.

In September 1971, the United Exploration Company (United) drilled a crude oil well known as the "Chandler 1-A" on Lot 1, lying directly south of Lot 8. United acquired the right to produce crude oil on Lot 1 by oil and gas lease from the Oklahoma Basic Economy Corporation (OBEC) and it produced crude oil from the Hunton and Misener formations from 1971 through 1973. In May 1973, the Commission approved an application submitted by the Sun Oil Company to form an enhanced recovery unit to produce crude oil from these formations. The North Steedman Misener-Hunton unit (the Sun Unit) originally included the Chandler 1-A well and all of Lot 1. Subsequently, however, the Commission issued an amended order that without explanation deleted 15 acres of Lot 1 adjacent to Lot 8 from the Sun Unit.[3]

In January 1974, Ward and the owners of the oil and gas rights to the remainder of Lot

[1] In this and other assignments described in this Interpretation, the assignors reserved for themselves various interests in crude oil production in the assigned acreage's oil and gas rights.

[2] Ward's crude oil and gas rights exclude all oil and gas rights within 300 feet of the Senora lime and in the Gilcrease sand series.

[3] For purposes of this Interpretation, we have assumed that when the Sun Unit was formed it took into account the total monthly production and sale of crude oil from Lot 1 in determining new and released crude oil for the Sun Unit. *E.g.*, Ruling 1975-15, 40 FR 40832 (September 4, 1975); 41 FR 4931, § VII (February 3, 1976).

1 [4] completed a crude oil producing well called the "Chanute-Chandler 1" on the boundary between Lot 8 and the remainder of Lot 1. Ward acquired the oil and gas rights to the remainder of Lot 1 in February 1974. On April 16, 1974, the Commission recognized Lot 8 and the remainder of Lot 1 together as a single drilling and spacing unit (the Chanute-Chandler Unit), effective December 12, 1973. At the same time, the Commission removed Lot 8 from the Chanute unit. As a result, the amended Chanute Unit consisted of Lot 9 only (the Amended Chanute Unit).

There are numerous working, royalty and overriding royalty interest owners in the crude oil production from the Chanute 1–A well and the Chanute-Chandler 1 well. In general, all of the interest owners in the crude oil production from the Chanute 1–A well share in the production from the Chanute-Chandler 1 well.[5] A number of working and royalty interest owners in the production from the Chanute-Chandler 1 well, however, do not share in the production from the Chanute 1–A well.

For purposes of this Interpretation, we have assumed that Ward's actions were not undertaken in order to frustrate the objectives of the Mandatory Petroleum Price Regulations and to obtain a price for the crude oil produced from the properties in question that is higher than the regulations permit. 10 CFR 210.62.

*Issues*

1. What "properties," as that term is defined in 10 CFR 212.72, are described by the facts set forth above?

2. What method should be used to compute the "base production control levels" of these properties, as that phrase is defined in 10 CFR 212.72?

*Interpretation*

I. Summary

For the reasons discussed below, the Department of Energy (DOE) has concluded that Lots 8 and 9 together (the Chanute Unit) constituted a single property under the Mandatory Petroleum Price Regulations until April 16, 1974, in accordance with the definition of the term "property" in 10 CFR 212.72. Inasmuch as the Chanute-Chandler 1 well was located on the boundary line of Lot 8 (part of a property from which crude oil was produced and sold during 1972), and because there is a substantial identity between the interest owners in the Chanute 1–A and Chanute-Chandler 1 wells, we conclude that the Chanute-Chandler 1's crude oil production was attributable to the Chanute Unit prior to April 16, 1974. The DOE has also determined that the withdrawal of Lot 8 from the Chanute Unit and the establishment of the Chanute-Chandler Unit on April 16, 1979, by the Commission created two separate properties on that date, the Amended Chanute Unit and the Chanute-Chandler Unit, in accordance with 10 CFR 212.72 as interpreted by Ruling 1977–1, 42 FR 3628 (January 19, 1977). The property consisting of the Chanute-Chandler Unit has a base production control level (BPCL) of zero, since there was no crude oil produced and sold during 1972 from any well located on that property. The Amended Chanute Unit has a BPCL that equals the BPCL of the Chanute Unit, since the same well—the Chanute 1–A—was the only well from which crude oil was produced and sold in 1972 on either of these properties. In accordance with the definition of BPCL in 10 CFR 212.72, for months commencing after January 31, 1976, and after May 31, 1979, updated BPCL's for the Amended Chanute Unit, based on the appropriate updated production and sale levels, may be computed and used for purposes of determining new crude oil.

II. Property Definition

The term "property" is defined in 10 CFR 212.72 in pertinent part as "the right to produce domestic crude oil, which arises from a lease or from a fee interest." This part of the property definition has remained substantially unchanged since Phase IV of the Economic Stabilization Program.[6]

Applying this definition to the facts of this case, it is clear that the 1972 assignment to Ward by one instrument of certain oil and gas rights on both Lots 8 and 9 established those lots as a single property.[7] Similarly, the 1971 lease to OBEC and the assignment to United of certain oil and gas rights on Lot 1 established this lot as a single property. The term "property" is synonymous with the physical premises described in a lease or fee interest and is not to be interpreted as a reference to a particular lessee's rights under a particular lease. *Rustex Oil, Inc.*, Interpretation 1978–5, 43 FR 12852 (March 28, 1978). *See* Ruling 1977–1, § II E; Ruling 1975–15, § II D; *Meridian Oil Corporation*, Interpretation 1977–46, 43 FR 1481 (January 10, 1978); and *Texaco, Inc.*, Interpretation 1977–42, 42 FR 64104 (December 22, 1977).

However, the DOE has recognized that in certain situations events subsequent to 1972 establish properties different from those in existence in 1972. Ruling 1977–1, § II F, sets forth a number of instances in which segregation, aggregation, and/or recombination of premises subject to a single right to produce would form different properties. Among these situations are:

(2) *Segregation of Premises Subject to a Single Right to Produce.*

* * * * *

c. *Partial unitization or other aggregation of interests.* It is not uncommon for less than the total premises subject to a right to produce to be unitized or otherwise aggregated with all or portions of premises subject to other rights to produce, to form a single "property," leaving the balance of the premises formerly subject to a single right to produce not aggregated with any other such rights. The portion of the premises which is not aggregated is appropriately recognized as a property separate and apart from the portion of the premises which has been aggregated with other rights to produce.

In some cases, FEA understands that the inclusion of the so-called "Pugh" clause in a lease would operate to create a separate and distinct right to produce with respect to the non-unitized portion of the premises subject to that lease, by stating that production from the unitized portion of a lease will not serve to fulfill the lessee's production obligations with respect to the non-unitized portion. Thus, the two portions of the lease including such a clause would become separate properties by the terms of the lease itself. However, even where such a clause is not included, FEA has concluded that treatment of the nonunitized portion of the premises as a separate property is appropriate.

* * * * *

(3) *Aggregation of "Rights to Produce."* The aggregation of separate "rights to produce" pursuant to a unitization agreement was discussed in FEA Ruling 1975–15. There are, however, other circumstances under which separate rights to produce may appropriately be aggregated, pursuant to either voluntary or involuntary arrangements.

Thus, for example, various parties may hold partial undivided interests in the right to produce crude oil from a particular tract. Whether voluntarily through a joint operating agreement or other type of agreement, or pursuant to compulsory state regulations, such undivided interests in the right to produce from a tract must typically be aggregated before production can begin. Under such circumstances, no apparent purpose would be served by requiring property delineations to be carried back to the individual partial undivided interests which have been aggregated in order to perfect the right to produce.

Another instance in which rights to produce may be aggregated occurs where the premises subject to such rights are required to be combined by a state regulatory agency as a condition to the operation of production activities. Thus, for example, in Louisiana the state regulatory agency will compel a "unit" to be formed by the owners of the tracts with respect to the surface area which overlies the portion of a reservoir that may be efficiently drained by a single well, provided the owners of at least 75 percent of the surface area agree to the formation of a unit.

Similarly, in states that maintain spacing requirements for oil wells, individual rights to produce may need to be combined, whether voluntarily or involuntarily, before a single well may be drilled and the right to produce made effective. Such aggregations of rights to produce (sometimes known as "drilling units") are also appropriately recognized as single "properties."

Generally speaking, FEA will follow a liberal policy with respect to the aggregation of rights to produce which will be permitted to be treated as a single "property," as long as a bona fide reason for the aggregation can be demonstrated by the producer.

Prior to April 16, 1974, Ward has only one property, the Chanute Unit. When the Commission established the Chanute-

[4] United transferred its rights to the 15-acre remainder of Lot 1 to other parties in 1973, apparently under a farmout agreement.

[5] The only exceptions to this parallel appear to be the result of transfers of interest among members of the owners' families.

[6] *See* 6 CFR 150.354, 38 FR 22538 (August 17, 1973), effective August 19, 1973; 39 FR 1924 (January 15, 1974); and 39 FR 31622 (August 30, 1974).

[7] This property was in fact coextensive with the Chanute Unit, although the extent of the property was determined by Ward's oil and gas rights, not by the Commission's establishment of Lots 8 and 9 as a single drilling and spacing unit in October 1972.

Chandler Unit and deleted Lot 8 from the old Chanute Unit on April 16, 1974,[8] however, different properties within the scope of the situations described above were formed for the purposes of the Mandatory Petroleum Price Regulations. Lot 8 (less than all of the premises subject to Ward's 1972 right to produce) was aggregated with a portion of Lot 1 (less than all of the premises subject to United's 1972 right to produce) to form a new drilling and spacing unit. This new unit was established by a state regulatory agency, the Corporation Commission of Oklahoma, for the *bona fide* reasons of facilitating additional recovery of crude oil and protecting the correlative rights of Ward under Oklahoma law. Thus, on April 16, 1974, the Chandler Unit and the Amended Chanute Unit each became separate and distinct properties.[9]

III. Base Production Control Level

The term "base production control level" (BPCL) is defined in 10 CFR 212.72 in pertinent part in the following manner: [10]

(a) with respect to months ending prior to February 1, 1976:

(1) if crude oil was produced and sold from the property concerned in every month of 1972, the total number of barrels of domestic crude oil produced and sold from that property in the same month of 1972;

(2) if crude oil was not produced and sold from the property concerned in every month of 1972, the total number of barrels of crude oil produced and sold from that property in 1972, divided by 12;

(b) with respect to months commencing after January 31, 1976, except as provided in § 212.76(a), either:

(1) the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days during the month in 1975 which corresponds to the month concerned; or

(2) if the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

(c) With respect to months commencing after May 31, 1979, except as provided in § 212.76, for properties other than marginal properties, either:

(1) The total number of barrels of old crude oil produced and sold from the property concerned during the six-month period ending March 31, 1979, divided by 182, multiplied by the number of days during the month in 1978 which corresponds to the month concerned; or

(2) If the producer elects to certify crude oil sales for 1975 in accordance with § 212.131(a)(2), the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days during the month in 1975 which corresponds to the month concerned; or

(3) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned;

In accordance with this definition, for months commencing prior to January 31, 1976, the BPCL of Ward's property consisting of Lots 8 and 9 (the Chanute Unit) is computed based on the 1972 production and sale of crude oil from the Chanute 1–A well, because this well provided the only crude oil produced and sold from this property in 1972. For purposes of the Mandatory Petroleum Price Regulations, the Chanute-Chandler 1 well was also located on the physical premises of this property. The well was drilled on the border of Lot 8, part of Ward's 1972 property, the Chanute Unit. Ward was the operator of this well, just as Ward operated the well located on Lot 9, the Chanute 1–A. The interest owners in both wells and thus in the crude oil production from both units are substantially the same.[11] Both wells are in close proximity to each other and produce crude oil from the same formations. Thus prior to April 16, 1974, at which time the Chandler Unit and the Amended Chanute Unit each became separate and distinct properties, the total monthly production and sale of crude oil from both the Chanute 1–A and Chanute-Chandler 1 wells must be compared with the BPCL (and any current cumulative deficiency) of the Chanute Unit for purposes of determining new and released crude oil for the Chanute Unit. 10 CFR 212.72, 212.73 and 212.74.

The Commission's April 16, 1974, order created two properties on that date, the Chanute-Chandler Unit and the Amended Chanute Unit. For months commencing prior to January 31, 1976, each of these properties had a BPCL based on the crude oil produced and sold in 1972 from wells located on those properties, as if they had existed as separate properties since the inception of the price regulations. *See* Ruling 1977–2, § III D, 42 FR 4409 (January 25, 1977); 41 FR 36171, § I G(1) (August 26, 1976); *Depco Inc.*, 2 DOE ¶ 80,167 (October 25, 1978). During this time, the BPCL (and any current cumulative deficiency) of the Amended Chanute Unit equaled the BPCL (and any current cumulative deficiency) of the Chanute Unit for purposes of determining new and released crude oil, since the same well, the Chanute 1–A, is located on the physical premises of both these properties and crude oil was produced and sold from this well in 1972. The BPCL of the Chanute-Chandler Unit was zero, since in 1972 there was no well on the physical premises of this property and no crude oil was produced and sold from these physical premises. For months commencing after January 31, 1976, and after May 31, 1979, Ward may compute an updated BPCL for the Amended Chanute Unit as provided in the definition of BPCL in 10 CFR 212.72.

IV. Conclusion

For the reasons set forth above, we have determined that the proper application of the DOE's Mandatory Petroleum Price Regulations to the factual situation presented in Ward's request for interpretation is as follows:

(1) Lots 8 and 9 (the Chanute Unit) constituted a single property prior to April 16, 1974;

(2) The Chanute-Chandler 1 well was located on the physical premises of the Chanute Unit;

(3) Lot 9 (the Amended Chanute Unit) constituted a single property effective April 16, 1974;

(4) Lot 8 together with the 15 acres of Lot 1 adjacent to Lot 8 (collectively designated the Chanute-Chandler Unit) constituted a single property effective April 16, 1974;

(5) For purposes of determining old, new and (prior to February 1, 1976) released crude oil from the Amended Chanute Unit and the Chanute-Chandler Unit as of April 16, 1974, the BPCL of the Amended Chanute Unit equals the BPCL of the Chanute Unit, and the BPCL of the Chanute-Chandler Unit is zero, although the BPCL of the Amended Chanute Unit may be updated in accordance with the BPCL definition of 10 CFR 212.72 for months commencing after January 31, 1976 and May 31, 1979.

Issued in Washington, D.C., on August 9, 1979.

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**Interpretation 1979–18**

*To:* Arizona Fuels Corporation
*Regulation Interpreted:* 10 CFR 211.63
*Code:* GCW—AI—Supplier/Purchaser Relationship

*Facts*

Arizona Fuels Corporation (Arizona Fuels) is a small, independent refiner, as defined in 10 CFR 211.62, and is therefore subject to the Mandatory Petroleum Allocation Regulations set forth in 10 CFR Part 211. Effective November 21, 1977, Arizona Fuels entered into an agreement with Compton Corporation, a predecessor to Comp-Cal

[8] The Mandatory Petroleum Price Regulations do not recognize any retroactive effect of the Commission's April 16, 1974, order. *E.G., Grigsby v. DOE,* 585 F.2d 1069 (TECA 1978).

[9] *Compare Amax Petroleum Corp.*, 2 DOE ¶ 83,004 (September 18, 1978); *W. E. Shrider*, 1 DOE ¶ 80,111 (October 21, 1977) (the creation of more than one drilling unit on premises subject to a single right to produce does not establish each such unit as a separate property). *See generally Grigsby v. DOE,* 585 F.2d 1069 (TECA 1978).

[10] Since Phase IV of the Economic Stabilization Program, the definition of BPCL has been amended in ways that do not affect this Interpretation. *See* 39 FR 1924 (January 15, 1974); 39 FR 31622 (August 30, 1974); 41 FR 4931 (February 3, 1976); 41 FR 15566 (April 13, 1976); and 44 FR 25160 (April 27, 1979). The last amendment to this definition added a new section (4) by which a property after May 31, 1979 may qualify as a "marginal property." Whether any of Ward's properties in this case in existence after that date qualify as marginal properties is not addressed in this Interpretation.

[11] According to information submitted by Ward, all of the seven royalty, five overriding royalty and seven working interest owners in the Chanute 1–A well are interest owners in the Chanute-Chandler 1 well, although some of these owners appear to have transferred their interests to relatives.

Corporation (Comp-Cal), resellers of crude oil, for the purchase of Sespe field crude oil, which Comp-Cal purchased from Trans World Oil Corporation (Trans World), a wholly owned subsidiary of U.S.A. Petroleum.[1] Trans World is thus part of the U.S.A. Petroleum firm, which is a refiner. According to the submission in this case, the agreement between Arizona Fuels and Compton Corporation contained a clause specifically providing that the agreement was "to continue unless cancelled by either party giving a minimum of sixty-five (65) days prior written notice to the other party." A similar provision was included in the agreement between Compton Corporation and Trans World.

On December 26, 1978, Trans World gave Comp-Cal notice of termination effective March 1, 1979, in accordance with the termination clause in their agreement. Comp-Cal then notified Arizona Fuels of the termination.[2]

In its request for interpretation, Arizona Fuels contended that the sales between it and Comp-Cal and between Comp-Cal and Trans World created supplier/purchaser relationships pursuant to 10 CFR 211.63 and that the termination clause in the agreement between Arizona Fuels and Comp-Cal did not constitute consent by Arizona Fuels to terminate that relationship in accordance with § 211.63. Specifically, Arizona Fuels seeks assurance that Comp-Cal must continue to supply it with crude oil. Trans World contends that no supplier/purchaser relationships within the meaning of 10 CFR 211.63 were created by the sales and, further, that if such relationships were created, they were properly terminated in accordance with the terms of the agreements between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World.[3] In its comments, Comp-Cal contends that if Comp-Cal has continuing obligations to Arizona Fuels pursuant to a supplier/purchaser relationship, then Trans World is similarly obligated to Comp-Cal.

*Issues*

1. Do the sales of crude oil under the agreements between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World create supplier/purchaser relationships within the meaning of 10 CFR 211.63?

2. If such a supplier/purchaser relationship is created between Arizona Fuels and Comp-Cal, does the termination clause in their agreement constitute consent by Arizona Fuels to terminate that supplier/purchaser relationship in accordance with § 211.63?

*Interpretation*

For the reasons set forth below, the Department of Energy (DOE) has determined that supplier/purchaser relationships within the meaning of § 211.63 were created between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World by the initial sales of crude oil under the agreements and that the termination clause in the agreement between Arizona Fuels and Comp-Cal did not constitute consent by Arizona Fuels to terminate that supplier/purchaser relationship in accordance with § 211.63.

The Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, apply to all crude oil produced in or imported into the United States. 10 CFR 211.1(a). Section 211.63 provides for the establishment of a supplier/purchaser relationship and for its continuation until terminated in a manner specifically set forth in § 211.63(d). Section 211.63(b) provides in pertinent part:

(1) All supplier/purchaser relationships in effect under contracts for sales, purchases and exchanges of domestic crude oil on January 1, 1976 shall remain in effect for the duration of this program; *provided, however,* that any such supplier/purchaser relationship to which this section is applicable may be terminated as provided in paragraph (d) of this section.

(2) Once any first sale, purchase or exchange of domestic crude oil is made which is exempt from this rule pursuant to paragraph (a)(4) of this section, or *once the sale, purchase or exchange of any domestic crude oil that has at any time been the subject of a supplier/purchaser relationship under subparagraph (1) of this paragraph (b) is made in accordance with this section to a firm that was not the purchaser thereof on January 1, 1976,* or has not continued to purchase that crude oil without interruption since December 31, 1975, *a supplier/purchaser relationship between the seller and purchaser shall be established thereafter under this section as though it had been in effect on January 1, 1976.* (Emphasis added.)

The initial sales of crude oil under the agreements between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World gave rise to supplier/purchaser relationships within the meaning of § 211.63. The Sespe field crude oil subject to the new supplier/purchaser relationships between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World had been the subject of a previous supplier/purchaser relationship. Thus, the supplier/purchaser relationships established between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World are treated as though they had been in effect on January 1, 1976, and can be terminated only as provided in § 211.63(d). *See* § 211.63(b)(1) and (2).

Section 211.63(d) provides the specific manner in which a supplier/purchaser relationship may be terminated.[4] Section 211.63(d)(1) makes clear that a purchaser can consent to the termination of a supplier/purchaser relationship if certain requirements are fulfilled. Section 211.63(d)(1), as amended, reads in pertinent part:

Any supplier/purchaser relationship established under paragraph (b) of this section may be terminated as follows:

(i) at the option of the purchaser, as evidenced by its written consent thereto together with notice of the termination date given to the producer, provided all subsequent purchasers of the crude oil involved have consented to such termination in writing; . . .

The express regulatory requirements for a purchaser to consent to the termination of a supplier/purchaser relationship are, first, that the consent be in writing; second, that all subsequent purchasers consent; and, third, that a specific termination date be indicated at the time the purchaser gives its consent. In order for a purchaser to consent to termination of a supplier/purchaser relationship, it must do so in a manner that satisfies all three of these requirements.

There is no dispute regarding the fact that the termination clause contained in the agreement and relied upon by Trans World did not give notice of a specific termination date. Therefore, this termination clause is insufficient on its face to constitute consent to terminate pursuant to § 211.63(d)(1)(i), and Arizona Fuels has not consented to a termination of its supplier/purchaser relationship with Comp-Cal by reason of the termination clause in their agreement.[5]

This conclusion is consistent with and furthers the underlying policy of § 211.63(d). At the time the current termination provisions set forth in § 211.63(d) were proposed, the Federal Energy Administration, a predecessor to the DOE, stated the purpose of § 211.63(d)(1):

The provisions relating to terminations of crude oil supplier/purchaser relationships are also proposed to be altered to reflect more accurately industry conditions and to be made more workable. Specifically, the proposed modification to paragraph (a)(1) of the present rule (set forth in § 211.63(d)(1) in the proposal) would no longer require that termination of a supplier/purchaser relationship be based on the mutual consent of both parties to the relationship but instead require only the consent of the purchaser (and the consent(s) of that purchaser's

[1] According to the facts presented in this case, U.S.A. Petroleum purchased the Sespe field crude oil from several producers and transported it through U.S.A. Petroleum's pipeline. Prior to November 1977, when the agreements between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World became effective, the Sespe field crude oil was the subject of a different supplier/purchaser relationship. The issue of whether these previous supplier/purchaser relationships were properly terminated was not presented to the Department of Energy (DOE) in this case, and the DOE has made no determination as to the lawfulness of those terminations.

[2] Because of a notice of violation issued to Trans World by the Ventura County Air Pollution Control District, Comp-Cal and, hence, Arizona Fuels did not receive crude oil after December 1978, and were not receiving crude oil at the time this request was filed.

[3] Trans World now seeks to terminate its supplier/purchaser relationship with Comp-Cal so that the crude oil that is the subject of this supplier/purchaser relationship can be transferred to a refining entity of U.S.A. Petroleum.

[4] Prior to its amendment, effective June 11, 1976, 41 FR 24338 (June 16, 1976), § 211.63 provided in paragraph (a)(1) that "any supplier/purchaser relationship may be terminated by the mutual consent of both parties; . . . ." Section 211.63(a), as amended, no longer expressly provides for termination by "mutual consent"; rather § 211.63(b) allows a supplier/purchaser relationship to be terminated at the *purchaser's* option, provided that the requirements of that section are met.

[5] Likewise, the termination clause in the agreement between Comp-Cal and Trans World is not sufficient to terminate their supplier/purchaser relationship. Therefore, Trans World has the same continuing supply obligations to Comp-Cal as Comp-Cal has to Arizona Fuels. It is important to note, however, that either supplier/purchaser relationship could be terminated in any manner expressly permitted by § 211.63(d).

subsequent purchasers, if any). This would be consistent with *the principal objective of the rule to assure that crude supplies continue to be available to historic purchasers.* (Emphasis added.) 41 FR 16662, 16663 (April 21, 1976).

Clearly, § 211.63(d)(1) was intended to safeguard a crude oil purchaser's rights under the DOE allocation regulations and to insure that the purchaser continues to receive crude oil pursuant to a supplier/purchaser relationship until it affirmatively consents to termination of that relationship in a manner that meets the specific requirements of § 211.63(d)(1)(i).[6]

Accordingly, based upon the preceding discussion, we conclude that supplier/purchaser relationships for the sale of crude oil in this case were created between Arizona Fuels and Comp-Cal and between Comp-Cal and Trans World and that Arizona Fuels has not consented to a termination of its supplier/purchaser relationship in accordance with § 211.63(d).

Issued in Washington, D.C., on August 13, 1979.

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## Interpretation 1979–19

*To:* General American Oil Company of Texas
*Regulation Interpreted:* 10 CFR 212.72
*Code:* GCW–PI—New Crude Oil, def.; Certification

### *Facts*

The General American Oil Company of Texas (General American) is a domestic crude oil producer and participant in the Johnson Bayou Gas Unit and the H–5 Sand Unit located in Cameron Parish, Louisiana. The Johnson Bayou Gas Unit initially produced only natural gas and condensate and was unitized on May 1, 1964. The H–5 Sand Unit was created from new reservoirs in leases participating in the Johnson Bayou Gas Unit when a productive crude oil sand was discovered in 1972. Each of these units was formed pursuant to the express approval of the Louisiana Department of Conservation.

Prior to the issuance of Ruling 1975–15, 40 FR 40832 (September 4, 1975), by the Federal Energy Administration (FEA), a predecessor of the Department of Energy (DOE), General American calculated a separate base production control level (BPCL) for each lease constituting the Johnson Bayou Gas Unit and the H–5 Sand Unit. In September 1975, when Ruling 1975–15 was issued, General American recalculated a single BPCL each month for each unit, and on the basis of the unit BPCL's recomputed the amounts of new and released crude oil for each month during the period September 1973 through December 1975. When General American provided its purchaser, Scurlock Oil Company (Scurlock), with revised certifications of its first sales of crude oil during this period, Scurlock, relying upon its interpretation of 10 CFR 212.72, refused to accept General American's adjustments in its new and released crude oil certifications for any period preceding the two months prior to the receipt of the recertifications.

General American, however, contends that the recertifications are not only proper, but are required under the circumstances. That contention is based on General American's premise that Ruling 1975–15 requires all units formed during or after 1972 to calculate a BPCL by aggregating the production and sale of crude oil each month from all of the several leases that constitute the unit. Accordingly, General American argues that Ruling 1975–15 fits within the exception (set forth in § 212.72) to the general prohibition against retroactive recertification beyond a two-month period.

### *Issue*

Does the interpretation in Ruling 1975–15 regarding the proper method for determining upper and lower tier crude oil volumes from unitized properties permit General American retroactively to recertify increased volumes of new and released crude oil without regard to the two-month limitation set forth in § 212.72?

### *Interpretation*

For the reasons set forth below, the Department of Energy has concluded that General American must adhere to the two-month limitation in § 212.72 for purposes of retroactively recertifying crude oil produced and sold from its H–5 Sand Unit and Johnson Bayou Gas Unit.

Subpart D of the Mandatory Petroleum Price Regulations contains the provisions applicable to first sales of domestic crude oil. During the period relevant to this interpretation, these provisions generally consisted of a two tier price system which established ceiling prices in first sales of domestic crude oil depending upon whether the crude oil was classified as "new," "old," "released," or "stripper well" crude oil.

The concept of new crude oil originated with the adoption of the two tier price system by the Cost of Living Council (38 FR 22536; August 22, 1973), and was later incorporated by the Federal Energy Office into the Mandatory Petroleum Price Regulations (39 FR 1924; January 15, 1974).[1] As it originally appeared in the CLC Phase IV regulations (at 6 CFR 150.354) and the FEO Mandatory Petroleum Price Regulations (at 10 CFR 212.72), "new crude petroleum" was defined as "the total number of barrels of domestic crude petroleum produced and sold from a property in a specific month less the base production control level for that property." 38 FR at 22538 (August 22, 1973); 39 FR at 1952 (January 15, 1974).[2] The new crude oil concept thus was designed to provide an incentive for producers to increase production above 1972 levels; this was implemented initially by permitting first sales of new crude oil to be made without regard to the ceiling price rule. More recently, this incentive has been preserved in § 212.74(a), which permits first sales of new crude oil at upper tier ceiling prices. Thus, crude oil producers were permitted under these regulations (6 CFR 150.354 and 10 CFR 212.72) to sell at new crude oil prices those volumes of crude oil produced and sold in excess of a particular property's BPCL.[3] An essential element of this pricing scheme has always been the requirement that a producer certify to its purchaser the volumes of a property's crude oil production. Although the certification requirements have changed along with revisions in the pricing regulations for crude oil, they have always required a statement of either the ceiling price of the crude oil or the posted prices from which the ceiling price is derived, and a statement of the volumes of new, old, or released crude oil.[4]

Effective March 23, 1975, the FEA amended the definition of new crude oil in § 212.72 by limiting to two months the extent to which a producer may retroactively recertify any volumes of crude oil as new or released. 40 FR 28447 (July 7, 1975). Prior to this amendment, producers could recertify as new or released any crude oil volumes not previously certified as such, without regulatory limitations on the retroactive effect of the recertifications. To minimize the instability and disruption such retroactive recertifications impose upon the petroleum industry, the FEA amended § 212.72 to provide:

"New crude oil" shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period

[6] It is well established by DOE interpretations that consent to terminate a supplier/purchaser relationship can be given in advance. *See, e.g., State of Alaska,* Interpretation 1977–7, 42 FR 31143 (June 20, 1977); *Alaska Petrochemical Company,* Interpretation 1978–1, 43 FR 5797 (February 10, 1978); and *The Permian Corporation,* Interpretation 1978–45, 43 FR 34436 (August 4, 1978). In *Permian,* the DOE determined that as a condition precedent to the sale of crude oil, a supplier could require a purchaser to agree that any future termination of their supplier/purchaser relationship be deemed to be by mutual consent and that such advance consent, when *express* and *knowing,* did not violate § 211.63(a). The DOE need not address the issue of whether Arizona Fuels expressly and knowingly consented in advance to terminate its supplier/purchaser relationship with Comp-Cal, as the termination clause on its face does not meet the requirements of § 211.63(d)(1).

[1] The Federal Energy Office (FEO) was a predecessor agency of the Department of Energy.

[2] The definition of BPCL remained substantially unaltered from September 1973 through December 1975, the relevant time period under consideration for the purposes of this interpretation. In January 1974, the FEO incorporated into the Mandatory Petroleum Price Regulations the definition of BPCL, which formerly appeared at 6 CFR 150.354 of the CLC Phase IV regulations. That definition as it appeared in 10 CFR 212.72 of the FEO regulations read as follows:

"Base production control level" for a particular month for a particular property means:

(1) if crude petroleum was produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in the same month of 1972;

(2) if domestic crude petroleum was not produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in 1972 divided by 12.

[3] For a more complete discussion of the two tier price system, see Ruling 1977–1, 42 FR 3628 (January 19, 1977).

[4] For a summary of the various changes the certification requirement has undergone, see 41 FR at 36182–83 (August 26, 1976).

immediately succeeding the month in which the crude oil is produced and sold, *except where such recertification is required or permitted by FEA order, interpretation, or ruling.* (Emphasis added.)

*Id.* at 28448. As emphasized above, an exception to the general two-month limitation on retroactive recertifications is allowed where the recertification is either required or permitted by FEA order, interpretation, or ruling.

The exception to the two-month limitation on retroactive recertification in § 212.72 was discussed in the preamble to the final rulemaking adopting the amended definition of new crude oil. As FEA explained:

The modification to that proposal takes into account and explicitly provides for the possibility that certain volumes of crude oil treated as old oil *may subsequently be eligible* for treatment as new or released crude oil by virtue of a later FEA order, interpretation or ruling. Thus, the regulation issued today expressly permits a recertification in such circumstances after the expiration of the two-month certification period. It is not anticipated that significant volumes will be affected, but inclusion of this provision was determined to be required by considerations of administrative fairness. (Emphasis added.)

40 FR at 28447 (July 7, 1975). Thus, the exception was intended to apply where volumes that had originally been treated as old crude oil subsequently became eligible for treatment as new or released crude oil as a result of later agency action. (Although a subsequent modification of the exception language (see n. 3 *supra*) added the word "explicitly," this change only emphasized the initial agency intention that recertification beyond the two-month limitation be required or permitted by FEA order, interpretation, or ruling.)[5]

On August 31, 1975, the FEA for the first time in the context of an interpretive ruling expressly addressed the pricing of first sales of crude oil produced from a unitized property, and clarified the proper computation of a BPCL for a unitized property. In its request for interpretation, General American asserts that Ruling 1975–15 constitutes a ruling that "requires" or "permits" recertification of crude oil beyond the two-month limitation expressed in § 212.72, and thus brings into play the exception to the two-month rule.

General American's reading of the exception, however, ignores both the language of § 212.72 and the policy underlying the exception as well as the rule. Section 212.72 clearly indicates that the exception applies only where "*such recertification* is required or permitted" by FEA ruling. (Emphasis added.) The policy behind § 212.72 supports this literal reading of the regulation. If General American's view were correct, then every ruling or interpretation of Subpart D would allow retroactive recertification, and the exception would supplant the rule. Nothing in Ruling 1975–15 "requires" or "permits" a producer to recertify volumes of new or released crude oil erroneously certified as old crude oil prior to the issuance of the Ruling. Moreover, the preamble to the final rulemaking adopting the pertinent language in § 212.72 makes clear that its application was intended for volumes of old crude oil that "may *subsequently be eligible* for treatment as new or released crude oil." (Emphasis added.) *Supra.* The exception was therefore not intended to apply to volumes of crude oil that were previously eligible for treatment as new or released crude oil, but were treated otherwise because of an erroneous interpretation of the regulations. General American as a crude oil producer has a duty to be cognizant of the application of relevant regulatory provisions to its operations.[6] Ruling 1975–15 was never intended to provide an additional opportunity for producers, such as General American, who had not been cognizant of the operation of the regulations and thereby failed to avail themselves fully of the benefits of the two tier price system, to obtain the highest possible price permitted under the regulations.

Accordingly, since Ruling 1975–15 does not "require" or "permit" recertification of volumes of old crude oil as new or released crude oil, General American may not retroactively recertify the crude oil produced and sold from the H–5 Sand Unit and the Johnson Bayou Gas Unit beyond the two-month limitation set forth in § 212.72.[7]

Issued in Washington, D.C., on August 17, 1979.

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**Interpretation 1979–20**

*To*: Shell Oil Company

*Regulation Interpreted*: 10 CFR 211.13(c)

*Code*: GCW—AI—Adjustments to Base Period Use

*Facts*

Shell Oil Company (Shell) is the sole base period supplier of aviation turbine fuel to Mountain Oil Company (Mountain), a branded Shell jobber. Shell has arranged to supply Mountain through an exchange agreement between Shell and Chevron USA, Inc. (Chevron). Pursuant to that agreement, Mountain obtains the aviation fuel at Chevron's East Pasco, Washington, terminal.

On January 20, 1977, the Region X office of the Federal Energy Administration (FEA), a predecessor agency of the Department of Energy (DOE), assigned Mountain as the base period supplier of Execuair Airlines, Inc. (Execuair), and ordered Mountain to supply 132,000 gallons per year of aviation turbine fuel to Execuair pursuant to 10 CFR Part 205, Subpart C. On September 16, 1977, the Region X office issued an adjustment order to Mountain pursuant to 10 CFR 211.145(b) and 10 CFR Part 205, Subpart B, increasing the total volume of aviation turbine fuel to be supplied by Mountain to Execuair to 732,000 gallons per year, or 183,000 gallons per quarter. The order provided that it was "effective upon issuance." As provided for in 10 CFR 211.13(c), Mountain was then entitled to receive an adjustment to its base period use from Shell for the full amount of the adjustment received by Execuair. Shell was served with a copy of that order by the FEA. Although Mountain obtained from Chevron in its customary manner the portion of its base period volume allocated for the third quarter, as adjusted by the September 16 order, it did not submit written certification to Shell for this supply obligation until October 28, 1977. Shell then notified Mountain that it would offset the purchases Mountain made from Shell in the third quarter of 1977 that were in excess of Mountain's entitlement to an allocation prior to the September 16 order against Mountain's fourth quarter adjusted base period volume. Shell reasoned that Mountain's failure to certify these additional supply obligations to Shell until October 28, 1977, postponed their effectiveness until that date, notwithstanding the terms of FEA's adjustment order which expressly stated that it was effective on September 16.

*Issue*

Was Shell required to supply Mountain with the adjusted base period volume of aviation turbine fuel commencing September 16, 1977, the effective date of an adjustment order increasing Shell's base period supply obligation to Mountain, even though Mountain did not certify that supply obligation to Shell until October 28, 1977, pursuant to § 211.13(c)?

*Interpretation*

For the reasons set forth below, the DOE has concluded that commencing on September 16, 1977, Shell was obligated to supply Mountain with the volumes of aviation turbine fuel specified in the adjustment order of FEA's Region X office issued and effective on September 16, 1977. This supply obligation was not postponed by Mountain's delay in certifying this obligation to Shell.

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[5] The definition of new crude oil in § 212.72 containing the two-month limitation on recertifications was amended in 41 FR 4931 (February 3, 1976) to provide in part that new crude oil:

. . . shall not in either period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is *explicitly* required or permitted by FEA order, interpretation, or ruling. (Emphasis added.)

[6] *See, e.g., Dixie Gas, Inc.*, 5 FEA ¶ 83,115 (March 30, 1977); *Warrior Asphalt Co. of Alabama*, 3 FEA ¶ 83,247 (June 24, 1976); *Belco Petroleum Co.*, 3 FEA ¶ 83,186 (May 12, 1976); *New England Petroleum Corp.*, ¶ 83,136 (May 2, 1975); and *Carlos R. Leffler*, 2 FEA ¶ 80,640 (July 18, 1975).

[7] Any prices obtained from volumes recertified as new crude oil during the two-month period, however, must comply with the terms of § 212.74(c) regarding retroactive increases in price. That provision states:

No producer may charge or accept a retroactive increase in price for crude oil, other than crude oil which is exempt from this Subpart pursuant to § 212.54 and is sold on September 1, 1976, or thereafter, or crude oil which is exempt from this Subpart pursuant to § 212.55 and is sold on April 5, 1976, or thereafter. Retroactive increase in price means any price charged or offered after the close of the calendar month in excess of the highest price prevailing for that grade of crude oil, in first sales between the producer and the purchaser of the domestic crude oil, during the calendar month in which it was produced and sold.

Section 211.13(c) provides in relevant part:

(1) : . . [A] wholesale purchaser-reseller shall be entitled to receive an adjustment to its base period use whenever . . . (ii) it is notified pursuant to § 205.26(c) of an adjustment granted pursuant to . . . § 211.145(b) to the base period use of a wholesale purchaser entitled to receive an allocation from that wholesale purchaser-reseller, in an amount equal to the increases in the allocation entitlements . . . which the wholesale purchaser-reseller is to supply.

(2) A wholesale purchaser-reseller which is entitled to receive an adjustment to its base period use pursuant to subparagraph (1) above may certify to and shall receive an adjustment to its base period use from its supplier or suppliers in proportion to that part of its base period use received from each supplier.

In light of the September 16 adjustment order which increased its supply responsibilities to Execuair, Mountain sought a corresponding increase in supply from Shell. In its submission, Shell concedes that Mountain may be "entitled" to the adjustment under § 211.13(c)(1), but contends that subparagraph (1) does not by itself provide the basis for an adjustment to a wholesale purchaser-reseller's base period volume. Rather, according to Shell, Mountain would receive an adjustment from the DOE, and Shell's concurrent obligation to supply the increased allocation would arise only after Mountain actually submits a certification to Shell under § 211.13(c)(2). According to Shell, Mountain failed to submit such an upward certification of its adjusted allocation entitlement to Shell until October 28, 1977. Therefore, Shell asserts that Mountain's third-quarter liftings of aviation fuel in excess of its previous base period rights were unauthorized. Shell concludes that because such excess liftings were unauthorized, it is entitled to offset the volume of product it is obligated to supply Mountain during the fourth quarter by the volume "overlifted" by Mountain in the third quarter.

We do not agree with Shell's view regarding § 211.13(c). Formal certification under § 211.13(c)(2) is not a condition precedent to a firm's right to receive an adjustment under § 211.13(c)(1). Section 211.13(c)(2) does not require that a purchaser must first certify its purchase entitlement to its supplier before it may lawfully receive additional quantities of product pursuant to an adjustment order. Rather, that section provides only that a purchaser shall receive the additional product if it has submitted the certification to its supplier. So long as formal certification by a purchaser to its supplier takes place within a reasonable time after issuance of an adjustment order and after its effective date, the purchaser's right to receive an adjustment will not be postponed or destroyed.

In the present case, where the allocated product was in fact already supplied to Mountain by Shell pursuant to the adjustment order, Mountain's formal certification to Shell in the following month was made within a reasonable time. Mountain's certification to Shell in this case did not violate the Mandatory Petroleum Allocation Regulations and did not postpone its right to the adjusted supply of aviation turbine fuel from Shell effective September 16, 1977.

Thus, Shell's obligation to supply Mountain pursuant to an adjustment to the firm's base period volume under § 211.13(c) arose on September 16, 1977, the effective date of FEA's order.

Issued in Washington, D.C., on August 17, 1979.

Everard A. Marseglia, Jr.,

*Assistant General Counsel for Interpretations and Rulings.*

**Interpretation 1979–21**

*To:* Indiana Farm Bureau Cooperative Association, Inc.

*Regulations and Ruling Interpreted:* 10 CFR 212.54; 212.72; Ruling 1977–4

*Code:* GCW—PI—Part 212, Subparts C and D; Definition of Property; Stripper Well Property Exemption

## *Facts*

The Farm Bureau Oil Co., a wholly-owned subsidiary of the Indiana Farm Bureau Cooperative Association, Inc. (the Association), purchases domestic crude oil in first sales from a 240-acre tract in Gibson County, Indiana. The Association has requested an interpretation that the 11 leases that compose the tract constitute a single "property" as that term is used in 10 CFR 212.54 and defined in 10 CFR 212.72. Certain of the producers of crude oil from the leases in question have joined the Association in the requested interpretation.

Each of the 11 leases originally conveyed a partial undivided working interest in the 240 acres and contained the following clause:

If the leased premises are now, or shall hereafter be, owned in severalty or in separate tracts, the premises nevertheless shall be developed and operated as one lease, and all royalties accruing hereunder shall be treated as an entirety and shall be divided among, and paid to, such separate owners in the proportion that the acreage owned by each such separate owner bears to the leased acreage. . . .

During 1965–1966 one operator acquired all 11 leases, nine of which together conveyed a 20 percent undivided working interest, and two of which each conveyed 40 percent undivided working interests. Drilling for and production of crude oil commenced in 1966 on a 50-acre portion of the tract. In 1976 the entire 240-acre tract was certified as a stripper well property pursuant to 10 CFR 212.131, based on production of crude oil from the 50-acre portion during 1975.

In 1977 a dispute arose between the operator and the lessor of a 40 percent undivided working interest concerning the lease which conveyed that part of the working interest. Because this lease (the Kieffer lease) had been the only one of the original 11 to contain a continuous drilling clause, the lessor argued that while the working interest rights conveyed by the other 10 leases might have been held by production from the 50-acre tract, the working interest rights conveyed by the Kieffer lease had not been held by that production and therefore had expired. Inasmuch as the original operator was not successful in negotiating a new lease, the mineral rights were leased to a second operator, who commenced drilling and production of crude oil in 1977.

## *Issues*

1. Is the 240-acre tract the "property" as defined in 10 CFR 212.72?

2. If so, did the property lose its stripper well properly status when a portion of the working interest was subsequently obtained by a second operator?

## *Interpretation*

For the reasons discussed below the Department of Energy (DOE) has determined that the 240-acre tract is the property as defined in 10 CFR 212.72, and the property's status as a stripper well property does not change merely because of the substitution of lessees with respect to the Kieffer lease.

First sale prices for domestic crude oil are determined under the Mandatory Petroleum Price Regulations on a property-by-property basis. "Property" is defined in pertinent part in 10 CFR 212.72 as "the right to produce domestic crude oil, which arises from a lease or from a fee interest." In Ruling 1977–1 [1] the Federal Energy Administration (FEA), a predecessor agency of the DOE, reviewed the relevant legislative history and regulatory background to conclude that the term property "is generally to be understood as synonomous [sic] with the physical 'tract' or 'premises' as to which a working interest is established by an oil and gas lease, or by a fee interest." [2] In certain situations, such as the one presented by the Association for our review, the "right to produce crude oil" is held in undivided shares by various parties, who must participate in the aggregation of those shares before production may begin. FEA addressed these situations as follows:

[V]arious parties may hold partial undivided interests in the right to produce crude oil from a particular tract. Whether voluntarily through a joint operating agreement or other type of agreement, or pursuant to compulsory state regulations, such undivided interests in the right to produce from a tract must typically be aggregated before production can begin. Under such circumstances, no apparent purpose would be served by requiring property delineations to be carried back to the individual partial undivided interests which have been aggregated in order to perfect the right to produce.

Accordingly, the acquisition by one operator of all the undivided shares in the working interest "perfected" the working interest in the 240-acre tract, and the working interest, as thus perfected, defined the property. That the acquisition of the entirety of the working interest was accomplished by way of separate discrete instruments, rather than in a single lease, does not alter this conclusion.

The DOE has interpreted the term "property" as "the right to produce crude oil

[1] 42 FR 3628, January 19, 1977; originally published in other form at 41 FR 36172, August 26, 1976.

[2] A discussion of the legislative history and the regulatory background of the property concept appears in section II, B and C, of Ruling 1977–1.

relating to specific leased premises as described in the lease and not to that right only as vested in a particular lessee."[3] Thus, once defined, and so long as there was no change in the totality of the working interest during 1972, the property continued to be the 240-acre tract despite the substitution of one lessee for another. In *Texaco, Inc.*, the DOE stated:

While it it true that the meaning of "lease" is broad enough in ordinary usage to include the instrument of conveyance itself as well as the piece of land or other property leased, it would be wholly irrational, in the context of the definition of "property" in § 212.72, to interpret "lease" as a reference to a particular lessee's rights under a particular lease. If a "new" property (and thus "new" crude oil) could be created merely through the execution of new leasehold agreements between the same lessor and lessee, or through the substitution of a new lessee, the purpose of the two-tier crude oil pricing system as a production incentive would be quickly circumvented and defeated. The price regulations applicable to producers of crude oil require for their effectiveness a concept of "property" which provides a constant frame of reference for measurement of crude oil production between the base level and the current level. As stated in Ruling 1975-15 (40 FR 40832, September 4, 1975), "the need to compare like quantities, today and in 1972, in order to ensure a meaningful application of the new and released provisions," requires that the "property" be defined by reference to the "property" as it existed in 1972. *Thus, the definition of "property" was not made dependent upon* the continued effectiveness of a specific lease agreement or upon *the rights accruing to any specific lessee.* This provision, in virtually identical form, was among the initial Phase IV petroleum price regulations effective August 19, 1973 (6 CFR 150.361(c)(2)). (Emphasis added.)

42 FR at 61275. *See also Meridian Oil Corporation*, Interpretation 1977-46 (December 19, 1977), 43 FR 1481 (January 10, 1978); *Rustex Oil, Inc.*, Interpretation 1978-5 (February 20, 1978), 43 FR 12852 (March 28, 1978). Therefore, the execution of a new lease in 1977 conveying to a second operator an undivided 40 percent of the working interest did not create a separate or a "new" property for any DOE purpose. Notwithstanding that separate rights and liabilities exist with respect to the present operators, the physical premises subject to the right to produce crude oil is coextensive with the 240-acre tract as it existed in 1972.[4]

Prices charged in the first sale of crude oil produced and sold from any "stripper well property" are exempt from the provisions of Part 212. 10 CFR 212.54(a). As defined in § 212.54(c), a "stripper well property" is a "property" whose average daily production of crude oil per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972. Once a property has qualified, it retains the exemption permanently. *See Rustex Oil, Inc.*, Interpretation 1978-5 *supra*, and *H. H. Weinert Estate*, Interpretation 1978-9 (March 18, 1978), 43 FR 15620 (April 14, 1978). Under the facts presented by the Association, the 240-acre tract qualified as a stripper well property in 1976 based on production of crude oil during 1975. Once qualified, the property retains that exemption for the duration of price controls. Because the execution of a new lease in 1977 did not redefine the property, the 240-acre tract continues to qualify as a stripper well property.

Issued in Washington, D.C. on September 6, 1979.

Everard A. Marseglia, Jr.,

*Assistant General Counsel for Interpretations and Rulings.*

**Interpretation 1979-22**

*To:* Monsanto Company
*Regulations Interpreted:* 10 CFR 211.51, 211.62, 212.31 and 212.82
*Code:* GCW—AI and PI—Definitions of Firm, Refiner; Small Refiner Bias

## *Facts*

On October 1, 1977, the Monsanto Company (Monsanto) and the Continental Oil Company (CONOCO) entered into an agreement (the Monsanto-CONOCO Agreement) creating a joint venture for the primary purpose of operating an ethylene production facility that consists of Monsanto's present ethylene facility located on Chocolate Bayou near Alvin, Texas, a new jointly owned ethylene facility to be completed by 1981, and a new jointly owned feedstock preparation unit also to be completed in 1981. Monsanto, by virtue of its existing petrochemical facility that processes lease condensate, which is defined as crude oil under 10 CFR 211.51 and 212.31, and its production of some refined petroleum products, qualifies as a refiner under 10 CFR 211.62 and 212.81 and is therefore subject to the Mandatory Petroleum Allocation and Price Regulations. CONOCO is a refiner as that term is defined in 10 CFR 212.31.

The joint venture will ultimately involve the manufacture of ethylene and related products and the processing of crude oil into feedstock for the ethylene facility. The project will be divided into two phases. During the first, or construction, phase Monsanto will continue to own, operate and control its existing facility at Chocolate Bayou, but share with CONOCO the profits generated at the facility. During the construction phase, CONOCO and Monsanto will oversee the construction of the new jointly owned facility through a joint management committee. As the new ethylene facility is being constructed, a jointly-owned feedstock preparation unit will be started at CONOCO's Lake Charles, Louisiana refinery site. Upon completion of the new ethylene facility (estimated late 1980 or early 1981), the second, or operating, phase will commence. When all the facilities are complete, the existing and new ethylene facilities and the new feedstock preparation unit will be operated under the control of separate management committees, each with an equal number of representatives from each company.

## *Issue*

During the construction phase of the project, is Monsanto the proper "firm" under the Mandatory Petroleum Allocation and Price Regulations with respect to the operations of the existing ethylene facility located at Chocolate Bayou?

## *Interpretation*

For the reasons set forth below, the Department of Energy (DOE) has determined that under the Mandatory Petroleum Allocation and Price Regulations, Monsanto will continue to be the proper "firm" with respect to the operations of the Chocolate Bayou facility during the construction phase implementing the Monsanto-CONOCO Agreement. This determination is based upon our review of the provisions of the agreement, which provides that Monsanto will retain full title to the existing facility (Section 8.1)[1] and that the facility may be operated at Monsanto's discretion (Section 11).

The issue as phrased by the requesting party is whether Monsanto is the proper "firm" to report the operations of the existing ethylene facility. This reporting requirement, imposed upon all refiners, stems from 10 CFR 211.66, [2] and the relevant definitional section for that subpart defines a refiner as "a firm which owns, operates or controls the operations of one or more refineries." 10 CFR 211.62. The definition of "firm" applicable to the Mandatory Petroleum Allocation Regulations, Part 211 reads as follows:

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The [DOE] may, in regulations and forms issued in this part, treat as a firm: (a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm. 10 CFR 211.51.

For general allocation and price control purposes, DOE has selected the first and most expansive of the four meanings listed above,[3] and has implemented that meaning in 10 CFR Part 212, as well as the report forms required to be filed by all refiners. See instructions to Forms FEO-96 and P-110-M-

[3] *Texaco, Inc.*, Interpretation 1977-42, 42 FR 61274, 61275 (November 4, 1977).

[4] *See Sundance Oil Co.*, Interpretation 1977-1 (February 11, 1977), 42 FR 10964 (February 25, 1977).

[1] Section numbers refer to the Monsanto-CONOCO Agreement, a copy of which was submitted with the request for interpretation.

[2] Section 211.66 requires refiners to report each month to DOE crude oil runs to stills and products produced.

[3] The second and third meanings under the general definition of firm in § 212.31 were used by the Cost of Living Council and the Federal Energy Administration primarily in connection with profit margin regulations that are no longer effective. The fourth meaning has been used only in special circumstances, in connection with the consideration of requests for exception. *Ball Marketing Enterprise*, Interpretation 1977-18, 42 FR 39960 (June 13, 1977) at 39961.

1. *E.g., Northern Natural Gas Co.,* Interpretation 1978–63, 44 FR 3023 (January 15, 1979).

The definition of "firm" found in § 212.31 of the Mandatory Petroleum Price Regulations parallels that in 10 CFR 211.51 and both of these definitions are consistent with the definition of "small refiner" which reads as follows:

"Small refiner" means a refiner, the sum of the capacity of the refineries of which *(including the capacity of any person who controls, or is controlled by, or is under common control with such refiner)* does not exceed 175,000 barrels per day. (Emphasis added.) 10 CFR 211.62.

The element of "control" is therefore a critical factor in any determination of whether Monsanto is the proper firm to report the operations of the existing ethylene facility. Generally, the joint venture established by contract between Monsanto and CONOCO allows each venture party, unless otherwise provided in the agreement, to have a 50 percent interest in the venture, and share equally in the control and direction of, and in the benefits, operating expenses rights and liabilities relating to, the venture (Section 2). Each party must provide one-half of the feedstocks and, in turn, will be entitled to one-half of the products. *Ibid.*

The venture will not hold title to all of the facilities (Section 3.2) and title to inventories of the existing facility must be transferred to the venture as of the date of the agreement (Section 8.3).[4]

The venture will be operated by a management committee to consist of six members, three appointed by and representing Monsanto and three appointed by and representing CONOCO (Section 4). The management committee shall have the power and authority to make major decisions and set policy in regard to the start-up and operation of the new facilities and certain repairs to the facilities and, after first commercial production, the operation of the venture and facilities (Section 4.2). Apparently, the authority of the management committee will be exercised by Monsanto as the operator of the venture and its facilities (Section 10.1). Monsanto will act in that capacity pursuant to either the authority of the management committee or the Agreement (Section 10.1).

Under the terms of the agreement pertaining to the construction phase, Monsanto, contrary to the more general provisions of the Agreement, retains full ownership of the existing facility and the venture will not have any title to or ownership interest in the existing facility, nor any of its capital additions or replacements (Section 8.1). That is, Monsanto may operate the existing facility in the ordinary course of business on behalf of the venture and the venture parties (Section 11). Monsanto's broad discretion in the operation is best described by the language in Section 11 of the Agreement which reads in relevant part as follows;

Monsanto is hereby authorized on behalf of the Venture and the Venture Parties, but in the name of Monsanto, to operate the Existing Business in the ordinary course, to utilize all Existing Business for such purposes, to sell or otherwise consume or use all Products and Inventories, to carry on all manufacturing, purchasing, distribution, administrative and other operations, to provide all Feedstocks, to maintain the Existing Facilities and make repairs thereto, to receive, deposit and give receipts for all payments, to pay all costs and expenses and, in general, to take or cause to be taken any and all actions, make all decisions and otherwise conduct and carry on the Existing Business in such manner and to such extent as Monsanto, in the exercise of reasonable business judgment, may deem necessary or appropriate.

In other words, Monsanto may set operating rates, acquire feedstocks and market all of the products once derived. As a result, CONOCO has none of the prerogatives of control normally associated with ownership. CONOCO has no right to review or have knowledge of the performance of any employee or review customer lists, market studies, or prices (Sections 11.2 and 11.3). Moreover, the agreement specifically states that "Monsanto shall advise and consult with CONOCO's representatives on the Management Committee concerning the major affairs of, or with respect to any material changes in the operation of, the Existing Business . . . but Monsanto shall have the right to make the final decision with respect thereto" (Section 11.3).

Monsanto has in the past and will continue to modernize the existing facility to conserve energy by increasing in natural gas fuel efficiency and improving the utilization of heat from the ethylene cracking process (Section 5). Although Monsanto is to bear and pay all costs for these modernizations (Section 5), with respect to any capital additions to or replacements of the existing facilities, the cost shall be borne in whole or in part by CONOCO, which will then own a proportionate interest in the facility (Section 8.1). This section, as well as Section 14 on capital additions and replacements, are the only two references in the Monsanto-CONOCO agreement to CONOCO's ownership interest in the present facility. Yet the possibility of an interest does not appear to change the management aspect of the venture, as no provision allows for corresponding changes in those operational aspects of the agreement.

As Monsanto accurately points out, the principal cases in which DOE has addressed the issue of "control" and its importance in determining the relevant firm for regulatory purposes are inapposite to the facts presented for our consideration in the present case.[5] CONOCO is not acquiring an ownership interest in the existing ethylene facility and any such interest that arises will result, from later additions to that facility (Section 8.1). Even then CONOCO will not be able to control the operations of the facility as its ownership interest will be limited to any later additions, and Monsanto will retain full authority for the operation of the existing facility (Section 11). CONOCO will not, as in *Enterprise Products,* have veto power over the actions of Monsanto (Section 11.3); CONOCO will not, as in *Tesoro* or *Ball Marketing Enterprise,* have a greater then 50 percent or controlling ownership interest in the facility during the construction phase; and as CONOCO is not able to control the opertions of the existing ethylene facility under the terms of the Agreement, it does not have to report the operations of the facility as one of its refineries. Similarly, CONOCO cannot be considered to have "purchased" the existing ethylene facility in circumstances such as those surrounding transfers of refineries between two firms.[6] Comparing the refinery acquisition situation to the present one, it is clear that CONOCO has not "purchased" the existing ethylene facility. CONOCO does not have an ownership interest in the facility nor does it have the responsibility of operating or controlling its activities.

For the reasons set forth above, we have determined that, consistent with the DOE's Mandatory Petroleum Allocation and Price Regulations, Monsanto is the refiner of the existing ethylene facility during the construction phase and is responsible for reporting its operations as such to DOE.

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

Everard A. Marseglia, Jr.,

*Assistant General Counsel for Interpretations and Rulings.*

[4] [This footnote is exempt from mandatory public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552(b)(5).]

[5] *See Tesoro Petroleum Corp.,* Interpretation 1975–32, (42 FR 23743, August 21, 1975) (Tesoro, a refiner, controlled CORCO, a refiner in Puerto Rico, after Tesoro acquired 38 percent of CORCO's outstanding shares due to the widely dispersed ownership of the remaining shares outstanding); *Enterprise Products Co.,* Interpretation 1975–3, 42 FR 23724 (February 12, 1973) (Enterprise, a propane reseller and two retailers affiliated with Enterprise were found to constitute a single firm because the common owners of the firms protected their control by the veto power they held over any attempts the majority of the board might take toward independent action); and *Ball Marketing Enterprise,* Interpretation 1977–18, 42 FR 39960, (June 13, 1977) (a producer of crude oil and a refiner constituted a single firm based on the producer's greater than 50 percent ownership interest in the refinery).

[6] *See, e.g., Funding Systems Refining Corp.,* 1 DOE ¶ 80,250 (May 16, 1978), where Funding Systems Refining Corporation (Funding) was purported to have purchased one of three refineries owned by Crystal Oil Company (Crystal), a small and independent refiner as defined in § 211.62. Prior to the sale, funding had not engaged in any refining activities. DOE determined that Funding was not a "refiner" as defined in 10 CFR 211.62 and therefore did not qualify to receive entitlements under § 211.67. In reaching its determination, DOE concluded that Funding did not satisfy any of the elements of the definition of "refiner"—to own, operate or control a refinery—because Funding had assumed "minimal risks of ownership." Funding had not made a down payment to Crystal on the purchase price of the refinery, and under the operating agreement, Crystal was not to relinquish total operational control of the refinery to Funding until the full purchase price was paid.

Appendix B.—*Cases Dismissed*

| File No. and requestor | Category | Date dismissed |
|---|---|---|
| A-397—Commonwealth of Pennsylvania. | Price | Aug. 3. |
| A-381—Winnie Pipeline Co. | Price | Aug. 6. |
| A-418—Basin, Inc | Price | Aug. 23. |
| A-419—Basin, Inc | Price | Aug. 23. |
| A-427—Great Southern Oil & Gas Co. | Price | Aug. 28. |
| A-460—Blex Oil, Inc | Price | Aug. 29. |
| A-402—Ben Ritmiller d.b.a. Ben's Service and Donald J. Watson d.b.a. Don's Service. | Price | Aug. 29. |
| A-457—Wright Crowden, Jr. | Price | Sept. 10. |
| A-445—Mountain Fuel Supply Co. | Price | Sept. 11. |
| A-439—Dialcab Taxi Owners Guild; Cloverdale Two Way Radio Taxi Association; and CAB-CA Two Way Radio, Inc. | Allocation | Sept. 20. |

[FR Doc. 79-32402 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 329

### Interest on Deposits; Respecting Disclosure of Withdrawal Penalties

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** On July 30, 1979, the Board of Directors of the Federal Deposit Insurance Corporation ("Board", "FDIC") adopted several amendments to FDIC's regulations. Among those were amendments to the withdrawal penalty provisions which will make early withdrawal from time deposits without penalty mandatory in situations where a depositor has either died or become mentally incompetent. This amendment makes conforming changes in FDIC's regulations, requiring the disclosure of withdrawal penalties to depositors.

**EFFECTIVE DATE:** October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** F. Douglas Birdzell, Senior Attorney, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429 (202-389-4324).

**SUPPLEMENTARY INFORMATION:** On July 30, 1979, FDIC's Board amended Section 329.4(d) of FDIC's regulations (12 CFR 329.4(d)) effective August 1, 1979. That section provides minimum penalties for early withdrawal of funds held in time deposits. Certain mandatory exceptions have been made to the penalty requirements. By virtue of the July 30th amendments, banks will now be required to honor requests for early withdrawal from time deposits where the owner of time deposit funds has either died or been judicially declared mentally incompetent. Because of these mandatory exceptions, it is necessary to make conforming changes in the penalty disclosure provisions of Part 329 as embodied in § 329.4(f) of the regulations (12 CFR 329.4(f)).

The amendment contains no requirements that depositors with outstanding time deposits be advised of the mandatory nature of the death and incompetency exceptions. It requires notification only when time deposit contracts are first entered into or when they are renewed or extended. Nevertheless, insured nonmember banks should be aware that they have an obligation to disclose the mandatory nature of the death and incompetency exceptions to current depositors because these exceptions are retroactive and apply to existing at well as future time deposit contracts. The bank is free to use whatever form or notice best suits its operations and with due regard for minimizing administrative costs.

Under its authority in Sections 9 and 18 of the Federal Deposit Insurance Act (12 U.S.C. 1819 and 1828), FDIC hereby amends § 329.4(f) of its regulations. The requirements of Sections 553(b) and 553(d) of Title 5 of the United States Code (5 U.S.C. 553(b) and 553(d)) and §§ 302.1, 302.2 and 302.5 of FDIC's regulations (12 CFR 302.1, 302.2, and 302.5) respecting notice, public participation and deferred effective date were not followed in connection with the adoption of this amendment because the amendment is a technical and conforming amendment.

Section 329.4(f) of FDIC's regulations and footnote 11c thereto are revised as follows:

**§ 329.4 Payment of time deposits before maturity.**

* * * * *

(f) *Disclosure of penalty.* At the time that a bank enters into, renews or extends a time deposit contract with any depositor, unless it has previously done so, it shall provide the depositor with a separate written statement which clearly states that the deposit may not be withdrawn in whole or in part prior to maturity without the consent of the bank except where the depositor has died or has been judicially declared mentally incompetent. The statement shall make clear that in the case of the depositor's death or mental incompetency, the bank will be required to honor a request for withdrawal prior to maturity without penalty. In addition, the statement shall clearly state that in all other cases, withdrawal prior to maturity will be permitted only with the consent of the bank which may be given only at the time withdrawal is sought, and that a penalty will be assessed on the amount withdrawn. In addition, the statement shall clearly describe the penalty, which shall, at a minimum, be the penalty prescribed in paragraph (d) of this section.[11c]

Dated: October 15, 1979.

* * * * *

By Order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 79-32384 Filed 10-17-79; 8:45 am]

BILLING CODE 6714-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 124, 125, 126, and 127

**[Part 125—Rev. 1]**

### Procurement Assistance; Assistance to Small Business in Federal Contracting Programs

**AGENCY:** Small Business Administration.

**ACTION:** Final rules.

**SUMMARY:** These final rules implement the Small Business Act as amended by Pub. L. 95-507 with respect to programs rendering assistance to small businesses in Federal prime and subcontracting. Additionally, they are designed to eliminate obsolete functions and unnecessary regulations while at the same time updating, simplifying and clarifying the activities currently operational in the various programs to assist small businesses pursuing and engaged in Federal contracting other than that covered in Part 124 (The Small Business and Capital Ownership Development Program).

**EFFECTIVE DATES:** October 19, 1979.

[11c] This paragraph does not apply to "obligations other than deposits" that are otherwise subject to the provisions of this Part 329 (see 12 CFR 329.10(a)).

**FOR FURTHER INFORMATION:** Edward N. Odell, Deputy Director, Office of Procurement and Technical Assistance, Small Business Administration, 1441 L St. N.W., Washington, D.C. 20416—(202) 653–6332.

**SUPPLEMENTARY INFORMATION:**

Comments on the regulation as proposed in 44 FR 33884, June 13, 1979, were invited and considered. Certain editorial changes have been made. For the most part additions recommended were of the type generally promulgated to standardize operating procedures rather than appropriately contained in regulations. Modification of regional processing of Certificates of Competency was adopted as suggested. The duties of the Procurement Center Representative were broadened in response to another recommendation.

Previously 13 CFR Part 124 contained rules and regulations covering programs designed to render management, technical, and procurement assistance. The latter included the business development program for companies owned and controlled by socially or economically disadvantaged individuals. To be in consonance with the organizational changes mandated by Pub. L. 95-507 amending the Small Business Act as well as to reflect internal administrative reorganizations, 13 CFR Part 124 was used to cover the business development program cited above. Management and some technical assistance programs regulatory coverage was designated as 13 CFR Part 129. Procurement Assistance is now being presented as 13 CFR Part 125.

The provisions contained in Part 124.8(b) 1 and 2 are now covered by Part 125.4, 6, 8 and 10. Part 124.8(b)3 has been elminated as obsolete. Part 124.8(b) 4 through 12 (excepting 124.8(b)6) are now contained in Part 125.6 through .9. Part 124.8(b)6 is properly part of the Size Standard Regulation and is covered in Part 121. The matter covered by Part 124.8–3 dealing with management assistance is properly located under Part 129. Part 124–5 and 6 have been eliminated as obsolete while Part 124.8–4, is now to be found under Part 125.6. Part 124.8–7 is covered in Part 129 entitled Management Assistance. Part 124.8–7 through 17 is now contained in Part 125–5 through 10. What was previously entitled "Part 125—Research and Development Assistance" is now covered under Part 125.10. "Part 126—Defense Production Pools" is presented now under 125.7. "Part 127—Joint Set-Asides" is covered in Part 125.6 and .8.

Accordingly, pursuant to authority contained in Section 5(b)(6), of the Small Business Act (72 Stat. 385, 15 U.S.C. 634) as amended, the title of Part 124, Chapter I, Title 13 of the CFR is amended to read: Minority Small Business and Capital Ownership Development Assistance; and Sections 124.8–1 through 124.8–17 of Part 124 are hereby deleted. Additionally, Parts 126 and 127 are hereby deleted in their entirety and the part numbers are reserved for future use.

## Title 13—Minority Small Business and Capital Ownership Development Assistance

## PART 124—PROCUREMENT AND TECHNICAL ASSISTANCE

§§ 124.8–1 through 124.8–17 [Deleted]

## PART 126—DEFENSE PRODUCTION POOLS [Deleted]

## PART 127—JOINT SET-ASIDES [Deleted]

Pursuant to authority contained in Sections 8 and 15 of the Small Business Act, as amended by Pub. L. 95–507 (October 24, 1978), notice is hereby given that SBA amends Chapter I, Title 13, Part 125 of the Code of Federal Regulations to read as published below.

Dated: September 28, 1979.

A. Vernon Weaver,
*Administrator.*

## PART 125—PROCUREMENT ASSISTANCE

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Authority: Secs. 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631).

### § 125.1 Policy.

It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. The Small Business Administration will aid, counsel and assist, insofar as is possible, small business concerns to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for equipment, materials and supplies; maintenance, repair, construction and architect-engineer services; research, development, test and evaluation) are placed with small business enterprises; to insure that a fair proportion of the total sales of Government property be made to such enterprises; and to maintain and strengthen the overall economy, well-being and security of the Nation.

### § 125.2 Definitions.

For purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small Business" means a business which qualifies as a small business under the small business size standards requirements, Part 121 of this Chapter and includes small concerns owned and controlled by socially and economically disadvantaged individuals under the definition thereof in Part 124 of this chapter.

(d) The terms "procurement" and "acquisition" are used interchangeably throughout.

(e) The term "Federal agency" as used herein does not include the United States Postal Service or the General Accounting Office.

(f) The term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

### Procurement Assistance

### § 125.3 Introduction.

The regulations in this part implement the procurement assistance programs of the Small Business Administration. The Office of the Associate Administrator for Procurement Assistance establishes SBA policy for, and directs the nationwide operation of (currently) five major programs: Certificate of Competency; Prime Contracts Assistance; Property Sales Assistance; Subcontracting Assistance; and Technology Assistance. The five programs are involved in aiding small business firms to obtain a fair share of Federal Government procurement contracts and subcontracts, and Federal Government resources.

### § 125.4 Statutory provisions summarized.

SBA procurement assistance is authorized, as of the date of this

regulation, under Sections 8(b) (15 U.S.C. 637(b)), 8(d) (15 U.S.C. 637(d)), 9 (15 U.S.C. 638), 11 (15 U.S.C. 640), 14 (14 U.S.C. 643), 15 (15 U.S.C. 644), 222 (41 U.S.C. 405(a)) (40 U.S.C. 401 note), and 223(a) (15 U.S.C. 637(b)) of the Small Business Act, as amended.

(a) 8(b) authorizes the SBA—

(1) To provide procurement and technical assistance to small business concerns, by advising and counseling on matters in connection with Government procurement (including certain Federal prime contractor procurement) and property disposal and on policies, principles, and practices of Federal Government acquisition;

(2) To obtain from any Federal department, establishment or agency engaged in procurement or in the financing of procurement or production, or in the disposal of Federal property, such reports concerning the letting of and compliance with contracts and subcontracts, solicitations of bids or proposals, time of sale, or otherwise as it may deem appropriate in carrying out its functions under the Small Business Act, as amended;

(3) To certify to Government procurment officers, and officers engaged in the sale and disposal of Federal property with respect to all elements of responsibility including but not limited to the competency, capability, capacity, credit, integrity, perseverance and tenacity, of any small business concern or group or such concerns to perform a specific Government contract;

(4) To review a Government procurement officer's finding that an otherwise qualified small business concern may be ineligible due to the provisions of Section 35(a) of Title 41, United States Code (the Walsh-Healey Public Contracts Act);

(5) To make a complete inventory of all productive facilities of small business concerns or to arrange for such inventory to be made by any other Governmental agency which has the facilities;

(6) To assist small business concerns to obtain Government contracts for research and development; to assist small business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; to provide technical assistance to small business concerns to accomplish this purpose; and to insure that a fair proportion of Government contracts for research and development be placed with small business concerns;

(b) Section 8(d) authorizes the SBA—

(1) To review solicitations requiring the submission of subcontracting plans to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and submit findings which shall be advisory in nature to the appropriate Federal agency;

(2) To assist Federal agencies and businesses in complying with their subcontracting responsibilities (sec. 8(d) of the Small Business Act, as amended), including the formulation of subcontracting plans for contracts to be let pursuant to the negotiated method of procurement;

(3) To obtain reports from Federal prime contractors and subcontractors demonstrating the extent of compliance with the contract provisions for small and disadvantaged subcontracting;

(4) To evaluate compliance with subcontracting plans, either on a contract by contract basis or in the case of contractors having multiple contracts, on an aggregate basis;

(c) Section 8(d) provides—

(1) That each Government procurement prime contract and any amendment or modification thereto, and each subcontract let thereunder, which may exceed $1,000,000 in the case of construction projects or $500,000 in every other case, except those which (i) will be performed entirely outside of any State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; (ii) are for personal services; or (iii) are awarded to small business concerns; shall contain a mandatory provision for timely submission by the apparent successful bidder or offeror of an acceptable subcontracting plan that reflects maximum practicable opportunities for participation by and utilization of, to the fullest extent consistent with efficient contract performance, small and small disadvantaged business concerns to perform subcontracts to be let thereunder;

(2) That any contractor or subcontractor who fails to comply in good faith with the mandatory subcontracting provisions of a Government procurement contract or subcontract thereunder shall be found in material breach of such contract or subcontract;

(d) Section 9 authorizes the SBA—

(1) To consult with and make recommendations to all Government agencies for the purpose of providing small business concerns assistance, including technical assistance, to obtain (i) Government contracts for research and development, and (ii) the benefits of research and development performed under Government contracts or at Government expense; and to conduct studies, with the cooperation of Government agencies, of Government procurement or funding of research and development effort;

(2) To assist and encourage small business concerns to jointly undertake programs for research and development through such corporate or other mechanism appropriate for the purpose and to approve, after consultation with the Chairman of the Federal Trade Commission and with prior authorization of the Attorney General, any agreement between small business firms providing for such a joint program.

(e) Section 11 provides—

(1) That small business concerns may be authorized and encouraged, if found to be in the public interest as contributing to the national defense, to enter into voluntary agreements and programs to form Defense Production Pools for the purpose of furthering the objectives of the Small Business Act;

(f) Section 14 authorizes the SBA—

(1) To make a fair charge for the use of Government-owned property, as and to the fullest extent it deems practicable, and to make and let contracts on a basis that will result in recovery of the direct costs which it incurs in so doing;

(g) Section 15 provides—

(1) That small business concerns shall be awarded any Government procurement contract, or any part thereof, and any contract for the sale of Government property, as to which it is determined by the SBA and the procurement or disposal contracting agency to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, (iii) assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns, or (iv) assuring that a fair proportion of the total sales of Government property be made to small business concerns; and, that any failure of the SBA and contracting agency to reach agreement shall cause the SBA Administrator to submit the matter to the Secretary or head of the appropriate department or agency for determination;

(2) That the head of each Federal agency will provide the SBA a report at the conclusion of each fiscal year on the extent of participation by small business concerns, and by small disadvantaged business concerns in procurement contracts, which report shall contain the rationale and justification for any failure by the Federal agency to meet

established goals, for review, consolidation and submission to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives;

(3) That separate goals for the participation by small business concerns and small disadvantaged business in Government procurement contracts and subcontracts thereunder shall be established annually by the head of each Federal agency following consultation with the SBA, and that the Administrator of the Office of Federal Procurement Policy shall establish the goal whenever there is disagreement between a Federal agency head and the SBA;

(4) That exclusive small business set-asides are authorized for government procurements of architect and engineering services, and research, development, test and evaluation;

(5) That each Government contract for procurement of goods or services which has an anticipated value of less than $10,000 and is subject to small purchase procedures shall be set aside exclusively for small business concerns unless the contracting officer is unable to obtain competitive offers from at least two small business concerns;

(6) That a method of prompt payment to contractors which also minimizes paperwork shall be employed whenever circumstances permit for Government procurement contracts effected under small purchase procedures;

(7) That an 'Office of Small and Disadvantaged Business Utilization' shall be established in each Federal agency having procurement powers, and that management of such office shall be vested in an employee of each such agency who shall be known as the 'Director of Small and Disadvantaged Business Utilization' and who shall—

(i) Be appointed by the head of such agency, and be responsible only to, and report directly to, the head of such agency or to his deputy,

(ii) Be responsible for implementation and execution of the Federal agency's functions and duties under Sections 8 and 15 of the Small Business Act, as amended, and have supervisory authority over such agency personnel to the extent of their functions and duties thereunder,

(iii) Cooperate and consult on a regular basis with the SBA relative to carrying out the Federal agency's functions and duties under Sections 8 and 15 of the Small Business Act, as amended, and

(iv) Assign to each acquisition activity within such Federal agency, to which the SBA has a procurement center representative assigned, a small business technical adviser (A) who shall be a full-time employee of the activity and well qualified, technically trained and familiar with the supplies or services purchased at the activity, and (B) whose principal duty shall be to assist the assigned SBA procurement center representative in carrying out his duties and functions relating to Sections 8 and 15 of the Small Business Act, as amended;

(h) Section 222 of Pub. L. 95–507 provides—

(1) That, in formulating Federal procurement procedures which govern the acquisition process for all Government procurement requirements, the Administrator of the Office of Federal Procurement Policy shall, in consultation with the SBA, conduct analyses of the impact on small business concerns;

(2) That the forthcoming Federal Acquisition Regulation directed by Pub. L. 93–400 incorporate revised Government procurement regulations which provide for simplified bidding, contract administration, and contract performance procedures for small business concerns;

(i) Section 223(a) of Pub. L. 95–507 provides—

(1) That any small business concern shall be provided upon its request, in connection with any Government procurement contract to be let by any Federal agency, except in the case of contract (i) which will be performed entirely outside any State, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, or (ii) which is for personal services—

(A) The applicable bid set and specifications,

(B) The name and telephone number of an employee of such agency to answer questions with respect to such contract, and

(C) Adequate citations to each major Federal law or agency rule with which small business concerns must comply in performing such contract.

## Office of Procurement and Technical Assistance

### § 125.5 Certificate of competency program.

The Certificate of Competency program is authorized under Section 8(b)(7)(A), (B), and (C) of the Small Business Act. A Certificate of Competency (COC) is a written instrument issued by SBA to a Government contracting officer, certifying that a small concern (or group of such concerns) named therein possesses the responsibility and/or eligibility to perform a specific Government procurement (or sale) contract.

#### Issuance

(a) Government procurement officers, and officers engaged in the sale and disposal of Federal property, upon determining and documenting that a small business lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, perseverance, and tenacity, notify SBA of such determination. Award is withheld by the contracting officer for a period up to 15 working days following the date of receipt by SBA of notice of such determination (with appropriate documentation) in order to permit SBA to investigate the elements referred and certify as to the bidder's responsibility with respect to the elements referred.

(b) Upon receipt of this notification, SBA personnel then contact the company concerned to inform it of the impending decision, and to offer an opportunity to apply to SBA for a COC. A concern wishing to apply to SBA for a COC advises the SBA regional office for the geographic area within which the concern is located. Upon timely receipt of required documentation, a team of SBA personnel is sent to the firm to investigate the responsibility of the applicant as to the specific elements of responsibility referred to SBA and make recommendations to the Regional Administrator.

(c) If the Regional Administrator's decision is negative, the COC is denied and both the firm and procuring activity are notified. If the Regional Administrator's decision is affirmative and the procurement is less than $500,000, the Regional Administrator issues a COC. Contracting officers will be informed in advance of issuing. For procurements in excess of $500,000, if the Regional Administrator recommends issuance of the Certificate, the Associate Administrator for Procurement Assistance, SBA Central Office, causes a review to be made and either issues or denies the Certificate. If the Associate Administrator's decision is negative, the firm and procuring activity are so informed; if affirmative, a letter, certifying the responsibility of the firm as to the elements of responsibility referred (the Certificate of Competency) is sent to the procuring activity and the applicant informed of such issuance by the regional office. By terms of the Small Business Act, as amended, the COC is conclusive as to responsibility. Contracting officers are directed to award a contract without requiring the

firm to meet any other requirement with respect to responsibility.

(d) The notification to an unsuccessful applicant concern will briefly state the reason for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. However, such conference will be for the sole purpose of enabling the applicant to improve or correct deficiencies and will not constitute a basis for reopening the case in which the Certificate was denied.

(e) After a COC is awarded for capacity or credit and the contract is let to the applicant, SBA keeps a close watch on the progress. Monthly checks are made by SBA field personnel who report directly to the Central Office on the status of the contract. In this way SBA technical assistance is constantly available to the contractor.

(f) A small business concern shall not be eligible for a COC unless it performs a significant portion of the contract with its own facilities and personnel to assure SBA that the bidder is not simply an agent.

(g) A non-manufacturing concern which submits bids or offers in its own name on a set-aside procurement shall not be eligible for a COC unless the end items to be furnished under the contract will be manufactured by a small business concern in the United States. The product of a large business may only be supplied on a non-set-aside procurement and that product and the responsibility of the manufacturer must be acceptable to the procuring activity. The responsibility of the small non-manufacturer is certified, not the large manufacturer. In the event of a tie bid, preference shall be given to the concern supplying the product of a small business.

(h) A Government procurement officer documenting that a small concern is ineligible due to the provisions of Section 35(a) of Title 41, U.S.C. (the Walsh-Healey Public Contracts Act) notifies SBA of such determination. SBA may certify the concern is eligible for the specific contract or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition.

(i) SBA by law issues a certification on the basis that officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let the contract to such concern without requiring it to meet any other requirement of responsibility or eligibility.

### § 125.6 Government prime contracts assistance.

In accordance with specific provisions of the Small Business Act, as amended, the Small Business Administration develops, establishes and implements programs to increase the share of Government prime contracts awarded to small business concerns, including small business concerns owned and controlled by socially and economically disadvantaged individuals; to assist those small business firms having procurement and contract administration problems involving the Federal acquisition agencies; and to assist such concerns to form small business production or research and development pools. Federal acquisition regulations and instructions serve as the procedural vehicle for implementation of the Government's small and small disadvantaged business acquisition policy as declared in the Small Business Act. The effort to increase prime contract awards to small and small disadvantaged business concerns is concentrated in the early stages of the procurement cycle. The SBA has procurement center representatives (PCRs) stationed at Federal installations which have major buying programs. SBA PCRs accomplish their mission in coordination with small business specialists, and with small business technical advisers assigned to Federal acquisition activities, whose principal duties include responsibility for assisting SBA PCRs in the performance of all prime contracting assistance duties and functions emanating from the Small Business Act, as amended. The SBA Government Prime Contracts Assistance program is designed to cause the PCRs to carry out the following functions in connection with the acquisition of Federal procurement requirements.

(a) Represent the SBA in all Prime Contracts Assistance matters at Federal acquisition installations;

(b) Screen proposed Government procurements which the acquisition agencies' contracting officials and small business specialists or small business technical advisers do not recommend, including those recommended initially but later withdrawn, for small business set-asides, awards to SBA under Section 8(a), and small business labor surplus area set-asides, as appropriate, for possible set-aside action, either partial or total, by the SBA. In appropriate instances, appeals SBA-initiated set-asides denied by the heads of acquisition activities to the Secretary of the department or head of the agency through the Associate Administrator for Procurement Assistance (AA/PA), SBA Central Office;

(c) Represent the entire small business community to the Federal acquisition agencies and initiates activities necessary to provide an optimum climate for participation in the Government's contracting system;

(d) Review regulations and instructions of Federal acquisition agencies and activities for potential impact on small and small disadvantaged business concerns involved in Government procurement, and make recommendations through the AA/PA for resolutions of provisions deemed prejudicial to small or small disadvantaged business concerns at the highest necessary levels of the acquisition agencies;

(e) Review and evaluate the small business programs of individual Federal acquisition activities, and make recommendations either directly to the activities or through the Office of Procurement and Technical Assistance, SBA Central Office, to the Federal department or agency, which, when implemented, improve program effectiveness and results;

(f) Recommend potential small and small disadvantaged business sources for the contracting agencies' use in their procurement solicitations;

(g) Assist the acquisition agencies and activities in establishment of goals for awards to small business concerns and to small business concerns owned and controlled by socially and economically disadvantaged individuals, and periodically report progress toward attainment thereof to the AA/PA, SBA Central Office;

(h) Sponsor and participate in conferences and training courses, public and Government, designed to provide information and counsel to increase small and small disadvantaged business participation in Government procurement;

(i) Establish local operating procedures at and in conjunction with individual acquisition activities, within policy guidelines and direction of the AA/PA, SBA Central Office, designed to efficiently and effectively utilize Federal agency small business technical advisers in the discharge of their statutory responsibility and performance of their principal duty to assist SBA PCRs in achieving the congressional objective of providing maximum procurement opportunities for small and small disadvantaged business concerns;

(j) Advise, counsel and assist small and small disadvantaged business concerns which are having procurement or contracting problems with an acquisition or contract administration activity;

(k) Advise and guide small and small disadvantaged businesses in doing business with the Government;

(l) Counsel small and small disadvantaged businesses on how to prepare and submit bids and proposals, and obtain prime contracts and subcontracts;

(m) Assist small and small disadvantaged businesses in getting their names placed on bidders' lists; and in obtaining drawings and specifications for proposed purchases, and offer related services, which include supplying leads on research and development projects;

(n) Review terms, conditions and specifications of solicitations for bid or proposal offerings to ascertain, insofar as possible, that maximum contract and subcontract opportunities are afforded to small and small disadvantaged business concerns as required by the Small Business Act, as amended;

(o) Coordinate, as possible, with contracting officials in determining acceptability of proposed subcontracting plans to provide maximum practicable opportunities for small and small disadvantaged businesses; and advise the head of the acquisition activity and AA/PA, SBA Central Office, in cases of disagreement with contracting officials.

(p) Identify procurement requirements for potential contracting action by officials of the Associate Administrator for Minority Small Business and Capital Ownership Development as a result of screening Government procurement requisitions.

**§ 125.7 Defense production pools.**

(a) Defense Production Pools, which involves the voluntary pooling of small business concerns, are authorized for the purpose of furthering the objectives of the Small Business Act. Such pools, if their pooling agreements are approved, enjoy certain immunities from the antitrust laws and the Federal Trade Commission.

(b) An approved pool is treated the same as any other bidder or contractor for procurement purposes. A member of a pool is not precluded from submitting bids or proposals on other procurements but his bid or proposal will not be considered if he has participated in a bid or proposal submitted by his pool. However, the existence of a production pool agreeement may affect the responsibility of a pool member in the consideration of his individual bid or proposal.

(c) To qualify as a pool, the group members must:

(1) Associate for the purpose of procuring contracts—or to effectuate the purposes of the Small Business Act;

(2) Enter into a pool agreement controlling their organization, relationship and procedures;

(3) Secure approval under either the Defense Production Act or the Small Business Act.

(d) Bids or proposals of an approved pool may be submitted by the pool in its own name or by an individual member if the bid or proposal specifies that it is made on behalf of the pool. If a bid is not so submitted, it is not eligible for award. Contracting officers may reply upon a copy of the SBA notification of approval as proof of such approval.

(e) Unincorporated pools, before award of a contract, must furnish a certified copy of a Power of Attorney from each member who is to participate in the performance of the contract. The Power of Attorney must designate an agent to execute the bid, proposal, or contract to the member.

(f) Any group of small business concerns which wishes to form a pool should request the SBA district offices to arrange a meeting. The names and addresses of all such concerns which are considering participation in the pool shall be provided to SBA along with information as to the kinds of business in which they are engaged, and the name of a representative of each participant who should be invited to the initial meeting to be held at the SBA district office. The purpose of the meeting is to explore, with the SBA representative, the desirability of forming a pool, the proposed plan of operation, and related matters.

**§ 125.8 Government property sales assistance program.**

The Property Sales Assistance Program is authorized under Sections 2(a), 8(b), 10(f) and 15 of the Small Business Act.

(a) Pursuant to the statutory requirements of the Small Business Act, the Small Business Administration is charged to insure that small business concerns obtain a fair share of all Federal real and personal property which qualifies for sale or other competitive disposal action. The basic purpose of the program is:

(1) To insure small business concerns obtain a fair share of Government property sales/leases to include, where necessary, small business set-asides.

(2) To provide aid, counsel and other available assistance to small business concerns on all matters pertaining to Government sales/leases.

(b) The Property Sales Assistance Program and its implementation were designed to assure small business the opportunity to bid competitively on Government property being sold or leased. Interagency agreements have been formalized with the Departments of Agriculture, Interior and Defense, and the General Services Administration to provide for cooperative effort in setting aside certain sales of Government property for exclusive bidding of small business concerns.

(c) Specific areas of Government property included in the Property Sales Assistance Program are:

(1) Timber and related forest products

(2) Strategic material from national stockpiles

(3) Royalty oil and leases involving rights to minerals, oil, gas, vegetation

(4) Excess and surplus real and personal property primarily from GSA and DOD sources.

(d) The Property Sales Assistance Program is directed by Central Office staff management and assigned industrial specialists with post of duty at key geographic locations throughout the United States. SBA property sales industrial specialists are charged with the specific, primary responsibility to monitor all Federal timber sales and to require, if necessary, joint set-asides as proposed timber sales to insure a "fair proportion" of sales are offered to small businesses. Specific procedures for determining a "fair proportion" are in accordance with appropriate interagency agreements. Guidelines pertaining to timber sales are further outlined in § 121.3–9 of this chapter. To insure that set-aside timber is processed by small business the provisions of § 121.3–9(b) of this chapter require that the purchasers of preferential Government timber sales agree to the following:

(1) If the timber is being purchased for resale, that it will not sell more than 30 percent (50 percent in Alaska) of the preferential timber to concerns not meeting SBA's small business size standard; and

(2) If the timber is being purchased for manufacture, that it will do so with its own facilities or those of concerns that qualify as small business.

(e) At the time the contract for the sale of Federal timber is executed the selling agency requires execution of SBA Form 723, "Small Business Certification Required on all Preferential Sales of Set-Aside Timber," which becomes a part of the sales contract.

(f) A concern that violates the provisions of a preferential setaside sale agreement may be subject to:

(1) Cancellation of timber sale contract or contracts that have been breached;

(2) Debarment from participating in future Federal timber sales;

(3) Disqualification from participating in future Federal timber sales set aside for small business; and

(4) Criminal proceedings.

(g) When it is brought to the attention of SBA that a purchaser of set-aside timber or logs has appeared to violate the 30 percent (50 percent in Alaska) clause in the size standard for disposal of timber or sawlogs, the industrial specialist, when necessary, shall investigate the circumstances immediately. The purpose of the investigation shall be to ascertain whether said person or concern sold set-aside logs to other than small business in excess of the 30 percent allowable under the size standard regulations.

(h) The program's past efforts have stressed small business involvement primarily in the timber and royalty oil areas. Under the expanded, more fully developed Property Sales Assistance Program, increased emphasis is being placed on the following key areas:

(1) Closer definition of small business constituency which qualify for assistance, and establishment of an inventory of related firms and their capabilities;

(2) Expanded negotiations with various Federal departments and agencies involved to establish specific small business set-aside programs, and to develop mutual operating procedures as necessary to monitor setaside implementation and progress; and

(3) Increased development of energy information relating to mineral leasing and set-asides and access thereto as required for counseling, programming and other assistance to small concerns involved or contemplating involvement in the energy field;

### § 125.9 Subcontracting assistance program.

The Subcontracting Assistance Program is authorized under Sections 2(a), 8(b)(2), 8(b)(3), 8(b)(5), 8(c), 8(d)(1) through 8(d)(11), and 10(f) of the Small Business Act, as amended.

(a) Pursuant to statutory authorities and requirements of the Small Business Act, as amended, it is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. Participation in performance is defined to mean subcontracted goods or services under Federal agency prime contracts.

(b) The Small Business Administration has subcontract specialists throughout the Nation who may assist small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in subcontracing opportunities. Federal prime contracts in excess of $10,000 shall contain the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals."

(c) Federal agency prime contracts in excess of $1,000,000 for construction and $500,000 for all others which offer subcontracting possibilities must contain a subcontracting plan. Small Business prime contractors are excluded. Each subcontracting plan required shall include:

(1) Percentage goals (expressed in terms of total planned subcontracting) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(2) The name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(3) A description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror or bidder will include the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000, in the case of a contract for construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan meeting the basic requirements of the prime contractor's subcontracting plan;

(5) Assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Small Business Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

(d) The failure of contractor or subcontractor to comply in good faith with the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" or any required subcontracting plan in its contract or subcontract shall be a material breach of such contract or subcontract.

(e) The Small Business Administration is authorized to assist Federal agencies and businesses in complying with their responsibilities under subcontracting plans. The SBA may review any solicitation for any contract to be let, which would require a subcontracting plan, to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and submit its findings, which shall be advisory in nature, to the appropriate Federal agency.

(f) The Small Business Administration will evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts on an aggregate basis. In the case of aggregate evaluation of contract plans, a statistical sampling of contracts will be performed to determine compliance or non-compliance. All cases of non-compliance will be referred by SBA regional offices with recommendations for Central Office final decision. Evaluation for compliance will be based upon the complete terms of the contract subcontracting plan. Due to the length of the contract, performance periods and the point of evaluations, compliance or non-compliance may either be interim or final.

(g) At the conclusion of each fiscal year, SBA shall submit to the Senate Select Committee on Small Business and the Committee on Small Business, House of Representatives, a report on subcontracting plans found acceptable by any Federal agency which SBA determines do not contain maximum practicable opportunities to participate in the performance of the contract. In addition, the report will furnish information concerning subcontracting plans found to be in non-compliance.

(h) *Program Operation.* To carry out the Subcontracting Assistance Program, SBA subcontracting specialists are located in regional and district offices throughout the Nation.

(1) Program assistance directly available to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals from SBA personnel is as follows:

(i) Counseling representatives of firms interested in and capable of supplying Government procurement requirements on a subcontract basis;

(ii) Information and assistance on how to develop subcontract opportunities, and in obtaining currently available projects;

(iii) Information concerning subcontract opportunities for selected items, equipment and services being procured by the Government through large business prime contractors and major subcontractors;

(iv) Information and assistance on qualifications required to become eligible for inclusion on potential source listings of large business firms for future subcontract requirements;

(v) Names, addresses and telephone numbers of large business procurement representatives.

(2) SBA subcontract specialists perform the following additional duties:

(i) Assist large business, Government prime contractors and subcontractors, if requested and to the extent of available resources, in the compliance and formulation of contractually required subcontracting plans through the furnishing of potential sources;

(ii) Review subcontracting plans submitted by large business firms to Government contracting officials for approval and inclusion in major prime contracts and subcontracts;

(iii) Evaluate compliance by large business concerns with subcontracting plans incorporated into and made a material part of major prime contracts and subcontracts;

(iv) Evaluation of compliance by all concerns in their adherence to the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals";

(v) Recommend potential small and disadvantaged business sources to large business firms and to Government officials for performance of subcontract requirements under major Government contracts and subcontracts;

(vi) Maintain liaison with and visit large business Government prime contractors and subcontractors to assist, where requested and possible with available resources, in long term procurement plans for the purpose of encouraging increased utilization of small and disadvantaged business concerns as subcontractors;

(vii) Review and evaluate subcontracting regulations, procedures, policies, and instructions for impact on small and disadvantaged business;

(viii) Participate in conferences and training courses, public and Government, which provide information and counsel directed at increased small and disadvantaged business participation in subcontracting for Federal procurement requirement.

(3) The Associate Administrator for Procurement Assistance monitors performance, evaluates effectiveness and issues directives to implement the Subcontracting Assistance Program field operations. Management of the program is accomplished through:

(i) Establishment of program policy and procedural guidance and direction of SBA subcontracting specialists for daily interface with Government and industry officials at the field level to accomplish program objectives;

(ii) Studies and surveys conducted of the methods and practices employed by large business Government prime contractors and subcontractors;

(iii) Review and analysis of subcontracting plan compliance evaluation reports developed by SBA subcontracting specialists and reported to the Associate Administrator for Procurement Assistance; and

(iv) Compile the required reports to Congress.

(i) *Procurement Automated Source System.* The SBA maintains an active Procurement Automated Source System (PASS) the primary basis for recommending potential small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals as sources for both prime and subcontracting. The PASS is a nationwide computerized storage and retrieval bank. Concerns desirous of being included in the PASS should obtain SBA Form 1167, "PASS Company Profile," from the nearest SBA branch, district, or regional office. Instructions for filing are conveniently printed on Form 1167. If assistance should be required, it can be obtained from SBA field offices. The computerized inventory of small and disadvantaged business concerns is used to make referrals for procurements to assist those concerns in being placed on appropriate bidders' lists and for mobilization purposes, if required. Potential procurement opportunities may be local or nationwide. Once registered in the system, the company must update its data once a year to remain in the system. Potential sources may be obtained by small and large business and Government agencies.

### § 125.10 Technology assistance program.

(a) Section 9(a) of the Small Business Act states: "Research and Development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at government expense. These small business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy."

(b) Section 9(b) states: "It shall be the duty of the Administration (SBA), and it is hereby empowered—

(1) To assist small business concerns to obtain Government contracts for research and development;

(2) to assist small business concerns to obtain the benefits of research and development performed under Government contracts or at government expense; and

(3) To provide technical assistance to small business concerns to accomplish the purposes of this section.

(c) Section 9(c) states: "The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section."

(d) *Research and Development (R&D) Procurement Assistance.* (1) SBA will identify and register the capabilities of small R&D firms interested in Government contract opportunities. The procedure for cataloging the pertinent information on these firms will be through registration in the PASS. PASS is a computerized system designed to be instantaneously responsive to the requests of government agencies for the profiles of small firms that would be potential bidders on Government contracting opportunities. SBA will publish an annual directory of R&D firms contained in the PASS, and make appropriate distribution of this directory. SBA will periodically convene conferences with small R&D firms and other Federal agencies for the purpose of increasing the share of Government R&D contracts awarded to small business.

(2) *Procedure.* Small business concerns desiring to register in the PASS program should contact the nearest SBA field office and request a PASS Company Profile Form. The completed profile should be forwarded to the cognizant SBA regional office as described in the registration instructions. Registrations in the PASS program is a no-charge service for participating firms.

(e) *Technology Transfer.* (1) SBA, within existing resources, will assist small firms by identifying and transferring applicable and available technology for purposes which may include product development, process improvement, problem-solving, or state-of-the-art information.

(2) *Procedures.* (i) Small business firms may request technology assistance at any SBA district or regional office. The majority of requests come from small business firms as a result of SBA information flyers which describe the services available. The Reader Service portion of the information flyer is completed by the small firm and forwarded to SBA for action.

(ii) SBA will make every effort to respond initially to these requests within 30 days. Whenever possible, this response will be in the form of personal or telephone contact with the appropriate individual at the requesting firm.

(iii) Where necessary, SBA will assist the firm to clearly and adequately define the problem or request for technical information.

(iv) SBA will locate the requisite technology and provide it to the requesting firm.

[FR Doc. 79-32389 Filed 10-18-79; 8:45 am]

BILLING CODE 8025-01-M

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release No. 34-16278]**

## Interpretive Release Relating to Recordkeeping and Record Production Obligations of National Securities Exchanges and Registered Securities Associations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretive release.

**SUMMARY:** This release confirms: (1) That it is a violation of section 17 of the Securities Exchange Act of 1934 (the "Act"), and Rule 17a-1 thereunder, for any national securities exchange ("Exchange") or registered securities association ("Association") to refuse to furnish to Commission staff members, upon request, copies of any documents made or received by such exchange or association in the course of its business or the conduct of its self-regulatory activities or, alternatively, to refuse to make such documents available for reproduction by Commission staff members; (2) that record destruction plans submitted by an exchange or association to the Commission pursuant to Securities Exchange Act Rule 17a-6 should list only those documents that the exchange or association proposes to destroy prior to the end of the normal five-year retention period required by Rule 17a-1 and that any documents not included in such a plan are subject to the five year retention requirement.

**FOR FURTHER INFORMATION CONTACT:** Nancy H. Wojtas, Division of Market Regulation, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, 202-272-2841.

**SUPPLEMENTARY INFORMATION:**

### Section 17 and Rule 17a-1

On May 17, 1974, the Commission, pursuant to Sections 17(a) and 23(a) of the Act, adopted Securities Exchange Act Rule 17a-1 (17 CFR 240.17a-1), which requires that every exchange and association keep for five years all documents and records made or received by it in the course of its business and in the conduct of its self-regulatory activities.[1]

Rule 17a-1(c) further provides:

> All such documents shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in connection with the exercise of its oversight responsibilities respecting the self-regulatory activities of national securities exchanges and associations. To facilitate the completion of such examinations, such representatives shall be entitled to remove temporarily such documents for reproduction unless a national securities exchange or association makes copies thereof available.[2]

The Commission adopted Rule 17a-1 in order to require exchanges and associations to permit the Commission staff members to examine all documents, which any exchange or association makes or receives respecting its self-regulatory activities, "away from the premises of such an organization" and to "permit the copying of such documents."[3]

The Securities Acts Amendments of 1975 ("1975 Amendments") amended Section 17 of the Act.[4] Section 17(a)(1) of the Act still requires all exchanges and associations, among others,[5] "to make and keep for prescribed periods such records (and) furnish such copies thereof, * * * as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of (the Act)."

Congress, however, added a new subsection (b) to Section 17 which provides that all records of persons enumerated in Section 17(a), including exchanges and associations, are "subject at any time, to * * * reasonable * * * examination by representatives of the Commission * * *." In addition, the legislative history of the 1975 Amendments makes clear that "the authority to examine records would

[1] Securities Exchange Act Release No. 10809 (May 17, 1974), 39 FR 18765 (May 30, 1974).

[2] 17 CFR 240.17a-1(c).

[3] Securities Exchange Act Release No. 10809 (May 17, 1974), 39 FR 18764 (May 30, 1974).

[4] 15 U.S.C. 78q, as amended by Pub. L. No. 94-29 (June 25, 1975).

[5] Section 17(a)(1) applies to "[e]very national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rulemaking Board * * *."

include the authority to make or require copies of such records." [6]

In recent years there have been instances in which exchanges or associations have refused to provide (or have delayed in providing) copies of documents for Commission staff members without a formal Commission request or subpoena. Because of these instances, the Commission wishes to reconfirm publicly its position that Commission staff members are authorized directly, by Section 17 of the Act, to obtain copies of exchange and association records for examination and for removal from their premises. That statutory authorization is unconditional except for the requirement that any such record examination be "reasonable." Accordingly, the Commission expects any exchange or association, as a person subject to Section 17(b) of the Act, to comply promptly with any reasonable staff request for the production of copies of records, for removal from its premises, without requiring a Commission subpoena.

The Commission understands that certain refusals and delays have resulted from concerns regarding possible exchange or association liability to their members for "publishing" confidential or unverified investigatory material in the event that the material is obtained from the Commission by third parties pursuant to a Freedom of Information Act ("FOIA") request.[7] Whatever the merits, if any, of this concern, the refusal to produce Exchange or Association records for reasonable examination and removal by Commission staff members, or any unreasonable delay in producing such documents, would consitute violations of law. Further, the Commission has the power to take appropriate remedial action against any exchange or association that in the future refuses to comply with a reasonable record request made by the staff of the Commission pursuant to Section 17 of the Act and Rule 17a-1 thereunder.

**Rule 17a-6**

In order that exchanges and associations need not be required to keep all the records they generate in the course of their business and self-regulatory activities for the full five-year retention period provided in Rule 17a-1, Rule 17a-6 (17 CFR 240.17a-6) provides that specified documents may be destroyed or converted to another recording medium before the end of the usual five-year retention period if provided for by an exchange or association in a record destruction plan filed with and approved by the Commission.

Eight record destruction plans have been submitted formally to the Commission.[8] The Commission has encountered difficulties in processing certain of those plans. Rule 17a-6 is intended to permit an exchange or association to file a plan designating only those classes of documents for which it is requesting early destruction or conversion to another recording medium. All records or documents not so designated would remain subject to the retention requirement of Rule 17a-1, and no plan need be filed if an exchange or association does not wish to destroy any class of documents in less than five years. Only three of the plans received by the Commission conform to the intended scope. The non-conforming plans purport to list the retention period for all classes of documents maintained by the exchange or association (including those to be retained for five years or more). The most troublesome aspect of certain of these plans is the inclusion of an unacceptable "escape clause" designed to exclude from the plan, and from any retention requirement, those records which the exchange or association determines to be "not necessary in furtherance of the Commission's oversight responsibilities or (the exchange's or association's) self-regulatory responsibilities."

The Commission currently is reviewing all record destruction plans which have been formally filed and will contact each exchange or association regarding the status of its plan. Those plans which conform with the requirements of Rule 17a-6, and which designate documents which the Commission believes to be appropriate for early destruction or conversion, will be approved. The Commission's staff will contact those exchanges or associations whose plans (1) contain "escape clauses," (2) list documents other than those which are to be destroyed or converted to another recording medium before five years, (3) list documents inappropriate for early destruction or conversion, or (4) in other ways fail to comport with the requirements of Rules 17a-1 and 17a-6.

By the Commission.

George A. Fitzsimmons,

*Secretary.*

October 12, 1979.

[FR Doc. 79-32223 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

[6] Report of the Committee on Banking, Housing and Urban Affairs, to accompany S. 249, 94th Cong., 1st Sess., Senate Report No. 94-75, at p. 120. The report describes "examination authority" as being "essential to any effort by the Commission to discharge its responsibilities under the Act."

[7] 5 U.S.C. 552 *et seq.* Where an FOIA exemption is applicable, the Commission, in the exercise of its discretion, may withhold the release of such documents to third parties.

[8] The American Stock Exchange, Inc. ("Amex"); the Boston Stock Exchange, Incorporated ("BSE"); the Chicago Board Options Exchange, Incorporated ("CBOE"); the Cincinnati Stock Exchange ("CSE"); the Midwest Stock Exchange, Incorporated ("MSE"); the National Association of Securities Dealers ("NASD"); the Pacific Stock Exchange Incorporated ("PSE"); and the Philadelphia Stock Exchange, Inc. ("Phlx").

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 1 and 3

[Docket No. RM79-59]

## Rules of Practice and Procedure, and Organization; Operation; Information and Requests; Delegation of Authority

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order denying rehearing of Order No. 38.

**SUMMARY:** The order denies rehearing of Order No. 38, Delegation of the Commission's Authority to Various Staff Office Directors, issued July 23, 1979, insofar as Order No. 38 delegates to the Director of the Office of Enforcement the authority to deny the request of a witness in a formal investigation for a copy of the transcript of his testimony.

**DATES:** Issued September 21, 1979.

**ADDRESSES:** All filings should reference Docket No. RM79-59 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Tom Runge, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8606.

Delegation of the Commission's authority to various staff office directors; Order denying application for rehearing of Order No. 38 by Tenneco Oil Company, Pennzoil Company, Texasgulf Inc., and General American Oil Company of Texas.

September 21, 1979.

A. *Background*

On July 23, 1979, the Commission issued Order No. 38, Docket No. RM79-59 (44 FR 46449; August 8, 1979) making amendments to the Commission rules relating to internal delegations of the Commission's authority. These amendments transfer to the various Commission office directors increased

authority to make decisions on largely ministerial matters, in order to give the Commission a greater chance to more speedily consider significant issues of major importance.

Among the office directors who were delegated greater authority is the Director of the Office of Enforcement. Under new 18 CFR 3.5(h), the Director is given authority to:

"(h)(1) Designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records, in the course of formal investigations conducted by the Office of Enforcement to the extent the Commission's order of investigation expressly provides for the exercise of such investigative powers.

"(2) *Grant or deny requests of persons pursuant to § 1b.12 of this Chapter to procure copies of the transcripts of their testimony taken during non-public investigations* conducted by the Office of Enforcement. [Emphasis added.]

"(3) Terminate any informal non-public investigation conducted by the Office of Enforcement.

"(4) Terminate the authority of officers to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements or other records in the course of formal investigations conducted by the Office of Enforcement." (18 CFR 3.5(h).)

These amendments became effective immediately upon issuance, but comments were nevertheless requested by the Commission.

Subsequently, on August 22, 1979, comments were received from Tenneco Oil Company, Pennzoil Company, Texas Gulf Inc., and General American Oil Company of Texas, together with an application for rehearing of Order No. 38 "insofar as [the order] delegates to the Director of the Office of Enforcement, or the Director's designee, the authority to deny a person's request for a copy of that person's transcript of testimony."

In their specification of error, the applicants note that:

"In the preamble to Order No. 38, the Commission correctly states that decisions of a 'ministerial nature' and of 'limited discretionary decision-making' should be 'delegated downward.' However, the Commission must take care that important rights of parties before the Commission are not compromised by misdefining substantive decisions as ministerial or as limited discretionary decision-making.

"The right of a person to a [copy of his] transcript is an important right going to the presumption in favor of public proceedings. Accordingly, a person's request for a transcript can be denied only for 'good cause.' In an investigatory proceeding, only the Commission itself can properly apply that standard.

"The Director of the Office of Enforcement, or the Director's designee, is often an adversary party to witnesses and their counsel. Investing the power to deny a transcript to a person assuming an essentially adversary position creates a great potential for abuse. Not only can the power be used by the Director or the Director's designee for leverage over a witness, it can also be used for harassment.

"This is particularly the case since there are no limits on the discretion of the Director of Enforcement to delegate the power. Thus, the designee may turn out to be the investigating officer. Allowing that person to determine who should be granted and who should be denied a transcript only aggravates the inherent potential for abuse."

The applicants also point out that "the only justification given by the Commission for the delegation of the power to deny a person's request for a transcript is found in its statement that the 'proposed delegations are closely modeled after similar delegations of investigational power to the Staff of the Securities and Exchange Commission (SEC).'[1] The SEC has not, however, delegated the power to its staff to deny a person's request for a transcript. Instead, the SEC regulations provide that the SEC staff can *grant* a request,[2] but only the SEC itself can *deny* a request.[3] The SEC has thereby recognized that the denial of a person's request for a transcript is not action of a 'ministerial nature.' The Commission should do the same and retain the power of denial."

In conclusion, the applicants urge that "the Commission should, as the SEC has done, retain exclusively to itself the power to deny a person's request for a transcript."

B. *Discussion*

Initially, to narrow the issues somewhat, the Commission notes that there is no dispute here over the right of any witness in any non-public formal investigation to *inspect* a copy of the official transcript of his testimony, or to have the transcript inspected by his counsel. This is in accord with 5 U.S.C. § 555(c), the Administrative Procedure Act, which specifies that:

"A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a non-public investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony."

The statutory test for denial of a copy of the transcript, i.e., "for good cause", is undefined by the Act, but well articulated by the courts in a number of cases:

"The legislative history of the Administrative Procedure Act shows Congress was aware that investigations by the Commission, like those of a grand jury, might be thwarted in certain cases if not kept secret, and that if witnesses were given a copy of their transcript, suspected violators would be in a better position to tailor their own testimony to that of the previous testimony, and to threaten witnesses about to testify with economic or other reprisals. Therefore Congress added to an earlier draft of Section 6(b) of the Administrative Procedure Act, language giving the agencies the authority to deny *for good cause* a witness' request for a transcript of his testimony in a nonpublic investigation." *Commercial Capital Corp.* v. *Securities and Exchange Com'n*, 360 F. 2d 858 (7th Cir. 1966). [Emphasis added.]

This review of the delegation rule, the applicants' comments, and the applicable law makes it clear that here:

—There is no dispute over the power of the Director of the Office of Enforcement to "grant" requests by witnesses to procure a copy of the transcript of their testimony. Only the Director's power to "deny" such a request is in question.

—There is no dispute over the lawful test for such a denial; the test is "good cause", and its purpose is to prevent suspected law violators from acting in concert to "orchestrate" their testimony and frustrate justice.

—There is no dispute over the right of every witness to *inspect* the transcript of his testimony. Instead, the dispute involves only the additional right of a witness to *obtain* a copy of the transcript.

In particular, the narrow issue raised here is, *who* can deny the witness' request for a copy? The Director of the Office of Enforcement (as provided in Order No. 38), or instead, the Commission itself (as the applicants urge)?

In deciding between these two alternatives, it is helpful to compare the practical differences between them:

*Decision by the Office of Enforcement, Under Order No. 38*

At present, the investigating officer is the first official to confront the question of whether a copy of the transcript should be denied to the witness. He makes a recommendation on the matter to an Assistant Director of the Office of Enforcement.

[1] Order No. 38, at 9.

[2] 17 C.F.R. § 200.30-4(2).

[3] *Id.* § 203.6.

If the Assistant Director concurs in the recommendation, he in turn recommends denial to the Director of the Office.

In turn, if the Director concurs in a recommendation for denial, he may deny the transcript request, under 18 CFR 3.5(h)(2).

In that event, the Director's denial is immediately appealable to the Commission, in the same manner as are all other staff determinations made pursuant to delegated authority. Order No. 38 expressly provided for such appeals, by amending 18 CFR 1.7(d), "Appeals from actions of the staff," to permit "any interested *person*," and not merely any *party*, to gain review of a disputed staff decision. Thus, if a witness is denied a transcript of his testimony, any dispute over the denial can be quickly placed before the full Commission. This is, in large part, all that the applicants seek to insure here.

*Decision by the Full Commission*

The course here urged by the applicants would operate in this way: First, a recommendation for denial by the investigating officer; second, a similar recommendation by an Assistant Director of the Office; third, a similar recommendation by the Director to the Commission; fourth, a decision by the full Commission.

C. *Conclusion*

In our view, there is little real difference between these two courses. In either event, the final decisionmaking authority rests in the Commission. We also note, though it is not dispositive here, that to date, in no instance has this Commission ever denied a witness a copy of his transcript "for good cause."

Moreover, we note that the issues involved in a determination to deny a transcript are largely factual in nature. The investigative officer, and his immediate superiors, will ordinarily be in the best position to determine the matter. Nevertheless, a right to review by the full Commission remains to protect the rights of any witness, and we believe that is sufficient for the rare instances in which a denial may be appropriate.

In consideration of the foregoing, the Commission hereby denies the application for rehearing of Order No. 38 filed by Tenneco Oil Company, Pennzoil Company, Texasgulf Inc., and General American Oil Company of Texas.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32205 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## 18 CFR Parts 154, 270, and 283

**[Docket No. RM79-22]**

## Rate Schedules and Tariffs; Rules Generally Applicable to Regulated Sales of Natural Gas; Collection Authority: Refunds; Order Establishing Proceeding Pursuant to Court Order

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order establishing proceeding pursuant to court order.

**SUMMARY:** The order establishes a proceeding, pursuant to the order of the United States Court of Appeals for the Fifth Circuit, to determine which person filed the first petition seeking judicial review of the Commission's orders in Docket No. RM79-22.

**FOR FURTHER INFORMATION CONTACT:** J. Paul Douglas, Office of the Solicitor, Federal Energy Regulatory Commission, Room 8010, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4287.

Before Commissioners: Charles B. Curtis, Chairman,; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

### Order Establishing Proceeding Pursuant to Court Order

Issued: October 11, 1979.

In the matter of amendment and clarification of Interim Regulations Under the Natural Gas Policy Act of 1978 and Regulations Under the Natural Gas Act, Docket No. RM79-22.

On March 13, 1979, the Commission issued Order No. 23 (44 FR 16895 (March 20, 1979)), and, on May 11, 1979, denied rehearing.[1] Immediately upon the issuance of those orders, various persons endeavored to file the first petitions for review of those orders in the United States Court of Appeals for the District of Columbia Circuit,[2] while others tried to file first in the Fifth Circuit.[3] This order establishes procedures to determine which petitioner filed the first timely petitions pursuant the Fifth Circuit's orders.

It is presently difficult to ascertain whether Associated Gas Distributors or Pennzoil Company filed the first petitions after the issuance of the Commission's orders, or whether either or both petitioners filed prematurely, i.e., prior to the issuance of the orders. To resolve this impass which prevents the review proceedings from going forward,[4] the Fifth Circuit, by order entered July 19, 1979,[5] pursuant to its Rule 11.5,[6] as modified by an order of August 31, 1979,[7] directed the Commission "to make the ultimate factual finding of which party was first to file after [the Commission] issued the [May 11 Order]" (July 19 Order at 1) and "which party was first-to-file after the time stamping of Order No. 23." August 31 Order at 2.[8] Specifically, the Commission is to "find which party actually filed first"[9] and "whether either party filed prematurely, i.e., before [Order No. 23 or] the Order on Rehearing of Order No. 23 was stamped by the Commission." Order at 2 n.3.

The Commission will refer this matter to the Chief Administrative Law Judge, who may designate an Administrative Lay Judge to hear the matter, to conduct such proceedings as he considers necessary to make the findings called for by the Fifth Circuit's orders, prepare a report containing such findings, and transmit that report and record made to the Commission for such further consideration as it finds appropriate. Unless otherwise ordered by the Commission, the parties to this proceeding will not be permitted to file exceptions to the presiding Judge's report.

The purpose of the proceedings conducted pursuant to this order is to determine only which petitioner(s) filed the first petitions for review, not which Court of Appeals should hear these cases. As 28 U.S.C. 2112(a)[10] plainly

[1] This order denying rehearing will be referred to herein as the "May 11 Order."

[2] *Associated Gas Distributors* v. *FERC*, Nos. 79-1276 and 79-1490 (D.C. Cir.).

[3] *Pennzoil Company, et al.* v. *FERC*, Nos. 79-1247 and 79-1602 (5th Cir.).

[4] E.g., *Shell Oil Co.* v. *Federal Power Commission*. 509 F. 2d 176, 177 (5th Cir. 1975).

[5] A copy of this order is attached as Appendix A.

[6] Rule 11.5 provides: Any party who raises an issue as to venue shall immediately move for resolution of that issue and serve a supporting memorandum therewith. Within 10 days of service, opposing parties may serve an opposing memorandum. The Court will expedite its decision on this issue. Any dispute as to priority of institution of proceedings in two or more Courts of Appeal will be referred to the Commission for findings of fact.

[7] A copy of this order is attached as Appendix B.

[8] Previously, on July 16, 1979, the District of Columbia Circuit transferred the petitions in *Associated Gas Distributors* v. *Federal Energy Regulatory Commission, supra*, "to the Fifth Circuit for resolution of the questions of jurisdiction and venue." A copy of this order is attached as Appendix C.

[9] *Air Products & Chemicals, Inc., et al.* v. *Federal Energy Regulatory Commission*, No. 78-2011, order entered July 19, 1979 at 3. A copy of this order is attached as Appendix D.

[10] Section 2112(a) provides in pertinent part: If proceedings have been instituted in two or more

Footnotes continued on next page

indicates, the record is to be filed in that court of appeals in which the first petition for review, and all other petitions transferred to that court; that court may then transfer all petitions to another court of appeals "[f]or the convenience of the parties in the interest of justice * * *." The proceedings conducted pursuant to this order will resolve only the first step of that two-step process [11] for determining which court should hear the petitions for review of the Commission's orders, viz., which petitions were filed first. Resolution of the second step is a matter for the court.

*The Commission orders: (A) Pursuant to the authority contained in, and subject to the jurisdiction conferred on the Commission, by the Natural Gas Act, the Department of Energy Organization Act, the Natural Gas Policy Act, and the Commission's Rules of Practice and Procedure, and in accordance with the order of the United States Court of Appeals for the Fifth Circuit in Pennzoil Company, et al.* v. *Federal Energy Regulatory Commission,* Nos. 79-1247 and 79-1602 (July 19, 1979 and August 31, 1979), a public proceeding shall be conducted for purposes of making the factual findings called for by the Fifth Circuit's orders.

(B) An administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to § 3.5(d) of the Commission's General Rules (18 CFR 3.5(d)), shall conduct such proceedings as he deems necessary and appropriate, prepare a report as described in the body of this order, and certify that report and the record made to the Commission. Unless otherwise ordered by the Commission, the parties shall not be permitted to file exceptions to the administrative law judge's report.

(C) The presiding administrative law judge designated in accordance with ordering paragraph (B) above shall have authority to establish and change all procedural dates and to rule on all motions, as provided in the Commission's Rules of Practice and Procedure.

(D) The proceeding described in ordering paragraph (B) above shall be conducted as soon as possible following issuance of this order.

(E) The Secretary shall cause this order to be published promptly in the Federal Register.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32204 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

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courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

[11] *BASF Wyandotte Corp.* v. *Costle,* 582 F. 2d 108, 110-111 (1st Cir. 1978).

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 891

**[Docket No. R-79-529]**

### Review of Applications for Housing Assistance and Allocation of Housing Assistance Funds

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects a final rule relating to the review of applications for housing assistance and allocation of housing assistance funds published at 43 FR 50638, October 30, 1978.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Freedman, Office of Policy and Program Development, Room 9208, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C., 20410. Telephone (202) 755-6504. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** Part 891, Review of Applications for Housing Assistance and Allocation of Housing Assistance Funds, was published for effect on October 30, 1978 (43 FR 50638). The final rule contained three errors which are being corrected as follows:

1. On page 50645, in the second column, in the second and third lines, in § 891.206(c), substitute "24 CFR, Part 886, Subparts A, B, and C" for "24 CFR, Subparts A, B, and C."

2. On page 50647, in the second column, beginning in the twelfth line, correct § 891.404(c) by substituting "not having a HAP or not participating in an approval AHOP" for "not having a housing opportunity plan."

3. On page 50647, in the second column, beginning in the twenty-third line, correct § 891.404(c)(4) by substituting "shall be proportionate by housing type and household type to the approved Annual Housing Action Programs (which reflect the locality increments to achieve three-year HAP goals), housing needs for non-HAP localities, and goals in AHOPs approved pursuant to Subpart E" for "shall be proportionate by housing type and household type within each tenure type to the three-year goals in the annual housing action program identified in HAPs and goals in AHOPs prepared pursuant to Subpart E and approved by HUD."

Dated: Issued at Washington, D.C. October 15, 1979.

Lawrence B. Simons,

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 79-32398 Filed 10-18-79; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Parts 872, 877, 879, 882, 884, and 886

### Abandoned Mine Land Reclamation Program Provisions

**AGENCY:** Office of Surface Mining, Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice to confirm clearance of recordkeeping and reporting requirements.

**SUMMARY:** This notice confirms clearance by the U.S. General Accounting Office (GAO) of Abandoned Mine Lands Reclamation Program Provisions requiring reporting and recordkeeping issued by the Office of Surface Mining Reclamation and Enforcement (OSM). OSM amends its Abandoned Mine Lands Reclamation Program Provisions to reflect this clearance and announces the effective dates for those sections of the rules for which GAO clearance was obtained.

**EFFECTIVE DATE:** June 13, 1979.

**ADDRESSES:**

Assistant Director, Management and Budget, Office of Surface Mining and Enforcement, Room 240, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street, N.W., Washington, D.C. 20548.

Administrative Records, Office of Surface Mining Reclamation and Enforcement, Room 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

**FOR FURTHER INFORMATION CONTACT:** Joan Shaw, (202) 343-5447.

**SUPPLEMENTARY INFORMATION:** On October 25, 1978, the Secretary of the

Interior promulgated regulations of Title 30, Code of Federal Regulations, Chapter VII (43 FR 49932–49952) under the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87, (30 U.S.C. 1211, 1242). Those regulations which required collection, submission or retention of information, were promulgated subject to review and clearance by the GAO pursuant to 44 U.S.C. 3512. The GAO solicited comments on these regulations by public notice in the Federal Register on June 19, 1979 (44 FR 35290–35292).

OSM is restating paragraphs of its June 13, 1979 clearance notice that relate to 30 CFR Parts 872, 877, 879, 882, 884 and 886. The list of approved clearances follows:

The reporting and recordkeeping requirements contained in 30 CFR 872.11(b)(2) and (3) and 872.12(a) have been approved by the U.S. General Accounting Office under number B–190462 (R0643).

The reporting requirements contained in 30 CFR 877.12(b) and 877.13(b) and (c) have been approved by the U.S. General Accounting Office under number B–190462 (R0644).

The reporting and recordkeeping requirements contained in 30 CFR 879.13 and 879.15 have been approved by the U.S. General Accounting Office under number B–190462 (R0645).

The reporting and recordkeeping requirements contained in 30 CFR 882.12, 882.13(b), and 882.14(b) have been approved by the U.S. General Accounting Office under number B–190462 (R0646).

The reporting requirements contained in 30 CFR 884.13 and 884.15 have been approved by the U.S. General Accounting Office under number B–190462 (R0647).

The reporting requirements contained in 30 CFR 886.14, 886.15, 886.18(c)(2), 886.23, and the recordkeeping requirement contained in 886.24 have been approved by the U.S. General Accounting Office under number B–190462 (R0648).

During GAO's review, three changes were made. First, section 872.13(a) was omitted from clearance because fewer than 10 respondents will be subject to this requirement. However, if there are 10 or more respondents at some future time, this section will be submitted for clearance. Second, § 877.13(b) contains a part of the reporting requirement which is associated with § 877.13(c). Consequently, § 877.13(b) is included in this clearance. Third, § 882.14(b) contains reporting requirements associated with § 882.13(b); therefore, § 882.14(b) is included in this clearance.

Dated: October 12, 1979.

Paul L. Reeves,

*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

*Amendment to Rules:*

The following Parts of Chapter VII of Title 30 of the Code of Federal Regulations are amended:

Parts 872, 877, 879, 882, 884 and 886.

## PART 872—ABANDONED MINE RECLAMATION FUNDS

Part 872 is herby amended to include at the end of Part 872 the following note:

Note.—The reporting and recordkeeping requirements contained in 30 CFR 872.11(b)(2) and (3) and 872.12(a) have been approved by the U.S. General Accounting Office under number B–190462 (R0643).

## PART 877—RIGHTS OF ENTRY

Part 877 is hereby amended to include at the end of Part 877 the following note:

Note.—The reporting requirements contained in 30 CFR 877.12(b) and 877.13(b) and (c) have been approved by the U.S. General Accounting Office under number B–190462 (R0644).

## PART 879—AQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER

Part 879 is hereby amended to include at the end of Part 897 the following note:

Note.—The reporting and recordkeeping requirements contained in 30 CFR 879.13 and 879.15 have been approved by the U.S. General Accounting Office under number B–190462 (R0645).

## PART 882—RECLAMATION ON PRIVATE LAND

Part 882 is hereby amended to include at the end of Part 882 the following note:

Note.—The reporting and recordkeeping requirements contained in 30 CFR 882.12, 882.13(b), and 882.14(b) have been aproved by the U.S. General Accounting Office under number B–190462 (R0646).

## PART 884—STATE RECLAMATION PLANS

Part 884 is hereby amended to include at the end of Part 884 the following note:

Note.—The reporting requirements contained in 30 CFR 884.13 and 884.15 have been approved by the U.S. General Accounting Office under number B–190462 (R0647).

## PART 886—STATE RECLAMATION GRANTS

Part 886 is hereby amended to include at the end of Part 886 the following note:

Note.—The reporting requirements contained in 30 CFR 886.14, 886.15, 886.18(c)(2), 886.23, and the recordkeeping requirement contained in 886.24 have been approved by the U.S. General Accounting Office under number B–190462 (R0648).

[FR Doc. 79–32306 Filed 10–18–79; 8:45 am]

BILLING CODE 4310–05–M

## OFFICE OF MANAGEMENT AND BUDGET

### 34 CFR Ch. I

### OMB and Federal Management Circulars; Transfer and Redesignation of Regulations

**AGENCY:** Office of Management and Budget.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Office of the Federal Register, the Office of Management and Budget is transferring and redesignating the regulations in Title 34 to Title 5. This action will consolidate all Office of Management and Budget regulations in a single title of the *Code of Federal Regulations* and aid the Office of the Federal Register in the orderly development of the *Code of Federal Regulations.*

**EFFECTIVE DATE:** October 19, 1979.

**ADDRESS:** Office of Management and Budget, Room 5208, New Executive Office Building, 726 Jackson Place, Washington, DC 20503, ATTN: David Leuthold.

**FOR FURTHER INFORMATION:** David Leuthold, (202) 395–7250.

Accordingly, Part 1, OMB and Federal Management Circulars, of Title 34 (44 FR 37913, June 29, 1979) is transferred and redesignated as 5 CFR Part 1310, under a new "Subchapter B—OMB Directives". The existing regulations in 5 CFR Chapter III, Parts 1300, 1301, 1302 and 1303 are placed in a new "Subchapter A—Administrative Procedures."

Title 34—Chapter I is vacated.

David Leuthold,

*Budget and Management Officer.*

[FR Doc. 79–32577 Filed 10–18–79; 8:45 am]

BILLING CODE 6820–27–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 600

[FRL–1303–1]

### Fuel Economy of Motor Vehicles; Technical Amendment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final Rule.

**SUMMARY:** This document makes a technical amendment to EPA regulations

concerning calculation of the average fuel economy of motor vehicles. The amendment corrects an error brought about through the inadvertent publication of an obsolete regulatory provision.

**DATES:** This amendment is effective October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** Paul A. J. Wilson, Regulatory Management Staff, Office of Mobile Source Air Pollution Control (ANR–455), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 755–0596.

**SUPPLEMENTARY INFORMATION:** EPA began work on a large technical amendment package in the early spring of 1978, which included revisions to 40 CFR 600.510–80 (d) and (e). This rulemaking action was not published until November 14, 1978 (43 FR 52932). However, a different amendment was published September 5, 1978 (43 FR 39375) which deleted sections (d) and (e) from § 600.510–80. The regulation published on November 14 inadvertently was not revised to reflect this change and was published with the amendment to § 600.510–80(d) and (e) intact. Therefore, the amendment published November 14, 1978 revised a section which did not exist. For the purpose of clarity, the text of § 600.510–80 is printed below as it should have appeared on November 14, 1978, with paragraph (d) and (e) deleted.

This technical amendment does not change the stringency of the fuel economy regulations nor does it impose any additional burden on the regulated industry. It simply corrects a clerical error. For these reasons the Agency finds good cause for omitting as unnecessary a notice of proposed rulemaking and an opportunity for public comment. Since vehicle manufacturers are currently in the process of calculating average fuel economy, immediate correction of the clerical error is necessary to avoid possible confusion. Therefore, the amendment will be effective immediately.

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

Dated: October 12, 1979.

**Douglas M. Costle,**

*Administrator.*

Part 600 of Chapter I, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. By amending § 600.510–80 to read as follows:

**§ 600.510–80 Calculation of average fuel economy.**

(a) * * *

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

(b) * * *

(2) * * *

(iii) The fuel economy value of diesel powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline.

* * * * *

(vi) If a model type is comprised of some vehicles that are four-wheel drive general utility vehicles and some that are not as defined at 42 CFR 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average fuel economy will be calculated separately for four-wheel drive general utility vehicles, then separate model type calculations will be made for those vehicles that are not.

* * * * *

(d) [Reserved].

(e) [Reserved].

(Title V, Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.))

[FR Doc 79–32425 Filed 10–18–79; 8:45 am]

BILLING CODE 6560–01–M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Health Care Financing Administration

### 42 CFR Part 405

## Federal Health Insurance for the Aged and Disabled; Target Rate Reimbursement for Institutions Furnishing Home Dialysis Supplies, Equipment, and Support Services

**AGENCY:** Health Care Financing Administration (HCFA), HEW.

**ACTION:** Final rule with comment period.

**SUMMARY:** This regulation provides a new optional method of Medicare reimbursement for the cost of home dialysis supplies, equipment and support services furnished to self-care home dialysis patients under the direct supervision of an approved provider or facility. Payments will be made on the basis of an annually determined target reimbursement rate per treatment. The regulation implements section 1881(b)(4)–(6) of the Social Security Act, established by the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292). This method is intended to encourage the efficient delivery of home dialysis services.

**DATES:** This regulation is effective as of April 1, 1979. Consideration will be given to written comments or suggestions received by December 18, 1979, with a view to making any necessary changes.

**ADDRESS:** Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 17073, Baltimore, MD 21235. When commenting, please refer to file code MAB–92–RC. Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks after publication, in room 5231 of the Department's offices at 330 C Street, SW., Washington, D.C., on Monday through Friday of each week, from 8:30 a.m. to 5:00 p.m. (telephone 202–245–0950).

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley Weintraub, telephone: (301) 594–6535.

**SUPPLEMENTARY INFORMATION:** Section 299I of the Social Security Amendments of 1972 (Pub. L. 92–603) provided Medicare coverage for end-stage renal disease patients who meet certain entitlement requirements. While the end-stage renal disease program has been generally successful in meeting the needs of renal disease patients for protection against the catastrophic costs of obtaining needed care, there is great concern about the high and steadily rising cost of the program and the burden it can place on the Medicare trust funds unless steps are taken to put it on a more cost-effective basis.

The Congress has noted that while the high cost of the program is in part a reflection of the costly technology required for treatment and the need in many cases for lifetime care, it is generally agreed that rising program costs are also a reflection of disincentives in the program to the use of lower cost self-dialysis procedures and settings. Appropriate incentives for more cost-effective use of self-care

dialysis settings can help significantly to contain rising program costs without impairing the quality or availability of needed services. Since 1972, the percentage of the total patients on dialysis dialyzing at home has declined from over 40 percent to less than 10 percent in 1976. While various reasons for this decline have been offered (including changes in the patient population under treatment, professional disinterest in encouraging home dialysis, and increased access to institutional facilities), the Congress concluded that the evidence suggests that one of the major reasons is the existence of financial disincentives for patients to undertake self-care dialysis.

Pub. L. 95-292 (enacted June 13, 1978) addressed this problem through amendments designed to achieve several objectives, including the increased use of self-dialysis and transplantation, and the use of incentive reimbursement methods to encourage economies in the delivery of services.

One such incentive method is addressed in this regulation. It provides for payment on the basis of an annually determined target reimbursement rate for the dialysis services of patients dialyzing at home under the supervision of a facility. It is an optional method for providers and renal dialysis facilities which furnish all necessary home dialysis medical supplies, equipment, and supportive services (including the services of qualified home dialysis aides) that are medically necessary to enable patients to continue dialyzing in the home setting. See section 1881(b)(4)-(6) of the Act, 42 U.S.C. 1395rr.

**Major Provisions**

1. *Setting Target Rates*

Separate rates for home dialysis, one for each hemodialysis session and one for each peritoneal session (referred to hereafter as a "per treatment rate"), adjusted for regional variations, will be established each calendar year. Once established, the rates shall be utilized, without recomputation, throughout the calendar year for which they are established. Accordingly, there is no appeal available to a provider or renal dialysis facility if the actual costs for covered services exceed the target rates. In establishing the rates, HCFA will allow for the cost of providing medically necessary home dialysis supplies and equipment, the cost of providing personnel to aid in home dialysis, administrative costs, and an incentive to increase home dialysis through more cost-effective and efficient delivery of needed services.

Under Pub. L. 95-292, this statutory amendment became effective as of April 1, 1979. Because of insufficient cost information regarding new services required under this option (e.g., the cost of providing home dialysis aides), as well as the urgency required in publishing the target rates, the target reimbursement rate per treatment established for the remainder of 1979 will be equal to the maximum rate permitted under the statute. The maximum rate permitted shall not exceed 70 percent of the national average payment before application of the coinsurance requirement, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year.

To establish the target rate and the 70 percent limitation for the current calendar year, HCFA has used data from accounting periods ending in the calendar year 1977 to develop combined provider and facility average outpatient maintenance dialysis payments for both hemodialysis and peritoneal dialysis. These average dialysis payments were derived from a summary maintained by HCFA of maintenance dialysis payments made to providers and renal dialysis facilities and were determined for each of the ten regional areas.

The average dialysis payment data were then actuarially adjusted by HCFA to reflect the fiscal year 1978 average dialysis payments which are the bases for the target rate and 70 percent limitation for the current calendar year. Separate rates were then determined for each of the ten regional areas. This is in compliance with the requirement in Pub. L. 95-292 that the target rate established as well as the maximum rate permitted shall be "* * * adjusted for regional variations in the cost of providing home dialysis." The ten regional areas were used as the regional basis because the supporting dialysis payment data is accumulated in that format.

Home dialysis target rates established in succeeding calendar years (commencing with January 1, 1980), will be based on the most recent data available to HCFA at the time, including determination of the actual cost of home dialysis supplies and equipment and related support services furnished under this option. In establishing these rates, HCFA is authorized to utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure it determines is appropriate and feasible in complying with the statute.

By December 1 each year, HCFA will publish a notice in the Federal Register announcing the rates developed for the following calendar year. In compliance with the statute, the effective date of the rates set for the calendar year 1979 was April 1. These rates will be published in a separate notice.

2. *Agreements With HCFA*

Under Pub. L. 95-292, any provider or renal dialysis facility that wants to receive payment on the basis of a target reimbursement rate for furnishing home dialysis supplies and equipment and self-care home dialysis support services must file an agreement with HCFA. Section 1881(b)(4) and (5) of the Act discuss these requirements.

The agreement will require that the provider or facility agree to:

A. Assume full responsibility for directly obtaining or arranging for the provision of:

i. Such medically necessary dialysis equipment as is prescribed by the attending physician;

ii. Dialysis equipment maintenance and repair services;

iii. The purchase and delivery of all necessary medical supplies; and

iv. Where necessary, the services of trained home dialysis aides to all patients for which it is furnishing any home dialysis services;

B. Perform all such administrative functions and maintain such information and records as HCFA may require to verify the transactions and arrangements described in A. above;

C. Submit cost reports, data and information as HCFA may require to determine the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

D. Provide HCFA full access to all such records, data, and information required to perform its functions under section 1881 of the Act.

The agreement shall be effective with respect to services rendered on or after the date it is accepted by HCFA. (During the remainder of 1979, HCFA will approve agreements with an effective date of April 1, 1979, for providers and facilities that have been furnishing services in a manner consistent with this regulation.)

Provision is also made in the agreement for the termination of the agreement by either HCFA or the provider or facility.

3. *Incentive.*

The incentive for providers and renal dialysis facilities electing this optional method of reimbursement is the right to retain the difference between their actual cost for covered supplies, equipment and services, and the target rate. We believe that providers and

renal dialysis facilities, therefore, have an incentive under this method to exercise additional restraints on home dialysis costs by implementing more effective purchasing procedures for supplies and equipment and by more rigorously assessing the actual need for particular services.

Waiver of Proposed Rulemaking

Pub. L. 95-292 was enacted on June 13, 1978. The provisions being implemented by this action—section 1881(b) (4)-(6) of the Act—became effective April 1, 1979. Because of the need to develop sufficient cost information on which to establish the target rates, the complexity of this rate development process and the relatively brief period between enactment and the effective date of this provision in which to accomplish these complex steps, we were unable to publish these regulations as a notice of proposed rulemaking. Moreover, we believe that it is important to implement these provisions promptly because of the advantages they provide to beneficiaries.

Accordingly, we find that good cause exists to waive the notice of proposed rulemaking. However, recognizing that the target reimbursement method is both new and dissimilar from current Part B payment mechanisms, we invite comments on these regulations, which we will consider in making any future amendments to these regulations.

42 CFR Part 405 is amended as follows:

1. A new § 405.440 is added to read as follows:

**§ 405.440 Target rate reimbursement for home dialysis services.**

(a) *Purpose.* This section implements section 1881(b) (4) and (6) of the Social Security Act by specifying:

(1) The conditions under which approved renal dialysis facilities and providers may receive payment for home dialysis services (as specified in § 405.231(p)) under an optional target reimbursement rate per treatment; and

(2) How the target rate will be determined and applied.

(b) *Conditions for, and limitation on, payment.* (1) In order for a provider or renal dialysis facility to receive reimbursement under this section: (i) It must have an agreement with HCFA in accordance with § 405.691; and (ii) the specified services must be furnished to patients whose self-care home dialysis is under the direct supervision of the provider or facility.

(2) The target reimbursement rate per treatment established under this section shall be considered as payment in full for specified services provided in accordance with paragraph (b)(1) of this section.

(3) Payment will be made under Part B of Medicare at 80 percent of the target reimbursement rate per treatment or 80 percent of the balance of the rate after first applying any unmet Part B deductible. The beneficiary is liable for the balance of 20 percent of the target reimbursement rate per treatment or 20 percent of the balance of the rate after first applying any unmet Part B deductible.

(c) *Establishment of rate.* (1) HCFA will establish for each calendar year a separate target reimbursement rate per treatment for hemodialysis and peritoneal dialysis, adjusted for regional variations.

(2) Rates will be computed during the last quarter of each calendar year and will apply to the following calendar year. They will be based upon the most recent data available to HCFA at the time (including the actual cost of supplies, equipment and support services furnished under this section). In establishing the rates, HCFA may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure it determines is appropriate and feasible in order to carry out the provisions of this section in an effective and efficient manner.

(3) The rates are intended to cover:

(i) The cost of providing medically necessary home dialysis supplies and equipment;

(ii) The cost of providing personnel to aid in home dialysis;

(iii) The administrative cost of providing these services; and

(iv) An allowance to provide an incentive for the efficient delivery of home dialysis services.

(d) *Allowable and excluded costs.* (1) Allowable costs included in the target reimbursement rate will be the reasonable costs of home dialysis services provided to medicare beneficiaries. Reasonable costs include all necessary and proper expenses incurred by the provider or renal dialysis facility in the provision of home dialysis services, such as administrative costs, maintenance costs, supply costs, employee compensation and travel costs, and premium payments for employee health and pension plans. They include both direct and indirect costs, and normal standby costs.

(2) Excluded from reasonable costs are costs which:

(i) Are not related to patient care under this section;

(ii) Are for items or services specifically not reimbursable under the program; or

(iii) Flow from the provision of luxury items or services (items or services substantially in excess of, or more expensive than, those generally considered necessary for the provision of needed health services).

(e) *Reimbursement principles.* (1) Except as specified in paragraph (e)(2) of this section, the cost reimbursement principles specified in Subpart D, beginning with § 405.415, Depreciation, shall also apply in recording and reporting costs of home dialysis services.

(2) The following principles shall not apply:

(i) Section 405.429, Return on equity capital of proprietary providers;

(ii) Section 405.430, Inpatient routine nursing salary cost differential;

(iii) Section 405.436, Reimbursement of organ procurement agencies (OPA) and histocompatibility laboratories;

(iv) Section 405.451, Cost related to patient care;

(v) Section 405.452, Determination of cost of services to beneficiaries; and

(vi) Section 405.454, Payments to providers, through § 405.488, Effect of principles.

(f) *Effect of opting for 100 per cent reimbursement.* If a provider or facility elects the target reimbursement rate method and also elects to enter into an agreement (under § 405.690) for 100 percent reimbursement for installation and maintenance of equipment, the target rate will be adjusted by excluding all costs associated with the purchase, depreciation, installation, maintenance and reconditioning of dialysis equipment and the cost of supportive equipment.

(g) *Limitations on rate.* (1) The target reimbursement rate shall not exceed 70 percent of the national average payment before application of the coinsurance requirement, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year.

(2) In determining the national average, payments for cost components that are not covered for home dialysis services under this section (e.g., physician services rendered to renal dialysis patients (see § 405.542)) shall be excluded.

(h) *Publication and use of rates.* (1) On or before December 1 of each year, HCFA will publish the list of target reimbursement rates, adjusted for regional variations, for the following calendar year.

(2) Once published, those rates shall be used, without recomputation, throughout the calendar year for which they are established.

2. Section 405.601 is revised to read as follows:

**§ 405.601 Scope of subpart.**

The provisions of §§ 405.602–405.626 discuss provider agreements which an eligible provider of services must file with the Secretary in order to qualify for participation in the health insurance program for the aged. Sections 405.651–405.663 and §§ 405.670–405.678 discuss agreements under which Part A intermediaries and Part B carriers will perform specified functions necessary in the administration of the hospital insurance and supplementary medical insurance programs. Section 405.685 discusses agreements with the Secretary shall enter into with any State for the purpose of assisting the Secretary in determining whether an institution or agency situated in such State is a hospital, skilled nursing facility, or home health agency, and whether an independent laboratory meets the conditions for coverage of services, or whether a clinic, rehabilitation agency or public health agency meets the requirements of section 1861(p)(4). Section 405.690 discusses agreements that HCFA will enter into with approved providers of services and renal dialysis facilities for full reimbursement of the reasonable cost of purchase, installation, maintenance, and reconditioning of home dialysis equipment. Section 405.691 discusses agreements that HCFA will enter into with approved providers of services and renal dialysis facilities for reimbursement for the cost of home dialysis supplies and equipment and self-care home dialysis support services on the basis of a target reimbursement rate.

3. A new § 405.691 is added to read as follows:

**§ 405.691 Agreements with approved providers or ESRD facilities for reimbursement of home dialysis supplies, equipment, and support services on a target reimbursement rate basis.**

(a) *General requirement.* As provided by section 1881(b) (4) and (5) of the Act and § 405.440 of this part, HCFA may execute agreements for reimbursement on a target reimbursement rate basis with approved providers or ESRD facilities which demonstrate their ability to furnish efficiently the full scope of services, including, where necessary, the services of trained home dialysis aides as specified in § 405.231(p)(4). The agreement shall be effective with respect to services rendered on or after the date it is accepted by HCFA. (See § 405.440 for conditions for target rate reimbursement.)

(b) *Terms.* The agreement must provide that the provider or facility agrees to:

(1) Assume full responsibility for directly obtaining or arranging for the provision of necessary supplies, equipment, and services specified in § 405.231(p) to all patients for which it is furnishing any home dialysis services.

(2) Perform all administrative functions and maintain information and records as HCFA may require to verify the transactions and arrangements specified in paragraph (b)(1) of this section;

(3) Submit cost reports, data, and information as HCFA may require on costs incurred for equipment, supplies, and services furnished to home dialysis patients; and

(4) Provide HCFA full access to all records, data, and information required to perform its functions.

(c) *Review.* Agreements will not have a fixed expiration date. However, each provider or facility having an agreement under this section will be reviewed by HCFA at least once a year to determine whether it is complying with the terms of the agreement.

(d) *Termination by HCFA.* (1) If HCFA finds that a provider or facility has failed to perform its obligations under paragraph (b) of this section, HCFA may terminate its agreement with the provider or facility. HCFA will notify the provider or facility in writing of its intention to terminate the agreement and state the reasons for the termination. The provider or facility will be given the opportunity to submit a statement and evidence as to why the agreement should not be terminated.

(2) If no statement or evidence is received within 30 days after the date of initial notification, or if HCFA is not persuaded to alter its determination by the statement or evidence, HCFA shall give written notice of termination to the provider or facility at least 15 days before the effective date of termination of the agreement. In addition to giving notice to the provider or facility, HCFA shall also give notice of such termination to the public.

(3) Within 30 days after the effective date of the termination, the provider or facility must make a final accounting for all equipment purchased under the provision for 100 percent reimbursement for installation and maintenance of home dialysis equipment (see § 405.438) and comply with directions from HCFA regarding the disposition of equipment so purchased. HCFA will arrange for continuation of all necessary supplies, equipment, and support services to patients whose self-care home dialysis is under the direct supervision of the provider or facility.

(4) Any provider or facility dissatisfied with a determination terminating the agreement under this section shall be entitled to administrative review in accordance with the procedures set forth in 42 CFR 405.1502–405.1595.

(e) *Termination by provider or facility.* (1) An approved provider or ESRD facility having an agreement under this section may terminate the agreement after giving written notice to HCFA of its intention to terminate such agreement. The notice shall state the effective date of termination of the agreement (preferably the first day of a month).

(2) HCFA may accept the termination date stated in the notice or set a different date. If the notice does not specify the date for the termination of the agreement, HCFA will set a date that is not more than 3 months from the date on the notice filed by the provider or facility.

(3) In addition to giving notice to HCFA, the provider or facility must also give at least 15 days notice to the public by publishing in one or more local newspapers a statement of the date of termination of the provider or facility agreement with HCFA.

(4) Within 30 days after the effective date of termination, the provider or facility must make a final accounting for all equipment purchased under the provision for 100 percent reimbursement for installation and maintenance of home dialysis equipment (see § 405.438) and comply with directions from HCFA regarding disposition of the equipment.

(Secs. 1102, 1814(b), 1833, 1861(v)(1), 1871 and 1881 of the Social Security Act; (42 U.S.C. 1302; 1395(f)(b), 1395, 1395x(v)(1), 1395hh and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 4, 1979.

Leonard D. Schaeffer,

*Administrator, Health Care Financing Administration.*

Approved: October 5, 1979.

Patricia Roberts Harris,

*Secretary.*

[FR Doc. 79-31994 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-35-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0 and 1

[FCC 79-588]

### Revising Rules Concerning Petitions for Reconsideration and Applications for Review

**AGENCY:** Federal Communications Commission.

**ACTION:** Amendment of the Commission's rules.

**SUMMARY:** The Federal Communications Commission amends those sections of its rules dealing with petitions for reconsideration and applications for review. The purpose of these amendments is to correct some shortcomings and inconsistencies in the rules.

**EFFECTIVE DATE:** October 22, 1979.

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

**FOR FURTHER INFORMATION CONTACT:** Lewis J. Paper or Lee J. Peltzman, Office of General Counsel, (202) 254-6530.

Adopted: September 27, 1979.

Released: October 15, 1979.

By the Commission: Commissioner Lee absent.

In the matter of amendment of §§ 0.251, 0.281, 0.371, 1.104, 1.106, 1.115 of the Commission's rules of practices and procedures.

1. The purpose of this Order is to correct some shortcomings and inconsistencies in §§ 0.251, 0.281, 0.371, 1.104, 1.106 and 1.115 of the Commission's Rules, 47 CFR 0.251, 0.281, 0.371, 1.104, 1.106, 1.115.

2. In essence, the changes adopted here are intended to serve three basic purposes. The first purpose concerns our procedures for applications for review. 47 CFR 1.115. Under existing rules, the Commission does not entertain a petition for reconsideration of an order denying an application for review without reasons. At the same time, the rules do allow a petition for reconsideration if the Commission gives reasons for denying an application for review. Upon reexamination, we now believe that equal treatment should be accorded all orders denying an application for review, regardless of whether the Commission gives reasons for the denial. We are therefore changing the rules to allow a petition for reconsideration of any order denying an application for review if—but only if—the petitioner relies on new facts or changed circumstances.

3. The second purpose of our rule changes concerns the scope of Commission options in reviewing petitions for reconsideration and applications for review. The present rules allow the Commission to grant a petition for reconsideration or application for review and, in the same order, affirm the action being appealed. The rules, however, do not distinguish that option from a situation where the Commission proposes to deny the petition or application and affirm the earlier order. In order to avoid confusion, the changed rules state that the Commission may not grant a petition for reconsideration or an application for review and simultaneously affirm the original order.

4. The third purpose of the new rules is to make it clear that the Commission may act on petitions for reconsideration of actions taken on delegated authority. Other minor changes are also adopted.

5. In order to promote a full understanding of our action here, we believe it would be helpful to examine each of the three foregoing purposes and related changes in greater detail.

#### Petitions for Reconsideration of Orders Denying Applications for Review

6. Section 5(d)(4) of the Communications Act of 1934 [1] provides that a party may ask the Commission to review any action taken on delegated authority. The action further provides that the Commission may deny such applications for review "without specifying any reasons therefor." 47 U.S.C. 155(d)(5). The Commission's present rules state that a petition for reconsideration will not be entertained if an application for review has been denied without reasons. 47 CFR 1.106(b), 1.115(g). The unstated premise of this rule is fairly apparent. Section 405 of the Act [2] requires the Commission to issue a concise statement of reasons if it denies a petition for reconsideration. It would simply make no sense to allow the Commission to deny an application for review *without* specifying reasons and then require the Commission to provide reasons if it then wants to deny a petition for reconsideration of that order.[3]

7. Despite the logic of the Commission's rule, it has been criticized by the courts. It has been stated that the Commission cannot invoke its procedural rules to avoid a petition for reconsideration supported by good cause. In *Eagle Broadcasting Co.* v. *FCC*,[4] for example, the Commission had refused to consider a petition for reconsideration of an order denying review without reasons. The court ultimately affirmed the Commission's decision. In the course of its opinion, however, the court said it was troubled by the Commission's rule:

> Reliance by the Commission on its own rule against reconsideration would in itself be a clearly inadequate reason for the refusal to rehear. The rule may have some justification where the summary denial of review reflects a Commission judgment that the appeal was frivolous and where the request for rehearing is only a rehash of the same frivolous arguments. But the fact that no reasons were thought necessary when the Commission first heard the case is no basis for rejecting a proffer of new evidence. 514 F.2d at 855. *See also WSTE-TV, Inc.* v. *FCC*, 566 F.2d 333, 337 (D.C. Cir. 1977).

8. The court was even more critical of the Commission in *Crosthwait* v. *FCC*, 584 F.2d 550 (D.C. Cir. 1978). In that case, the Review Board denied a construction permit application for Folkways Broadcasting Company because of the applicant's faulty ascertainment effort. Folkways' application for review was later denied without reasons. On the same day, however, the Commission issued a separate decision in which it allowed a different applicant to file an amendment to cure an ascertainment problem. Folkways therefore asked the Commission to reconsider its decision and to provide it with the same opportunity to amend its ascertainment showing. In rejecting Folkways' petition, the Commission said that its rules preclude reconsideration of an application for review denied without reasons.

9. The court reversed the Commission. The court acknowledged that the Commission could refuse a petition that was " 'a rehash of the same, frivolous arguments' " or a " 'belated attempt to repair (a) defective showing made at the hearing,' not involving newly discovered evidence nor otherwise attended by good cause. (Footnote omitted.)" 584 F.2d at 555. At the same time the court said that Folkways offered a new ascertainment survey which, under the circumstances, should have been considered. On this basis the court concluded that "the Commission improperly invoked its procedural regulations as a basis for declining reconsideration." *Id.*

10. The court's message is plain: the Commission must entertain a petition for reconsideration of an order denying an application for review if the petition is supported by good cause. We are

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[1] 47 U.S.C. 155(d)(4).

[2] 47 U.S.C. 405.

[3] We feel justified in accepting this logic since laws should be interpreted in a sensible manner to avoid absurd results. *Worthy* v. *United States*, 328 F.2d 386, 391 (5th Cir. 1969).

[4] 514 F.2d 854 (D.C. Cir. 1975).

therefore taking this opportunity to amend §§ 1.106(b) and 1.115(g) of the Commission's rules by adding language to specify that the Commission will allow such petitions if they rely on newly discovered facts or on changed circumstances.[5] If a petition does not satisfy that standard, however, we will not hesitate to dismiss it. Otherwise, the Commission would be forced to spend its limited resources reviewing arguments it has already considered and rejected.

11. The rule change described above will nonetheless increase the opportunities to file petitions for reconsideration. Other rule changes being adopted here will decrease the opportunities for reconsideration. These other changes concern Commission orders that deny applications for review *with* reasons. Under our present rules, such orders are subject to petitions for reconsideration. See 47 CFR 1.106(b), 1.115(g). In adopting those rules, the Commission did not explain how or why it distinguished applications denied with reasons from those applications denied without reasons. *See Amendment of Part 1,* 23 RR 1560 (1962). Clearly, however, the distinction lies in the application of the rehearing requirements of Section 405 of the Act. As explained previously, that section requires the Commission to issue a concise statement of reasons when it disposes of a petition for reconsideration. As also explained previously, it makes no sense to require the Commission to give reasons in denying a petition for reconsideration if the action complained of (an application for review) was denied without reasons. This logic obviously would not apply to situations where the Commission had offered reasons in denying an application for review.

12. The Commission's distinction between two kinds of orders—those denying review without reasons as opposed to those denying review with reasons—has created internal problems for the Commission. On occasion the Commission wishes to deny an application for review but, at the same time, wants to clarify the decision rendered by delegated authority. In these instances the Commission may forego the opportunity for such clarification because it knows that the articulation of reasons in denying an application for review will provide an opportunity for reconsideration. This approach is certainly justified if the Commission feels that no new facts or arguments have been presented or could be presented and that acceptance of such petitions would be a waste of the Commission's limited resources. In other words, the Commission may feel that the benefit of greater clarity may not be worth the cost of another round of pleadings.

13. In retrospect, however, we believe this manner of proceeding is not fair to the public. As a general principle, the public is always entitled to a full and complete explanation of any action taken by the Commission. The public is also entitled to a proper allocation of resources so that the Commission does not spend the public's money rehearing the same arguments for the third and fourth time. Unfortunately, the present rules sometimes require the Commission to make a choice between those two goals. And no matter what the choice, one public interest will have to suffer.

14. Upon reexamination of applicable statutory provisions and their legislative history, we now conclude that there is no reason to place the Commission in this dilemma. We believe that, consistent with the language and purposes of the Communications Act, the Commission can refuse to entertain petitions for reconsideration of all orders denying applications for review—even those which specify reasons—unless the petition relies on new facts or changed circumstances.[6]

15. Initially, it should be noted that section 5 of the Act itself does not subject orders on applications for review to the rehearing requirement of section 405. This is significant because, in adopting the new language in section 5(d) in 1961, Congress obviously recognized the potential relationship between section 405 and section 5(d). See 47 U.S.C. 155(d)(6). If Congress wanted section 405 to apply to Commission actions on applications for review, presumably Congress would have made its intentions clear. It is also noteworthy that the statute does not state or suggest the need for different rules if the Commission chooses to deny an application for review with reasons. Again, if Congress wanted to make that distinction, it presumably would have done so, especially given its apparent recognition of the relationship between section 405 and section 5(d).

16. In providing like treatment for all decisions on applications for review, the new rules adopted here do not undermine the purposes for which Congress enacted section 5(d) of the Communications Act. In considering amendments to that section in 1961, Congress made clear its desire to make the Commission's adjudicatory process more efficient.[7] For example, in proposing new language for that section the Senate Commerce Committee stated as follows:

> The purpose of this legislation is to amend the Communications Act of 1934 so that the Federal Communications Commission will be able, by making better use of its own time and more effective use of experienced and technically qualified personnel, to handle its large workload of adjudication cases with greater speed and efficiency than is presently possible. *Facilitating the Prompt and Orderly Conduct of the Business of the Federal Communications Commission,* Committee on Commerce, United States Senate, 87th Cong., 1st Sess., p. 5 (Report No. 576 1961). *See also Facilitating the Prompt and Orderly Conduct of the Business of the Federal Communications Commission,* Committee on International and Foreign Commerce, House of Representatives, 87th Cong., 1st Sess., p. 1 (Report No. 723 1961).

17. The new section 5 of the Act satisfied this purpose of efficiency in several ways. Among other things, the new provisions allowed the Commission to delegate more of its decision-making authority. The procedures on applications for review were then rewritten only to assure the Commission an opportunity to review a case before it became subject to judicial review. Specifically, the Senate Commerce Committee stated as follows:

> The filing of an application for review is made a condition precedent for judicial review of a delegated decision; and the application cannot rely on questions of fact or law upon which the delegated authority has been afforded no opportunity to pass. In this way, the case will be presented to the Commission (and if the application is denied to the courts) with a ruling on every issue, and the Commission will have an opportunity

[5] "Changed circumstances" here would include legislative changes in the law or cases decided by a court or other forum after the pleading cycle had ended. We wish to emphasize however, that "changed circumstances" would not include those instances in which a party or parties consciously chose to withhold information or did not take advantage of available information. "We cannot allow [a party] to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed." *Colorado Radio Corp.* v. *FCC,* 118 F.2d 24, 26 (D.C. Cir. 1941). Nor would we allow reconsideration when the Commission on review merely clarified language or offered additional reasoning to support the decision of the delegated authority. Reconsideration would only be warranted where the Commission changed that decision's result.

[6] In order to implement this change, we are amending § 1.106(b) to make clear that where a petition for reconsideration of an order denying an application for review fails to rely on new facts or changed circumstances, it may be dismissed by the staff as repetitious. It is noted, however, that in those cases where the petition does allege new facts or circumstances, the staff shall continue to operate as it presently does in bringing the petition to the Commission.

[7] The Commission already had power to delegate authority in non-adjudicatory matters.

to review the decision before the matter goes before the courts. . . .

These provisions would give the Commission much needed authority, now withheld under present section 5(d)(1), to employ panels of Commissioners or employee boards to pass on adjudicatory cases . . . With the new authority the Commission would be able to concentrate on the important cases involving major policy or legal issues, and hearing of all cases by some authority within the agency should be substantially expedited. *Senate Report, supra* at 8.

18. In other words, the application for review procedure is simply a means for the Commission to review the work of delegated authority.[6] With this procedure, the Congress obviously hoped that the Commission could expedite the processing of its workload and enable the Commissioners themselves to concentrate on important issues. This purpose would not be served if the Commission had to subject itself to another round of pleadings simply because it wanted to clarify the decision by the delegated authority. This seems especially so since reconsideration of delegated decisions can take place at that lower level. *Id. See also* 47 CFR 1.104. It would therefore frustrate the Congressional hope for efficiency if a party could invoke Section 405's rehearing rights twice: once before the delegated authority, and again before the Commission on an application for review denial. Rather than shorten the adjudicatory process, such an interpretation would lengthen it considerably.

[6] Congress intended that the application for review procedure would be patterned after the procedure used by the United States Supreme Court in reviewing petitions for certiorari. *Senate Report, supra*, at 6. Normally, the Supreme Court does not issue an opinion when it denies a petition for certiorari. That fact does not in any way undermine the right of the Commission to set forth reasons in denying an application for review. To begin with, nothing in section 5(d) of the Communications Act prohibits the Commission from explaining such a denial; in fact, by stating that the Commission may deny an application for review without reasons, the language seems to contemplate that, in some cases at least, the Commission will offer reasons. Moreover, it must be remembered that the Commission's relationship with the delegated authority is different than the Supreme Court's relationship with a lower court. In the Commission's case, any decision by the delegated authority ultimately becomes the decision of the Commission for purposes of judicial appeal (unless of course the Commission changes the decision on review). In contrast, a denial of certiorari by the Supreme Court does not in any way constitute an opinion by that court. Therefore, unlike the Supreme Court, the Commission has a continuing responsibility to correct shortcomings in decisions rendered by delegated authority. Nothing in our re-regulation order on adjudicatory practices is inconsistent with this analysis. *Adjudicatory Re-regulation Proposals*, 58 FCC 2d 865 (1976). The relevant portion of that order only explained why the Commission need not take *de novo* review of every decision made under delegated authority.

19. Under the rules adopted here, then, every party will still have at least two bites at the apple. Matters decided initially by the Commission will still be subject to section 405 rehearing requirements. Those matters decided by delegated authority will also be subject to that section 405 requirement as well as the application for review procedure (and, if attended by good cause, reconsideration of the order on review). In this way, every party will have more than adequate opportunity to make its case to the Commission.

### Options Concerning Applications for Review and Petitions for Reconsideration

20. Our next set of rule changes here concern the Commission's options in disposing of applications for review and petitions for reconsideration. Our present rules indicate that the Commission or delegated authority may grant a petition for reconsideration and, in the same order, affirm the original action. 47 CFR 1.106(k). Our rules with respect to applications for review explicitly state that the Commission may simultaneously grant an application for review and affirm the original order. 47 CFR 1.115(i).

21. In retrospect, these rules are not entirely clear. In denying a petition for reconsideration, for example, the Commission must issue a concise statement explaining its disposition. 47 U.S.C. 405. A denial of such a petition, in effect, amounts to an affirmance of the original action. The rules do not provide any indication as to how that situation differs from one where the Commission grants reconsideration and then affirms the original order. The application for review procedures suffer from the same ambiguity. Because of these ambiguities, there has been a lack of consistency in Commission approaches. Sometimes the Commission grants reconsideration and then affirms the original order; in other cases the Commission simply denies reconsideration and allows the original order to stand. Similar inconsistencies also appear in our decisions disposing of applications for review.

22. We wish to take this opportunity to clarify our rules on this point. Specifically, we are amending §§ 1.106(k) and 1.115(i) to state that the Commission or designated authority will not grant a petition or application and simultaneously affirm the original order. (Under the new rules the Commission will, of course, continue to have the authority to supply additional explanation in an order which denies reconsideration but, through that denial, effectively affirms the prior decision.) If additional proceedings are ordered, however, the Commission or delegated authority may affirm the original order after the completion of those additional proceedings. Affirmance is appropriate in these latter cases because the Commission or delegated authority has done something more than consider the merits of the petition or application; it has engaged in rehearing to allow *de novo* review of the matter.

### Minor Clarifications

23. We are making other minor changes to clarify our rules on petitions for reconsideration and applications for review. Thus, the present § 1.104(b) states that all petitions requesting reconsideration of final actions taken pursuant to delegated authority will be acted on by the delegated authority. This provision conflicts with § 1.106(a) of the rules, which explicitly allows the delegated authority to refer the petition to the Commission. We are therefore amending § 1.104(b) to allow that referral to the Commission.[9]

24. In another change, we are amending § 1.104(d) of the Rules, which concerns deadlines for filing applications for review under certain circumstances. The rule specifies that such pleadings should be filed "within 30 days after final action" on petition for reconsideration. Unlike other rules concerning deadlines, this provision does not account for the situation when there is a public announcement of the action but no release of the full text of the Commission order. In these latter situations, the time for filing an application for review should begin to run the day the public notice is released. The new rule makes the appropriate changes so that this provision is consistent with the other provisions of our rules.

25. Finally, other sections of the rules have been renumbered and/or rewritten in the interest of consistency.

### Conclusion

26. The changes adopted here concern Commission procedure and practice. Moreover, since the changes primarily only reflect a desire to make our rules consistent with established case law, we find that public comment will not be necessary. For these reasons, the Commission need not comply with the prior public notice, comment and effective date provisions of the

[9] We are also changing § 1.104(b) of the rules to require referral to the Commission if reconsideration is requested of a designation order. Since an individual bureau automatically is made a party in hearing cases, it would be inappropriate for the bureau to reconsider the matter on the merits. A similar change is being made for consistency in our delegated authority rules. 47 CFR 0.281.

Administrative Procedure Act, 5 U.S.C. 553(b).

27. Authority for adoption of the rule amendments contained herein is set forth in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Accordingly, it is ordered that, effective October 22, 1979, §§ 0.251, 0.281, 0.371, 1.104, 1.106 and 1.115 of the Commission's rules, 47 CFR 0.251, 0.281, 0.371, 1.104, 1.106, and 1.115, are amended as set forth in the attached Appendix.

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

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

## PART 0—COMMISSION ORGANIZATION

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

1. Section 0.251, paragraph (e) is added to read as follows:

**§ 0.251 Authority delegated.**

* * * * *

(e) The General Counsel is delegated authority to dismiss as repetitious any petition for reconsideration of a Commission order denying an application for review which fails to rely on new facts or changed circumstances.

* * * * *

2. Section 0.281, paragraph (b) is revised to read as follows:

**§ 0.281 Authority delegated.**

* * * * *

(b) * * *

(2) Petitions and other requests for reconsideration of actions taken by the Chief, Broadcast Bureau, when such petitions or requests contain new or novel arguments not previously considered by the Commission, present facts or arguments which appear to justify a change in Commission policy, or request reconsideration of orders designating cases for hearing.

3. Section 0.371, paragraph (j) is added to read as follows:

**§ 0.371 Authority delegated.**

* * * * *

(j) To dismiss, as repetitious, any petition for reconsideration of a Commission order denying an application for review which fails to rely on new facts or changed circumstances.

## PART 1—PRACTICE AND PROCEDURE

Part 1 of Chapter I of Title 47 is amended as follows:

1. Section 1.104, paragraphs (b) and (d) are revised to read as follows:

**§ 1.104 Preserving the right to review; deferred consideration of application for review.**

* * * * *

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of release of the document containing the full text of such action, or in case such document is not released, after release of a public notice announcing the action in question. The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: *Provided,* That a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will in all cases be acted upon by the Commission.

Note.—In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

* * * * *

(d) Any person who has filed a petition for reconsideration may file an application for review within 30 days from the date of release of the document containing the full text of the final action on his petition, or in case the document is not released, after release of a public notice announcing the final action on his petition. If a petition for reconsideration has been filed, any person who has filed an application for review may: (1) Withdraw his application for review, or (2) substitute an amended application therefor.

Note.—In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

2. Section 1.106, paragraph (b), (c), (d) and (k) are revised to read as follows:

**§ 1.106 Petitions for reconsideration.**

* * * * *

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present:

(i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) A petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.

(d)(1) The petition shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form or relief sought and, subject to this requirement, may contain alternative requests.

(2) The petition for reconsideration shall also, where appropriate, cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed. The petition may request that additional findings of fact and conclusions of law be made.

* * * * *

(k)(1) If the Commission or the designated authority grants the petition for reconsideration in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which reconsideration is sought;

(ii) Remand the matter to a bureau or other Commission personnel for such further proceedings, including rehearing, as may be appropriate; or

(iii) Order such other proceedings as may be necessary or appropriate.

(2) If the Commission or designated authority initiates further proceedings, a ruling on the merits of the matter will be deferred pending completion of such proceedings. Following completion of such further proceedings, the Commission or designated authority may affirm, reverse, or modify its original order, or it may set aside the order and remand the matter for such further proceedings, including rehearing, as may be appropriate.

(3) Any order disposing of a petition for reconsideration which reverses or modifies the original order is subject to the same provisions with respect to reconsideration as the original order. In no event, however, shall a ruling which denies a petition for reconsideration be considered a modification of the original order. A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.

Note.—For purposes of this section, the word "order" refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the "memorandum opinion" or other material which often accompany and explain the order.

* * * * *

3. Section 1.115, paragraphs (g), (h) and (i) are revised to read as follows:

**§ 1.115 Application for review of action taken pursuant to delegated authority.**

* * * * *

(g) The Commission may grant the application for review in whole or in part, or it may deny the application with or without specifying reasons therefor. A petition requesting reconsideration of a ruling which denies an application for review will be entertained only if one or more of the following circumstances is present:

(1) The petition relies on facts which related to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(2) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(h)(1) If the Commission grants the application for review in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which review is sought;

(ii) Remand the matter to the designated authority for reconsideration in accordance with its instructions, and, if an evidentiary hearing has been held, the remand may be to the person(s) who conducted the hearing; or

(iii) Order such other proceedings, including briefs and oral argument, as may be necessary or appropriate.

(2) In the event the Commission orders further proceedings, it may stay the effect of the order from which review is sought. (See § 1.102.) Following the completion of such further proceedings the Commission may affirm, reverse or modify the order from which review is sought, or it may set aside the order and remand the matter to the designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing has been held, the Commission may remand the matter to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be appropriate.

Note.—For purposes of this section, the word "order" refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the "memorandum opinion" or other material which often accompany and explain the order.

(i) An order of the Commission which reverses or modifies the action taken pursuant to delegated authority is subject to the same provisions with respect to reconsideration as an original order of the Commission. In no event, however, shall a ruling which denies an application for review be considered a modification of the action taken pursuant to delegated authority.

* * * * *

[FR Doc. 79-32081 Filed 10-18-79; 8:45 am]
BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1011

### Commission Organization; Delegations of Authority

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule (Administrative rule change).

**SUMMARY:** New rules and procedures affecting the Commission's internal organization became effective January 1, 1978 (49 FR 65181) and were amended August 1, 1978. This document further amends the rules at 49 CFR 1011 to provide that transfer applications which are filed with directly related operating rights conversion applications and/or directly related securities issuance applications will be decided, where possible, on a consolidated basis, by the Review Board assigned to handle finance proceedings rather than the Commission's Motor Carrier Board. Because this amendment involves the internal organization and procedures of the Commission, it is being issued in final form, and public comments are not being requested.

**EFFECTIVE DATE:** September 27, 1979.

**FOR FURTHER INFORMATION CONTACT:** Michael Erenberg, 202-275-7245.

**SUPPLEMENTAL INFORMATION:** At present, processing of transfer applications filed under 49 U.S.C. 10926 which have directly related securities applications filed under 49 U.S.C. 11301-11302 or directly related conversion applications filed under 49 U.S.C. 10922 or 10923 are handled by three different decisional bodies. The Motor Carrier Board has delegated authority over transfer applications under 49 CFR 1011.6(b)(4); and operating rights review board has authority over conversion applications under 49 CFR 1011.6(g); and the Finance Board has authority over securities application proceedings under 49 CFR 1011.6(c). This separation is caused by the limited jurisdiction of each decisional body.

The handling of this type of finance proceeding (the transfer application) which causes the need for the other two types of directly related proceedings would be greatly facilitated by combining the applications into one proceeding for handling by the employee Review Board handling finance matters. Such consolidated handling will greatly speed up case processing, reduce paper work, free staff time for other work, and reduce the possibility of paper processing errors. To enhance the conformity of decisions on these consolidated, and somewhat more complicated, proceedings, these cases will be assigned to the employee Review Board handling finance matters.

*It is ordered:*

49 CFR 1011.6(g) is amended by adding subdivision (3) thereto which will read as follows:

**§ 1011.6 Employee boards.**

* * * * *

(g) * * *

(3) The employee Review Board handling finance matters will determine, in the first instance, and where possible, consolidated applications relating to the transfer of Certificates and permits filed under 49 U.S.C. 10926 which have directly related securities applications filed under 49 U.S.C. 11301-11302 and/or directly related conversion applications filed under 49 U.S.C. 10922 or 10923.

This decision does not affect significantly the quality of the human

environment or energy consumption. These rules are issued under the authority of 49 U.S.C. 10305 and 5 U.S.C. 553.

By the Commission.

Dated: October 12, 1979.

Agatha L. Mergenovich,

*Secretary,*

[FR Doc. 79-32400 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

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**49 CFR Ch. X**

**[Ex Parte No. MC 121]**

## Policy Statement on Motor Carrier Regulation

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Policy statement.

**SUMMARY:** The Commission adopts a policy statement describing its standards for deciding applications seeking motor carrier authority. Where applicants for authority show that the service proposed is responsive to a useful public purpose, and that they are fit to perform that service, the Commission will grant the application unless those opposing it demonstrate that a grant of authority would endanger their operations, contrary to the public interest.

**EFFECTIVE DATE:** November 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Shaw, Jr. (202) 275-7292.

**SUPPLEMENTARY INFORMATION:** We instituted this proceeding on December 5, 1978, by the publication of a notice in the Federal Register (43 FR 56979) in which we announced that we were considering adoption of a policy statement which would articulate, and if necessary modify, the criteria used in deciding cases involving motor carrier entry and acquisition. In light of the maturity of the motor carrier industry and changing economic conditions, we stated that, in carrying out regulatory responsibilities in the motor carrier area, more emphasis would be given to the benefits of healthy competition than to the protection of existing carriers.

To accomplish this goal in common carrier proceedings, we proposed to alter the three-part test first established in *Pan-American Bus Lines Operation,* 1 M.C.C. 190, 203 (1936). These criteria are:

> * * * [W]hether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

We proposed eliminating the second part of the test, which concerns existing carriers' ability to meet the demonstrated public purpose as well as applicant. We announced that, in evaluating motor common carrier application, we would follow these standards:

> (1) An applicant must demonstrate that the service proposed will serve a useful public purpose, responsive to a public demand or need; and
>
> (2) The Commission will grant common carrier authority commensurate with the demonstrated need unless it is established by those opposing the application that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers contrary to the public interest.

Our proposed standard for evaluting contract carrier applications will be described below.

We also stated that we were considering formulating new rules relating to the issuance of emergency temporary authority and new policy guidelines for handling applications for the merger, acquisition, and consolidation of motor carriers.

### Preliminary Matters

Since this proceeding was instituted, we have determined that it was necessary to institute a rulemaking proceeding to formulate new rules pertaining to emergency temporary authority. One proposal in that area is now pending in Ex Parte No. MC-64 (Sub-No. 2), *Special Temporary Authority Procedures,* published in the Federal Register on March 20, 1979 (44 FR 16996). Due to the complex issues involved in the establishment of new policies and guidelines in the area of motor finance transactions, we now believe that those issues will require separate consideration. We have, therefore, instituted Ex Parte No. 55 (Sub-No. 38), *Antitrust and Competition Factors in Motor Carrier Finance Cases,* (44 FR 21953).

The motor common carriers of passengers argue that their situation is different from that of motor carriers of property and that a different policy is required for them. Applicants for common carrier authority to transport both passengers and property must bear the burden of proving public convenience and necessity. The support normally relied upon by these two kinds of applicants differs. Property carriers can usually rely upon support from repetitive shippers, often with professionally staffed traffic departments. Passenger carriers, on the other hand, are more likely to serve the occasional user—persons who take intercity bus trips or who charter buses relatively infrequently—whose testimony is harder to obtain and who cannot usually be as firm in describing future service needs. Thus, passenger and most property carriers face different problems in pursuing an application for operating authority. However, it does not necessarily follow that the policies we apply in evaluating the necessarily different kinds of evidence that might be introduced in different kinds of proceedings should themselves be different. The *Pan American* case itself, after all, was a passenger application, and the standards developed there have worked well in evaluating property carrier applications. We believe that we can develop a statement on entry policy that will be applicable both to property and passenger carriers.

Western Pacific Transport Company, a motor common carrier that is a wholly-owned subsidiary of the Western Pacific Railroad, is concerned about Commission policy which requires rail-affiliated motor carriers to show "special circumstances" over and above the normal showing of public convenience and necessity before they can obtain unrestricted motor carrier authority. It requests clarification of that policy here. Any change in the "special circumstances" policy would have a significant impact on the rail and motor carrier industries. Since that issue is beyond the scope of this proceeding, we will not change our policy in that area here. It will be considered in Ex Parte No. 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation,* in which an advance notice of proposed rulemaking was issued August 21, 1979 (44 FR 49279).

### The Comments

Seventy-one initial statements were submitted in response to our proposed policy statement. Thirty-seven separate comments were submitted by individual motor carriers or groups of motor carriers. Those comments are the views of approximately 175 regulated motor carriers, representing almost all the segments of the motor carrier industry. They include both common and contract carriers; established carriers; new entrants; regular-route, general commodities carriers; specialized, irregular-route carriers; and passenger carriers. Six separate comments were submitted by various motor carrier associations: The American Trucking Associations, Inc., on behalf of itself and four specified member conferences; The Common Carrier Conference—Irregular Route of the American Trucking

Associations, Inc.; The Regular Common Carrier Conference of The American Trucking Associations, Inc.; The Contract Carrier Conference, Inc.; The Oil Field Haulers Association, Inc.; and National Automobile Transporters Association.

Six Federal agencies—the Department of Transportation, the Department of Justice, the Federal Trade Commission, the General Services Admininstration, the Council on Wage and Price Stability, and the Department of the Army—and the States of New Jersey, Utah, and Illinois submitted comments. The views of the shipping public were represented by comments from a total of 13 manufacturing companies, trade associations, and shipping groups, such as the National Industrial Traffic League, National Small Shipments Traffic Conference, Drug and Toilet Preparation Traffic Conference, and American Paper Institute, Inc. Statements were also filed by the Motor Carrier Lawyers Association; The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; Act, Inc.; and two individuals, one a registered ICC practitioner and the other a property and casualty underwriter. We appreciate the time and effort expended by these participants to inform us of their views with respect to the proposed policy statement.

The comments cover the entire spectrum of positions on the subject. The lines are very sharply drawn between the motor carrier industry and the Federal agencies. The regulated carriers and their trade associations (except the Contract Carrier Conference, Inc.) generally oppose adoption of the proposed policy statement and many of the current steps that this Commission has taken to change motor carrier regulation. Some argue that the regulatory changes which the Commission proposes here go to the basic purposes of the statutory scheme itself, that they cannot lawfully be made administratively, and that they would require statutory change. Some point to chaotic conditions which existed prior to regulation and predict that any further loosening of entry controls will destroy the present stability and prosperity of the trucking industry. They do not, however, claim that the industry is comparable to that which existed in 1935. Some point out that not all trucking companies are large and enormously profitable, but none has argued convincingly that the regulated segment of the industry, taken as a whole; is anything but financially healthy.

The Federal agencies applaud the proposed policy change and urge this Commission to go even further to institute an open-entry policy. They rely largely on the application of economic theory, and cite the opinions of professional economists to the effect that the motor carrier industry is naturally competitive, and that freer entry will result in lower prices with no harmful reduction in service quality. One of the government parties—the Federal Trade Commission—in support of its argument that the industry, while it may have needed regulatory protection in 1935 does not need it today, has provided comparisons between the industry as it was then and as it is now.

The views expressed by shipper interests are somewhat varied, but shippers generally take a middle position. They favor increased competition, and they also commend the Commission on its recent actions regarding regulatory reform of the motor carrier industry. Some, however, fear that adoption of this proposal may lead to completely open entry into motor transportation, which they believe might adversely affect the shipping public. Those same respondents favor entry control to guard against overcapacity, and they support continued regulation of such matters as financial responsibility and adequate insurance as necessary to protect the public. Several shippers favor total open entry.

The State agencies are primarily concerned with local issues. The Illinois Department of Revenue believes that the proposed policy could hinder its ability to collect State motor fuel tax from interstate carriers. The New Jersey Department of Transportation is concerned about the effect of the policy on interstate commuter bus operations. The Utah Motor Carrier Committee of the Utah Department of Transportation fears that adoption of the proposed policy statement may have an adverse impact on motor carrier service to small Utah communities.

## Motor Carrier Entry Policy

The primary purpose of this proceeding is to appraise our policy relating to motor carrier entry control and to articulate a statement pertaining to the role of competition in applications for motor carrier authority. We are mindful that in *Trans-American Van Service, Inc.* v. *United States,* 421 F. Supp. 308 (N.D. TX, 1969), and *P. C. White Truck Line, Inc.* v. *ICC,* 551 F. 2d 1326 (DC Cir. 1977), the Commission was required to consider "* * * the contribution that increased competition might make to the public weal." *P. C. White, Supra,* 551 F. 2d at 1329. In instituting this proceeding, we suggested that elimination of the second *Pan-American* criterion regarding consideration of the adequacy of existing service might be the proper course to follow to give competition adequate consideration. We noted too, that we believed that in the past the Commission might have relied too heavily on adequacy of existing service, thus impeding the growth of beneficial competition.

The need for Federal regulation of the motor carrier industry followed the Supreme Count's decision in the landmark cases of *Buck* v. *Kuykendall,* 267 U.S. 307 (1925), and *Bush Co.* v. *Maloy,* 267 U.S. 317 (1925). There, the Court declared that it was unconstitutional for States to establish any entry control laws or regulations for interstate motor carriers, because the laws or regulations interfered with the free flow of interstate commerce. For approximately 10 years, Congress debated and considered legislation to create a regulatory system intended to support a coordinated nationwide transportation system involving motor carriers and other modes of transportation.

The culmination of this study and debate was the Motor Carrier Act of 1935, which contained a franchise system modeled after the regulatory programs adopted by a number of States. Included in the 1935 Act was a policy statement which was incorporated into the national transportation policy created by the Transportation Act of 1940. We still follow that policy today, see 49 U.S.C. 10101. That policy statement and the legislative history of the Motor Carrier Act of 1935, see 79 Cong. Rec., 12204–12237 (1935), demonstrate that two of Congress' primary goals were to ensure that the public had safe, efficient, and economic transportation services available and to stabilize the motor carrier industry so it could grow and develop. See *Regulation of Transportation Agencies,* S. Doc. No. 152, 73d Cong., 2nd Sess. (1935).

Congress intended the legislation to protect the interests of many different segments of the public, not just the interstate motor carrier industry. It sought to protect shippers from competitors within their own industries that were willing to make use of carriers engaging in discriminatory and unfair practices to obtain lower rates and other concessions; the general public from unsafe and irresponsible operators; and the railroads regulated by the Federal Government and intrastate carriers regulated by individual States from

unfair competition by unregulated interstate carriers. Competition, especially competition between the different modes of transportation was to continue to play an important role in the national transportation system. However, competition was to be held within reasonable limits and kept from becoming destructive and wasteful.

The legislation included an entry control system designed to guard against congestion and oversupply of transportation. However, there was never any intention to create monopoly situations. As was stated by a proponent of the legislation:

> There is nothing in the bill to prohibit the Commission from granting two or more certificates over the same route and there are many operators competing over the same route now that will receive certificates under the grandfather clause as a matter of course. The effect of such a provision is to place the authority in the hands of the Commission, a Government body, to determine whenever public convenience and necessity require additional operations on the public highway. 79 Cong. Rec., 12206 (1935).

The statute required new applicants to meet certain criteria before a certificate or permit could be granted. In deciding applications for common carrier authority, the Commission is required to find whether the present or future public convenience and necessity require the service proposed. See 49 U.S.C. 10922. In a contract carrier application, the Commission must find whether a new operation would be consistent with the public interest and the national transportation policy. These statutory standards are not self-limiting, but instead are extremely broad and flexible. They do not suggest that the Commission should be either open-handed or tight-fisted in dealing with applications. This has meant that the task of defining and refining the statutory concepts has necessarily fallen to the Commission, and we must assume that the Congress knew that this would be the case and acted consciously when it adopted such broad criteria.

*Contract carriage.*—For the sake of convenience, and because it will require relatively brief comment, we shall turn our attention first to contract carriage. The test here is consistency with the public interest and the national transportation policy, and it is usually assumed to entail a lesser standard of proof than is required in common carrier applications. Also, specific statutory criteria (see 49 U.S.C. 10102(12) and 10923) applicable to contract carrier applications serve to make the applicant's task easier, as they have been construed to place evidentiary burdens upon the opposing carriers. *I.C.C.* v. *J-T Transport Co.*, 368 U.S. 81, 90 (1961). Thus the standard which we announced we would apply in contract carrier applications represents no change from long-standing policy, and it is reaffirmed.

In considering motor contract carrier applications, the Commission's policy will be to find that the effect of a grant of contract carrier authority upon protesting carriers will not be a significant factor unless the protestants themselves can establish that such a grant would endanger or impair their operations to an extent contrary to the public interest.

*Common carriage.*—Soon after the passage of the Motor Carrier Act of 1935, the Commission, in the *Pan-American* case, articulated tests which it has used since in applying the statutory standard of public convenience and necessity. These tests—the three *Pan-American* criteria—are quoted at the beginning of this decision. The first criterion is directed to whether there is a public demand or need for the proposed service; that is, whether if new authority is granted, it will be used and useful to a prospective customer of the applicant (as is the case in most applications for new authority) or to the applicant and its existing customers (as is the case of applications to use alternate routes or to eliminate gateways). This standard has the effect of placing the overall burden of proof upon the applicant, as required by the Administrative Procedure Act, 5 U.S.C. 556(d). The second *Pan-American* criterion addresses the issue of "adequacy" of existing service. Its effect has been widely construed as placing on the applicant the specific burden of showing that the service it proposes cannot be provided as well by existing carriers. The third criterion goes to the effect which a new competitive service would have on existing carriers' ability to meet the needs of the public they serve.

As we pointed out in the notice initiating this proceeding, the motor carrier industry today is vastly different than it was during the 1930's when the Motor Carrier Act was being considered and enacted by the Congress, and when the standards for its interpretation and application were being formulated by the Commission.[1]

From a struggling industry in 1935, characterized by one-truck operators providing largely short-haul and local drayage service,[2] trucking today is one of the largest businesses in America. According to the American Trucking Associations, Inc., trucking is the nation's largest employer, with over 9 million employees.[3] The trucking industry's share of the available freight traffic increased from 10 percent in 1940, when it handled about 62 billion ton miles, to 24 percent in 1977.[4] The trucks carried some 510 billion ton miles of freight in 1976, with Federally-regulated carriers handling about 44 percent of that amount, or 225 billion ton miles.[5] Operating revenues as reported to the Commission for 1977 by 857 of the largest motor carriers of property and passengers amounted to over 23.2 billion dollars.[6] The average return on equity for the 100 largest trucking companies, which account for half of all industry revenues, was 18.5 percent for the year ending September 30, 1978,[7] as contrasted to a 14 percent average for industry generally.[8]

As the motor carrier industry has developed, and especially in the past two years, the Commission has placed more emphasis on the need for additional competition than on the protection of carriers already in the market. Our statistics bear this out. During the first ten months of fiscal year 1979 (October 1, 1978–July 31, 1979), 98.4 percent of the motor carrier applications which were decided on the merits resulted in full or partial grants of authority. Of these, all but 4.2 percent represented total grants of the authorities ultimately sought by the applicants.

We wish to emphasize that any change that may have occurred in the direction of a more liberal approach to determining application cases did not result from a repudiation of all or any one of the *Pan-American* criteria. In deciding applications, in balancing the need for a new service against the

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[1] Comments of the Federal Trade Commission, filed February 5, 1979, pages 18–21. See also *Issues in Regulating Interstate Motor Carriers*, Study of the Staff of the U.S. General Accounting Office, pages 12–14 (June 20, 1978).

[2] Hearings before the Senate Committee on Interstate Commerce on S. 1629, S. 1632, and S. 1635, 74th cong., 1st Sess. 312 (1935). The vast majority of firms at that time had only one vehicle and were either owner-operated or employed by one person. In contrast, the average number of vehicles operated by regulated carriers by 1968 was 43. G.A.O. Study page 12.

[3] American Trucking Associations, Inc., *Trucking '77*, 1977 Annual Report, page 9.

[4] Transportation Association of America, *Transportation Facts and Trends*, 14th edition (July 1978).

[5] Interstate Commerce Commission, *92nd Annual Report*, page 134 (1978).

[6] Ibid., page 133.

[7] Interstate Commerce Commission, Bureau of Accounts, *Large-Class I Motor Carriers of Property. Selected Earnings Data*, page 1 (December 1978).

[8] Investigation and Suspension Docket No. M-29772, *General Increase, S.M.C.R.C.*, slip opinion, page 24 (November 27, 1978).

impact which added competition would have on existing carriers' ability to perform service to the public, we have routinely and consistently addressed and resolved three issues. Has the applicant established a public need for the proposed service? Can existing carriers satisfy the demonstrated need? Will the proposed service cause the protestants to be harmed to such extent as to outweigh the benefits to the public? These three questions are no more than articulations of the three *Pan-American* criteria. *Liberty Trucking Co., Ext.—General Commodities,* 131 M.C.C. 573, 574 (1979).

Also working within the framework of the *Pan-American* criteria we have continuously refined the protestant's evidentiary burden. No longer can the mere willingness of an authorized carrier to perform service, or the showing that it has successfully served a supporting shipper, defeat an application. *Superior Trucking Co., Inc., Ext.—Agric. Machinery,* 126 M.C.C. 292 (1977). In the *Liberty* decision on reconsideration, cited above, we reaffirmed our prior finding that a protestant should be required to demonstrate how new competition might materially jeopardize its ability to serve the public, contrary to the public interest. *Liberty,* supra, at 575; *May Trucking Co.* v. *United States,* 593 F. 2d 1349 (D.C. Cir. 1979).

Today, we take a step further. We adopt a policy statement to the effect that an opposing carrier must bear the evidentiary burden of showing that a grant of authority will adversely affect its operations to the detriment of the public interest, and we expressly eliminate as a factor in making our decision the second *Pan-American* criterion. In addition, we suggest certain non-traditional ways in which an applicant might carry *its* burden of showing that its proposed service will serve a useful public purpose.

Our actions here should not be taken as evidence that we have abdicated our function to determine whether a given proposal is required by the public convenience and necessity. Rather, it means that we are convinced that we have the duty as regulators, charged with administering in today's world a statute that was written and originally construed under vastly different economic and social conditions, to change the standards we use in interpreting and applying the terms and concepts reflected in that statute. See *American Trucking* v. *A., T. & S.F.R. Co.,* 387 U.S. 397, 416 (1967). Our policy, as stated here, reflects our conviction that today's motor carrier industry is generally financially strong, that many segments of the industry have largely competitive characteristics and are capable of being regulated primarily by the economic forces of the marketplace,[9] and that the artifical protections which strict government regulation of entry can provide are currently unnecessary in those instances.

The first of the *Pan-American* criteria places the burden upon the applicant to come forward with evidence of a public need or demand for its service. Under that standard, applicants must show that the service they propose would serve a useful public purpose, responsive to a public demand or need. The normal way to establish this has been for applicants to submit evidence of those who would use the service proposed. We think that this is still the most satisfactory means for an applicant to proceed, for it provides us with the information we need to frame a grant of authority, and provides a factual framework for dealing with the application and the interests of the parties on both sides.

The second *Pan-American* criterion speaks to the question whether the "useful public purpose" which a proposed new operation would meet "can and will be served as well by existing lines or carriers." Thus it raises the issue of adequacy of existing service. In the early days of entry regulation, the effect of this standard was to place upon the applicant the burden of showing that the service it proposed could not be performed as well by existing carriers. As already discussed above, over the years applicants have still been encouraged to provide evidence of their supporting witnesses' experience with available services, but the lack of a showing by the applicant that the existing service is inadequate has not been fatal to its case. Rather the burden has been thrust upon opposing carriers to bear an ever greater evidentiary burden.

The placing of this burden squarely on the opposing carriers is clearly required by today's conditions in the surface transportation industry. As we stated in the notice instituting this proceeding, it is only the opposing carrier who is in a position to show the impact which a grant of authority will have upon it, and it is logical to place upon it the responsibility for developing the record and bearing the burden of producing the evidence as to this issue. We are convinced that the second of the criteria laid down in the *Pan-American* case has outlived its usefulness, and it will no longer be applied.

In determining applications for motor common carrier authority, we will apply these tests:

(1) The applicant must demonstrate that the operation proposed will serve a useful public purpose responsive to a public demand or need.

(2) The Commission will grant authority commensurate with the demonstrated purpose unless it is established by parties opposing the application that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent contrary to the public interest.

### Evidentiary Guidelines

The public comments have brought to our attention that, in light of our current entry policy, many carriers do not seem to be aware of the means by which they may oppose effectively an application and thus protect what may be legitimate rights. They are uncertain what evidence must be presented to demonstrate that authorization of a new service might have serious adverse effects upon their ability to continue to provide essential services. It is our responsibility to clarify our current policy regarding the evaluation of applications for permanent motor carrier operating rights.

A carrier opposing a motor carrier entry application should present certain basic evidence to allow us to make a determination about its ability to meet the supporting shipper's service needs. The Commission needs specific factual information to evaluate the degree to which an intervenor's existing operations, and consequently its service to the general public, may be impaired or endangered, to an extent contrary to the public interest, if a new competitive service is authorized. This evidence should be presented in the opponent's verified statement under modified procedure or at the presentation of its case at oral hearing.

The information should include:

(1) A precise description of its pertinent operating authority;

(2) A description of the type and amount of equipment and facilities that it has available to meet the avowed purpose of the application;

(3) A discussion of its present operation; including a description of the specific service it is providing those supporting the application;

(4) The amount of traffic which it has handled that would be subject to diversion to the applicant if the authority sought is granted, and the impact of that diversion on its profitability;

(5) A description of the probable impact on operations which are directly competitive

[9] Interstate Commerce Commission, Initial Report of the Motor Carrier Task Force (May 1979).

with the service which the applicant proposes;

(6) A statement concerning other adverse impacts of a grant of authority on its business generally and on the public such as:

(a) Need to close particular terminals or other facilities;

(b) The number of employees that would be furloughed or dismissed;

(c) The imbalance of its operations and other inefficiencies;

(d) Its ability to continue its existing service to the public due to a reduction in total business, loss of particular traffic in a geographic area, or other factors; and

(e) Effects on fuel efficiency.

This decision does not significantly affect the quality of the human environment or energy consumption.

This notice is promulgated under authority contained in 49 U.S.C. 10101, 10321(a), 10921, 10922, 10923, and 5 U.S.C. 553..

Dated: September 26, 1979.

James H. Bayne,

*Acting Secretary.*

By the Commission. Chairman O'Neal, Vice Chariman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Vice Chairman Stafford and Commissioner Gresham dissenting.

**Vice Chairman Stafford, Dissenting**

I strongly agree with Commissioner Gresham that this Policy Statement really means quite little in terms of actual impact.

The statement is more symbolic than practical. It evidences the Commission's current attitude toward (or should I say against) regulation in general and entry controls in particular. If anyone needed it, the statement is an indication that things will not be done the way they used to be done. Old theories and old policies will not carry material weight in future deliberations.

Removal of traditional entry barriers is not the only indication of this attitude. Virtual elimination of rate bureaus as ratemaking organizations is about to be realized. Rate flexibility (in terms of no-suspend zones and even no-notice zones) appears not too far away.

The policy statement disturbs me because it implies that what the ICC has been doing for over forty years has not been in the public interest. I have said it before, and it may sound trite, but I believe the ICC has done a surprisingly good job of regulating. Service is generally better than adequate, and prices are reasonable. There is substantial and healthy competition in the trucking industry. Obviously, the industry has matured. But with all the rhetoric, no one has ever shown with any degree of reliability that most of the same problems that existed before the Motor Carrier Act of 1935 will not be visited upon us again when all of these so-called reforms are implemented.

Had all of these changes occurred in one proceeding, I am confident that any reviewing court would have found that they exceed the bounds of what an agency may do toward self-deregulation. The tactic of smaller, individual rulemakings, each with a limited specific change, has proven very effective in achieving major changes without legislation. Unfortunately, no reviewing court has had the big picture before it; and I doubt if any court ever will. This proceeding represents one more minor rulemaking that is part of a major policy overhaul.

**Commissioner Gresham, Dissenting:**

How does the majority's statement of "new" policy really change the actual policies which currently are followed by the Commission in deciding the fate of operating rights application cases? This is the real question as I see it. The answer seems to be that no real change has been made. Candidly, I must label this policy statement as "window dressing."

Those who are familiar with current Commission policy undoubtedly can accept this label as accurate and must surely wonder why the Commission has expended so much time and effort merely for the sake of telling them what they already know. Frankly, I do not know why.

At one point the majority states "that in the *past* (emphasis added) the Commission might have relied too heavily on adequacy of existing service, thus impeding the growth of beneficial competition." The key words in that quote are "in the past." I believe even extreme critics of regulation would agree that this quoted analysis of the past does not accurately depict the trend of current regulation by this Commission. I believe these critics would even concede that currently, adequacy of existing service is not the decisive factor in final decisions of this Commission. Going a step further, these critics, if objective, would confirm that today the Commission decides application cases by determining whether the public benefits of a grant of new authority outweigh the detriments which would flow from such a grant and by considering the competitive impact of the outcome of application cases. Today these are the decisive factors, not mere adequacy of existing service. So again, I must ask why the majority has taken such pains to bury court approved and time-tested standards which, as presently applied by the Commission, result in the enhancement of effective competition while avoiding the extremes of destructive competition?

I wonder what the majority believes it actually has changed. Does the majority think that this "new" policy will alter the outcome of application cases? I think not. To illustrate, consider a hypothetical, and very simplistic case. A person who wants new operating authority asks a shipper to support his application for this authority. The shipper agrees to do so. This supporting shipper then tells the Commission that it receives wholly adequate service from existing carriers and that carrier competition for its traffic is intense. Assuming that there are no other issues or overriding factors present in the case such as substantial fuel saving which would result from a grant of this new authority, would the fate of this application differ under the "new" policy from its fate under current Commission policy? The answer is no! I believe that the application would be denied irrespective of whether the "new" policy or the current policy of this Commission was in effect. The only real difference would be in the words used in the decision. Under current policy, the Commission's decision might mention that existing service is adequate although its analysis went far beyond that particular aspect of the case to factors such as the effect of a grant on competition. Under the "new" policy the Commission would merely avoid mentioning the fact that existing service is adequate and instead might say that its denial is based on the fact no useful public purpose would be served by a grant of this new authority. Thus, we have a distinction without difference! Here we have another semantic wrestling match, an exercise from which I will refrain and to which I must respectfully dissent.

As a final point, I challenge the majority to count the number of cases in which this Commission has followed the current administrative policy that operating authority may be granted even if an applicant does not prove that existing service is inadequate. Yes, they are too numerous to count! Again, I must ask why so "much ado about nothing?"

[FR Doc. 79-32279 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 44, No. 204
Friday, October 19, 1979

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 581

### Processing Garnishment Orders Issued Against the United States for Child Support or Alimony

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** In the matter of proposed uniform procedures for the Executive Branch, including therein, the Territories and Possessions of the United States, the United States Postal Service, the Postal Rate Commission, any Wholly Owned Federal Corporation Created by an Act of Congress, and the Government of the District of Columbia. This proposed rule is published in compliance with Executive Order 12105, December 19, 1978. The purpose of the rule is to provide uniform procedures throughout the executive branch of the Government for the garnishment of moneys (the entitlement to which is based upon remuneration for employment) due and payable by the United States or the District of Columbia, where the garnishment, or similar legal process, is brought to enforce child support or alimony obligations. The executive branch of the Government, for the purpose of this rule, includes the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia.

**DATE:** Comments will be considered, if received no later than December 18, 1979.

**ADDRESS:** Send comments to: Office of the General Counsel (Room 6H31), Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

**FOR FURTHER INFORMATION CONTACT:** Murray Meeker, Attorney, Office of the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415 (202–632–5530).

**SUPPLEMENTARY INFORMATION:**

#### The Social Services Amendments of 1974

On January 4, 1975, Congress amended the Social Security Act with the enactment of Public Law 93–647, cited as the Social Services Amendments of 1974. Public Law 93–647 added a number of new sections to the Social Security Act, including section 459 which waived the sovereign immunity of the United States to allow for the acceptance of garnishment orders. In substance, section 459 provided that moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States, shall be subject to legal process brought for the enforcement of legal obligations to provide child support or make alimony payments, in like manner and to the same extent as if the United States were a private person.

#### Tax Reduction and Simplification Act of 1977

On May 23, 1977, Congress enacted the Tax Reduction and Simplification Act of 1977, Public Law 95–30. Title V of Public Law 95–30 further amended the Social Security Act by clarifying and supplementing the garnishment provisions contained in section 459. Additionally, Public Law 95–30 authorized the President or his designee to promulgate regulations for the implementation of the Act in the executive branch.

#### Executive Order 12105

By Executive Order 12105, dated December 19, 1978, the President authorized the United States Civil Service Commission (now the Office of Personnel Management), in consultation with the Attorney General, the Secretary of Defense, and the Mayor of the District of Columbia, to promulgate garnishment regulations for the executive branch.

On April 27, 1979, the Office of Personnel Management submitted advance copies of the proposed regulations to former Attorney General Griffin B. Bell, Secretary of Defense Harold Brown, and Mayor Marion Barry. We shall complete our consultation with these officials during the period for comment on this proposed rule.

Office of Personnel Management.

Roderick S. Speer,

*Assistant Issuance System Manager.*

Accordingly, it is proposed that 5 CFR Part 581 be added as follows:

## PART 581—PROCESSING GARNISHMENT ORDERS ISSUED AGAINST THE UNITED STATES FOR CHILD SUPPORT OR ALIMONY

### Subpart A—Purpose and Definitions

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### Subpart E—Implementation by Governmental Entities

581.501 Rules, regulations, and directives by governmental entities.

Authority: 42 U.S.C. §§ 659, 661–662; 15 U.S.C. § 1673; E.O. 12105.

### Subpart A—Purpose and Definitions

#### § 581.101 Purpose.

Section 659 of title 42 of the United States Code, as amended, provides that moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement of such individual's legal obligations to provide child support

and/or make alimony payments. The purpose of this part is to implement the objectives of section 659 as it pertains to the executive branch of the Government of the United States.

**§ 581.102 Definitions.**

In this part:

(a) "The executive branch of the Government of the United States" means all "governmental entities" as hereinafter defined, including therein the territories and possessions of the United States, the United States Postal Service; the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia.

(b) "Governmental entity" means each and every department (both civilian and military), agency, independent establishment, or instrumentality of the executive branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature of the executive branch, and the governments of the District of Columbia and of the territories and possessions of the United States.

(c) "Private person" means a person who does not have sovereign or other special immunity or privilege which causes such person not to be subject to legal process.

(d) "Child support", when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect to which the individual has such an obligation, and (subject to and in accordance with State or local law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; the term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable pursuant to a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction.

(e) "Alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State or local law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; the term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his/her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses of former spouses.

(f) "Legal process" means any writ, order, summons, or other similar process in the nature of garnishment (which may include attachments, writs of execution, and court ordered wage assignments), which—

(1) Is issued by (i) a court of competent jurisdiction within any State, territory, or possession of the United States, or the District of Columbia, (ii) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (iii) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support and/make alimony payments.

(g) "Legal obligation" means an obligation to pay alimony and/or support which is enforceable under appropriate State or local law.

(h) "Obligor" means an individual having a legal obligation to pay alimony and/or child support.

(i) "Remuneration for employment" means compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes, but is not limited to those items set forth in § 581.103.

**§ 581.103 Moneys which are subject to garnishment.**

(a) For the personal service of the obligor in the employment of the executive branch of the Government of the United States as a civilian employee:

(1) Saved pay;
(2) Retained pay;
(3) Night differentials;
(4) Sunday and holiday premium pay;
(5) Overtime pay;
(6) Standby pay;
(7) Environmental differentials;
(8) Hazardous duty pay;
(9) Tropical differentials;
(10) Recruitment incentives;
(11) Any payment in consideration of accrued leave;
(12) Severance pay;
(13) Sick pay;
(14) Physician's comparability allowances;
(15) Special pay for physicians and dentists;
(16) Amounts paid pursuant to a personal services contract where the contractor recipient is a Federal employee;
(17) Merit pay;
(18) Incentive pay;
(19) Cash awards;
(20) Agency and Presidential incentive awards (except wher such award is for making a suggestion); and
(21) Senior Executive Service rank and performance awards.

(b) For the personal service of the obligor in the uniformed services of the United States;

(1) Basic pay (including service academy cadet and midshipmen pay);
(2) Special pay (including inlistment and re-enlistment bonuses);
(3) Lump sum reserve bonus;
(4) Continuation pay for physicians and dentists;
(5) Special pay for physicians, dentists, optometrists, and veterinarians;
(6) Incentive pay;
(7) Variable incentive pay;
(8) Inactive duty training pay;
(9) Administrative duty pay;
(10) Academy official pay (other than personal money allowances);
(11) Any payments made in consideration of accrued leave (basic pay portion only);
(12) Readjustment pay;
(13) Disability retired pay; and
(14) Severance pay (including disability severance pay).

(c) For obligors generally:

(1) Periodic benefits (including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code) (Social Security Act) or other payments to such individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act) and by chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;
(ii) Retirement;

(iii) Retired/retainer pay;
(iv) Annuities;
(v) Refunds of retirement contributions where an application has been filed; and
(vi) Dependents' or survivors' benefits when payable to the obligor.
(2) Amounts received under any Federal program for compensation for work injuries; and
(3) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

However, remuneration would not include any payment as compensation for death, including any lump sum death benefit under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans Administration as pension, or any payments by the Veterans Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his/her retired pay in order to receive such compensation. In such case, only that part of the Veterans Administration payment which is in lieu of the waived retired/retainer pay, is subject to garnishment.

**§ 581.104 Moneys which are not subject to garnishment.**

(a) Amounts paid by way of reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, would not be remuneration for employment, including, but not limited to:
(1) In the case of civilian employees:
(i) Uniform allowances;
(ii) Travel and transportation expenses (including mileage allowances);
(iii) Relocation expenses;
(iv) Storage expenses;
(v) Post differentials;
(vi) Foreign areas allowances;
(vii) Education allowances for dependents;
(viii) Separate maintenance allowances;
(ix) Post allowances and supplementary post allowances;
(x) Home service transfer allowances;
(xi) Quarters allowances;
(xii) Cost-of-living allowances (COLA); and
(xiii) Per diem allowances.
(2) In the case of members of the uniformed services:
(i) Position pay (Navy only);
(ii) Basic allowance for quarters;
(iii) Basic allowance for subsistence;
(iv) Station allowances;
(v) Armed Forces health professions scholarship stipends;
(vi) Travel and transportation allowances;
(vii) Dislocation allowances;
(viii) Family separation allowances;
(ix) ROTC subsistence allowance;
(x) Allowance for recruiting expenses;
(xi) Education allowances for dependents;
(xii) Clothing allowances for enlisted personnel; and
(xiii) Uniform allowances for General and Flag officers and for the Surgeon General of the United States.
(3) In the case of volunteers serving under either the Domestic Volunteer Service Act of the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for our-of-pocket expenses.

(b) Remuneration for employment would not include payments made pursuant to:
(1) The provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 *et seq.*, of title 28 of the United States Code;
(2) Payments or portions of payments made by the Veterans Administration pursuant to section 501–560 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected, disability or death, age, and need;
(3) Refunds in connection with tax overpayments from the Internal Revenue Service;
(4) Grants;
(5) Fellowships; and
(6) Contracts, except where the contractor recipient is a Federal employee.

**§ 581.105 Exclusions.**

In determining the amount of any "moneys due from, or payable by, the United States" to any individual, there shall be excluded amounts which—
(a) Are owed by such individual to the United States;
(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to deductions for programs under title II of the Social Security Act, as amended, Federal employment taxes, amounts mandatorily withheld for the U.S. Soldiers' and Airmens' Home, and fines and forfeitures ordered by court-martial or by a commanding officer;
(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he/she was entitled (the withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding);
(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Social Security Administration;
(e) Are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage). (Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Amounts voluntarily contributed toward civil service annuity benefits under section 8343 of title 5 of the United States Code, are considered to be supplementary); or
(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage). (Both Servicemen's Group Life Insurance and "regular" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; "optional" Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary.)

**§ 581.196 Future Payments.**

Moneys paid by a governmental entity which may be due and payable to an individual at some future date, shall not be considered due such individual unless and until all of the conditions necessary for payment of the moneys to the individual have been met, including, but not limited to, the following conditions which might apply: (a) Retirement; (b) resignation from a position in the Federal service; (c) application for payment of moneys by the individual.

## Subpart B—Service of Process

**§ 581.201 Official to receive process.**

The head of each governmental entity shall designate an official or officials, identified by title of position, mailing address, telephone number, and, if applicable, geographical area or region, upon whom service of legal process against the entity may be accomplished in order to facilitate and expedite the

entity's compliance with such legal process.[1]

**§ 581.202 Service of process.**

(a) A party using this part shall serve on the designated official of the governmental entity which has moneys due and payable to the obligor, legal process which names the governmental entity as the garnishee.

(b) Service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated in the appendix to this part for receipt of such service of process (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Service upon a United States Attorney is not valaid service of process. The governmental entity shall make every reasonable effort to facilitate proper service of process on the official(s) designated to receive legal process for the governmental entity. If, for example, legal process is not directed to any particular official within the entity, or if it is addressed to the wrong official, the recipient shall, nonetheless, deliver the legal process to the individual who has been designated by the entity to receive service.

(c) Where it does not appear from the face of the process received that it has been brought to enforce the legal obligation(s) authorized in paragraphs (d) and/or (e) of § 581.102, the process must (1) be accompanied by a certified copy of the court order establishing such legal obligation(s), or (2) where the State or local law provides for the issuance of legal process without a support order, such other documentation establishing that it was brought to enforce legal obligation(s) authorized in paragraphs (d) and/or (e) of § 581.102, must be submitted.

(d) In order for the party who caused the legal process to be served to receive the additional five (5) percent provided for in either § 581.402 (a) or (b), it must appear on the face of the legal process that the process was brought for the enforcement of a support order with respect to a period which is twelve (12) weeks in arrears, or a certified copy of the support order (or other evidence acceptable to the head of the governmental entity), establishing this fact, must be submitted.

**§ 581.203 Information minimally required to accompany legal process.**

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the governmental entity named. Therefore, the following identifying information, if known, is requested:

(1) Full name of the obligor;

(2) Date of birth of the obligor;

(3) Employment number, social security number, or civil service retirement claim number of the obligor;

(4) Component of the governmental entity for which the obligor works, and the official duty station or worksite of the obligor; and

(5) Status of the obligor, e.g., employee, former employee, or annuitant.

(b) In the event that the information submitted is not sufficient to identify the obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time, an attempt should be made to inform the party who caused the legal process to be served, or his/her representative, that the legal process will not be honored unless adequate identifying information is supplied. If legal process is returned to the court, or other authority, the governmental entity may wish to send copies of the returned documents to the United States Attorney for the district embracing the jurisdiction from which the legal process issued.

## Subpart C—Compliance With Process

**§ 581.301 Suspension of payment.**

Upon proper service of legal process, together with all supplementary documents and information as required by §§ 581.202 and 581.203, the head of the governmental entity or his/her designee, shall identify the obligor to whom that governmental entity holds moneys due and payable as remuneration for employment, and shall suspend payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part and the law of the jurisdiction from which it was issued. However, if the governmental enfity receives a subpoena, summons, or other document which merely requests information concerning moneys due an obligor, no suspension action shall be taken.

**§ 581.302 Notification of obligor.**

(a) As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:

(1) That such process has been served, including a copy of the legal process, together with such other documents as may be required by § 581.202;

(2) Of the maximum garnishment limitations set forth in § 581.402, with a request that the obligor submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation; and

(3) Of the percentage that will be deducted if he/she fails to submit the necessary documentation.

(b) The governmental entity may provide the obligor with the following additional information:

(1) Copies of any other documents submitted in support of the legal process;

(2) That the United States does not represent the interests of the obligor in the pending legal proceedings;

(3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and

(4) That obligors in the military service may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. §§ 501 *et seq.*).

**§ 581.303 Response to legal process or interrogatories.**

(a) Except under the circumstances set forth in paragraph 581.305(a), whenever the agent designed to accept service is validly served with legal process, the agent shall respond within thirty (30) calendar days, or within such longer period as may be prescribed by applicable State or local law, after the date valid service is made. Interrogatories which accompany legal process shall also be responded to within this time period.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to said interrogatories within thirty (30) calendar days after receipt thereof, provided that the document(s) required by § 581.202(c) have been presented.

**§ 581.304 Nonliability for disclosure.**

No Federal employee whose duties include responding to interrogatories

[1] The head of each governmental entity shall, within 45 days of the publication of these proposed regulations, provide the Office of Personnel Management with the information requested in section 581.201, in order that this information may be included in the appendix of these regulations when they are published as a final rule.

pursuant to § 581.303(b), shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or an account of, any disclosure of information made by him/her in connection with the carrying out of any of his/her duties which pertain (directly or indirectly) to the answering of any such interrogatory.

**§ 581.305 Honoring legal process.**

(a) The governmental entity shall comply with legal process, except where such legal process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part;

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity; or

(6) The governmental entity has been directed by the Department of Justice not to comply with the legal process.

(b) Under the circumstances set forth in paragraph 581.305(a), the governmental entity shall immediately refer the matter to the United States Attorney for the district embracing the jurisdiction from which the legal process issued, and shall inform the party who caused the legal process to be served, or his/her representative, that the legal process will not be honored. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves shall coordinate their representation with the United States Attorney. When simple administrative matters are involved concerning undisputed problems such as the lack of sufficient identification of the obligor or the lack of proper authorization for the legal process, the governmental entity may file an answer directly with the court, setting forth its objections to the legal process, without referring the matter to the United States Attorney.

(c) In the event that a governmental entity is served with more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first-come, first-served basis, provided that in no event will the total amount garnisheed for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(d) Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. However, where a governmental entity negligently fails to comply with legal process, the Federal Government shall be liable to the same extent that a private person would be liable.

(e) Governemental entities affected by legal process served for the enforcement of an individual's child support and/or alimony payment obligations shall not be required to vary their normal pay or disbursement cycles in order to comply with such legal process. However, legal process which is received too late to be honored during the disbursement cycle in which it is received, shall be fully honored to the extent that the legal process may, in compliance with this part, be satisfied from the next payment due the obligor. The fact that the legal process may have expired during this period would not relieve the governmental entity of its obligation to fully comply.

**§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.**

(a) When legal process is served on a governmental entity, and the individual identified in the legal process as the obligor is found not to be entitled to moneys due from, or payable by, the governmental entity, the entity shall follow the procedures set forth in the legal process for such contingency or, if no procedures are set forth therein, shall return such legal process to the court, or other authority from which it was issued, and advise such court, or other authority, that no moneys, the entitlement to which is based upon remuneration for employment are due from, or payable by, the governmental entity to the named obligor.

(b) Where it appears that remuneration for employment due the obligor is only temporarily exhausted or otherwise unavailable, the court, or other authority, shall be fully advised as to why, and for how long, said remuneration will be unavailable, if such information is known by the governmental entity.

(c) In instances where an obligor employee separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or his/her representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has retired, separated and requested a refund of retirement contributions, transferred, or is receiving benefits under the Federal Employee's Compensation Act, the entity shall state, if known, the new disbursing governmental entity.

## Subpart D—Consumer Credit Protection Act Restrictions

**§ 581.401 Aggregate disposable earnings.**

The "aggregate disposable earnings", when used in reference to the amounts garnishable under the Consumer Credit Protection Act for child support and/or alimony, are the obligor's remuneration for employment less those amounts deducted in accordance with § 581.105.

**§ 581.402 Maximum garnishment limitations.**

Pursuant to section 1673(b)(2)(A) and (B) of title 15 of the United States Code, as amended, unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support orders shall not exceed:

(a) Fifty (50) percent of such obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence (e.g., a marriage license, birth certificate, or adoption order), that he/she is supporting a spouse and/or dependent child (other than the [former] spouse and/or child with respect to whose support such order is issued), except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order with respect to a period which is twelve (12) weeks prior to such workweek.

(b) Sixty (60) percent of such obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit, or establishes by other acceptable evidence, that he/she is supporting a spouse and/or dependent child (other than a [former] spouse and/or child with respect to whose support such order is issued), except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order with respect to a period which is twelve (12) weeks prior to such workweek.

(c) Where, pursuant to § 581.402(a), an obligor submits evidence that he/she is supporting a second spouse and/or child, copies of such evidence shall be sent by the governmental entity to the garnishor, or his/her representative, together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support claim, he/she should immediately refer the matter to the court, or other authority, for resolution.

## Supart E—Implementation by Governmental Entities

**§ 581.501 Rules, regulations, and directives by governmental entities.**

Appropriate officials of all governmental entities shall issue implementing rules, regulations, and directives that are consistent with this part.

[FR Doc. 79-32321 Filed 10-18-79; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 113

### Viruses, Serums, Toxins, and Analogous Products; Standard Requirement for Pasteurella Multocida Bacterin, Avian Isolate, Type 4

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed amendment would revise the regulations by adding new standard requirements for purity, safety, potency, and efficacy to be met by all biological products containing Pasteurella Multocida Bacterin, Avian Isolate, Type 4. It would also delete the general requirements for Pasteurella Multocida Bacterins, Avian Isolates, that are presently found in the standards. Such general requirements would be incorporated in the introductory paragraphs of the standard requirements for Pasteurella Multocida Bacterin, Avian Isolates, Types 1, 3, and 4. Safety test procedures presently found in the standard requirements for types 1 and 3 isolates would also be revised to be consistent with the proposed new standards for the type 4 isolate.

**DATE:** Comments must be received on or before December 18, 1979.

**ADDRESS:** Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. R. J. Price, 301–436–8245.

**SUPPLEMENTARY INFORMATION:** Standard requirements consist of test methods, procedures, and criteria established by Veterinary Services (VS) for evaluating biological products for purity, safety, potency, and efficacy. Until such standard requirements are developed by VS and are codified in the regulations (9 CFR Part 113), test methods, procedures, and criteria to be used in the evaluation of a product are developed by the licensee and are written into an Outline of Production, which is required to be filed with VS.

When standard requirements for a biological product have been developed by VS, they are proposed for codification in the regulations. Such codfication assures uniformity and general applicability of such standard requirements to all licensees and to the general public. This proposed amendment contains the standard requirements for evaluating all licensed products containing Pasteurella Multocida Bacterin, Avian Isolate, Type 4.

The codification of this new standard requirement would make most of the general requirements for Pasteurella Multocida Bacterins, Avian Isolates, presently found in § 113.101 obsolete. The obsolete general requirements would, therefore, be deleted and those general requirements that remain applicable would be included in the revised § 113.101 and also would be incorporated in the introductory paragraphs of §§ 113.102 and 113.103, which contain standard requirements for Pasteurella Multocida Bacterin, Avian Isolates, Types 1 and 3, respectively.

The safety test contained in §§ 113.102 and 113.103 would be revised to provide flexibility in order to avoid conducting retests when a test bird dies accidentally or shows other unfavorable reactions that are not attributable to the product. This revision will make the present standards for Pasteurella Multocida Bacterin, Avian Isolates, Types 1 and 3, consistent with the proposed new standard for Pasteurella Multocida Bacterin, Avian Isolate, Type 4.

The first letter in each word of the headings for §§ 113.101, 113.102, and 113.103 is to be capitalized.

1. Section 113.101 would be revised to read:

**§ 113.101 Pasteurella Multocida Bacterin, Avian Isolate, Type 4.**

Pasteurella Multocida Bacterin, Avian Isolate, Type 4, shall be prepared with cultures of *Pasteurella multocida,* avian isolate, type 4 (Little and Lyons classification), which have been inactivated and are nontoxic. Each serial of biological product containing Pasteurella Multocida Bacterin, Avian Isolate, Type 4, shall meet the applicable requirements in § 113.85 and shall be tested for purity, safety, and potency, as prescribed in this section. A serial found unsatisfactory by any prescribed test shall not be released.

(a) *Purity test.* Final container samples of completed product shall be tested for viable bacteria and fungi, as provided in 9 CFR 113.26.

(b) *Safety test.* Observation of the vaccinated turkeys during the prechallenge period of the potency test provided in paragraph (c) of this section shall consitute the safety test. If unfavorable reactions that are attributable to the product occur, the serial is unsatisfactory. If unfavorable reactions that are not attributable to the product occur in one turkey, test results shall be determined by observing the remaining 20 turkeys. If unfavorable reactions that are not attributable to the product occur in two or more turkets, the test shall be declared inconclusive and repeated; provided that, if the test is not repeated, the serials shall be declared unsatisfactory.

(c) *Potency test.* Bulk or final container samples of completed product shall be tested for potency of the type 4 strain, using the two-stage test provided in this paragraph. Turkeys at least 6 weeks of age obtained from the same source and hatch shall be properly identified and used, as provided in this paragraph.

(1) *Vaccinates.* Each of not more than 21 turkeys shall be injected with the dose and by the route recommended on the label. A second dose shall be injected after 3 weeks and the turkeys observed for an additional 2-week prechallenge period.

(2) *Positive controls.* Each of not more than 21 turkeys shall be injected with two doses of a reference bacterin available from Veterinary Services upon request.

(3) *Unvaccinated controls.* Each of not more than 21 turkeys shall be held as controls.

(4) *Challenge.* Not less than 14 days after the second injection, each of 20 vaccinates, each of 20 positive controls, and each of 20 unvaccinated controls shall be challenged intramuscularly with virulent *Pasteurella multocida* strain P–1662, type 4 (Little and Lyons

classification), and observed daily for a 14-day postchallenge period. Only dead birds shall be considered in evaluating the product.

(5) If seven or more positive controls die, the test may be declared inconclusive and repeated.

(6) If 14 or more unvaccinated controls die, the test is valid and stage-one potency test results shall be evaluated according to stage one of the following table:

| Stage | Number of vaccinates | Cumulative number of vaccinates | Cumulative total number of dead vaccinates for— | |
|---|---|---|---|---|
| | | | Satisfactory serial | Unsatisfactory serial |
| 1 | 20 | 20 | 4 or less | 7 or more. |
| 2 | 20 | 40 | 11 or less | 12 or more. |

(7) The serial shall pass or fail based on the stage-one results of the potency test; provided that, if five or six vaccinates die in the first stage, the second stage shall be required.

(8) The second stage shall be conducted in a manner identical to the first stage. The serial shall be evaluated according to stage two of the table. On the basis of accumulated results, a serial shall either pass or fail the second stage.

2. Section 113.102 would be amended by revising the introductory paragraph and paragraph (b) to read:

**§ 113.102 Pasteurella Multocida Bacterin, Avian Isolate, Type 1.**

Pasteurella Multocida Bacterin, Avian Isolate, Type 1, shall be prepared with cultures of *Pasteurella multocida,* avian isolate, type 1 (Little and Lyons classification), which have been inactivated and are nontoxic. Each serial of biological product containing Pasteurella Multocida Bacterin, Avian Isolate, Type 1, shall meet the applicable requirements in § 113.85 and shall be tested for purity, safety, and potency as prescribed in this section. A serial found unsatisfactory by any prescribed test shall not be released.

(a) * * *

(b) *Safety test.* Observation of the vaccinated chickens during the prechallenge period of the potency test provided in paragraph (c) of this section shall constitute the safety test. If unfavorable reactions that are attributable to the product occur, the serial is unsatisfactory. If unfavorable reactions that are not attributable to the product occur in one chicken, test results shall be determined by observing the remaining 20 chickens. If unfavorable reactions that are not attributable to the product occur in two or more chickens, the test shall be declared inconclusive and repeated; provided that, if the test is not repeated, the serial shall be declared unsatisfactory.

* * * * *

3. Section 113.103 would be amended by revising the introductory paragraph and paragraph (b) to read:

**§ 113.103 Pasteurella Multocida Bacterin, Avian Isolate, Type 3.**

Pasteurella Multocida Bacterin, Avian Isolate, Type 3, shall be prepared with cultures of *Pasteurella multocida,* avian isolate, type 3 (Little and Lyons classification), which ave been inactivated and are nontoxic. Each serial of biological product containing Pasteurella Multocida Bacterin, Avian Isolate, Type 3, shall meet the applicable requirements in § 113.85 and shall be tested for purity, safety, and potency, as prescribed in this section. A serial found unsatisfactory by any prescribed test shall not be released.

(a) * * *

(b) *Safety test.* Observation of the vaccinated turkeys during the prechallenge period of the potency test provided in paragraph (c) of this section shall constitute the safety test. If unfavorable reactions that are attributable to the product occur, the serial is unsatisfactory. If unfavorable reactions that are not attributable to the product occur in one turkey, test results shall be determined by observing the remaining 20 turkeys. If unfavorable reactions that are not attributable to the product occur in two or more turkeys, the test shall be declared inconclusive and repeated; provided that, if the test is not repeated, the serial shall be declared unsatisfactory.

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C. this 15th day of October 1979.

Note.—This proposal has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations." Under those criteria, this action has been designated for Agency oversight. A Draft Impact Analysis Statement has been prepared and is available from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

M. T. Goff,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 79-32194 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF ENERGY

## Economic Regulatory Administration

## 10 CFR Part 211

**[Docket No. ERA-R-79-25A]**

## Amendments to Special Rule No. 9 Providing for the Special Allocation of Middle Distillates and to the Provisions Concerning the Allocation of Motor Gasoline for Priority Uses

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Further Notice of Proposed Rulemaking and Public Hearing.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to amend Special Rule No. 9 to Subpart A, Part 211 to extend its effectiveness indefinitely. This action would promote energy efficiency by ensuring the future availability of diesel fuel for surface passenger mass transportation.

ERA also is proposing to amend § 211.51 to revise the definition of passenger transportation services to include van-pooling. This proposal would assist those engaged in van-pooling, an energy-efficient alternative to the private automobile, in obtaining gasoline during periods of tight supplies.

In addition, ERA is proposing to amend § 211.103 to provide for the allocation of gasoline on a first priority basis to a firm which resells gasoline solely to end-users engaged in an activity which § 211.103 establishes as a first priority use. This action would assist end-users which are not bulk purchasers but which nevertheless are engaged in a first priority activity, such as van-pooling or taxi service, in obtaining adequate supplies of gasoline.

**DATES:** Comments by December 21, 1979, 4:30 p.m.; Requests to speak by December 4, 1979, 4:30 p.m.; Hearing date: December 13, 1979, 9:30 a.m.

**ADDRESSES:** Comments, requests to speak, copies of oral statements to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA–R–79–25A, 2000 M Street, NW., Washington, D.C. 20461.

**FOR FURTHER INFORMATION CONTACT:**
Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.
William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.
William E. Caldwell (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–8034.
Alan T. Lockard (Office of Fuels Regulation), Economic Regulatory Administration, Room 6222, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–7422.
Ben McRae (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6739.

**SUPPLEMENTARY INFORMATION:**

I. *Background and Proposals*
II. *Comment Procedures*
III. *Other Matters*

## I. Background and Proposals

Special Rule No. 9 provides that middle distillates for surface passenger mass transportation shall be supplied on a priority basis. We have adopted a final rule to extend the effectiveness of this Rule through January 31, 1980 (44 FR 56888, October 2, 1980). The discussion of Special Rule No. 9 and its extension which accompanies that final rule is incorporated herein by reference.

We believe that the reasons that supported extending Special Rule No. 9 through January 31, 1980 may also support extending it indefinitely. Accordingly, we are proposing to delete from section (1) of Special Rule No. 9 the provision that specifies a date for its termination.

Several of the comments on Special Rule No. 9 favored DOE's giving regulatory preference to van-pools. The Department of Transportation, in its comments, cited van-pooling as an energy-efficient alternative to the private automobile, particularly for commuting to and from work.

We agree that van-pooling should receive a regulatory preference. Since most vehicles used for van-pooling are gasoline powered, the appropriate regulatory change would be to include van-pooling among those activities that receive gasoline on a first priority basis. Such an action would directly benefit bulk purchasers engaged in van-pooling. In addition, each State would be able to utilize the provisions of § 211.10(d) to provide for preferential treatment of end-users that were engaged in van-pooling but were not bulk purchasers. Moreover, a State could use our definition of van-pooling to establish preferences for such activities in State programs such as odd-even or other allocation plans.

Accordingly, we are proposing to amend the definition of passenger transportation service in § 211.51 to include van-pooling. We also are proposing to include a specific definition of van-pooling in § 211.51. Van-pooling would be defined as eight or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers.

Section 211.103 does not provide for the allocation of gasoline on a first priority basis to resellers or to end-users which are not bulk purchasers. We have been informed of several situations, particularly with respect to taxi service, in which a firm is a bulk purchaser of gasoline and resells that gasoline solely to end-users which would qualify for an allocation on a first priority basis if such end-users were bulk purchasers. Providing gasoline on a first priority basis in such situations appears appropriate since the gasoline would be used in a first priority activity and would be purchased by a firm to which it would be practicable to supply gasoline on a first priority basis. Accordingly, we are proposing to revise § 211.103(a) to provide that a firm which is a bulk purchaser and which resells gasoline solely to end-users engaged in an activity listed in § 211.103(b) shall be deemed to be a wholesale purchaser-consumer for purposes of determining the allocation level for that firm.

## II. Comments Procedures

### *A. Written Comments*

You are invited to participate in this rulemaking by submitting views, data, or arguments with respect to the proposals set forth in this notice. Comments should be submitted to the address set forth in the "ADDRESSES" section of this notice and should be identified on the outside with the docket number and the designation "Special Rule No. 9." Fifteen copies should be submitted. All comments received by December 21, 1979 and all relevant information will be considered before final action is taken on the proposed amendments. All comments received will be available for public inspection in the DOE Reading Room GA–152, 1000 Independence Avenue, SW., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

If you submit any information or data you believe to be confidential, it must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

### *B. Public Hearing*

1. *Requesting opportunity for oral statement.* The times and places for the hearing are indicated in the "DATES" and "ADDRESSES" sections of this notice. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the first business day following the date therefore shown above.

You may make a written request for an opportunity to make an oral presentation at the hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m. December 7, 1979, and must submit 100 copies of your statement before 4:30 p.m., December 11, 1979. Statements for the public hearing should be sent to the Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA–R–79–25A, 2000 M Street, NW., Washington, D.C. 20461.

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

An ERA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Questions to be asked of any person making a statement at the hearing may be submitted to the Office of Public Hearings Management at the above address before 4:30 p.m., December 12, 1979. You may also submit any questions, in writing, to the presiding officer at the time of the hearing. The ERA or, if the question is submitted at

the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

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

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

## IV. Other Matters

In accordance with Section 7(a)(1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the impact of this proposal on the quality of the environment. The EPA Administrator has responed that EPA does not foresee this Rule having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of EPA.

We have determined that the proposals contained in this notice will not have a major impact as that term is defined in Section 9 of the DOE Directive issued December 20, 1978, (44 FR 1032, January 3, 1979) to implement Executive Order 12044, and, therefore, no regulatory analysis pursuant to Executive Order 12044 is required.

Pursuant to the requirements of Section 404 of the Department of Energy Organization Act (Pub. L. 95-91), upon issuance of this proposed rule, a copy of this Notice will be referred to the Federal Energy Regulatory Commission for a determination, in its discretion, whether this proposed rule may significantly affect any function within the Commission's jurisdiction pursuant to section 412(a)(1), (b) and (c)(1) of that Act. The Commission will have until December 21, 1979, the date the public comment period closes, to make this determination.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 211 of Chapter II, of Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below, effective February 1, 1980.

Issued in Washington, D.C., October 12, 1979.

David J. Bardin,

*Adminstrator, Economic Regulatory Administration.*

1. The Appendix to Subpart A of Part 211 is amended by modifying Special Rule No. 9 to read as follows:

## Appendix—Special Rule No. 9

*Special Allocation of Middle Distillates for Surface Passenger Mass Transportation*

1. *Scope.* Notwithstanding the provisions of paragraphs (b) and (c) of § 210.35 of Part 210 of this chapter and of paragraphs (b)(5) and (b)(6) of § 211.1 of this Part, this Special Rule establishes a special allocation program for middle distillates.

2. *Definitions.* For purposes of this Special Rule, the relevant definitions of § 211.51 of Part 211 of this chapter shall apply, except that the following definitions shall apply:

"Base period" means the first calendar month prior to May 1979 in which a wholesale purchaser purchased or obtained middle distillate volumes.

"Current requirements" means, (a) with respect to a wholesale purchaser-consumer or end-user, the volume of middle distillates needed by the wholesale purchaser-consumer or end-user to meet its present supply requirements for middle distillates for use in surface passenger mass transportation, but does not include any amounts which the wholesale purchaser-consumer or end-user purchases or obtains for resale or accumulates as an inventory in excess of that purchaser's customary inventory maintained in the conduct of its normal business practices; or, (b) with respect to a wholesale purchaser-reseller, the volume of middle distillates needed by the wholesale purchaser-reseller to meet its present requirements to supply middle distillates to wholesale purchaser-consumers, end-users or other wholesale purchaser-resellers for ultimate use in surface passenger mass transportation.

"Middle distillates" means any of the following, as defined in § 212.31 of Part 212 of this chapter: No. 1 heating oil, No. 1-D diesel fuel, No. 2 heating oil, No. 2-D diesel fuel and kerosene.

"Surface passenger mass transportation" means any activity in which passengers are transported by means of a commuter bus or rail system (including a metropolitan mass transit system), a school bus, a charter bus, a commuter ferry, or an intercity passenger bus or train.

3. *General Rule.* Each supplier of middle distillates shall supply all wholesale purchaser-consumers, all end-users, and all wholesale purchaser-resellers with their current requirements for middle distillates which have been certified to that supplier in accordance with the provisions of this Special Rule.

4. *Certification Requirements.*—(a) *End-users.* An end-user may certify to any supplier its current requirements for middle distillates for surface passenger mass transportation.

(b) *Wholesale purchaser-consumers.* A wholesale purchaser-consumer may certify to its base period supplier its current requirements for middle distillates for ultimate use in surface passenger mass transportation.

(c) *Wholesale purchaser-resellers.* A wholesale purchaser-reseller may certify to its base period supplier its current requirements for: (i) Any end user; (ii) any wholesale purchaser-consumer it supplied during the base period (in accordance with paragraph (d) of this section); (iii) any wholesale purchaser-consumer it agrees to supply under section (7); (iv) any assigned purchasers, and (v) any certification for volumes to be supplied pursuant to this Special Rule.

(d) *Purchasers with more than one base period supplier.* A purchaser or supplier which purchased or obtained middle distillates during the base period from more than one supplier may certify to each such supplier a percentage of its current requirements for surface passenger mass transportation which does not exceed the percentage of the total volumes of middle distillates purchased or obtained by the purchaser from that supplier in the base period.

5. *Validation of Certifications.* In the event that a purchaser and its supplier cannot agree on the volume of middle distillates which the supplier is required to supply to the purchaser under this Special Rule, the purchaser may request validation of the required volume from the appropriate ERA Regional Office. From the time the supplier receives certification, the supplier shall supply the purchaser any volumes which are not in dispute. If ERA determines that the purchaser is entitled to volumes in excess of those supplied by the supplier during the period in which certification was in dispute, ERA may order the supplier to supply such increased

requirements and to supply the purchaser with additional volumes of middle distillates equal to the amount the purchaser would have received if the increased requirements had been supplied during such period.

6. *Assignment of suppliers.* Any purchaser which is unable to purchase or obtain its total current requirements for ultimate use in surface passenger mass transportation may apply to the appropriate ERA Regional Office as provided in Subpart C of Part 205 of this chapter to be assigned a supplier: *Provided,* That, an end-user in a State in which there is a State Office must apply to that State Office as provided in Subpart Q of Part 205 of this chapter for the assignment of a supplier. The purchaser may be assigned one or more suppliers and the amount of its current requirements to be supplied by each supplier may be specified.

7. *Mutual agreements.* As an alternative to the procedures set forth in sections (5) and (6) of this Special Rule, a supplier of middle distillates may agree to supply that portion of the current requirements of a wholesale purchaser-consumer which has been unable to obtain the full amount of its current requirements from its base period suppliers.

8. *Normal business practices; non-discriminatory pricing.* The requirements of paragraphs (a) and (b) of § 210.62 of this chapter shall apply to suppliers to prohibit any practice or any form of discrimination (including price discrimination) which has the effect of circumventing, frustrating or impairing the objectives, purposes and intent of this Special Rule.

* * * * *

**§ 211.51 [Amended]**

2. Section 211.51 is amended by the revision of the definition of "passenger transportation service" and the addition of a definition of "van-pooling" between the definitions of "utility" and "wholesale purchaser." The definitions shall read as follows:

* * * * *

"Passenger transportation service" means (a) air and surface facilities and services, including water and rail, for carrying passengers whether publicly or privately owned, including tour and charter buses and taxicabs, which serve the general public; (b) bus transportation of pupils to and from school and school sponsored activities; and (c) van-pooling.

* * * * *

"Van-pooling" means eight or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers.

* * * * *

3. Paragraph (a) of § 211.103 is amended to read as follows:

**§ 211.103 Allocation levels.**

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority. For purposes of this section, a firm which is a bulk purchaser of gasoline and resells gasoline solely to end-users for a use set forth in paragraph (b) of this section shall be deemed to be a wholesale purchaser-consumer.

* * * * *

[FR Doc. 79-32401 Filed 10-18-79; 8:45 am]
BILLING CODE 6450-01-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 528

[No. 79-510]

### Monitoring Fair Lending Practices

October 11, 1979.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed amendment.

**SUMMARY:** The Federal Home Loan Bank Board proposes to change the loan application register currently required to be kept by all member institutions. The purpose of the register is to enable the institutions and the Board to monitor compliance with fair lending statutes and regulations, and take corrective action if the data disclose patterns or practices which indicate that lending decisions may be based on characteristics of the borrower or property which are discriminatory when considered in granting or denying a loan. The proposed changes arise from a Board study and field experience which indicate that more information is needed to improve the register's usefulness as a monitoring tool.

**DATE:** Comments must be received by: December 18, 1979.

**ADDRESS:** Send comments to the Secretary to the Board, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

**FOR FURTHER INFORMATION CONTACT:** Patricia C. Trask, Attorney, Federal Home Loan Bank Board (202-377-6442), at the above address.

**SUPPLEMENTARY INFORMATION:** *Background.* The Federal Home Loan Bank Board has statutory responsibility to enforce compliance by all Federal Home Loan Bank System member institutions with Federal laws which prohibit discrimination in lending. Among these are Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.,* and the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. 1691 *et seq.* On May 18, 1978, the Bank Board adopted amendments to its rules and guidelines in 12 CFR Parts 528 and 531 to reflect changes in law and judicial interpretations that expanded the scope of lending practices that are discriminatory *per se* or in effect. These rules, as explained by the guidelines, prohibit, among other things, discrimination in lending on the basis of the age or location of the property securing the loan, and on the basis of a loan applicant's race, sex, marital status, age, receipt of income from a public assistance program, and good faith exercise of rights under the Consumer Credit Protection Act.

In order to monitor member institutions' compliance with statutes and regulations designed to prohibit discriminatory lending practices, the Board designed a loan application register ("register") to be kept by all member institutions. This register and the data analysis to follow were substituted for the monitoring system in Regulation B (12 CFR 202.2(z)) established by the Federal Reserve Board under ECOA. This was done to provide more comprehensive monitoring in the least burdensome and most efficient manner since the Board must regulate compliance with prohibitions contained not only in ECOA but other fair lending statutes. Also, the monitoring system was intended to fulfill the Board's commitment to strengthen its enforcement efforts in this area under the terms of a 1977 Settlement Agreement entered into by the Board with plaintiffs to terminate litigation in *National Urban League, et al.* v. *Comptroller of the Currency, et al.*

in the United States District Court for the District of Columbia (C.A. No. 76–0718).

Since September 1, 1978, all Federal Home Loan Bank System member institutions have been required under 12 CFR 528.6 to maintain a loan application register in which is recorded information derived from written applications for dwelling-related loans. Prior to instituting the register now in use, the Board published for public comment a proposed register comprising more information than the register which was later adopted. (42 FR 58182; November 8, 1977).

When the Board adopted final amendment to its fair lending regulations and guidelines on May 18, 1978 (43 FR 11221; May 25, 1978), the amount of information to be compiled was reduced to that which is currently required. The Board concluded that although a shortened register would be appropriate for its initial effort, usefulness of all items would be evaluated. At that time, the Board gave institutions flexibility in choosing their own register formats, but in view of the continuing study by the Board, it was noted that the format would be changed if necessary. Further, the Board decided to initiate a study of data collected on a more detailed register to assess the need for revision of the register or substitution of some alternative monitoring tool.

*Proposed changes.* The Board has now completed an extensive analysis of information obtained by Board examiners from every member institution in three SMSAs using an extensive data base, as well as information derived from discussion with examination and supervisory personnel in the field who have been working with the currently available material, and it finds that the existing register's value for monitoring can be markedly improved. Therefore, the Board is proposing to restructure some items in the register and add others, such as information concerning loan applicants' income and debt obligations. Another proposed change is that information would be recorded after disposition of a written loan application, rather than while it is pending. The Board believes that such a step would substantially reduce handling time and expense for the association and facilitate examiners' comparision of loans made during given time periods. The register would be redesignated "Loan-Application Disposition Register" (LADR) to reflect the change.

The data collected on the proposed register is designed to be used by examiners to detect specific instances and general patterns of possibly discriminatory lending. Analysis of the register would be for the purpose of flagging institutions for more extensive review of particular files, thereby reducing examination time and costs.

The Board is proposing that all institutions be required to use the same register format, to be developed by the Board. The format included in this proposal is intended only as an example of the type of format the Board may select, and comment is solicited on other types of formats, changes in codes or additional codes, and inclusion or exclusion of particular items of information. As proposed, the register would contain the items of information set forth below. Comment is specifically solicited on whether an additional item, borrower's net worth, should be included in order to aid in review of loan applications from older persons whose retirement of other income may be low but whose assets may support a requested loan.

1. Loan Purpose (e.g. purchase/owner-occupied, purchase/investment, home improvement)
2. Type of Financing (conventional, conventional/PMI, FHA, VA, and other)
3. Application Number (required; sequential as of filing time (by branch, if applicable) but not recorded until disposition)
4. Date of Application
5. Loan Number
6. Date of Disposition
7. Disposition
(a) Approved as requested
(b) Approved with changes; applicant accepts
(c) Approved with changes; applicant refuses
(d) Denied, decision based on applicant's income
(e) Denied, decision based on other credit factors
(f) Denied, decision based on collateral
(g) Denied, decision based on other considerations
(h) Withdrawn by applicant before decision
8. SMSA/County (use name of County only if outside of SMSA)
9. Census Tract
10. Zip Code
11. Applicant(s) Race
12. Applicant(s) Sex
13. Applicant(s) Marital Status
14. Applicant(s) Age
15. Combined Gross Monthly Income
16. Existing Monthly Debt (all installment debt with more than ten (10) remaining payments including monthly housing expenses; alimony, child support or maintenance payments)
17. Property Type (single family, 2–4 family dwellings, combination home and business property, 5 or more unit apartment (indicate the number of units in the parenthesis), land development inclusive of homes)
18. Purchase Price
19. Appraised Value
20. Year Built
21. Loan Amount
22. Loan-to-Value Ratio
23. Interest Rate (contract rate)
24. Maturity Term
25. Fees (pre-paid finance charges (as defined in Regulation Z) excluding interest)
26. Monthly Payment (principal, interest, taxes and insurance, and mortgage insurance if applicable)
27. Ratio Housing Expense to Gross Monthly Income
28. Ratio of Total Monthly Payment to Gross Monthly Income
29. Net Disposable Income (after total monthly expenses)
30. Source of Application (applicant referred by broker, construction firm, etc., or off-the-street applicant)

All loan-related items above are based on the loan request if the application is not approved; if the application is approved, they are based on the approved terms whether or not the applicant accepts.

Accordingly, the Board proposes to amend paragraph (d) of 12 CFR 528.6 to read as follows:

**§ 528.6 Monitoring information.**

* * * * *

(d) *Loan-Application Disposition Register.* For examination purposes, each member institution shall maintain a current, readily accessible loan-application disposition register containing the information required by the Board on its prescribed form.

* * * * *

BILLING CODE 6720-01-M

SAMPLE: FORMAT, LISTED ITEMS, AND CODES MAY BE CHANGED

## LOAN APPLICATION DISPOSITION REGISTER

NAME AND ADDRESS OF ASSOCIATION

| LOAN IDENTIFICATION | | | | | LOAN DISPOSITION | | | PROPERTY LOCATION | | | APPLICANT(S) INFORMATION (A = Applicant - CA = Co-Applicant) | | | | | | | | | | PROPERTY DATA | | | | LOAN TERMS | | | | | | UNDERWRITING GUIDELINES | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| * LOAN PURPOSE | * TYPE OF FINANCING | APPLICATION NUMBER | DATE OF APPLICATION | LOAN NUMBER | DATE MONTH | DATE YEAR | * DISPOSITION | SMSA/ COUNTY | CENSUS TRACT | ZIP CODE | * RACE A | * RACE CA | * SEX A | * SEX CA | * MARITAL STATUS A | * MARITAL STATUS CA | AGE A | AGE CA | COMBINED GROSS MONTHLY INCOME A and CA | EXISTING MONTHLY DEBT | * PROPERTY TYPE | PURCHASE PRICE | APPRAISED VALUE | YEAR BUILT | LOAN AMOUNT | LOAN TO VALUE RATIO | INTEREST RATE | MATURITY TERM | FEES | MONTHLY PAYMENT PITI/MI 1/ | HE/ GHI 2/ | THE/ GNI 3/ | NET DISPOSABLE INCOME | * SOURCE OF APPLICATION |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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✻CODES

LOAN PURPOSE
1 = Purchase/Owner-Occupied
2 = Purchase/Investment
3 = Construction/Permanent
4 = Construction
5 = Refinance
6 = Acquisition and Development Inclusive of Home Construction
7 = Home Improvement
8 = Equipping
9 = Mobile Home
10 = Other

TYPE OF FINANCING
1 = Conventional
2 = Conventional/PMI
3 = FHA
4 = VA
5 = Other

LOAN DISPOSITION
1 = Approved as Requested
2 = Approved with Changes - Applicant Accepts
3 = Approved with Changes - Applicant Refuses
4 = Denied - Decision based on Applicant's Credit
5 = Denied - Decision based on Collateral
6 = Denied - Decision based on Other Considerations
7 = Withdrawn by Applicant before Decision

RACE
1 = American Indian or Alaskan Native
2 = Asian or Pacific Islander
3 = Black
4 = Hispanic
5 = White
6 = Other

SEX
M = Male
F = Female

MARITAL STATUS
1 = Married
2 = Unmarried
3 = Separated

PROPERTY TYPE
1a. = Single-family Dwelling
1b. = 2-4 Family Dwelling
1c. = Combination Home and Business Property
2( ). = 5 or More Unit Apartment (Indicate the number of units in parentheses)
3. = Land Development Inclusive of Homes
NA = Not Applicable

SOURCE OF APPLICATION
1 = Broker
2 = Construction Firm
3 = Off-the-Street Applicant
4 = Other

FOOTNOTES

1/ Principal (P), Interest (I), Taxes (T), Insurance (I), and Mortgage Insurance (MI), if Applicable.

2/ Ratio of Monthly Housing Expense to Gross Monthly Income.

3/ Ratio of Total Monthly Payments (Home Expenses and Other Debts) to Gross Monthly Income.

PROPOSED FHLBB FORM
OCTOBER 11, 1979

BILLING CODE 6720-01-C

(Title VIII, Pub. L. 95–128, 91 Stat. 1147 (12 U.S.C. 2901); Title VII, Pub. L. 93–495 (15 U.S.C. 1691); Title VIII, Pub. L. 90–284, 82 Stat. 81 (42 U.S.C. 3601–3619), 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981); EO 11063, 27 FR 11527; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat, 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. 1071)

By the Federal Home Loan Bank Board.

O. J. Finn,

*Secretary.*

[FR Doc. 79-32332 Filed 10-18-79; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

## 21 CFR Parts 136 and 137

**[Docket No. 79N-0327]**

## Iron Fortification of Flour and Bread; Standards of Identity

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the standards of identity for enriched flour and enriched bread by changing the requirements for enrichment with iron. The amendments would delete the present minimum and maximum requirements for each food and establish single-level requirements. It would also provide for reasonable overages within the limits of good manufacturing practice. The single levels being proposed will promote greater uniformity and will allow enriched bread to be made from enriched flour without further adjustment.

**DATES:** Comments by December 18, 1979.

It is proposed that the regulation based on this proposal become effective on July 1, 1981.

**ADDRESS:** Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Prince G. Harrill, Bureau of Foods (HFF–411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of December 3, 1971 (36 FR 23074), FDA issued a proposal to amend the standards of identity for enriched flour (21 CFR 137.165, formerly 21 CFR 15.10 prior to recodification published in the Federal Register of March 15, 1977 (42 FR 14302)), enriched self-rising flour (21 CFR 137.185, formerly 21 CFR 15.60), and enriched bread, rolls, and buns (21 CFR 136.115, formerly 21 CFR 17.20) and, among other changes in the nutrient requirements, to increase the iron content of these foods. (Elsewhere in this proposal, the foods are referred to collectively as enriched flour and enriched bread). The existing standards at the time of the proposal provided ranges for the quantities of added nutrients with both minimum and maximum levels specified. In the preamble to the proposal, the Commissioner of Food and Drugs said that to ensure uniformity and maximum benefit to the consumer he proposed to replace the ranges for nutrients in enriched flour and enriched bread with single-level requirements and with provisions for reasonable overages within the limits of good manufacturing practice.

A final regulation adopting the changes in nutrient levels was published in the Federal Register of October 15, 1973 (38 FR 28558). With certain exceptions, the single level requirements in the amended standards were close to the maxima of the previous ranges. The iron enrichment levels were among these exceptions with new single levels approximately double the previous maxima. For iron the range from 8.0 to 12.5 milligrams (mg) per pound for enriched bread was changed to 25 mg per pound. The amount of iron was increased in response to recommendations by several groups that steps be taken to overcome widespread iron deficiency anemia. These groups included the 1969 White House Conference on Food, Nutrition, and Health; the Food and Nutrition Board, National Academy of Sciences-National Research Council; and the Council on Foods and Nutrition, American Medical Association. The range from 13.0 to 16.5 mg per pound for enriched flour was changed to 40 mg per pound. This increase to somewhat more than double the previous maximum was made so that bakers could, in most instances, use enriched flour without further adjustment to meet the 25 mg-per-pound requirement for enriched bread. For the same reason the required amounts of the other added nutrients were proportioned similarly between enriched flour and enriched bread.

Several physicians objected to increasing the iron content of enriched flour and enriched bread. Because of questions they raised regarding the effects of the increase on the public health, FDA decided that the matter justified a public hearing. The stay of the provisions increasing the amount of iron and the public hearing, which began on April 1, 1974, were announced in the Federal Register of February 11, 1974 (39 FR 5188). FDA allowed the other provisions of the standards to become effective.

After considering the evidence received at the hearing, the Hearing Examiner's recommended decision, and all the filed written arguments, the Commissioner concluded that the increases in iron levels were not proven to be needed, safe, or effective. he issued a tentative order in the Federal Register of November 18, 1977 (42 FR 59513) withdrawing the stayed provisions of the regulations and restoring the former minimum and maximum requirements for iron.

FDA received exceptions to the tentative order. One exception, filed by the Pennwalt Corp., a major supplier of vitamin-iron enrichment premixes to the flour-milling industry, said that "simply returning to the old minimum-maximum range for iron will cause continued compliance problems for the milling and baking industry." The exception preferred that iron levels be stated in the same terms used for vitamins, that is, a single minimum level with reasonable overages within the limits of good manufacturing practice. The exception also preferred selecting a sufficiently high iron level for enriched flour to accommodate the widespread practice of using enriched flour to manufacture enriched bread. Specifically, the exception proposed that the minimum iron standards for enriched flour be not less than 18.3 mg per pound and for enriched bread not less than 11.5 mg per pound with reasonable overages within the limits of good manufacturing practice.

FDA believes that the references to "a single minimum level" and "minimum iron standards" in the comment are inappropriate. The setting of single level requirements for nutrients is intended to achieve uniformity in enriched foods. The only overages allowed are those consistent with good manufacturing practice. In the preamble to the final regulation of October 15, 1973, the Commissioner advised that matters of good manufacturing practice will continue to be judged on the basis of the multiple factors involved, including technology, nutrient deterioration, and the appreciation of these factors by the manufacturer in its food processing and quality control procedures.

The final regulation withdrawing the staying provisions of the regulations that would have increased the levels of iron in enriched flour and enriched bread

and restoring the former provisions was published in the Federal Register of August 29, 1978 (43 FR 38575). In the preamble, the Commissioner agreed with the arguments presented in the exception filed by the Pennwalt Corp. Because the issues raised by the exception were not involved at the hearing, in the final regulation the Commissioner was unable to act on the proposal made in the exception. He said, however, that he expected to issue a separate new proposal along the lines suggested in the exception.

A letter dated October 12, 1978, on behalf of the American Bakers Association, recommended that a single level for iron in enriched bread be set at the current maximum of 12.5 mg per pound. The letter pointed out that the corresponding figure of 20 mg per pound for flour would allow enriched bread to be made from enriched flour. The agency considers it appropriate to propose adoption of the recommendation because it is consistent with the other changes that were made in the nutrient levels of enriched flour and enriched bread. The agency is proposing amendments of the standards to adopt these changes.

FDA has considered the environmental effects of the issuance or amendment of food standards and has concluded in 21 CFR 25.1(d)(4) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

## PART 136—BAKERY PRODUCTS

1. In Part 136, by revising § 136.115(a)(1), to read as follows:

**§ 136.115 Enriched bread, rolls, and buns.**

(a) * * *

(1) Each such food contains in each pound 1.8 milligrams of thiamine, 1.1 milligrams of riboflavin, 15 milligrams of niacin, and 12.5 milligrams of iron.

* * * * *

## PART 137—CEREAL FLOURS AND RELATED PRODUCTS

2. In Part 137, as follows:

a. By revising § 137.165(a), to read as follows:

**§ 137.165 Enriched flour.**

* * * * *

(a) It contains in each pound 2.9 milligrams of thiamine, 1.8 milligrams of riboflavin, 24 milligrams of niacin, and 20 milligrams of iron;

* * * * *

b. By revising § 137.185(a), to read as follows:

**§ 137.185 Enriched self-rising flour.**

* * * * *

(a) It contains in each pound 2.9 milligrams of thiamine, 1.8 milligrams of riboflavin, 24 milligrams of niacin, and 20 milligrams of iron;

* * * * *

Interested persons may, on or before December 18, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Consistent with the Office of Planning and Evaluation Interim Guidelines for Regulatory Analysis dated August 8, 1978, food standards are exempt from regulatory analysis as required by Executive Order 12044.

Dated: September 14, 1979.

Sanford A. Miller,

*Director, Bureau of Foods.*

[FR Doc. 79-32217 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

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## 21 CFR Part 145

**[Docket No. 78N-0355]**

## Table Olives; Termination of Consideration of Codex Standard

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of Termination of Consideration.

**SUMMARY:** This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "Recommended International Standard for Table Olives." The response to the Food and Drug Administration (FDA's) request for comments on the provisions of the Codex standard and on the desirability of establishing U.S. standards for table olives indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing a U.S. standard for table olives based on the Codex standard.

**EFFECTIVE DATE:** October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Bureau of Foods (HFF–414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204. 202–245–1164.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 23, 1979 (44 FR 10724), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for Table Olives" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission. At the request of a trade association, a notice extending the comment period to May 24, 1979 was published in the Federal Register of May 11, 1979 (44 FR 27691).

Four letters were received, one each from the United States Department of Agriculture (USDA), the U.S. Metric Board, a trade association, and a processor of olives in response to the advance notice of proposed rulemaking.

Two letters, one from a processor and the other from a trade association, stated that there is no need for U.S. standards for table olives. The association stated that domestic manufacturers are opposed to establishment of a standard.

The USDA and the U.S. Metric Board advanced no position on whether U.S. standards for this food are necessary, but, instead, spoke to other considerations. The trade association stated that Codex provisions allow the packing of olives at a much lower quality and flavor level than currently packed in California. It aded that Codex provisions would result in poor quality olives being imported into the United States and would degrade the reputation of olives. Both comments state that Codex would limit many of the ingredients used by both Spanish and United States olive packers and the economic impact would be serious to the olive industry, both domestic and foreign. Also, the processor states that incompatible size ranges would lead to excessive costs for necessary label changes and to confusion of consumers.

No data were submitted to support the allegation that the standard submitted

by Codex would allow an inferior product in the marketplace; therefore, it is the agency's opinion that in the absence of support to the contrary, the general provisions of the Federal Food, Drug, and Cosmetic Act are sufficient to protect the American consumer.

Having considered the comments received, FDA has concluded that there is insufficient support to warrant proposing U.S. standards at this time for table olives under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 341].

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for table olives based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards for table olives upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard for table olives may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 11, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-32117 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 148

[Docket No. 78N-0359]

## Quick Frozen Bilberries; Termination of Consideration of Codex Standard

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of Termination of Consideration.

**SUMMARY:** This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "Recommended International Standard for Quick Frozen Bilberries." The response to the Food and Drug Administration's (FDA's) request for comments on the provisions of the Codex standard and on the desirability of establishing United States standards for quick frozen bilberries indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing U.S. standards for quick frozen bilberries based on the Codex standard.

**EFFECTIVE DATE:** October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, D.C. 20204, 202-245-1164.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 23, 1979 [44 FR 10733], FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for Quick Frozen Bilberries" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

Two letters were received in response to the advance notice of proposed rulemaking.

The United States Department of Agriculture [USDA] and the U.S. Metric Board advanced no position on whether U.S. standards are necessary for quick frozen bilberries, but, instead, spoke to other considerations.

Having considered the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant proposing U.S. standards at this time for quick frozen bilberries under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for quick frozen bilberries based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards for quick frozen bilberries upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food which complies with the requirements of the Codex standard for quick frozen bilberries may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 11, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-32115 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 168

[Docket No. 78N-0363]

## Soft Sugars; Termination of Consideration of Codex Standard

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of Termination of Consideration.

**SUMMARY:** This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "Recommended International Standard for Soft Sugars." The response to the Food and Drug Administration's (FDA's) request for comments on the provisions of the Codex standard and on the desirability of establishing U.S. standards for soft sugars indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing U.S. standards for soft sugars based on the Codex standard.

**EFFECTIVE DATE:** October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C ST. SW., Washington, D.C. 20204, 202-245-1164.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 23, 1979 [44 FR 10747], FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for Soft Sugars" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission. At the request of a trade organization, a notice extending the comment period to June 25, 1979 was published in the Federal Register of May 18, 1979 [44 FR 29106].

Five letters were received from three trade associations, a sugar producer, and the U.S. Metric Board in response to the advance notice of proposed rulemaking.

Four comments stated that there is no need for U.S. standards for soft sugars. The U.S. Metric Board advanced no position on whether U.S. standards for this food are necessary, but, instead, spoke to other considerations. One trade association supported by two comments stated that the consumer can obtain sugar of very high quality without relying on regulatory requirements and a

standard would benefit neither the household nor the industrial consumer, or the sugar manufacturer. It pointed out that the terms "soft white" and "soft sugar" are not the common or usual names for any of the sugar products distributed in the United States within the specifications provided by the standard.

Having considered all the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant proposing U.S. standards at this time for soft sugars under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for soft sugars based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards for soft sugars upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard for soft sugars may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 11, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-32116 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 310

**[Docket No. 79N-0176]**

## Stomach Acidifier Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that stomach acidifier drug products be classified in Category II as being not generally recognized as safe and effective or as being misbranded for over-the-counter (OTC) use. The document, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, is part of the ongoing review of OTC drug products conducted by the Food and Drug Administration (FDA).

**DATES:** Comments by January 17, 1980, and reply comments by February 18, 1980.

**ADDRESS:** Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

**SUPPLEMENTARY INFORMATION:** In accordance with Part 330 (21 CFR Part 330), FDA received on June 23, 1978, a report of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. Under § 330.10(a)(6) (21 CFR 330.10(a)(6)), the Commissioner of Food and Drugs issues (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded (i.e., Category I); (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding (i.e., Category II); (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify such conditions under either (1) or (2) above (i.e., Category III); and (4) the conclusions and recommendations of the Panel. Because the Panel's recommendations on stomach acidifier drug products for OTC use contain no Category I or Category III conditions, FDA is therefore issuing the Panel's recommendations as a notice proposing Category II classification of stomach acidifier drug products for OTC use.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. This document represents the best scientific judgment of the Panel members but does not necessarily reflect the agency's position on any particular matter contained in it. The Panel's findings appear in this document as a formal notice to propose classification of stomach acidifer drug products as Category II and to obtain public comment before the agency reaches any decision on the Panel's recommendations. Should the agency accept the Panel's recommendation that the ingredients in stomach acidifier drug products be classified as Category II, a regulation declaring the products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) will be proposed for inclusion in Part 310, Subpart E (21 CFR Part 310, Subpart E). The agency is including the proposed regulation in this notice to obtain full public comment at this time. After FDA has carefully reviewed the comments and reply comments, submitted in response to this notice, the agency will issue a tentative final order on stomach acidifier drug products for OTC use.

Should FDA accept the conclusions and recommendations of the Panel, the agency would propose that stomach acidifier drug products be eliminated from the OTC market, effective 6 months after the date of publication of a final order in the Federal Register, regardless of whether further testing is undertaken to justify their future use.

In accordance with § 330.10(a)(2) (21 CFR 330.10(a)(2)), all data and information concerning stomach acidifier drug products for OTC use submitted for consideration by the Advisory Review Panel have been handled as confidential by the Panel and FDA. All such data and information will be put on public display in the office of the Hearing Clerk, Food and Drug Administration, after November 19, 1979, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address given above).

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the Federal Register of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the Federal Register of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous internal drug products was issued in the Federal Register of November 16, 1973 (38 FR 31696). In the Federal Register of August 27, 1975 (40 FR 38179), a further notice supplemented the initial notice with a detailed list of ingredients which included stomach acidifier ingredients.

The Commissioner appointed the following Panel to review the data and information submitted and to prepare a report under § 330.10(a) (1) and (5) on the safety, effectiveness, and labeling of the ingredients in those products: John

W. Norcross, M.D., Chairman, Ruth Eleanor Brown, R.Ph. (resigned May 1976), Elizabeth C. Giblin, Ed.D., Richard D. Harshfield, M.D., Theodore L. Hyde, M.D., Claus A. Rohweder, D.O., Samuel O. Thier, M.D. (resigned November 1975), William R. Arrowsmith, M.D. (appointed March 1976), Diana F. Rodriguez-Calvert, Pharm.D. (appointed July 1976).

Representatives of consumer and industry interests served as nonvoting members of the Panel. Eileen Hoates, nominated by the Consumer Federation of America, served as the consumer liaison until September 1975, followed by Michael Schulman, J.D., Francis J. Hailey, M.D., served as the industry liaison, and in his absence John Parker, Pharm.D., served. Dr. Hailey served until June 1975, followed by James M. Holbert, Sr., Ph.D. All industry liaison members were nominated by the Proprietary Association.

The following FDA employees assisted the Panel: Armond M. Welch, R.Ph., served as the Panel Administrator. Enrique Fefer, Ph.D., served as the Executive Secretary until July 1976, followed by George W. James, Ph.D., until October 1976, followed by Natalia Morgenstern until May 1977, followed by Arthur Auer. Joseph Hussion, R.Ph., served as the Drug Information Analyst until July 1976, followed by Anne Eggers, R.Ph., M.S., until October 1977, followed by John R. Short, R.Ph.

To expand its medical and scientific base, the Panel called upon the following consultant for advice in areas which required particular expertise: Ralph B. D'Agostino, Ph.D. (statistics).

The Advisory Review Panel on OTC Miscellaneous Internal Drug Products was charged with the review of many categories of drugs, but due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for stomach acidifier drug products in this document. The review of all other categories of miscellaneous internal drug products will be continued by the Panel, and its findings will be periodically published in the Federal Register during the Panel's deliberations.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings were held on the following dates (the dates of those meetings which dealt with the topic of this document are in italics): February 23 and 24, *March 23 and 24, April 27 and 28,* June 22 and 23, September 21 and 22, November 16 and 17, 1975; February 8 and 9, *March 7 and 8,* April 11 and 12, *May 9 and 10,* July 11 and 12, *October 10 and 11,* 1976; *February 20 and 21,* April 3 and 4, May 15 and 16, July 9, 10, and 11, October 15, 16, and 17, December 2, 3, and 4, 1977; *January 28, 29, and 30, March 10, 11, and 12, May 5, 6, and 7,* and *June 23, 24, and 25,* August 4, 5, and 6, September 29, 30, and October 1, November 17, 18, and 19, 1978; January 19 and 20, and *March 2 and 3,* 1979.

The minutes of the Panel meetings are on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address given above).

The following individuals were given an opportunity to appear before the Panel to express their views on stomach acidifier drug products for OTC use, either at their own or at the Panel's request: C. N. Christensen, M.D., John M. Holt, C. H. Sun, M.D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent data and information submitted through June 23, 1978 in arriving at its conclusions and recommendations for OTC stomach acidifier drug products.

In accordance with the OTC drug review regulations (21 CFR 330.10), the Panel considered stomach acidifier drug products for OTC use with respect to the following three categories:

Category I. Conditions under which stomach acidifier drug products are generally recognized as safe and effective and are not misbranded for OTC use.

Category II. Conditions under which stomach acidifier drug products are not generally recognized as safe and effective or are misbranded for OTC use.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel concludes that all stomach acidifier active ingredients reviewed are safe, but none is effective for OTC use (Category II) in relieving the conditions of achlorhydria and hypochlorhydria.

## A. Ingredients Reviewed by the Panel

Pursuant to the notices published in the Federal Register of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on OTC miscellaneous internal drug products, the following firms made submissions related to products used as stomach acidifiers:

1. *Submissions by Firms*

| *Firms* | *Marketed products* |
|---|---|
| Eli Lilly & Co., Indianapolis, IN 46206 | Acidulin. |
| Stuart Pharmaceuticals, Wilmington, DE 19899 | Normacid. |
| Winthrop Laboratories, New York, NY 10016 | Acidol-Pepsin. |

2. *Labeled ingredients contained in marketed products*—a. *Ingredients in drug products submitted to the Panel for review.*

Betaine hydrochloride
Glutamic acid hydrochloride
Pepsin

b. *Other ingredients reviewed by the Panel.* In addition to those ingredients contained in submitted products, the following ingredient, which was included in the Federal Register notice of August 27, 1975 (40 FR 38179) and for which no data were received, was reviewed by this Panel:

Diluted hydrochloric acid.

3. *Classification of ingredients*—a. *Active ingredients.*

Betaine hydrochloride
Glutamic acid hydrochloride
Diluted hydrochloric acid
Betaine hydrochloride and pepsin

b. *Inactive ingredients.*

None.

## B. Referenced OTC Volume Submissions

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call for data notices published in the Federal Register of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179). All of the submitted information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on display after November 19, 1979, in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

## C. Definition of Terms

For the purposes of this document, the Panel agreed on the following definitions:

1. *Stomach acidifier.* An agent which adds hydrochloric acid to the stomach.

2. *Achlorhydria.* An absence of secretion of hydrochloric acid by the stomach even after suitable stimulation.

3. *Hypochlorhydria.* A subnormal secretion of hydrochloric acid by the stomach even after suitable stimulation.

4. *Diluted hydrochloric acid.* As described in the 19th Edition of the "United States Pharmacopeia."

### D. General Discussion

The Panel was charged with the review of numerous pharmacologic categories of OTC drug products, including those which are known as stomach acidifiers. The Panel has reviewed the available data and has evaluated the safety and effectiveness of stomach acidifiers for OTC use.

The Panel agrees that in some individuals the stomach secretes a subnormal amount of hydrochloric acid (hypochlorhydria) and that in some other individuals the stomach secretes no hydrochloric acid (achlorhydria). In the past, drug products containing ingredients such as betaine hydrochloride, glutamic acid hydrochloride, and diluted hydrochloric acid have been employed as a means of normalizing the hydorchloric acid content of the stomach. Although the Panel recognizes that each of these ingredients in recommeded doses adds hydrochloric acid to the stomach, the Panel believes that such treatment is not clinically beneficial.

More important, the Panel believes that because the conditions of achlorhydria and hypochlorhydria do not produce any symptoms (i.e., they are asymptomatic), these conditions are not amenable to self-diagnosis. Therefore, the Panel concludes that all ingredients used to treat the conditions of achlorhydria and hypochlorhydria are Category II for OTC use.

### E. Physiology Review

To evaluate the ingredients under review, the Panel considered the role of hydrochloric acid in digestion and the regulatory mechanisms that control its secretion. The acidity of the stomach depends in part upon the rate of secretion of hydrochloric acid. The basal rate is almost 30 milliliters (mL) of a dilute solution of hydrochloric acid per hour. The basal secretion rate ranges from 0 to 17 milliequivalents (meq) per hour (Refs. *1* and *2*). Following a meal, there is about a 25 percent increase in the secretion of hydrochloric acid.

The secretion of hydrochloric acid is stimulated by a number of factors, including sight, smell, and taste of food; distention of the stomach; and the release of the hormone gastrin. Gastrin is released by the presence of protein digestive products, caffeine, or alcohol. The secretion of acid is inhibited by a reflex from the duodenum which inhibits both the release of gastrin and the secretion of the gastric glands. Distention of the duodenum and the presence of acid, fats, or a hypertonic solution activate the reflex inhibition of the secretions.

Hydrochloric acid assists digestion by converting pepsinogen to pepsin. Together with pepsin, hydrochloric acid breaks up connective tissue and cell membranes and reduces the size of food particles on the surface of the food mass in the stomach. However, hydrochloric acid is not essential for the digestion and absorption of food.

References

(*1*) Davenport, H., "Physiology of the Digestive Tract," 3d Ed., Year Book Publishers, Inc., Chicago, pp. 143–153, 1971.

(*2*) Vander, S., J. Sherman, and D. Luciano, "Human Physiology, Mechanisms of Body Function," McGraw-Hill, New York, pp. 378–384, 1970.

### F. Category II Active Ingredients

The Panel has classified the following stomach acidifier ingredients as not generally recognized as safe and effective or as being misbranded for OTC use in treating self-diagnosed conditions of achlorhydria and hypochlorhydria:

Betaine hydrochloride
Glutamic acid hydrochloride
Diluted hydrochloric acid
Betaine hydrochloride and pepsin

1. *Betaine hydrochloride.* The Panel concludes that betaine hydrochloride is safe in the dose stated below but not generally recognized as effective in treating achlorhydria and hypochlorhydria.

a. *Safety.* The oral dosage range of betaine hydrochloride used as a substitute for hydrochloric acid is 0.5 to 3.0 grams (g) (Ref. *1*) with a dose of 0.5 g equivalent to approximately 1.1 mL of diluted hydrochloric acid (Ref. *2*). The Panel has been unable to find any reports of adverse reactions to betaine hydrochloride in the medical literature.

There is no information, to the Panel's knowledge, to indicate that betaine hydrochloride is unsafe in the usual oral dose of 0.44 g administered three times daily with meals (Ref. *3*).

b. *Effectiveness.* Due to its ease of administration and its lack of erosive effect on tooth enamel, betaine hydrochloride is sometimes given as a substitute for diluted hydrochloric acid. The usual recommended dose of betaine hydrochloride delivers less hydrochloric acid to the stomach than does the usual recommended dose of diluted hydrochloric acid. There are no controlled studies showing that even large amounts of hydrochloric acid are efficacious in aiding digestion (Ref. *4*). Currently marketed products contain an amount of betaine hydrochloride that is equivalent to between 0.67 and 1.0 mL of diluted hydrochloric acid in a single dose.

Betaine hydrochloride is claimed to be beneficial to persons with low or nonexistent gastric acid secretion because it is said to help in providing a more optimal pH for enzymatic activity in the stomach (Refs. *5* and *6*). However, the Panel has not been presented with, nor is it aware of, convincing evidence demonstrating the effectiveness of hydrochloric acid in the treatment of achlorhydria and hypochlorhydria.

c. *Evaluation.* The Panel concludes that betaine hydrochloride is generally recognized as safe in the dose specified, but its effectiveness has not been demonstrated for the treatment of achlorhydria and hypochlorhydria. In fact, the Panel is of the opinion that such conditions are asymptomatic and, therefore, not amenable to self-diagnosis.

References

(*1*) Stecher, P. G., "The Merck Index," 8th Ed., Merck and Co., Inc., Rahway, NJ, p. 145, 1968.

(*2*) Swinyard, E. A., "Gastrointestinal Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by Osol, A., and J. E. Hoover, Mack Publishing Co., Easton, PA, p. 738, 1975.

(*3*) OTC Volume 170011.

(*4*) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Inc., Littleton, MA, pp. 1082–1083, 1977.

(*5*) OTC Volume 170023.

(*6*) OTC Volume 170049.

2. *Glutamic acid hydrochloride.* The Panel concludes that glutamic acid hydrochloride is safe in the dose stated below but not generally recognized as effective in treating achlorhydria and hypochlorhydria.

a. *Safety.* The oral dosage range of glutamic acid hydrochloride is 0.6 to 1.8 g three times daily (Refs. *1* and *2*). A dose of 0.3 g corresponds to 0.6 mL of diluted hydrochloric acid (Ref. *1*). The Panel has determined that glutamic acid hydrochloride is safe in the usual oral dose of 1.02 g administered three times daily (Ref. *3*). No adverse reactions have been reported in the literature at this dose.

b. *Effectiveness.* Glutamic acid hydrochloride is claimed to increase the amount of hydrochloric acid present in the stomach, thus altering the pH of the gastric environment (Refs. *4* and *5*). Due to its ease of administration and its lack of erosive effect on tooth enamel, glutamic acid hydrochloride is sometimes used as a substitute drug for diluted hydrochloric acid. The usual recommended dose of glutamic acid hydrochloride delivers less hydrochloric acid to the stomach than does the usual recommended dose of diluted hydrochloric acid. There are no controlled studies showing that even

large amounts of hydrochloric acid are efficacious in aiding digestion (Ref. *6*). The Panel has not been presented with, nor is it aware of, any convincing evidence demonstrating the effectiveness of hydrochloric acid in the treatment of achlorhydria and hypochlorhydria.

c. *Evaluation.* The Panel concludes that glutamic acid hydrochloride is generally recognized as safe in the dose specified, but its effectiveness has not been demonstrated for the treatment of achlorhydria and hypochlorhydria. In fact, the Panel is of the opinion that such conditions are asymptomatic and, therefore, not amenable to self-diagnosis.

References

(*1*) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott, Philadelphia, pp. 559–560, 1973.

(*2*) Swinyard, E. A., "Gastrointestinal Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by Osol, A., and J. E. Hoover, Mack Publishing Co., Easton, PA, p. 737, 1975.

(*3*) OTC Volume 170103.

(*4*) OTC Volume 170023.

(*5*) OTC Volume 170049.

(*6*) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Inc., Littleton, MA, pp. 1082–1083, 1977.

3. *Diluted hydrochloric acid.* The Panel concludes that diluted hydrochloric acid is safe when taken in the dose stated below but not generally recognized as effective for treating achlorhydria and hypochlorhydria.

a. *Safety.* Diluted hydrochloric acid contains 10 percent hydrochloric acid and is usually given in a dose of 5 mL, further diluted with 125 to 250 mL of water (Ref. *1*). This amount of hydrochloric acid is considered safe for oral administration when the solution is sipped through a glass straw to minimize tooth enamel erosion by the acid.

b. *Effectiveness.* While diluted hydrochloric acid does somewhat increase the acidity of the gastric contents, the usual therapeutic dose is generally not sufficient to result in free hydrochloric acid in the stomach in the case of achlorhydria (Refs. *1* and *2*). Instead, most of the acid is bound by the gastric contents (Ref. *1*). There are also no controlled studies showing that even large amounts of hydrochloric acid are efficacious in aiding digestion (Ref. *2*). The Panel was not presented with, nor is it aware of, any convincing evidence demonstrating the effectiveness of diluted hydrochloric acid in treating achlorhydria and hypochlorhydria.

c. *Evaluation.* The Panel concludes that diluted hydrochloric acid is generally recognized as safe in the dose specified, but its effectiveness has not been demonstrated for the treatment of achlorhydria and hypochlorhydria. In fact, the Panel is of the opinion that such conditions are asymptomatic and, therefore, not amenable to self-diagnosis.

References

(*1*) Harvey, S. C., "Gastric Antacids and Digestants," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by Goodman, L. S., and A. Gilman, The MacMillan Co., New York, pp. 970–971, 1975.

(*2*) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Inc., Littleton, MA, pp. 1082–1083, 1977.

4. *Betaine hydrochloride and pepsin.* Two submissions were received for a product containing betaine hydrochloride and pepsin. This combination was labeled as a stomach acidifier. No data were submitted, nor is the Panel aware of any, which substantiate a claim that pepsin functions as a stomach acidifier or enhances the stomach-acidifying effects of betaine hydrochloride. The Panel concludes that this is a safe combination but not effective in treating the conditions of achlorhydria and hypochlorhydria. Therefore, the Panel recommends that betaine hydrochloride and pepsin be included in Category II. (In a future issue of the Federal Register, the Panel will review pepsin as a digestive aid ingredient.)

## G. Category II Labeling

The Panel reviewed the labeling claims made for the submitted drug products and concludes that each of the stomach acidifier ingredients reviewed is safe but not effective for the treatment of achlorhydria and hypochlorhydria in the dose specified. In addition, and more important, the Panel believes that these conditions do not produce any symptoms and therefore should not be considered as symptomatic disease states. For these reasons, the Panel has classified the following labeling claims as Category II and not appropriate for OTC use:

1. For hydrochloric acid deficiency.
2. For replacement therapy in deficiencies of hydrochloric acid in gastric secretion.
3. Stomach acid medication.
4. For achlorhydria.
5. For stomach subacidity.
6. Assists digestion in gastric hypoacidity by gradual release of hydrochloric acid and pepsin.
7. Digestant.

The Food and Drug Administration has determined that this document is exempt from the requirement of preparing an Environmental Impact Statement as specified under 21 CFR 25.1(f)(4).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 310 by adding new § 310.540, to read as follows:

**§ 310.540 OTC drug products containing active ingredients offered for use as stomach acidifiers.**

(a) Betaine hydrochloride, glutamic acid hydrochloride, diluted hydrochloric acid, and pepsin have been present as ingredients in over-the-counter (OTC) drug products for use as stomach acidifiers. Based upon the lack of adequate data to establish the effectiveness of these or any other ingredients of stomach acidifiers used in treating achlorhydria and hypochlorhydria, and because such conditions are asymptomatic and not amenable to self-diagnosis, any OTC drug product containing ingredients offered for use as stomach acidifiers cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product labeled, represented, or promoted as a stomach acidifer is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD–1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that any drug product labeled, presented, or promoted as a stomach acidifier for OTC use is safe and effective for the purpose intended.

(d) Any such drug product introduced in interstate commerce after the effective date of a final regulation that is not in compliance with this section is subject to regulatory action.

Interested persons are invited to submit their comments in writing (preferably in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal on or before January 17, 1980. Comments should be addressed to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville,

MD 20857, and may be accompanied by a supporting memorandum or brief. Comments replying to comments may also be submitted on or before February 18, 1980. Comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 10, 1979.

Sherwin Gardner,

*Acting Commissioner of Food and Drugs.*

[FR Doc. 79-32107 Filed 10-18-79; 8:45 am]

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## 21 CFR Part 320

[Docket No. 79N-0133]

## Certain Sulfonamide Anti-Infectives; Proposed Bioequivalence Requirements

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) proposes to establish bioequivalence requirements for certain oral sulfonamide drug products used in the treatment of bacterial infections. Available data suggest that the various marketed brands of the same oral sulfonamides may not have comparable therapeutic effects. The proposed regulations would assure the bioequivalence of different brands of such products and batch-to-batch uniformity of the same product by each manufacturer.

**DATES:** Comments by December 18, 1979; FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

**ADDRESS:** Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

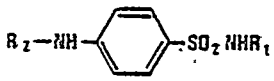
**FOR FURTHER INFORMATION CONTACT:** Henry J. Malinowski, Bureau of Drugs (HFD-525), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4750.

**SUPPLEMENTARY INFORMATION:** FDA has promulgated regulations in Subpart C of Part 320 (21 CFR Part 320) setting forth procedures by which the agency may, on its own initiative or in response to a petition from an interested person, propose and promulgate regulations to establish bioequivalence requirements for drug products containing identical amounts of the same active drug ingredient and in the same dosage form that are intended to be used interchangeably for the same therapeutic effect and for which there is a known or potential bioequivalence problem. The Commissioner of Food and Drugs has delegated authority to issue, amend, or repeal these regulations to the Director and Deputy Director of FDA's Bureau of Drugs (21 CFR 5.79).

Data available to FDA demonstrate that there is well-documented evidence of actual bioequivalence differences in oral formulations of sulfadiazine, trisulfapyrimidines, and sulfaphenazole and potential bioequivalence differences in oral formulations of other drugs in the class of sufonamides among currently marketed brands of the same drug product produced by various manufacturers, based on the criteria set forth in § 320.52 (21 CFR 52). Therefore, the Director of the Bureau of Drugs, on the Director's own initiative, tentatively concludes that a bioequivalence requirement involving both in vivo testing in humans and in vitro dissolution testing should be established for acetyl sulfisoxazole emulsion and for the following oral solid dosage form sulfonamides: Sulfachlorpyridazine, sulfacytine, sulfadiazine, sulfadiazine sodium bicarbonate, sulfadimethoxine, sufaethidole, sulfamerazine, sulfameter, sulfamethazine, sulfamethizole, sulfamethoxazole, sulfamethoxypyridazine, sulfaphenazole, sulfapyridine, sulfasalazine, sulfisomidine, trisulfapyrimidines, and sulfadiazine-sulfamerazine-sulfamethazine-sulfacetamide-sulfamethizole combination. The Director also tentatively concludes that, because existing data demonstrate an in vivo/in vitro correlation, (Refs. 22 and 23), a bioequivalence requirement involving only an in vitro bioequivalence standard should be established for sulfisoxazole tablets and for all sulfonamide suspensions. The evidence on which the Director bases these tentative conclusions and the proposed bioequivalence requirements are discussed below (see also Ref. 1).

### Background

Orally administered sulfonamides have a wide range of antimicrobial activity. Essentially, they inhibit the growth or multiplication of bacteria; i.e., they are bacteriostatic agents. Although the importance of the sulfonamides in the treatment of infectious diseases has diminished with the development of more effective antimicrobial agents, these drugs continue to have a prominent place in the treatment of lower urinary tract infections and systemic infections caused by *Nocardia* species. They are also drugs of choice for prophylaxis in rheumatic fever and meningococcal infections that are sensitive to sulfonamides. Although no one oral sulfonamide drug product is equally effective in all types of infections, for purposes of bioequivalence requirements the sulfonamides are considered together because they are members of a class of drugs having close structural commonality and similar physicochemical and pharmacological properties. All of them are derivatives of sulfanilic acid and contain the following general structural formula:



Substituents and $R_1$ and $R_2$ for some important sulfonamides are shown in Table 1.

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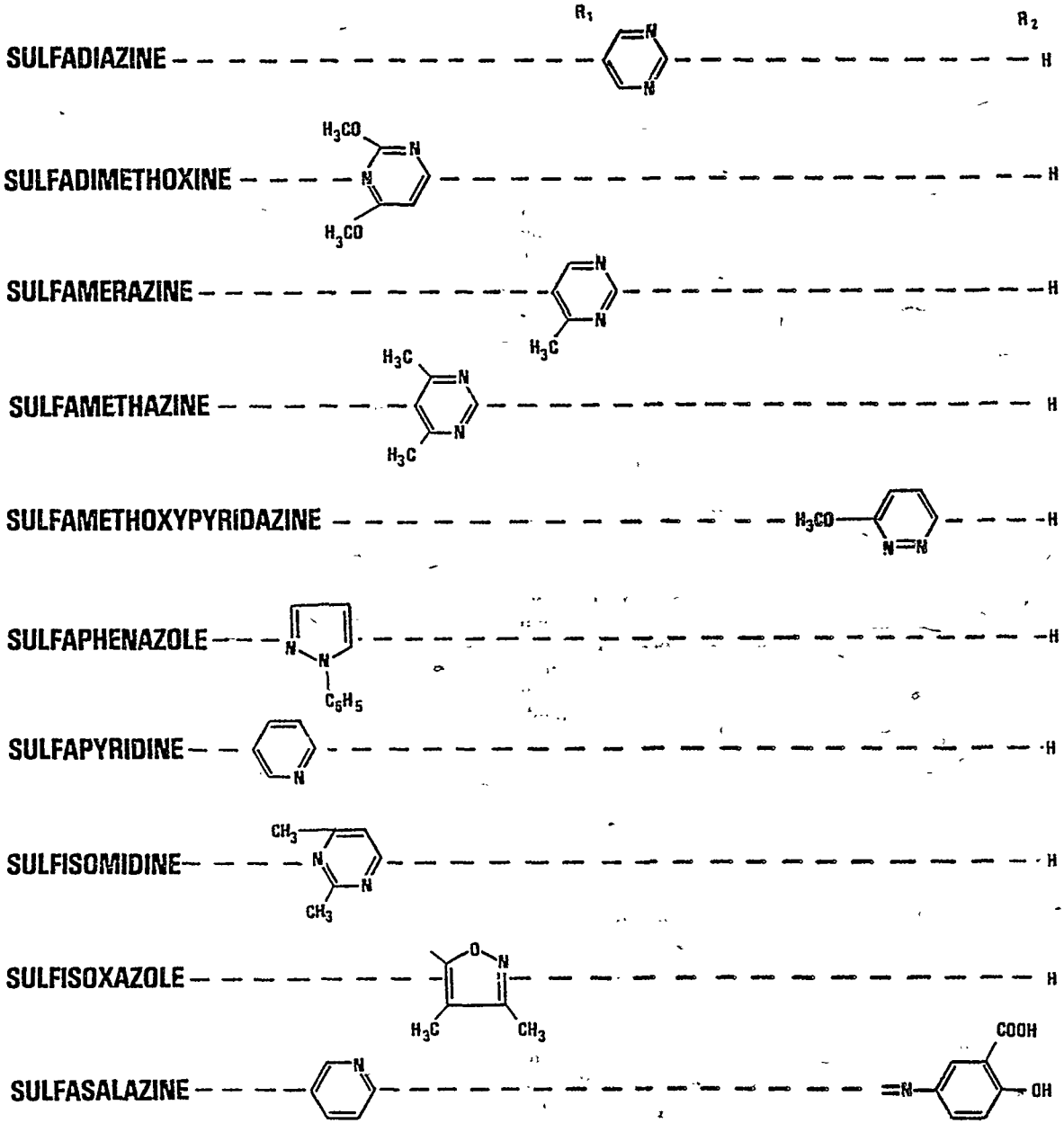
# TABLE I

## STRUCTURE OF SELECTED SULFONAMIDES

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The essential structural prerequisites for antibacterial activity of sulfonamides are: (1) The S atom of the $SO_2NH_2$ group is directly linked to the benezene ring, and (2) the presence in the para position of the benzene ring of an $-NH_2$ group or a group that can be converted readily in the tissues to a free amino group. Substitution in the benzene ring of sulfonamides usually yields inactive compounds. Substitution of heterocyclic aromatic nuclei on the nitrogen of the $SO_2NH_2$ group yields highly potent compounds.

All major sulfonamides are white crystalline powders, most of which are relatively insoluble in water. The sodium salts of the sulfonamides are readily soluble. The free sulfonamides are more soluble in plasma than in water (Ref. 2). Tables 2 and 3 present data on the solubility of various sulfonamides and their acetylated derivatives in body fluids at different pH's (Ref. 3).

**Table 2**—*Solubility Data on Sulfonamides (milligrams/milliliter at 37° C.)*

| Drug | Water (pH 5.5) | Serum |
|---|---|---|
| Sulfadiazine | 0.14 | 1.60 |
| Sulfamerazine | 0.32 | [1] |
| Sulfisomidine | 1.88 | 3.72 |
| Sulfisoxazole | 1.50 | 6.40 |
| Acetyl sulfisoxazole | 0.50 | 12.00 |

[1] Not available.

**Table 3**—*Solubility of Sulfonamides at Various pH's in Urine (milligrams/milliliter at 37° C)*

| Drug | pH 5.5 | pH 7.5 | pH 8.0 |
|---|---|---|---|
| Sulfadiazine | 0.18 | | 4.50 |
| Sulfamerazine | 0.35 | | 4.25 |
| Sulfisomidine | 2.54 (pH 5.0) | 3.97 (pH 7.3) | |
| Sulfisoxazole | 1.50 | 145.00 | |
| Acetyl sulfisoxazole | 0.55 | 100.00 | |

The following are general characteristics for most members of the series: Absorption—alimentary or parenteral—is rapid, in minutes; distribution is widespread within the water of the body, including penetration into spinal fluid; metabolism occurs by varying degrees of acetylation (of the para-$NH_2$ group); and excretion is moderately rapid, in 24 to 48 hours through the kidneys (Refs. 2 and 3).

All sulfonamides, except those designed for their local effects in the bowel, can be absorbed rapidly from the gastrointestinal tract. The small intestine is the major site of absorption, but some of the drug is absorbed from the stomach. The drug can often be found in the urine within 30 minutes after its oral ingestion (Ref. 2). Total sulfonamide blood levels of 12 to 15 milligrams (mg) per 100 milliliters (mL) (120 to 150 micrograms ($\mu$g) per mL) have been reported to be optimal; blood levels greater than 20 mg per 100 mL (200 $\mu$g per mL) have been associated with an increased incidence of adverse reactions (Ref. 4). The minimum inhibitory concentrations (MIC) of sulfonamides, i.e., the smallest concentration known to inhibit growth or multiplication of bacteria, vary from drug to drug. Table 4 shows MIC for selected sulfonamides:

**Table 4**—Minimum Inhibitory Concentrations (MIC) for Some Sulfonamides (Ref. 5)

| Drug | MIC($\mu$g/ml) |
|---|---|
| Sulfadiazine | 100–150 |
| Sulfadimethoxine | 1–50 |
| Sulfamerazine | 3–20 |
| Sulfamethazine | 10–100 |
| Sulfamethoxazole | 0.2–50 |
| Sulfamethoxypyridazine | 1–20 |
| Sulfisomidine | 12.5–50 |
| Sulfamethoxazole | 1–20 |

All sulfonamides are bound in varying degrees to plasma proteins (Table 5). The effective sulfonamide level in body fluids corresponds to the concentration of unbound drug in the plasma.

Sulfonamides are distributed throughout the tissues of the body, and this distribution accounts for their therapeutic efficacy in systemic infections (Ref. 2).

**Table 5.**—*Physicochemical Data on Sulfonamides*

[Refs. 3, 4, 5, and 18]

| Drug | pKa | Solubility at pH 5.5 (mg/mL) | Protein binding (percent) | Daily dose (g) |
|---|---|---|---|---|
| Sulfadiazine | 6.4 | 0.14 | 45 | 2–4 |
| Sulfadimethoxine | 6.1 | 0.075 | 99 | 0.5–1 |
| Sulfaethidole | 5.6 | 0.25 | 99 | 3–4 |
| Sulfamerazine | 7.0 | 0.32 | 75 | 2–4 |
| Sulfamethazine | 7.4 | 1.5 (pH 7) | 80 | |
| Sulfamethoxazole | 6.0 | | 68 | 1–2 |
| Sulfamethoxypyridazine | 6.7 | 0.37 | 87 | 0.5–1.5 |
| Sulfisomidine | 7.4 | 1.88 | 86 | 2–4 |
| Sulfisoxazole | 4.9 | 1.50 | 85 | 2–4 |
| Sulfisoxazole acetyl | 5.0 | 0.50 | 85 | 2–4 |
| Sulfapyridine | | 0.8 | 40 | 0.5–2 |
| Sulfaphenzole | 5.91 | 0.00 (pH 7) | 85 | 1–2 |
| Sulfamethizole | | 1.54 (pH 5) | 90 | 2–4 |

Sulfonamides undergo metabolic transformation to a varying extent in tissues, especially in the liver. Both acetylation and oxidation occur. Acetylation is disadvantageous because the resulting product lacks antibaterial activity and yet retains the toxic potentialities of the parent substance (Ref. 2).

Sulfonamides are completely eliminated from the body, partly unchanged and partly as metabolized products. The largest fraction is excreted in the urin. The rate of excretion of some sulfonamides exhibits diurnal variation. Each sulfonamide, free and acetylated, is handled by the kidney in a characteristic manner. In all cases, renal filtration is a major factor (Ref.2).

Untoward effects during sulfonamide therapy represent the major limitation to their clinical use. Most sulfonamides produce mildly toxic effects; they can also produce severe sensitivity phenomena such as dermatitis, rash agranulocytosis, and hepatitis. The most frequently observed side effect is crystalluria and related renal damage (Refs. 2, 4, and 5).

Because of their similiarity of structure and pharmacologic properties, all sulfonamide drug products are considered as a class in establishing bioequivalence requirements.

### Evidence To Establish a Bioequivalence Requirement

Among the criteria set forth in § 320.52 to be considered in determining that a bioequivalence requirement should be established, the following are relied upon by the Director in tentatively concluding that these proposed bioequivalence requirements should be imposed upon this class of drugs:

1. *Evidence from well-controlled bioequivalence studies that such products are not bioequivalent drug products* (§ 320.52(b)). A well-controlled study of eight brands of sulfadiazine tablets demonstrated that two products were 50 percent as bioavailable as the standard, measured in terms of the area under the plasma concentration-time curve (AUC), while a third one was about 75 percent as bioavilable as the reference standard (Ref. 6). Table 6

shows the AUC for the three bioinequivalent products compared to the standard.

Table 6—*Comparision of AUC*

| Brand | AUC (free sulfa) |
|---|---|
| A (Standard) | 1327.1; 1192.0 |
| B | 651.8 |
| C | 504.5 |
| D | 880.9 |

A bioavailability study (Ref. 7) submitted to FDA by a firm in support of its new drug application (NDA) documented a bioequivalence problem regarding the trisulfapyrimidine suspension. The study was a crossover design using 10 healthy male adults to compare the firm's trisulfapyrimidine test suspension with a reference standard suspension. The blood levels of sulfonamide obtained with the test product were almost 50 percent higher at all sampling times than the reference product. Table 7 shows the peak plasma levels (Cmax), time to obtain peak plasma levels (Tmax), and AUC for the test and reference products:

Table 7—*Comparision of Certain Measured Parameters*

| | Test product | Reference product | Reference as percentage of test |
|---|---|---|---|
| Cmax (mg %) | 10.8 | 6.1 | 56.5 |
| Tmax (hour) | 4.0 | 4.0 | 100.0 |
| AUC | 187.7 | 106.3 | 56.6 |

Cmax for the reference product was only 56.5 percent of that for the test product; the AUC value for the reference product was 56.6 percent of that for the test product. These observations demonstrate a clear and significant bioinequivalence between the test and reference products.

Bioequivalence studies (Ref. 8) submitted by two firms in support of their abbreviated new drug applications (ANDA's) compared their suspension formulations of trisulfapyrimidine with the same reference material suspension. The blood levels of the reference product in both studies were about half of those of the test products. AUC's reported in one study were 158 for the test product and 77.4 for the reference product. The results of these studies demonstrated a bioinequivalence problem.

Tablets and two lots of suspension from the same manufacturer whose suspension formulation was used as the reference product in the studies reported in Reference 8 were studied under a contract from FDA (Ref. 9). Table 8 shows the mean Cmax and AUC for the tablet and the two suspension lots used in this study:

Table 8—*Comparison of Certain Measured Parameters*

| | Tablet | Suspension I | Suspension II |
|---|---|---|---|
| Cmax (mg %) | 5.49 | 3.06 | 3.01 |
| Tmax (hours) | 4-6 | 4.0 | 4.0 |
| AUC | 94.87 | 56.14 | 56.67 |

The AUC's showed that the two suspension lots were only 59 percent as bioavailable as the tablet, demonstrating a bioinequivalence problem.

A recent study on trisulfapyrimidine suspension conducted under an FDA contract (Ref. 10) revealed that three of seven commercial products differed significantly ($p < .01$) in bioavailability. Using a high-pressure liquid chromatography assay, it was established that the major components leading to the bioinequivalence were sulfadiazine and sulfamerazine, but no difference in serum levels was observed for the sulfamethazine. The sulfadiazine component was the greatest contributor to the bioinequivalence. Table 9 shows the mean values for Tmax, Cmax, and AUC for sulfadiazine in the three products in comparison to a more bioavailable product included in the study (Ref. 10).

Table 9—*Comparison of Certain Measured Parameters*

| Product | Tmax (hr) | Cmax (μg/mL) | AUC (μg hr/mL) |
|---|---|---|---|
| A | 3.9 | 12.1 | 186 |
| B | 5.0 | 9.3 | 231 |
| C | 5.1 | 9.1 | 200 |
| D | 4.6 | 6.0 | 138 |

The data reveal that one product resulted in significantly lower sulfadiazine peak levels (50 percent) and lower AUC sulfadiazine values (60 percent) in comparison to other products in the study. Two additional products differed significantly in their rate of absorption but not in extent of absorption, resulting in lower peak levels (Ref. 10).

A bioequivalence study (Ref. 11) submitted to FDA by a firm in support of its NDA for a sulfaphenazole product documented a bioequivalence problem with rate of absorption. The study, a two-way crossover design employing 12 subjects, compared the two formulations produced by the same company. The areas under the concentration-time curves (AUC's) showed the products to be equivalent in the extent of bioavailability; however, the rates of absorption demonstrated the two products to be bioinequivalent:

Table 10—*Rates of Absorption of Two Formulations*

| | Drug A | Drug B |
|---|---|---|
| Rate constant of absorption Kab (hour-1) | 0.340 | 0.767 |
| Half-life of absorption T ½ (abs) hours | 2.04 | 0.90 |
| AUC, 0-24 hours (μg hr/mL) | 200.7 | 211.2 |

A bioequivalence study (Ref. 12) submitted to FDA by a firm in support of its NDA for sulfasalazine documented a bioequivalence problem with the extent of absorption. New and old enteric-coated tablet formulations of sulfasalazine were compared in a parallel design bioavailability study. The subjects were healthy, male adults. A single oral dose of 2 grams (g) of the old or new formulation was administered to each subject and blood levels determined at various sampling times. The mean peak blood levels (Cmax) were similar but the coefficients of variation (C.V.) were large—83 percent for the new formulation and 102 percent for the old. The AUC for free sulfasalazine showed that the new formulation was 215 percent as bioavailable as the old one (AUC of the new formulation 139.7 μg hr/mL; AUC of the old formulation, 64.8 μg hr/mL). The study thus demonstrated the bioinequivalence of the two formulations of the same drug.

Slow-dissolving sulfisoxazole drug products were shown to have a lower bioavailability when compared to a control solution. Products that required 237, 402, and more than 420 minutes for 50 percent of drug to dissolve were only 71, 74, and 71 percent, respectively, as available as the control solution, as determined by area under the curve from 0 to 4 hours (Ref. 18).

2. *Competent medical determination that a lack of bioequivalence would have a serious adverse effect in the treatment or prevention of a serious disease or condition* (§320.52(d)). Sulfadiazine is the recommended chemoprophylactic agent for persons in close contact with patients having meningococcal disease if the strain of *N. meningitidis* is sensitive to sulfonamides (Ref. 2). Sulfadiazine therapy is also recommended for patients with meningococcal disease if the epidemic is proven to be due to a sulfonamide-sensitive strain of meningococcus (Ref. 2). A lack of bioequivalence among sulfadiazine products would, therefore, have a serious adverse effect in the treatment and prevention of meningitis

3. *Physicochemical evidence that: (a) The active drug ingredient has a low solubility in water, e.g., less than 5 mg per 1 mL, or, if dissolution in the stomach is critical to absorption, the volume of gastric fluids required to dissolve the recommended dose far exceeds the volume of fluids present in the stomach (taken to be 100 mL for adults and prorated for infants and children)* § 320.52(e)(1)). Sulfadiazine, sulfamethoxazole, sulfaphenazole, and sulfasalazine are practically insoluble in water (Refs. 2a, 13, 14, and 15). Sulfamethazine (1.5 mg/mL), sulfasomidine (1.88 mg/mL), and sulfisoxazole (1.5 mg/mL) are slightly soluble in water. Sulfadimethoxine (0.075 mg/mL), sulfamethizole (0.5 mg/mL), sulfaethidole (0.25 mg/mL), sulfamerazine (0.32 mg/mL), and sulfapyridine (0.8 mg/mL) are very slightly soluble in water. Therefore, the amount of fluid required to dissolve any of these oral sulfonamide drugs at the recommended dose level exceeds the volume of fluid present in the stomach. As used here, the term "practically insoluble" is defined as a solubility of less than 0.05 mg/mL. "Very slightly soluble" refers to a solubility from 0.05 mg/mL to 1.0 mg/mL, while "slightly soluble" means a solubility of more than 1.0 mg/mL.

(b) *The dissolution rate of one or more such products is slow, e.g., less than 50 percent in 30 minutes when tested using either a general method specified in an official compendium or a paddle method at 50 revolutions per minute (rmp) in 900 mL of distilled or deionized water at 37° C or differs significantly from that of an appropriate reference material such as an identical drug product that is the subject of an approved full new drug application* (§ 320.52(e)(2)).

A 1973 Canadian study (Ref. 19) reports dissolution testing of 13 lots of 500-mg tablets of sulfisoxazole by the U.S.P. compendial method. Of 13 lots, 5 failed the U.S.P. dissolution test. The investigators also found that values calculated from six determinations of dissolution time often gave unrealistically high values for the coefficient of variation (indicative of great variability from tablet to tablet). They concluded that 10 determinations appear to be the minimum to preclude undue weight being given to occasional variations.

Under an FDA contract (Ref. 16), 11 lots of 500-mg sulfisoxazole tablets, manufactured by 10 companies, were evaluated in vitro and in vivo. Three of these 11 did not meet the dissolution rate specified in U.S.P. XVIII. The time required, according to compendial specification, for 60 percent of the labeled amount of sulfisoxazole in the tablets to dissolve is not more than 30 minutes with dilute hydrochloric acid (1 in 12.5) being used as the dissolution medium. Table 11 shows the percent sulfisoxazole dissolved in 30 minutes from the three products that failed to meet the U.S.P. XVIII specification.

**Table 11—*Sulfisoxazole Dissolution***

| Product | Percent dissolved (range) |
|---|---|
| A | 21.4 (18–22.6) |
| B | 50.0 (44–55) |
| C | 10.1 (8.9–12.9) |

The in vivo bioavailability testing of these 11 products, however, showed them to be bioequivalent.

Recently the dissolution testing of five brands of 500–mg tablets and one brand of 300–mg tablets of sulfadiazine was conducted in FDA laboratories (Ref. 17). The rates of dissolution of sulfadiazine tablets were determined in 900 mL of 0.1*N* hydrochloric acid as well as in 900 mL of pH 7.5 phosphate buffer using the paddle for stirring at 50 rpm for 60 minutes. Of the five brands of 500–mg tablets, three dissolved less than 20 percent in 40 minutes in 0.1*N* hydrochloric acid, and four dissolved less than 40 percent in 40 minutes in pH 7.5 phosphate buffer solution. (Sulfadiazine is practically insoluble in water and is primarily absorbed in the small intestine. The buffer solution of pH 7.5 was used to see whether improved dissolution rates were possible in this medium.) Table 12 gives the result of testing:

**Table 12—*Sulfadiazine Dissolution***

| Product | Percent dissolved in 40 minutes | |
|---|---|---|
| | pH 7.5 Buffer | 0.1*N* HCl |
| A (500 mg) | 30.3 | 15.4 |
| B (500 mg) | 4.7 | 17.6 |
| C (500 mg) | 86.5 | 76.1 |
| D (500 mg) | 4.6 | 10.8 |
| E (500 mg) | 23.0 | 73.1 |
| F (300 mg) | 5.1 | 3.1 |

However, in vivo testing involving the same lots of products A, B, and C demonstrated them to be bioequivalent with a solution of sodium sulfadiazine.

The results of the above two studies cited in Reference 17 demonstrate that some sulfa drug products dissolve slowly and, consequently, may have in vivo bioavailability problems.

Recent dissolution testing by FDA laboratories was performed on 13 samples of trisulfapyrimidine tablets from 12 manufacturers. Dissolution testing was conducted using the paddle method at 50 rpm in 900 milliliters of 0.1N hydrochloric acid at 37 ± 0.5° C. Of the 13 samples, 6 of the sulfadiazine component, 3 of the sulfamerazine component, and 2 of the sulfamethazine, dissolved less than 50 percent in 40 minutes (Ref. 21).

**The Bioequivalence Requirement**

On the basis of these data, the Director tentatively concludes that the evidence meets one or more of the criteria set forth in § 320.52. The Director proposes to establish the following bioequivalence requirements:

1. *For sulfisoxazole tablets.* The Director proposes to establish a bioequivalence standard that would apply to all manufacturers of sulfisoxazole tablets. This proposed standard is an in vitro dissolution test that has been correlated with human in vivo bioavailability data (Ref. 22). The standard specifies that the average amount of labeled sulfisoxazole dissolved in a sample of 12 test tablets is not less than 60 percent in 30 minutes. Manufacturers of sulfisoxazole tablets not marketed on the effective date of this regulation must include the results of the tests in the original full or abbreviated NDA for the drug product submitted to FDA. For products currently marketed, the results of these tests must be submitted to FDA within 60 days following the effective date of the final regulation. The submission must be in the form of a supplement to the approved NDA or ANDA for the drug product. A manufacturer unable to meet this specification would be required to reformulate the drug product to meet the specifications. After approval of an application or supplement, the manufacturer will be required to conduct the in vitro dissolution test on a sample of each batch of its drug product to ensure batch-to-batch uniformity.

Methodology specifications are set forth below in the text of the proposed bioequivalence requirements.

2. *For all sulfonamide suspensions.* The Director proposes to establish a bioequivalence requirement that would apply to all manufacturers of sulfonamide suspensions. This proposed bioequivalence standard is an in vitro dissolution test that has been correlated with human in vivo bioavailability data (Ref. 23). The standard specifies that the average amount of labeled sulfonamide dissolved in 12 test samples is not less than 60 percent in 30 minutes. Manufacturers of sulfonamide suspensions not marketed on the effective date of this regulation must include the results of the tests in the

original full or abbreviated NDA for the drug product submitted to FDA. For products currently marketed, the results of these tests must be submitted to FDA within 60 days following the effective date of the final regulation. The submission must be in the form of a supplement to the approved NDA or ANDA for the drug product. A manufacturer unable to meet this specification would be required to reformulate the drug product to meet the specifications. After approval of an application or supplement, the manufacturer will be required to conduct the in vitro dissolution test on a sample of each batch of its drug product to ensure batch-to-batch uniformity.

Methodology specifications are set forth below in the text of the proposed bioequivalence requirements.

3. *For acetyl sulfisoxazole emulsion, single-active-ingredient oral solid dosage form drug products containing sulfachlorpyridazine, sulfacytine, sulfadiazine, sulfadiazine sodium bicarbonate, sulfadimethoxine, sulfaethidole, sulfamerazine, sulfameter, sulfamethazine, sulfamethizole, sulfamethoxazole, sulfamethoxypyridazine, sulfaphenazole, sulfapyridine, sulfasalazine, or sulfisomidine, and the combination sulfonamide drug products trisulfapyrimidines or sulfadiazine-sulfamerazine-sulfamethazine-sulfacetamide-sulfamethizole.* The Director proposes to establish a bioequivalence requirement that would apply to all manufacturers of these products. It would require each manufacturer, except the manufacturer of a reference material or a manufacturer who has previously conducted in vivo bioavailability/bioequivalence studies that fulfill the requirements of this section, to (1) conduct an in vitro dissolution test comparing its drug product to a specified reference product, and (2) conduct an in vivo bioavailability study comparing the same lot of its drug product to a specified reference product.

Under this proposed requirement, the oral solid sulfonamide test drug product would be considered to meet the in vitro portion of the bioequivalence requirement if the in vitro data show that the average dissolution rate for a sample of 12 test drug products is not less than 50 percent in 30 minutes and not less than 80 percent in 60 minutes; in the case of acetyl sulfisoxazole emulsion, however, the test drug product would be considered to meet the bioequivalence requirement if the in vitro data show that the average dissolution rate for a sample of 12 test samples is not less than 60 percent in 30 minutes.

The in vivo portion of the bioequivalence requirement must show that the test drug product meets the following conditions:

(1) The test drug product and the reference material show no more than 20 percent difference in the comparison of measured parameters, e.g., concentration of the active drug ingredient in the plasma, rate of absorption (measured by Tmax or Ka), peak plasma levels (Cmax), area under the plasma concentration-curves (AUC), and time to obtain peak plasma levels (Tmax).

(2) The test product should be at least 75 percent as bioavailable as the administered reference material using the subjects as their own controls, that is, administering both the reference material and the drug material to each subject sequentially.

In addition, the analytical and statistical techniques used must be of sufficient sensitivity to detect those differences in rate and extent of absorption that are not attributable to subject variability.

Methodology specifications are set forth either in the text of the proposed bioequivalence requirements that appear later in this document, or in guidelines on file in the office of the Hearing Clerk.

It should be noted that FDA dissolution specifications for these oral sulfonamide drug products either differ in certain particulars from their respective compendial dissolution specifications or set dissolution specifications where none currently exist.

If data are submitted, whether by a manufacturer currently marketing the product or by one wanting to enter the market, that differ significantly from valid studies reported in the literature or obtained by FDA using a validated protocol and method, FDA may require further in vivo studies.

The Director further proposes that a manufacturer of a reference material who has not previously conducted in vivo bioavailability/bioequivalence studies that fulfill the requirements of this section be required to conduct an in vivo bioavailability study comparing the reference material with a solution or suspension of an equivalent amount of active ingredient contained in the reference material. All other manufacturers of sulfonamide drug products requiring in vivo bioavailability testing who have previously conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence of their products in accordance with the provisions of the proposed regulation would be required to conduct only in vitro dissolution testing on three consecutive lots or batches of their products to demonstrate consistent dissolution performance, provided their in vivo data are acceptable.

The Director also proposes that the manufacturer of the drug product selected by FDA as the reference material and each manufacturer of a drug product subject to this section who has previously conducted in vivo tests in humans, which tests have been found by FDA to fulfill the requirements of this section, be required to conduct in vitro dissolution testing on three consecutive lots or batches of the product to demonstrate consistent dissolution performance. The reference material must meet the minimum requirements set for the test drug products. A manufacturer of a sulfonamide drug product requiring in vivo bioavailability testing subject to this proposed section who has previously conducted in vivo bioavailability/bioequivalence studies (e.g., to meet requirement for approval of an ANDA for a drug product covered by a drug efficacy study implementation notice) may request FDA to evaluate the studies to determine whether the studies are adequate and conclusive to ensure the bioequivalence of the drug product in light of current scientific knowledge and methodology.

To obtain data necessary to correlate in vivo data with in vitro dissolution data, where in vivo testing is required, the Director proposes that the same lot or batch of the test product and one of the three lots or batches of the reference material used in the in vitro tests be used in the in vivo test. This requirement will not apply to a manufacturer who has conducted acceptable in vivo tests in humans to demonstrate bioavailability/bioequivalence before the effective date of this proposed section.

General guidelines for in vivo testing are set forth in § 320.25 (21 CFR 320.25). Specific guidelines for in vivo testing and for in vitro dissolution testing of sulfonamides, developed by the Bureau of Drugs are on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and are available for public review between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the guldelines entitled "Guidelines for In Vivo Bioavailabilty Studies for Sulfonamides" and "Guidelines for In Vitro Dissolution Testing for Sulfonamides" may be made in writing

to the Hearing Clerk. The reference material to be used in the in vivo and in vitro tests of each drug product subject to this proposed regulation is named in the guidelines for in vivo bioavailability studies for sulfonamides.

The prososed effective date of the final regulation is 30 days after its date of publication in the Federal Register.

The Director proposes that the results of the required in vitro dissolution test be submitted to FDA within 60 days after the effective date of the final regulation and that the results of the required in vivo test be submitted to FDA within 180 days after the effective date of the final regulation. The Director believes this will be enough time for a manufacturer to conduct the required tests, evaluate the data, prepare the necessary reports, and submit them to FDA. The Director advises, however, that for the manufacturer to meet an in vivo bioavailability requirement for some sulfonamides, the agency may require the manufacturer to conduct a pilot study to determine optimal sampling times and volume of sample needed. An additional extension of up to 180 days may be granted by the Director upon request from the manufacturer to allow sufficient time to conduct the pilot study and submit the data to FDA. In addition, FDA encourages the submission of protocols for in vivo bioavailability studies. If any manufacturer submits a protocol for evaluation by FDA, the Director will grant an extension of time during the initial review of the protocol.

The Director advises that drug products subject to this proposal are regarded as new drugs as defined in section 201(p) of the Fedreal Food, Drug, and Cosmetic Act (21 U.S.C. 321[p]), that require either an approved full or abbreviated NDA as a condition to market the product lawfully. Marketing of any drug product subject to this proposal must be in accordance with the requirements of § 320.58 (21 CFR 320.58).

After the effective date of a final regulation establishing a bioequivalence requirement, each manufacturer would be required, under § 320.56 (21 CFR 320.56), to conduct the in vitro dissolution test on a sample of each batch of the oral sulfonamide to ensure batch-to-batch uniformity. Batches that, after appearing in the marketplace, fall below the specifications contained in the final regulation will have to be recalled.

## References

Copies of all references cited below are on public display in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

(1) Shah, V. P., J. P. Skelly, S. V. Dighe, and K. Apone, "Sulfonamide Bioavailability Monograph," with collaborators W. Barr, S. Sarver, K. Stefos, R. Haggerty, L. Perkins, T. Turner, D. Li, W. H. Walker, A. Garner, W. Butler, and R. Robinson.

(2) Weinstein, L., "Antimicrobial Agents," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 1113–1124, 1975.

(3) Weinstein, L., "The Sulfonamides," *in* "The Pharmacological Basis of Therapeutics," 4th Ed., Edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 1178–1179, 1970.

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(5) Reilly, M. J. (Ed.), "American Hospital Formulary Service," American Society of Hospital Pharmacists, Washington, DC, p. 8:24, 1976.

(6) Ritschel, W. A., "Handbook of Basic Pharmacokinetics," Drug Intelligence Publications, Hamilton, IL, pp. 144, 152, 165, 323–324, 1976.

(7) Van Petten, G. R., G. C. Becking, R. J. Withey, and H. F. Lettau, "Studies on the Physiological Availability and Metabolism of Sulfonamides. I. Sulfadiazine," *Journal of Clinical Pharmacology*, 11(1):27, 1971.

(8) McGuire, J. J. to J. P. Skelly, Internal Memo: NDA Summary (Triple Sulfa), Dec. 21, 1975.

(9) McGuire, J. J. to J. P. Skelly, Internal Memo: ANDA Summary (Triple Sulfa), Dec. 21, 1975.

(10) Murdock, H. R., Memorandum to Division of Anti-Infective Drug Products, Nov. 8, 1972.

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(13) Apone, K. to J. P. Skelly, Memo: NDA Summary (Salicylazosulfa-pyridine), May 3, 1976.

(14) Nygard, G., J. Olofsson, and M. Sandberg, "Some Physico-Chemical Properties of Salicylazosulphapyridine, Including Its Solubility, Protolytic Constants and General Spectrochemical and Polarographic Behavior." *Acta Pharmacologica Suecica*, 3(5):313, 1966.

(15) "Remington's Pharmaceutical Sciences," 15th Ed., Mack Publishing Co., Easton PA, pp. 1108, 1110, 1111, 1113, 1975.

(16) Wilson, C. O. et al., "Textbook or Organic Medicinal and Pharmaceutical Chemistry," J. B. Lippincott Co., Philadelphia, PA, p. 295, 1971.

(17) Meyer, M. C. et al., "Bioavailability of 11 Sulfisoxazole Products in Humans," Journal of Pharmaceutical Sciences, 65(10):1494, 1976.

(18) Dighe, S. V. to J. P. Skelly, Memo: Dissolution Data on Sulfadiazine Tablets, Nov. 10, 1977.

(19) Van Petten, G. R., G. C. Becking, R. J. Witkey, and H. F. Lettau, "Studies on the Physiological Availability and Metabolism of Sulfonamides. II. Sulfisoxazole," Journal of Clinical Pharmacology, 11:35, 1971.

(20) Hossie, R. D., I. J. McGilveray, G. L. Mattok, and C. A. Mainville, "Compendial Dissolution Characteristics of Commercial Formulation," Canadian Journal of Pharmaceutical Sciences, 8:37, 1973.

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The Director has determined that this document does not contain an agency action covered by § 25.1(b) (21 CFR 25.1(b)) and, therefore, preparation by the agency of an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701(a), 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055 (21 U.S.C. 321(p), 352, 355, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1) and redelegated to the Director of the Bureau of Drugs (21 CFR 5.79), it is proposed that Part 320 be amended by adding to Subpart D (proposed in the Federal Register of August 5, 1977 (42 FR 39675)) new § 320.110 to read as follows:

### § 320.110 Certain oral sulfonamides.

(a) *Applicability*—(1) *In vivo and in vitro testing.* The requirements of this section for both in vivo and in vitro testing apply to any acetyl sulfisoxazole emulsion, any oral solid dosage form drug product containing sulfachlorpyridazine, sulfacytine, sulfadiazine, sulfadiazine sodium bicarbonate, sulfadimethoxine, sulfaethidole, sulfamerazine, sulfameter, sulfamethazine, sulfamethizole, sulfamethoxazole, sulfamethoxypyridazine, sulfaphenazole, sulfapyridine, sulfasalazine, sulfisomidine, and the combination sulfonamide drug products. sulfadiazine-sulfamethazine-sulfamerazine (trisulfapyrimidines), or sulfadiazine-sulfamerazine-sulfamethazine-sulfacetamide-sulfamethizole.

(2) *In vitro testing only.* The requirements of this section for in vitro testing only, apply to the following drug products for which existing data demonstrate an in vivo/in vitro correlation: Any sulfisoxazole tablet and any sulfonamide suspension containing acetyl

sulfamethoxypyridazine, acetyl sulfisoxazole, sulfadiazine, sulfadimethoxine, sulfamethizole, sulfamethoxazole, sulfaphenazole, sulfisomidine, sulfadiazine-sulfamethazine-sulfamerazine (trifulfapyrimidines), or sulfadiazine-sulfamerazine-sulfamethazine-sulfacetamide-sulfamethizole.

(b) *Bioequivalence requirement for in vitro testing.* Any oral solid dosage form drug product containing sulfachlorpyridazine, sulfacytine, sulfadiazine, sulfadiazine sodium bicarbonate, sulfadimethoxine, sulfaethidole, sulfamerazine, sulfameter, sulfamethazine, sulfamethizole, sulfamethoxazole, sulfamethoxypyridazine, sulfaphenazole, sulfapyridine, sulfasalazine, or sulfisomidine, and the combination sulfonamide drug products sulfadiazine-sulfamethazine-sulfamerazine (trisulfapyrimidines), or sulfadiazine-sulfamethazine-sulfamerazine-sulfacetamide-sulfamethizole shall meet the following bioequivalence requirement:

(1) Each manufacture of a drug product subject to this paragraph (b) shall conduct an in vitro dissolution test using U.S.P. Apparatus 2, comparing 12 test samples of its drug product with 12 samples from each of 3 lots or batches of reference product specified by the Food and Drug Administration. Nine hundred milliliters of 0.1*N* hydrochloric acid are to be used as the medium. The temperature of the medium is to be held at 37±0.5° C throughout, with the paddle being rotated at 50 revolutions per minute. The test drug product meets the bioequivalence requirement for in vitro testing if the average amount of the labeled sulfonamide dissolved in the test samples is greater than or equal to the average dissolution of the samples of the reference product and the average dissolution of the test drug products is not less than 50 percent in 30 minutes and not less than 80 percent in 60 minutes.

(2) Each manufacturer of a drug product subject to this section selected by the Food and Drug Administration as a reference material and each manufacturer of a drug product subject to this section who has previously conducted in vivo tests in humans, which tests have been found by the Food and Drug Administration to fulfill the requirements of this section, shall conduct an in vitro test, using U.S.P. Apparatus 2, on 12 sample units from each of 3 consecutive lots or batches of its drug product to demonstrate consistent dissolution performance. Nine hundred milliliters of 0.1*N* hydrochloric acid are to be used as the medium. The temperature of the medium is to be held at 37±0.5° C throughout, with the paddle being rotated at 50 revolutions per minute. The average dissolution of the test drug product must be not less than 50 percent in 30 minutes and not less than 80 percent in 60 minutes.

(c) *In vitro bioequivalence standard for sulfisoxazole tablets.* (1) Each manufacturer of a sulfisoxazole tablet drug product shall conduct an in vitro dissolution test using U.S.P. Apparatus 1. In following U.S.P. Apparatus 1 procedures, 900 milliliters of dilute hydrochloric acid (1 in 12.5) are to be used as the medium. The temperature of the medium is to be held at 37±0.5° C throughout, with the basked rotating at 100 revolutions per minute.

(2) The drug product meets the bioequivalence requirement for the in vitro bioequivalence standard if the average amount of the labeled sulfisoxazole dissolved in a sample of 12 test tablets is not less than 60 percent in 30 minutes.

(d) *In vitro bioequivalence standard for all sulfonamide suspensions and acetyl sulfisoxazole emulsion.* (1) Each manufacturer of a sulfonamide suspension or acetyl sulfisoxazole emulsion drug product shall conduct an in vitro dissolution test using U.S.P. Apparatus 2. In following U.S.P. Apparatus 2 procedures, 900 milliliters, consisting of 899 milliliters of distilled water plus 1.0 milliliter of 0.2*M* hydrochloric acid of pH 3.4, are to be used as the medium. The temperature of this medium is to be held at 37±0.5° C throughout with the paddle being rotated at 25 revolutions per minute.

(2) The test drug product meets the bioequivalence requirement for the in vitro bioequivalence standard, if the average amount of the labeled sulfonamide dissolved in a sample of 12 test suspensions or acetyl sulfisoxazole emulsion is not less than 60 percent in 30 minutes.

(e) *Submission of test results.* Each manufacturer of a drug product subject to this section shall submit the results of the required in vitro dissolution test to the Food and Drug Administration on or before (60 days after the effective date of the final regulation.

(f) *Inclusion of test results in full or abbreviated new drug application.* Each manufacturer of a drug product subject to this section that is not marketed on (the effective date of the final regulation) shall include the results of the tests in the original full or abbreviated new drug application for the drug product submitted to the Food and Drug Administration. For any drug product that is currently marketed, the results of these tests are to be submitted to the Food and Drug Administration by (60 days after the effective date of the final regulation). The submission is to be in the form of a supplement to the new drug application or abbreviated new drug application for the drug product. A manufacturer unable to meet this specification will be required to reformulate the drug product to meet the specifications. After approval of an application or supplement, the manufacturer will be required to conduct the in vitro dissolution test on a sample of each batch of its drug product to assure batch-to-batch uniformity.

(g) *Bioequivalence requirement for in vivo testing in humans.* Any acetyl sulfisoxazole emulsion, any oral solid dosage form drug product containing sulfachlorpyridazine, sulfacytine, sulfadiazine, sulfadiazine sodium bicarbonate, sulfadimethoxine, sulfaethidole, sulfamerazine, sulfameter, sulfamethazine, sulfamethizole, sulfamethoxazole, sulfamethoxypyridazine, sulfaphenazole, sulfapyridine, sulfasalazine, sulfisomidine, and the combination sulfonamide drug products sulfadiazine-sulfamethazine-sulfamerazine (trisulfapyrimidines) or sulfadiazine-sulfamerazine-sulfamethazine-sulfacetamide-sulfamethizole shall meet the following in vivo bioequivalence requirements:

(1) Each manufacturer of a drug product subject to this paragraph (g) who has not conducted in vivo bioavialability/bioequivalence studies fulfilling the requirements of this section before (the effective date of the final regulation) shall conduct an in vivo bioavailability study in humans comparing its drug product with the reference material.

(2) The test drug product meets the bioequivalence requirement for in vivo testing in humans if the following conditions are met:

(i) The test drug product and the reference material show no more than 20 percent difference in the comparison of means of measured parameters, e.g., concentration of the active drug ingredient in the plasma, peak plasma levels (Cmax), rate of absorption (measured by Tmax or Ka), and area under the plasma concentration-time curves (AUC);

(ii) The test product is at least 75 percent as bioavailable as the administred reference material using subjects as their own controls, that is, administering both the reference material and the test drug material to the same subject sequentially; and

(iii) Analytical and statistical techniques used are of sufficient sensitivity to detect those differences in rate and extent to absorption that are not attributable to subject variability.

(3) Each manufacturer of a drug product subject to this section that is selected by the Food and Drug Administration as the reference material, who has not conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section before (the effective date of the final regulation) shall conduct an in vivo bioavailability study in humans comparing its product (i.e., the reference material) with a solution or suspension of an equivalent amount of the sulfonamides contained in the reference material.

(4) Each manufacturer of a drug product subject to this section shall submit the results of the required in vivo testing to the Food and Drug Administration on or before (180 days after the effective date of the final regulation. The Food and Drug Administration may grant, upon request, an extension of up to 180 days when pilot studies are required before the tests are begun. An extension of time necessary for an initial review of a protocol will be granted by the Food and Drug Administration when a protocol is submitted.

(5) Any manufacturer of a drug product subject to this section who has conducted one or more in vivo bioavailability/bioequivalence studies before the effective date of this section may request an evaluation of the studies to determine whether the studies are adequate and conclusive to ensure the bioavailability/bioequivalence of the drug product in light of current scientific knowledge and methodology. Any such request must contain the new drug application number, the established (generic) name of the product, the dosage form and strength of the drug product, and the date(s) of submission of the pertinent study information contained in the new drug application.

(6 ) Each manufacturer who holds an approved or pending full new drug application for the drug product and who requests an evaluation of a previously conducted study shall submit the request for evaluation to the Division of Anti-Infective Drug Products (HFD–140), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Each manufacturer who holds an approved or pending abbreviated new drug application for the drug product and who requests an evaluation of a previously conducted study shall submit the request for an evaluation to the Division of Generic Drug Monographs (HFD–530), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(h) *Modifications.* Alternative methods or modifications to the bioequivalence requirement for in vitro testing as set forth in this section may be used if evidence is submitted demonstrating that the modification will assure the bioequivalence of the drug to an extent equal to or greater than the methods set forth in this section. The data should be submitted to the Director, Division of Biopharmaceutics (HFD–520), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and must be approved before they are used. Any approved modification will be incorporated into the appropriate guidelines for the drug.

(i) *Reference material and guidelines for testing.* (1) The reference materials to be used in the in vivo and in vitro tests are specified in the "Guidelines for In Vivo Bioavailability Studies for Sulfonamides," and "Guidelines for In Vitro Dissolution Testing for Sulfonamides." The same lot or batch of the test drug product used in the in vitro test and the reference lot that has the highest dissolution in the specified time must be used in the in vivo test unless a manufacturer has conducted, before (the effective date of the final regulation), in vivo tests in humans to demonstrate bioavailability/bioequivalence.

(2) Guidelines for in vivo and in vitro tests of sulfonamides are on file in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, and are available on request to that office.

Interested persons may, on or before December 18, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 12, 1979.

J. Richard Crout,

*Director, Bureau of Drugs.*

[FR Doc. 79–32216 Filed 10–18–79; 8:45 am]

BILLING CODE 4110–03–M

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## 21 CFR Part 331

**[Docket No. 79N–0152]**

## Antacid Drug Products for Over-the-Counter Human Use; Proposed Amendment of Monograph

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The agency proposes to amend the antacid monograph to require that antacid drug products containing calcium and magnesium contain a precautionary statement. Current labeling requirements for OTC antacid drug products are that antacids containing aluminum contain the drug interaction precaution "Do not take this product if you are presently taking a prescription antibiotic drug containing any form of tetracycline." This proposed amendment would require that the labeling of antacids containing calcium and magnesium also contain this same drug interaction precaution for concomitant therapy with tetracycline and its derivatives.

**DATE:** Comments by December 18, 1979.

**ADDRESS:** Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 4, 1974 (39 FR 19862), the Food and Drug Administration (FDA) published the final order for OTC antacid drug products generally recognized as safe and effective and not misbranded (21 CFR Part 331). Section 331.30(c)(i) (21 CFR 331.30(c)(i)) requires OTC antacid drug products containing aluminum to bear the drug interaction precaution "Do not take this product if you are presently taking a prescription antibiotic drug containing any form of tetracycline."

This precautionary statement is not the same as the statement presently used for orally prescribed tetracycline drug products. Prescription package insert labeling currently approved for

tetracycline and its derivatives provides the following statement for concomitant therapy with antacids containing aluminum, calcium, or magnesium: "Concomitant therapy: Antacids containing aluminum, calcium, or magnesium impair absorption and should not be given to patients taking oral tetracycline," (Refs. *1* through *4*.) FDA has determined that both OTC and prescription drug labeling should be similar in respect to this drug interaction statement. Therefore, in accordance with § 330.10(a)(12), FDA proposes to amend the antacid monograph to require that antacid drug products containing calcium and magnesium also contain the OTC drug interaction precaution set forth in § 331.30(c)(i).

Available evidence indicates that the most rapid absorption of tetracycline and its derivatives takes place by passive diffusion from the duodenum and ileum (Refs. *5, 6,* and *7*). Many studies have determined that this absorption may be altered as the result of two interdependent factors: first, the chelation of tetracycline with polyvalent metallic cations contained in certain drugs or food (Refs. *8,* through *11*); and second, an increase in gastric pH which in turn augments chelation (Refs. *12* and *13*).

The tetracycline molecule contains numerous sites at which chelation with polyvalent metallic cations can occur. This chelation increases with an increase in the concentration of metallic cations. In in vitro studies of three such polyvalent metallic cations, aluminum, calcium, and magnesium, which are present in OTC antacid preparations, all have exhibited an affinity for the tetracycline molecule (Refs. *7, 12, 14, 15,* and *16*).

More specifically, aluminum forms a chelate through the ionized tricarbonyl methane functional group; magnesium and calcium each form a chelate with tetracycline through its phenolic diketone function (Refs. *5* and *12*). Of the three cations, aluminum has been shown to form the most stable complex, while magnesium and calcium form much weaker ones. When such a chelate is formed, the diffusion rate of tetracycline in solution is depressed, even if the chelate formed is water soluble (Refs. *8, 12, 14, 15,* and *16*).

Evidence suggests that chelation is dependent upon the pH of the system. At a low pH there is little chelate formation, while significant chelate formation occurs at high pH levels (Ref. *12*).

Increased gastric pH may also act independently of chelate formation to decrease the absorption of tetracycline. A study by W. H. Barr, et al., (Ref. *13*) showed a 50 percent reduction in tetracycline absorption when gastric pH was increased by administration of sodium bicarbonate as compared to the absorption recorded by the use of tetracycline alone. Sodium is a monovalent cation and cannot form chelates with tetracycline. Information is not available as to the mechanism by which sodium bicarbonate decreased tetracycline absorption, and the question as to whether antacids, in general, interfere with tetracycline absorption warrants further investigation.

Chelation and an increase in gastric pH act concomitantly and apparently reduce the absorption of tetracycline and its derivatives, thereby decreasing the effectiveness of the antibiotic. With antacids containing aluminum, magnesium, and calcium, this reduction is magnified. Not only do the antacids provide the material for chelation (namely, polyvalent metallic cations), but they also facilitate the process by raising the gastric pH.

A number of clinical studies involving products containing these metallic cations demonstrate the results of concomitant therapy with tetracycline. One double-blind study involved giving 15 milliliters (mL) of an antacid product containing aluminum hydroxide to four subjects at the same time as a single 100 milligram (mg) dosage of doxycycline, and to four other subjects at the same time as a single 300-mg dosage of demeclocycline. This study demonstrated that each group of four patients showed significant reductions in antibiotic serum levels compared to controls (Ref. *9*). In each study group, three of the four subjects showed essentially no measurable plasma levels of antibiotic, and one subject in each group had very low levels.

Michel, et al., (Ref. *17*) gave five adults 1 gram (g) of oxytetracycline each morning for 4 days. On the third and fourth days, in addition to the oxytetracycline each subject received either 30 mL of an aluminum gel antacid or a full breakfast. In another treatment the same five subjects received an additional treatment of 1 g chlortetracycline for 4 days and food or 30 mL of an aluminum gel antacid on the second and fourth days. Blood samples were taken 3 hours after administration. Results of the testing showed that simultaneous ingestion of the antacid with either chlortetracycline and oxytetracycline resulted in a marked depression in antibiotic blood levels, compared to antibiotic blood levels without antacid. The simultaneous ingestion of the antibiotics with food caused no significant alteration in blood levels.

In another study, chlortetracycline was administered to five hospitalized patients and six normal male subjects at an oral dosage of 500 mg every 6 hours for 6 consecutive days (Ref. *18*). On the fourth, fifth, and sixth days, all subjects were given 30 mL of aluminum hydroxide suspension immediately following each dose of chlortetracycline. Results showed that in four of the hospitalized patients, there was a decrease in serum levels of chlortetracycline within 24 hours following administration of the aluminum hydroxide solution, compared to chlortetracycline levels recorded in the first 3 days. After 48 hours, four patients had serum levels of antibiotic below 1 microgram/milliliter (μg/mL); the fifth patient maintained a serum level of 5 μg/mL. On the third day of the combined therapy, one patient suffered a recurrence of her urinary tract infection, which promptly subsided when the aluminum hydroxide was discontinued. The six normal males averaged serum levels of 4.2 μg/mL of chlortetracycline after the 3-day administration, but serum levels dropped to 0.49 μg/mL with concurrent administration of the aluminum hydroxide.

Tetracycline was administered to 10 patients in oral doses of 500 to 1,000 mg alone, or concomitantly with 30 mL of a 50-percent magnesium sulfate solution. Results of the testing showed that when the magnesium sulfate was administered concomitantly with tetracycline, the blood level of tetracycline was reduced fourfold, when compared to the blood level produced by the tetracycline used alone (Ref. *19*).

In a comparison of blood serum levels of tetracycline, 12 patients received 4 tetracycline preparations (250 mg tetracycline base with citric acid, 250 mg tetracycline with lactose, 250 mg tetracycline phosphate complex with 22 mg calcium, and 250 mg tetracycline hydrochloride with 40 mg dicalcium phosphate) in a Latin-square pattern as follows: On each of 4 days at 4-day intervals, three patients received a single oral dose of one of the four preparations so that upon completion of the study each patient had received each of the four medications. At the end of the study, it was found that the two tetracycline preparations containing calcium measured 1, 3, 6, and 8 hours after administration resulted in serum levels only half of those found with the tetracycline administered with lactose or citric acid (Ref. *30*).

Sweeney, et al., (Ref. *21*) recorded serum and urine levels of tetracycline

from 31 healthy subjects after the administration of 3 separate treatments of tetracycline (250 mg tetracycline base with citric acid, 250 mg tetracycline base with lactose, or 250 mg tetracycline phosphate complex containing the equivalent of 22 mg calcium in each dose). A comparison of the serum and urine levels showed that the tetracycline phosphate complex resulted in significantly lower readings at all measurements. The investigators then measured serum and urine levels of tetracycline in 12 healthy patients, each of whom received, in separate tests, samples of 250 mg tetracycline base, 250 mg tetracycline base with sodium hexametaphosphate, or tetracycline hydrochloride with dicalcium phosphate. Results of the study showed that in all 12 patients, serum and urine tetracycline levels recorded after administration of the tetracycline hydrochloride with dicalcium phosphate were significantly lower than after administration of any of the other two preparations.

Research with dairy products has produced similar findings. Dairy products contain a considerable amount of calcium and magnesium. Although the amounts of calcium and magnesium vary with the source of the dairy product, such products generally contain between 118 and 120 mg/100 g calcium and between 13 and 14 mg/100 g magnesium (Refs. *8, 22,* and *23*). When 12 volunteers reviewed 300 mg demeclocycline simultaneously with milk or buttermilk (240 mL) or cottage cheese (240 g), serum antibiotic levels were reduced by as much as 80 percent, when compared with a control group of four, who received 300 mg demeclocycline with water (Ref. *11*).

References

(*1*) "Physicians' Desk Reference," 32d Ed., Medical Economics Company, Oradell, NJ, p. 723, 1979.

(*2*) "Physicians' Desk Reference," 32d Ed., Medical Economics Company, Oradell, NJ, p. 943, 1979.

(*3*) "Physicians' Desk Reference," 32d Ed., Medical Economics Company, Oradell, NJ, p. 971, 1979.

(*4*) "Physicians' Desk Reference," 32d Ed., Medical Economics Company, Oradell, NJ, p. 1352, 1979.

(*5*) Kunin, C. M., and M. Finland, "Clinical Pharmacology of the Tetracycline Antibiotics," *Clinical Pharmacology and Therapeutics,* 2:51–69, 1961.

(*6*) Colaizzi, J. L., and P. R. Klink, "pH—Partition Behavior of Tetracyclines," *Journal of Pharmaceutical Sciences,* 58:1184–1189, 1969.

(*7*) Pindell, M. H., K. M. Cull, K. M. Doran, and H. L. Dickison, "Absorption and Excretion Studies on Tetracycline," *Journal of Pharmacology and Experimental Therapeutics,* 125:287–294, 1959.

(*8*) Neuvonen, P. J., "Interactions With the Absorption of Tetracyclines," *Drugs,* 11:45–54, 1976.

(*9*) Rosenblatt, J. E., "Comparison of In Vitro Activity and Clinical Pharmacology of Doxycycline With Other Tetracyclines," *Antimicrobial Agents and Chemotherapy,* pp. 134–141, 1966.

(*10*) Weinstein, L., "Antimicrobial Agents," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by Goodman, L. S. and A. Gilman, The MacMillan Co., New York, pp. 1183–1187, 1975.

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(*13*) Barr, W. H., J. Adir, and L. Garrettson, "Decrease of Tetracycline Absorption in Man by Sodium Bicarbonate," *Clinical Pharmacology and Therapeutics,* 12:779–784, 1971.

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(*15*) Albert, A., "Avidity of the Tetracyclines for the Cations of Metals," *Nature,* 177:433–434, 1956.

(*16*) Kohn, K. W., "Mediation of Divalent Metal Ions in the Binding of Tetracycline to Macromolecules," *Nature,* 191:1156–1158, 1961.

(*17*) Michel, J. C., R. J. Sayer, and W. M. M. Kirby, "Effect of Food and Antacids on Blood Levels of Aureomycin and Terramycin," *Journal of Laboratory and Clinical Medicine,* 36:632–634, 1950.

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(*19*) Harcourt, R. S. and M. Hamburger, "The Effect of Magnesium Sulfate in Lowering Tetracycline Blood Levels," *Journal of Laboratory and Clinical Medicine,* 50:464–468, 1957.

(*20*) Boger, W. P. and J. J. Gavin, "An Evaluation of Tetracycline Preparations," *New England Journal of Medicine,* 261:827–832, 1959.

(*21*) Sweeney, W. M., et al., "Absorption of Tetracycline in Human Begins as Affected by Certain Excipients," *Antibiotic Medicine and Clinical Therapy,* 4:642–656, 1957.

(*22*) Watt, B. K. and A. L. Merrill, "Composition of Foods," Agriculture Handbook No. 8, Agriculture Research Service, United States Department of Agriculture, Washington, DC, p. 39, 1964.

(*23*) Watt, B. K. and A. L. Merrill, "Composition of Foods," Agriculture Handbook No. 8, Agriculture Research Service, United States Department of Agriculture, Washington, DC, p. 153, 1964.

FDA has reviewed the data relevant to the concomitant administration of antacid drug products containing polyvalent cations and tetracycline and its derivatives, and has determined that sufficient data exist to require that all antacids containing aluminum, magnesium, and calcium bear drug interaction labeling. (In making this decision, FDA has weighed previous statements by the Advisory Review Panel for OTC Antacid Drug Products, and subsequent Federal Register statements regarding this possible interaction (38 FR 8718, April 5, 1973; 38 FR 31263 and 31264, November 12, 1973; and 39 FR 19868 and 19880, June 4, 1974). FDA is concerned that the interaction between the polyvalent cations (aluminum, magnesium, and calcium) present in antacid products and tetracycline or its derivatives could result in lower serum levels of tetracycline and thus inadequate therapy to the patient. The agency is also concerned that some patients may not be readily able to determine whether or not the prescription antibiotic drug that they are taking contains a form of tetracycline. Therefore, the proposed precautionary statement urges the patient to ask a physician or pharmacist whether or not the drug contains tetracycline.

The agency is considering the need for a similar precautionary statement for OTC non-antacid internal drug products containing aluminum, magnesium, and calcium, e.g., magnesium salicylate, calcium lactate, and aluminum aspirin. FDA invites comment on this issue.

FDA is unaware of data demonstrating that tetracycline and antacids containing aluminum, magnesium, and calcium may be administered sequentially at a time interval that will ensure that therapeutic levels of antibiotic would not be affected (e.g., administration of the antacid 2 hours before or 2 hours after the antibiotic). FDA invites comment and welcomes any evidence available on this issue.

Where an antacid product contains minimal amounts of aluminum, magnesium, or calcium and blood level data are sufficient to show that the normal dosage of the antacid does not cause interference with the concomitant administration of any form of tetracycline, FDA will grant an exemption from this drug interaction precaution. Anyone seeking such an exemption must submit a petition in accordance with Part 10 (21 CFR Part 10) of the agency's procedural regulations with the supporting data to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. These petitions will be maintained in a permanent file for public review.

The agency proposes that a final regulation based on this proposal be effective 12 months after the date of its publication in the Federal Register. The FDA believes that a 12 month delayed effective date would provide sufficient time for manufacturers to order and begin using revised labeling. On or after the effective date, FDA would regard any drug product that is subject to this regulation and that is initially introduced or initially delivered for introduction into interstate commerce as misbranded unless the labeling of the product complies with the requirements set forth in the regulation. The regulation would also apply to a drug product that is repackaged or relabeled after the effective date, regardless of the date it was initially delivered for introduction into interstate commerce.

The Food and Drug Administration has determined that this document does not contain an agency action covered by 21 CFR 25.1(b) and consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 331 be amended by revising § 331.30(c) to read as follows:

**§ 331.30 Labeling of antacid products.**

* * * * *

(c) *Drug interaction precautions.* (1) The labeling of the product contains the following drug interaction precautions under the heading "Drug Interaction Precautions":

(i) If the product is an antacid containing aluminum, calcium, or magnesium, "Do not take this product if you are presently taking a prescription antibiotic drug containing any form of tetracycline. If you are not sure whether or not you are taking a tetracycline product, contact your physician or pharmacist."

(ii) [Reserved]

(2) Any person may file a petition under Part 10 of this chapter to exempt an antacid product from the provisions of paragraph (c)(1)(i) of this section. The petition shall be supported by an adequate showing that:

(i) The product contains minimal amounts of aluminum, calcium, or magnesium; and

(ii) Blood level data are sufficient to show that the normal dosage of the antacid does not cause interference with the concomitant administration of any form of tetracycline.

Interested persons may, on or before December 18, 1979 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fisher Land, Rockville, MD 20857, written comments regarding this proposal. Five copies of any comments are to be submitted, and they may be accompanied by a supporting memorandum or brief. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 11, 1979.

Joseph P. Hile,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-31971 Filed 10-18-79; 12:00 pm]

BILLING CODE 4110-03-M

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**21 CFR Part 444**

**[Dockets Nos. 79N-0151 and 79N-0155]**

## Neomycin Sulfate Preparations; Proposed Revocations of Certification; Informal Conference and Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of Informal Conference and Extension of Comment Period.

**SUMMARY:** The Food and Drug Administration (FDA) announces that it will hold an informal conference in Rockville, MD, to receive information and views from interested persons on the agency's proposals to revoke provisions for certification of neomycin sulfate for prescription compounding and sterile neomycin sulfate for parenteral use. The agency is also extending the period for submission of written comments on the proposals.

**DATES:** A written notice of participation should be filed by November 13, 1979. The informal conference will be held on November 20, 1979; written comments by December 20, 1979.

**ADDRESSES:** Written notice of participation and comments to Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. The informal conference will be held in Conference Room A, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** T. Greene Reed, Bureau of Drugs (HFD–140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4310.

**SUPPLEMENTARY INFORMATION:** FDA will hold an informal conference on its proposals to amend the Code of Federal Regulations by revoking provisions for certification of neomycin sulfate for prescription compounding and neomycin sulfate for parenteral use. The proposals were published in the Federal Register of July 27, 1979 (44 FR 44178; 44180). The effect of the amendments would be to remove these drug products from the market.

The proposals gave interested persons an opportunity to submit written comments by September 25, 1979. They also announced that interested persons could submit a request by August 27, 1979, for an informal conference on the proposed regulations. Three requests for an informal conference and two requests for an extension of the comment period were received.

The agency has concluded that an informal conference should be held on the proposed regulations. The conference will be on November 20, 1979, at 9:30 a.m. in Conference Room A of the Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. It will be open to the public.

Any persons who wish to present their views at the conference should file a written notice of participation with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857 by November 13, 1979.

The notice of participation should be prominently marked "INFORMAL CONFERENCE, NEOMYCIN SULFATE" and should contain the following information:

1. Name, address, and telephone number of the person desiring to make a presentation.
2. Business affiliation, if any.
3. A summary of the presentation.
4. The approximate amount of time requested for the presentation (no more than 30 minutes unless more time can be justified).

The time available for the conference will be allocated among the persons who file written notices of participation. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations. The agency may require consolidation to facilitate the purposes of the conference or to meet time constraints. At the discretion of the agency, participants and, as time permits, any person who attends may be heard on the issues under consideration.

The agency has also decided to extend the period for submission of written comments for 30 days after the informal conference. Accordingly, interested persons may, on or before December 20, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding these proposals. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 79N-0151 or 79N-0155, as appropriate. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 12, 1979.

J. Richard Crout,

*Director, Bureau of Drugs.*

[FR Doc. 79-32088 Filed 10-15-79; 11:20 am]

BILLING CODE 4110-03-M

## 21 CFR Part 640

**[Docket No. 79N-0117]**

## Source Plasma (Human); Amendment of Storage Temperature Requirements

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA is proposing to amend the storage temperature requirements for Source Plasma (Human) intended for manufacture into injectable products to permit one inadvertent exposure of the product to a temperature range of −20° to −5° C for no more than 72 hours, without requiring relabeling of the frozen product from "Source Plasma (Human)" to "Source Plasma (Human) Salvaged." Data submitted to the agency demonstrate the satisfactory recovery of clotting factor concentrates from the plasma despite the temporary elevation of storage temperature.

**DATE:** Comments by December 18, 1979.

**ADDRESS:** Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Donna C. Williams, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

**SUPPLEMENTARY INFORMATION:** Section 640.69(b) (21 CFR 640.69(b)) of the biologics regulations requires that, immediately after filling, Source Plasma (Human) intended for manufacturing into injectable products be stored at a temperature not warmer than −20° C. Such cold storage assures preservation of the antihemophilic factor in Source Plasma (Human). Source Plasma (Human) is fractionated into injectable plasma derivatives including clotting factors such as Antihemophilic Factor (Human) and Factor IX Complex (Human) used for treatment of patients with clotting factor deficiencies. Section 640.76(a) (21 CFR 640.76(a)) requires that Source Plasma (Human) intended for manufacture into injectable products that is inadvertently exposed to a storage temperature warmer than −20° C but colder than 10° C may be issued only if labeled as "Source Plasma (Human) Salvaged." This revised labeling provides the manufacturer of the fractionated plasma derivatives with important information concerning possible adverse effects on the clotting factors because of the inadvertent storage of the Source Plasma (Human) at temperatures warmer than −20° C.

By letter dated January 5, 1978, the Director of Regulatory Affairs and Clinical Development of Hyland Division Travenol Laboratories, Inc. on behalf of the Biological Section of the Pharmaceutical Manufacturers Association (PMA) requested the amendment of the Source Plasma (Human) regulations to allow for an inadvertent rise in storage temperature to not warmer than −5° C for a time period not to exceed 72 hours during an unforeseen occurrence in spite of compliance with good manufacturing practices (e.g., freezer malfunction or power failure) without requiring such plasma to be relabeled "Source Plasma (Human) Salvaged." Data submitted in support of this request demonstrate that suitable potency levels of Antihemophilic Factor (Human) and Factor IX Complex (Human) were obtained from pools of plasma that contained Source Plasma (Human) Salvaged (stored at temperatures colder than 0° C) and Source Plasma (Human). Copies of the PMA request and supporting data are on file at the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

On the basis of the data submitted to the agency, FDA concludes that a one-time temporary storage of Source Plasma (Human) at a temperature between −20° and −5° C for a period up to 72 hours will not affect the safety, purity, potency, or effectiveness of derivatives prepared from the plasma. Therefore, the PMA recommendation to amend the storage temperature regulations is accepted to the extent set forth in this document. No data have been submitted, however, to support the potency levels of clotting factor derivatives prepared from Source Plasma (Human) exposed to more than one episode of temperature elevation. Therefore, this proposal would amend § 640.76 by designating existing paragraph (a) as (a)(1) and by adding a new paragraph (a)(2) to permit only one inadvertent episode (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practices) of temperature elevation without requiring relabeling of the units as "Source Plasma (Human) Salvaged." The proposed amendment would also require that appropriate records be maintained and copies provided to the plasma derivatives manufacturer, specifying the units involved, that there was no more than one episode of temperature elevation, that the temperature did not rise to warmer than −5° C, and that the period of exposure was no more than 72 hours. In addition, the proposed amendment would define the term, "inadvertently exposed", in paragraphs (a)(1), (2), and (b) by specifying its relationship to the good manufacturing practices standard. Paragraph headings are also proposed for paragraphs (a), (b), and (c).

The Food and Drug Administration has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 640 by revising § 640.76 to read as follows:

### § 640.76 Products stored or shipped at unacceptable temperatures.

(a) *Storage temperature.* (1) Except as provided in paragraph (a)(2) of this

section, Source Plasma (Human) intended for manufacture into injectable products that is inadvertently exposed (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practices) to a storage temperature warmer than −20° C and colder than 10° C may be issued only if labeled as "Source Plasma (Human) Salvaged." The label shall be revised before issuance and appropriate records shall be maintained identifying the units involved, their disposition, and fully explaining the conditions that caused the temperature exposure.

(2) Source Plasma (Human) intended for manufacture into injectable products that is inadvertently exposed (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practices) to a one-time storage temperature range of −20° C to −5° C for not more than 72 hours is exempt from the labeling requirements of paragraph (a)(1) of this section, provided that the plasma has been and remains frozen solid. Appropriate records shall be maintained and copies provided to the plasma derivative manufacturer specifying the units involved; and documenting that there was only one episode of temperature elevation for not more than 72 hours, that the temperature did not rise to warmer than −5° C in storage, and that the plasma remained frozen solid throughout the period of raised temperature.

(b) *Shipping temperature.* Source Plasma (Human) for manufacture into injectable products that is inadvertently exposed (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practices) to shipping temperatures warmer than −5° C and colder than 10° C shall be labeled by the plasma derivative manufacturer as "Source Plasma (Human) Salvaged." Appropriate records shall be maintained identifying the units involved, their disposition, and fully explaining the conditions that caused the accidental temperature exposure.

(c) *Relabeling.* Source Plasma (Human) shall be relabeled as "Source Plasma (Human) Salvaged" by covering the original label with either (1) a complete new label containing the appropriate information or (2) a partial label affixed to the original label and containing the appropriate new information, which covers the incorrect information regarding storage temperature.

Interested persons may, on or before December 18, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 15, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-32218 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 680

[Docket No. 79N-0097]

## Allergenic Products; Antigen E Potency Test; Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule; Extension of Comment Period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period for submitting written comments on the proposed antigen E potency test for short ragweed pollen extracts and extracts prepared from equal parts of giant and short ragweed pollen.

**DATES:** Written comments by November 10, 1979.

**ADDRESS:** Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Hooton, Bureau of Biologics (HFB–620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of August 3, 1979 (44 FR 45642), FDA proposed a new potency test to measure the quantity of antigen E in short ragweed pollen extracts and extracts prepared from equal parts of giant and short ragweed pollen. The proposal also included labeling and lot-by-lot release standards for the extract products. Interested persons were given until October 2, 1979, to submit written comments on the proposal. In response to a request from the American Council of Otolaryngology, which will meet to discuss the proposal in October after the comment period has ended, FDA is extending the comment period for all interested persons to November 10, 1979.

Interested persons may, on or before November 10, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 12, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-32090 Filed 10-15-79; 8:45 am]

BILLING CODE 4110-03-M

## DEPARTMENT OF LABOR

## Occupation Safety and Health Administration

## 29 CFR Part 1910

[Docket No. S-019]

## Entry and Work in Confined Spaces; Advance Notice of Proposed Rulemaking

**AGENCY:** Occupational Safety and Health Administration, U.S. Department of Labor.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) requests information of value in the development of standards for entry and work in confined spaces in general industry. Continued reports of deaths and injuries to employees working in and rescuing employees from such work areas have been received by the Agency. At this time, OSHA does not contemplate the development or revision of standards for agriculture, construction, longshoring or shipyard industries.

**DATES:** Comments should be received by December 15, 1979.

**ADDRESS:** Communications should be mailed to the Docket Officer, Docket S–

019, Occupational Safety and Health Administration, U.S. Department of Labor, Room S-6212, 200 Constitution Avenue, NW., Washington, D.C. 20210 by December 15, 1979. The communications received will be available for public inspection and copying at the above location.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry L. Purswell, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, Room N-3605, U.S. Department of Labor, Washington, D.C. 20210, 202-523-8061.

**SUPPLEMENTARY INFORMATION:** The Occupational Safety and Health Administration presently is developing a proposal to revise the existing standards covering entry to and work in confined spaces in general industry. OSHA intends that its proposal will cover the hazards connected with all aspects of entry and work in confined spaces in petroleum refineries and other industries covered by the OSHA general industry standards. "Confined spaces" include work areas such as tanks, boilers, pressure vessels, sewer vaults, manholes and trenches.

Information now available to the Agency includes continuing reports of deaths and serious injuries attributable to working in confined spaces, and information submitted by the American National Standards Institute and other interested organizations and persons. In addition, OSHA has also received 107 responses to its previous Advance Notice of Proposed Rulemaking, published on July 24, 1975 (40 FR 30980) which had also requested data and recommendations for revisions to existing OSHA standards covering confined spaces in all industries.

The National Institute for Occupational Safety and Health (NIOSH) has advised OSHA that it is currently developing a criteria document for confined spaces which will recommend relevant standards.

In consideration of both the complexity of the issues and the period of time since the previous Advance Notice, OSHA has decided to again request information of value to the development of its proposal on confined spaces in general industry. At this time, OSHA does not contemplate the development or revision of standards for agriculture, construction, longshoring, or shipyard industries. Standards addressing confined spaces in these industries may be considered at some future date.

Specifically, for consideration in this rulemaking, the Agency is seeking information and answers to the following questions:

1. Do the existing OSHA standards relating to confined spaces in general industry present problems in application? These standards include §§ 1910.194(d)(11), 1910.252, 1910.261(b)(5) and 1910.268(o)(2), as well as provisions in those subparts of Part 1910 which cover areas such as walking and working surfaces, fire protection, protection from hazardous and toxic materials, guarding from mechanical hazards and protection from electrical hazards. Information relating to the effectiveness of these provisions, their clarity of language or format, and any omissions of necessary or appropriate provisions, would be helpful to OSHA in developing its proposal.

2. OSHA does not currently intend to develop or revise standards that apply to confined spaces in maritime, construction or agricultural workplaces. However, OSHA would like to know if there are any problems or difficulties in applying the standards for maritime, construction and agricultural industries including §§ 1915.2(m), 1915.2(n), 1915.11, 1915.23, 1915.24, 1915.31, 1915.32, 1915.33, 1915.54, 1915.82, 1916.2(m), 1916.2(n), 1916.11, 1916.23, 1916.24, 1916.31, 1916.32, 1916.33, 1916.54, 1916.82, 1917.2(m), 1917.2(n), 1917.11, 1917.31, 1917.33, 1917.54, 1917.82, 1918.93, 1926.21(b)(6), 1926.352(g), 1926.353, 1926.354, and 1926.956.

3. What is a suggested definition for a confined space?

4. What is the incidence of injuries or death associated with working in confined spaces or attempting to rescue employees from confined spaces?

5. What is a recommended method for classifying confined spaces based on the degree of risk they pose to employees.

6. Should radiation hazards that may be encountered in confined spaces be addressed in the proposed regulation?

7. Should working in confined spaces that have been rendered inert be addressed in the proposed regulation? If so, what procedures are recommended for entry into confined spaces under inert atmospheric conditions?

8. Should working in confined spaces that are at pressures greater or lesser than atmospheric be addressed?

9. What procedures are recommended to identify and deactivate pyrophoric material, particularly solid pyrophorics?

10. What procedures, methods and instruments are available, in use or recommended for testing and monitoring confined spaces for oxygen content, toxic materials or flammable atmospheres?

11. At what percentage of the lower explosive limit should hot work such as welding be prohibited?

12. When combustible gas analyzers are calibrated using a reference different from the atmosphere to be measured, what errors are introduced and what safety factors should be added to compensate for errors?

13. What are the conditions that require continuous monitoring of a confinded space when persons are working in the space?

14. What is the safe minimum oxygen level for breathing? Should there be adjustments in required oxygen level depending on the elevation?

15. When should personnel be required at the entrance to a confined space to assist persons working within the space?

16. What are recommendations for maintaining communications between personnel within the confined space and attendant personnel on the outside?

17. Under what conditions are confined spaces tested for hazardous atmospheres? What testing methods are used? How often are these tests performed and how much do they cost?

19. When an unsafe atmosphere is encountered, what are the typical problems and costs of ventilation or purification procedures and equipment?

20. What safety procedures and equipment are used when entering or working in confined space (e.g., communication procedures, isolation and lockout procedures, outside monitors, lifelines, safety harnesses, personal protective clothing, spark resistant tools, lockout or tagout procedures)? What are the associated costs?

21. What types of standby rescue equipment are used and what do they cost? What were the associated costs of injuries to the company? Are records kept of accidents?

22. What labor categories are normally employed in confined space work? What are the wage of these employees, and what portion of their time do they spend on confined space work and related safety work practices?

23. What special training do these employees receive and what is the frequency and cost of this training, including the instructor's and trainee's labor costs and material costs?

24. What are the other related issues that should be addressed by OSHA in developing a standard?

This Advance Notice of Proposed Rulemaking is issued under section 6 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655) and Secretary of Labor's Order No. 8-76 (41 FR 25059).

Signed at Washington, D.C., this 11th day of October 1979.

Eula Bingham,

*Assistant Secretary of Labor.*

[FR Doc. 79-32416 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-26-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 35

[FRL 1313-8]

### Assistance for Pesticide Enforcement and Applicator Training and Certification Programs

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed Rule.

**SUMMARY:** On September 21, 1977, the U.S. Environmental Protection Agency (EPA) published in the Federal Register (42 FR 47565) a notice of its intent to develop regulations to implement a program of assistance for pesticide enforcement for States interested in entering into cooperative agreements with EPA under section 23(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (Sec. 21, Pub. L. 95-396, 92 Stat. 834 (7 U.S.C. 136u)) (FIFRA). Comments received in response to this notice were considered in developing the following proposed regulations.

The scope of these regulations has been expanded to include programs for training and certifying pesticide applicators and to extend eligibility to Indian tribes as authorized by recent amendments to section 23(a)(2) of FIFRA.

These proposed regulations are designed (1) to incorporate the pesticide enforcement and applicator training and certification assistance programs into the EPA grant regulations and (2) to provide uniform rules for administration of these programs, so that EPA and the recipients of assistance are better informed about such matters as eligibility, conditions, and responsibilities.

In developing the proposed regulation, the Office of Enforcement sought comments from the Agency Steering Committee and the FIFRA Scientific Advisory Panel. The draft was also sent through the OMB Circular A-85 process as well as to the State-Federal FIFRA Implementation Advisory Committee and members of the American Association of Pesticide Control Officials for comment by State governments and agencies. In addition, EPA solicited comments from the Department of Agriculture and the House Committee on Agriculture and Senate Committee on Agriculture and Forestry as required by section 25(a) of FIFRA.

EPA solicits further comment from interested members of the public.

**DATES:** Comments must be received on or before December 18, 1979.

**ADDRESS: SEND COMMENTS TO:** Mr. Alexander J. Greene, Director, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street, SW., WSM, Washington, DC 20460, (202) 755-0850.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Stangel, Policy and Guidance Branch, Pesticides and Toxic Substances Enforcement Division (EN-342), Washington, DC 20460, (202) 755-0997.

**SUPPLEMENTAL INFORMATION:**

#### Scope and Purpose

The proposed regulations are designed to allow an applicant to file a single application with EPA for assistance for pesticide enforcement and applicator training and certification functions. If an applicant wishes to apply for assistance in only one of these areas, however, the regulations do not preclude such an application.

The regulations do not specifically preclude an applicant from applying for enforcement assistance if it does not have a certification program in place. However, EPA deems the certification program generally to be critical to the success of an overall pesticide management program. The Regional Administrator will weigh a particular applicant's ability to conduct a viable enforcement program without a certification program as one of the factors in deciding whether to award enforcement assistance.

#### Eligibility of Indian Tribes

The 1978 amendments to the FIFRA provide that Indian Tribes are eligible for assistance. EPA will work closely with those Indian Tribes wishing to develop enforcement and applicator training and certification programs.

#### Eligibility of States

EPA recognizes that there are often several State agencies with separate authority for carrying out the various functions in the pesticide regulatory area. To encourage a unified approach to the regulation of pesticides within a State, EPA prefers a single award of assistance to each State covering all aspects of the State's pesticide regulatory program. EPA will award assistance to the State lead agency designated by the Governor. This agency will be responsible for ensuring that all regulatory functions are performed under appropriate legislative authority, if necessary, by other State agencies. The various State agencies should have coordinated their activities and agreed upon specific responsibilities prior to submitting the application to the Agency. With the Regional Administrator's approval, funds may be passed through to other agencies.

EPA is aware that under section 4 of FIFRA, the Governor of each State has designated a lead agency for certification purposes which may not always have primary enforcement authority. These regulations provide that the Governor may consider both certification and enforcement authorities in designating a lead agency for purposes of the combined assistance. It is conceivable, therefore, that for purposes of administering combined assistance, the Governor may deem it more appropriate to designate as lead agency a State agency which does not have primary authority in the area of applicator certification.

#### Rate of Federal Assistance

The proposed regulations indicate that the Regional Administrator may negotiate a rate of Federal assistance for enforcement activities based on the needs of the recipient. While these regulations stipulate a maximum Federal contribution of 85%, EPA favors a balance of 75% Federal—25% State contributions.

The Federal share of applicator training and certification activities shall not exceed 50 percent of the anticipated program cost. If appropriated funds are not sufficient to pay 50 percent of the program costs, the share of each recipient shall be reduced proportionately.

#### Economic Impact Analysis Statement

The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: October 12, 1979.

Douglas M. Costle,

*Administrator.*

## PART 35—STATE AND LOCAL ASSISTANCE

40 CFR Part 35, Subpart B, is proposed to be amended as follows:

1. By adding new §§ 35.750 though 35.786 to read as follows:

## Assistance for Pesticide Enforcement and Applicator Training and Certification Programs

Sec.
35.750 Scope and purpose.
35.751 Definitions.
35.752 Eligibility.
35.753 A-95 clearinghouse review.
35.755 Application submission.
35.758 Application evaluation.
35.761 Allotments and distribution of funds.
35.761-1 Enforcement funds.
35.761-2 Applicator training and certification funds.
35.764 Amount of assistance and reallocation.
35.767 Rate of Federal assistance.
35.769 Reduction of amount.
35.771 Budget period.
35.775 Program plan.
35.778 Program elements.
35.782 Program evaluation.
35.786 Reporting.

Authority: Secs. 4 and 23, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Sec. 21, Pub. L. 95-396, 92 Stat. 834 (7 U.S.C. 136u)).

## Assistance for Pesticide Enforcement and Applicator Training and Certification Programs

### § 35.750 Scope and purpose.

Sections 35.750 through 35.786 establish policies and procedures for providing financial assistance to States and Indian Tribes for the establishment, development, improvement, and maintenance of pesticide enforcement programs, and for training and certification of pesticide applicators, as authorized by section 23 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (sec. 21, Pub. L. 95-396, 92 Stat. 834 (7 U.S.C. 136u)). This subpart supplements EPA General Grant Regulations and Procedures in Part 30 of this chapter and regulations governing the certification of pesticide applicators in Part 171 of this chapter.

### § 35.751 Definitions.

As used in this part:

(a) "Act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 95-396, 92 Stat. 819 (7 U.S.C. 136u)).

(b) "Applicant" means a State or Indian Tribe which has filed an application for assistance.

(c) "Indian Tribe" means any Indian tribe, band, pueblo or community, including Native villages and Native groups as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(d) "Recipient" means a State or Indian Tribe which has been awarded financial assistance.

(e) "State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and Northern Mariana Islands.

### § 35.752 Eligibility.

(a) *State agencies.* EPA will award assistance to the State agency designated by the Governor under section 4(a) of the Act and implementing EPA regulations or such other State agency as the Governor may designate and the Regional Administrator approves. Where the designated State agency does not have adequate authority or capability to carry out all requirements of this subpart, the designated State agency shall pass EPA funds on to one or more other State agencies, with approval of the Regional Administrator, for performance of enforcement or other responsibilities of the State under the program plan. No funds will be released by EPA for payment to such other agency unless an authorized representative of such other agency has signed the financial assistance agreement, thereby obligating the agency to all terms and conditions of the agreement and the requirements of this chapter.

(b) *Indian Tribes.* EPA will award assistance to Indian Tribes which the Regional Administrator determines have adequate authority and capability to carry out the requirements of this subpart.

### § 35.75 A-95 clearinghouse review.

Applicants for program assistance shall comply with all applicable requirements of the Office of Management and Budget (OMB) Circular A-95 in accordance with § 30.305 of this chapter.

### § 35.755 Application submission.

An applicant for assistance shall submit an application containing the program plan required by § 35.755 to the appropriate EPA Regional Office in accordance with § 30.315 of this chapter, no later than July 1 of each year.

### § 35.758 Application evaluation.

The Regional Administrator will evaluate each application in accordance with criteria provided in the EPA annual guidance. The Regional Administrator will respond to each applicant within 30 calendar days of EPA receipt of the application. EPA will use the following criteria in application evaluation, as supplemented by the EPA annual guidance:

(a) The extent of an applicant's demonstrated need for establishing, developing, improving, or maintaining a comprehensive pesticide enforcement and applicator training and certification program within applicant's jurisdiction;

(b) The extent to which the applicant's proposed program demonstrates a potential for long-term beneficial impact upon human health and the environment within the applicant's jurisdiction;

(c) The extent of the past level and effectiveness, and the likelihood of future success, of the applicants' pesticides program.

### § 35.761 Allotments and distribution of funds.

(a) The Administrator may provide in the annual guidance that specified portions of available funding will be available only for one or more program elements, as, for example, applicator certification or producer establishment inspections.

(b) The annual guidance will specify program approval criteria which the Regional Administrator will use in distributing funds among the eligible applicants in each region consistent with § 35.764(a).

(c) The Administrator will issue to each Regional Administrator, as a part of the EPA annual guidance, tentative regional allowances for the fiscal year. The tentative regional allowance will be based on the appropriation requested by the President. As soon as practicable after funds are appropriated, the Administrator will issue to each Regional Administrator a final regional allowance.

### § 35.761-1 Enforcement funds.

Enforcement funds which the Administrator determines will be available in each Fiscal Year for allotments among the regions for assistance under section 23(a)(1) of the Act will be allotted on the basis of factors, and appropriate relative weightings, which will be identified each year in the annual guidance. These factors include population; number of farms; number of pesticide producers; number of commercial and private applicators; and incentive factors designed to assure that the Regional Administrator has the ability to encourage and reward highly successful programs.

### § 35.761-2 Applicator training and certification funds.

The Administrator will determine the annual distribution of applicator training and certification funds among the Regions based on the relationship of appropriated funds to the funding needs

of each applicant, as determined by the Regional Administrator's review of applications received in the Region as of July 1 of each year. As soon as possible after receipt of applications, the Regional Administrator will advise the Administrator of the estimated funding needs based on applications received in the Region. Based on the cumulative national total, the Administrator will allot funds to each Regional Administrator with guidance concerning the proportionate Federal share (not to exceed 50 percent of allowable costs) attributable to each proposed project.

**§ 35.764 Amount of assistance and reallocation.**

(a) *Amount of assistance.* The Regional Administrator shall review each application prior to award of assistance to determine its approvability under the requirements of §§ 35.750 through 35.766, and to determine the reasonableness of the estimated costs of carrying out the approved elements of the program. Should the Regional Administrator's evaluation of the applicant's program submission reveal that an output commitment is not consistent with the funding anticipated under § 35.761 or national priorities contained in the EPA annual guidance, the Regional Administrator shall negotiate with the applicant to change the output commitment or to reduce the amount. However, should an applicant propose a different set of outputs from those suggested by the EPA annual guidance due to unique pesticide problems, the Regional Administrator may approve the program provided he or she determines the outputs can and should be produced and the proposed funding is appropriate.

(b) *Reallocation* (1) *Enforcement.* Unobligated funds remaining after negotiations with the recipients within a region may be used for supplementary awards to other recipients within that region. Funds not obligated by the Regional Administrator within three months following the date of the final advance of allowance for that region will revert to the Administrator for reallocation to regions which can demonstrate a need for funds in excess of their final regional allowance.

(2) *Applicator training and certification.* Unobligated funds remaining after negotiations with recipients within a region and funds which are later deobligated will revert to the Administrator. The Administrator will use such funds for either reallotment or accomplishing, under contract or by other appropriate means, objectives of the applicator training and certification program.

**§ 35.767 Rate of Federal assistance.**

(a) *Enforcement activities.* The Federal share of enforcement activities shall not exceed 85 percent of the total allowable program plan costs.

(b) *Applicator training and certification activities.* The Federal share of applicator training and certification activities shall not exceed 50 percent of the anticipated program plan cost. If appropriated funds are not sufficient to pay 50 percent of such costs, the share shall be determined in accordance with § 35.761–2.

**§ 35.769 Reduction of amount.**

If the Regional Administrator's program evaluation reveals that the recipient will not achieve or has not achieved the outputs specified in the approved program, an effort should be made to resolve the situation through mutual agreement. If agreement is not reached, the Regional Administrator may reduce the amount in proportion to the estimated program cost to produce such outputs, consistent with § 30.920 of this chapter. This provision does not limit the Regional Administrator's right to take other appropriate actions authorized by §§ 30.915 and 30.920.

**§ 35.771 Budget period.**

The budget period shall be for the Federal fiscal year.

**§ 35.775 Program plan.**

An applicant shall submit to the Regional Administrator an application containing a program plan which satisfies the requirements of this subpart and contains planned accomplishments. Unless the Regional Administrator otherwise agrees, the program plan shall include the program elements listed in § 35.778. The purpose of the program plan is to relate the use of available resources (both Federal and non-Federal) to the achievement of planned accomplishments. The program plan shall describe how the planned accomplishments address the pesticide problems in the applicant's jurisdiction and how the planned accomplishments are consistent with the objectives of the Act. Information on the program elements contained in each submission shall be presented in summary form and shall include:

(a) The planned accomplishments;

(b) The resources to be expended to produce the planned accomplishments, including anticipated Federal financial and technical assistance; and

(c) A timetable for the performance of outputs.

**§ 35.778 Program elements.**

Guidance concerning output requirements of the program elements below will be included in EPA's annual guidance under § 35.404. Under § 35.764(a) the Regional Administrator may approve an applicant's proposal to alter or add to the list of program elements below. The applicant's program plan must be developed so that the program elements are free from redundant or inconsistent outputs. The program plan shall indentify specific outputs (i.e., the planned accomplishments) to be achieved during the year within the following major program elements (common outputs may be developed for overlapping program areas):

(a) *Administration and program development.* Planning, development and coordination of activities for program management, including general program direction and supervision: development of staffing and budget needs; development and evaluation of basic legislation, regulations, policies; and public information.

(b) *Enforcement.* An enforcement program should include the following elements.

(1) *Surveillance.* Collection of samples of pesticides which have been packaged, labeled, and released for shipment; collection of samples of pesticides which are being used or are held for use; and producer establishment, market place, import and pesticide use inspections.

(2) *Laboratory capability.* Provision for the analysis of all samples collected during surveillance activities using Association of Official Analytical Chemists or other test methods approved by EPA. In accordance with Federal Management Circular FMC 74–4, provision may be made for rearrangement and alteration of facilities as specifically required for the program. The cost of constructing new building will not be allowable.

(3) *Training.* Training of inspectors, laboratory personnel or case preparation officers regarding EPA establishment, marketplace and use inspection and sample collection procedures, EPA analytical methods and chain of custody standards, and case-development procedures.

(4) *Enforcement.* Establishment and implementation of procedures for administrative and judicial enforcement of Federal and non-Federal pesticide regulations, including revocation of certification and provision for supplying evidence gathered by the recipient to EPA to support prosecution in

cooperation with or by Federal authorities.

(c) *Applicator training and certification.* An applicator training and certification program should include the following elements:

(1) *Certification.* Certification and recertification of private and commercial applicators to use and supervise the use of restricted use pesticides, and development of new techniques in pest control and their introduction through the certification process.

(2) *Training.* Training to increase professionalism and awareness of private and commercial applicators, vocational agriculture students, trade association members and others involved with the use of pesticides.

**§ 35.782 Program evaluation.**

Each Regional Administrator and the recipient shall jointly review and evaluate the recipient's program as follows:

(a) *Mid-year evaluation.* A mid-year on-site evaluation meeting to review and evaluate the program accomplishments of the current budget period under § 35.410.

(b) *End-of-year review.* Generally within 30 days after the end of the budget period, an evaluation meeting to review the accomplishments for the year.

(c) *Evaluation report.* The Regional Administrator shall prepare a written report of each evaluation generally within 10 working days of the meeting. The recipient shall be allowed 15 working days from the date of receipt to concur with or comment on the findings.

**§ 35.786 Reporting.**

The recipient shall submit to the Regional Administrator quarterly reports which identify (by number where appropriate) specific program activities such as establishment inspections, market place inspections, pesticide use observations, sample collections, chemical analysis of samples, enforcement actions, and the accomplishment of any other outputs. Reports for the second and fourth quarters shall include the information required by § 171.7(d)(1)(i) of this title.

2. By revising §§ 35.400 through 35.425 to read as follows:

## Subpart B—Program Grants

Sec.

35.400 Purpose.
35.400–1 Air pollution control agency grant awards.
35.400–2 Water pollution control program grant awards.
35.400–3 Public water system supervision program grant awards.
35.400–4 Solid and hazardous waste management program support grant awards.
35.400–5 Pesticide enforcement and applicator training and certification program grant awards.
35.400–6 Underground water source protection program grant awards.
35.403 Authority.
35.404 Annual guidance.
35.405 Criteria for evaluation of program objectives.
35.410 Evaluation of agency performance.
35.415 Financial status report.
35.420 Payment.
35.425 Federal and grantee program support.

Authority: Authorities cited § 35.403.

## Subpart B—Program Grants

**§ 35.400 Purpose.**

This subpart establishes and codifies policy and procedures for air pollution, water pollution, public water system supervision, solid and hazardous waste management support, pesticide enforcement and applicator training and certification and underground water source protection program grants, and supplements the EPA general grant regulations and procedures (Part 30 of this chapter). These grants are intended to aid programs for air pollution control, water pollution control, public water system supervision, solid and hazardous waste management, pesticide enforcement and applicator training and certification and underground water source protection.

**§ 35.400–1 Air pollution control agency grant awards.**

Grants may be awarded to air pollution control agencies for the planning, development, establishment, improvement, and maintenance of programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in accordance with the applicable implementation plan.

**§ 35.400–2 Water pollution control program grant awards.**

Grants may be awarded to State and interstate water pollution control agencies to assist them in developing or administering programs for the prevention, reduction, and elimination of water pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

**§ 35.400–3 Public water system supervision program grant awards.**

Grants may be awarded to State agencies to assist them in developing or administering public water system supervision programs.

**§ 35.400–4 Solid and hazardous waste management program support grant awards.**

Grants may be awarded to agencies having responsibility for solid and hazardous waste management to assist them in developing and implementing solid and hazardous waste management work programs.

**§ 35.400–5 Pesticide enforcement and applicator training and certification program grant awards.**

Grants may be awarded to State agencies or Indian Tribes to assist them in establishing, developing, improving, or maintaining programs relating to the regulation of the production, sale, distribution, and use of pesticides and programs relating to the certification of private and commercial applicators to purchase and apply restricted use pesticides.

**§ 35.400–6 Underground water source protection program grant awards.**

Grants may be awarded to eligible States to assist them in developing and administering programs to protect underground sources of drinking water by adoption and enforcement of a program which meets the requirements of sections 1421 and 1422(b)(1)(A)(ii) of the Safe Drinking Water Act and regulations promulgated under these sections.

**§ 35.403 Authority.**

This subpart is issued under sections 105 and 301(b) of the Clean Air Act, as amended (42 U.S.C. 1857(c) and 1857(g)); sections 106 and 501 of the Federal Water Pollution Control Amendments of 1972 (33 U.S.C. 1256 and 1361); sections 1443 and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–2); sections 3011, 4007, 4008 and 4009 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6931, 6947, 6948 and 6949); and sections 4 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Sec. 21, Pub. L. 95–396, 92 Stat. 834, 7 U.S.C. 136u)).

**§ 35.404 Annual guidance.**

The Environmental Protection Agency will develop and disseminate annual guidance to be used by the grantee to structure air pollution, water pollution, public water system supervision, solid and hazardous waste management, pesticide enforcement and applicator training and certification and underground water source protection programs for the coming Federal fiscal year. The guidance will contain a statement of the national strategy, including national objectives and

national priorities for the year, together with planning figures for Federal program grant assistance based on the EPA budget approved by the President. The annual guidance will be disseminated each year as soon as practicable during the month of February.

**§ 35.405 Criteria for evaluation of program objectives.**

(a) Programs set out in the application and submitted in accordance with these regulations shall be evaluated in writing by the Regional Administrator to determine:

(1) Consistency and compatibility of objectives and expected results with EPA national and regional priorities in implementing purposes and policies of the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, or the Federal Insecticide, Fungicide, and Rodenticide Act.

(2) Feasibility of achieving objectives and expected results in relation to existing problems, past performance, program authority, organization, resources and procedures.

(b) Approval of the program developed under § 35.526 (air) or § 35.565 (water pollution) or § 35.626 (public water system supervision) or § 35.718 (solid and hazardous waste management) or § 35.775 (pesticide enforcement and applicator training and certification) or 35.650 (underground water source protection) shall be based on the extent to which the applicant's program satisifes the above criteria.

**§ 35.410 Evaluation of agency performance.**

(a) A performance evaluation shall be conducted at least annually by the Regional Administrator and the grantee to provide a basis for measuring progress toward achievement of the approved objectives and outputs described in the work program. The evaluation shall be consistent with the requirements of § 35.538 for air pollution control agencies, § 35.570 for water pollution control agencies, § 35.626(d) for public water system supervision agencies, § 35.744 for solid and hazardous waste management agencies, § 35.782 for pesticide enforcement and applicator training and certification agencies, and § 35.680 for underground water source protection agencies.

(b) The Regional Administrator shall prepare a written report of the annual evaluation. The grantee shall be allowed 15 working days from the date of receipt to concur with or comment on the findings.

**§ 35.415 Financial status report.**

Within 90 days after the end of each budget period, the grantee must submit to the Regional Administrator an annual report of all expenditures (Federal and non-Federal), which accrued during the budget period. Beginning in the second quarter of any succeeding budget period, grant payments may be withheld under § 30.615–3 of this chapter until this report is received.

**§ 35.420 Payment.**

Grant payments will be made in accordance with § 30.615 of this chapter. Notwithstanding the provisions of § 30.345 of this chapter, the first grant payment subsequent to grant award may include reimbursement of all allowable costs incurred from the beginning of the approved budget period, provided that monthly costs incurred from the beginning of the budget period to the date of grant award do not exceed the level of costs incurred in the last month of the prior budget period.

**§ 35.425 Federal and grantee program support.**

(a) For purposes of establishing the amount of resources which will be committed by the agency to particular budget categories or program elements under §§ 35.527 (air), 35.561(a) (water), § 35.626–1 (public water system supervision), § 35.778 (pesticide enforcement and applicator training and certification), or § 35.670–2 (underground water source protection) Federal and grantee financial contributions shall be considered as combined sums, and shall not be separately identified for each budget category or program element. For purposes of this subpart, and pursuant to § 30.700(a) of this chapter, all project expenditures by the grantee shall be deemed to include the Federal share.

(b) A grantee may not unilaterally reduce the non-Federal share of project costs. In the event of a significant proposed or actual reduction in the non-Federal contribution, the Regional Administrator must consider a reduction in the Federal share or an increase to the Federal percentage.

[FR Doc. 79-32319 Filed 10-18-79; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1242-3]

## Proposed Revision to Air Quality Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve a revised sulfur dioxide emission regulation as part of the Missouri State Implementation Plan (SIP). This regulatory change relaxes the currently approved generating plants in the St. Louis metropolitan area. Approval means that the regulation will be enforceable by the federal government as well as by the state government. This proposal is published to advise the public of the receipt of this proposed revision and to request comments on the proposal.

**DATES:** Comments must be received before December 18, 1979.

**ADDRESS:** Comments should be sent to: William A. Spratlin, Jr., Chief, Air Support Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Whitmore, (816) 374–3791.

**SUPPLEMENTAL INFORMATION:** On March 1, 1979, the Missouri Department of Natural Resources (MDNR) submitted the proposed revision to the Missouri SIP. This regulation was the subject of a public hearing December 15, 1978, in St. Louis, Missouri. The revision was formally adopted by the Missouri Air Conservation Commission (MACC) on January 24, 1979 and became effective on April 12, 1979.

The proposed SIP revision is a revision to Missouri regulation 10 CSR 10–5.110, "Restriction of Emission of Sulfur Dioxide from Use of Fuel." This regulation restricts the sulfur content of fuel and sulfur dioxide emissions from fuel burning installations in the St. Louis Interstate Air Quality Control Region (AQCR). This revision establishes specific allowable emission rates for Union Electric's Labadie and Sioux power plants which are less stringent than the generally effective emission rate. The Sioux plant is located in St. Charles County, Missouri, and the Labadie plant in Franklin County, Missouri, both in the metropolitan St. Louis Interstate AQCR.

Regulation 10 CSR 10–5.110 was effective March 24, 1967, and was approved as part of the original SIP for the St. Louis AQCR on May 31, 1972. This regulation limited allowable emissions of sulfur dioxide to 2.3 pounds per million BTUs heat input for fuel burning installations having heat input of 2,000 million BTUs per hour or greater. The Sioux and Labadie power plants have never met the 2.3 pound emission limit.

Union Electric Company obtained one-year variances from the MACC to operate the subject plant at emission rates in excess of the 2.3 pounds per million BTUs limit in regulation 10 CSR 10–5.110. These variances were not submitted to EPA as SIP revisions. On July 22, 1976, the EPA Regional Administrator advised the MACC that the limits of regulation 10 CSR 10–5.110 would have to be enforced. The MACC was further advised that regulation 10 CSR 10–5.110 could be revised to allow a higher emission rate if the demonstration could be made that the relaxation would not interfere with the attainment and maintenance of the national ambient air quality standards (NAAQS).

The MACC, after holding public hearings on March 7 and 8, 1978, granted a variance on July 26, 1978, to allow operation of the Labadie and Sioux plants at emission rates of 6.3 and 7.3 pounds per million BTUs, respectively. The variance was submitted to EPA for approval on July 31, 1978. No action has been taken on approval of the variance and none is required. The variance contained a clause that the variance would automatically terminate upon revision of regulation 10 CSR 10–5.110 setting forth sulfur dioxide limitations in the St. Louis AQCR. Thus, the effect of the variance was terminated as of the April 12, 1979, effective date of the regulation being considered in this notice.

On October 2, 1978, notice was published in the Missouri Register that the MACC was proposing to amend regulation 10 CSR 10–5.110 to make emission limits of 6.3 pounds per million BTUs for Labadie and 7.3 pounds per million BTUs for Sioux part of the regulation. A public hearing to consider this regulation change was held on December 15, 1978.

Detailed dispersion modeling developed subsequent to the October 2, 1978, notice of proposed rulemaking predicted violations of the NAAQS for sulfur dioxide would occur at the proposed emission rates. Based on these analyses, the MDNR at the December 15, 1978, hearing, proposed an emission limit of 4.8 pounds per million BTUs for both Labadie and Sioux. Testimony indicated that emissions at this rate would not interfere with attainment and maintenance of the NAAQS. The amendment was adopted by the MACC on January 14, 1979, and became effective as of April 12, 1979.

The revised regulation 10 CSR 10–5.110 limits emissions to 4.8 pounds per million BTUs on a daily average from both Labadie and Sioux. These emission rates may be exceeded by not more than twenty (20) percent for not more than three (3) days in any month.

The determination to approve or disapprove the revision to 10 CSR 10–5.110 will be based on whether the applicable requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR, Part 51, "Requirements for Preparation, Adoption and Submittal of Implementation Plans" are met.

Areas in which EPA is especially interested in receiving comments are the interstate impact of the proposed revision, public participation in the MACC consideration of the revised regulation, and use of the available air quality increment under the regulations for prevention of significant air quality deterioration (PSD).

EPA review of the interstate impact issue is based on the provisions of Section 110(a)(2)(E)(i), requiring that the implementation plan contain provisions prohibiting a source from emitting pollutants in amounts which would prevent attainment or maintenance of any applicable NAAQS in another state, or interfere with measures required to be included in an implementation plan of another state designed to prevent significant deterioration of air quality or protect visibility (Sections 160 to 169A of the Act). Dispersion modeling analyses indicate that the Union Electric sources, taken alone, will not cause violations of the NAAQS. These same analyses, however, indicate that violations of the NAAQS may occur in Illinois. These analyses indicate that the combination of emissions from the Sioux plant and Illinois sources may cause violations. The vast majority of the predicted violations in Illinois are caused by Illinois sources and would occur in the complete absence of Sioux emissions. These analyses further indicate that if Illinois sources were controlled to attain the NAAQS, considering impact from Illinois sources only, the addition of the Sioux emissions would not cause violations. Thus, although sulfur dioxide is transported into Illinois, and violations of the NAAQS are predicted in Illinois, EPA does not believe that emissions from Union Electric are preventing attainment or maintenance of the NAAQS in Illinois, and thus finds that the requirements of section 110(a)(2)(E) of the Clean Air Act regarding interstate impact are met. In addition, since no prevention of significant deterioration increment would be affected by the proposed revision, as discussed below, EPA does not believe the revision would interfere with measures required for the prevention of significant deterioration in Illinois. Due to the nature of the emissions (sulfur dioxide) and the absence of any prevention of significant deterioration Class I areas listed under Section 169A of the Act as areas where visibility is an important value, EPA also does not believe the revision would interfere with measures required for the protection of visibility of the affected area in Illinois.

As previously discussed the October 2, 1978, notice of public hearing to consider the regulation change indicated that the proposed emission rates were 6.3 pounds per million BTUs for Labadie and 7.3 pounds per million BTUs for Sioux. By the date of the public hearing several events had occurred which made it obvious that these emission rates would not be acceptable and the emission rate of 4.8 pounds per million BTUs was introduced. In order to accommodate any comments which would differ in consideration of the 4.8 pounds per million BTUs limit in lieu of the proposed limit, the hearing record was left open for 30 days after the hearing. EPA believes since, (1) the adopted regulation is more stringent than the proposed emission limits, (2) the public hearing of December 15, 1978, was held after adequate notice, including notice to the State of Illinois, and (3) the hearing record was held open for an additional 30 days, the requirements of Section 110 of the Clean Air Act and 40 CFR 51.4 concerning public participation have been met.

The currently applicable SIP emission rate is 2.3 pounds per million BTUs heat input. This emission limit was approved as part of the SIP on May 31, 1972. As previously noted, neither the Sioux nor the Labadie plant have operated in compliance with this regulation. The actual emissions from these sources have been approximately 6.3 pounds per million BTUs for Labadie and 7.3 pounds per million BTUs for Sioux. Thus, EPA believes that the approval and compliance with the 4.8 pound limit will result in a relaxation of the allowable emission limit but a reduction in actual emissions.

The Clean Air Act, in Part C, provides for the prevention of significant deterioration of air quality in areas where the existing air quality is better than the NAAQS. The Act establishes increments which specify how much air pollution concentrations may be allowed to increase. Once this incremental increase is consumed by new pollution sources no additional new sources may be constructed unless accompanied by a reduction in emissions from existing sources. A relaxation of a SIP emission limit, such as the one discussed here, would

consume air quality increment if actual emission were being increased. For the subject SIP revision, since actual emissions will decrease, no air quality increment will be consumed and this regulation will have no adverse effect on any increment which could be used by industrial sources in the future.

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

Copies of the proposal and supporting documents are available for public inspection at the office of EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106; Public Information Unit, Library Systems Branch (PM-213), 401 M Street, SW., Washington, D.C. 20460; and the Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65101, and the Missouri Department of Natural Resources, St. Louis Regional Office, 8460 Watson Road, St. Louis, Missouri 63119.

(42 U.S.C. 1857c-5)

Dated: September 21, 1979.

Kathleen Camin,

*Regional Administrator.*

[FR Doc. 79-32318 Filed 10-18-79; 8:45 am]

BILLING CODE 6560-01-M

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**40 CFR Part 81**

**[FRL 1242-4]**

## Designation of Areas for Air Quality Planning Purpose; Section 107—Attainment Status Designations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this rulemaking is to invite public comment on EPA's proposed redesignation of the attainment status of certain areas in the State of Oregon as promulgated on March 3, 1978 (43 FR 9028).

**DATE:** Comments are due by November 19, 1979.

**ADDRESSES:** Comments should be addressed to: Laurie M. Kral, Air Programs Branch (M/S 629), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

The proposed revision and supporting documentation may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region 10 (M/S 629), 1200 Sixth Avenue, Seattle, WA 98101.

State of Oregon, Department of Environmental Quality, P.O. Box 1760, Portland, OR 97207.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** George C. Hofer, Chief, Technical Support and Special Projects Section, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442-1125, FTS No. 399-1125.

**SUPPLEMENTARY INFORMATION:** On March 3, 1978, as required by Section 107 of the Clean Air Act amendments of 1977, EPA promulgated the attainment status of the State of Oregon in relation to the National Ambient Air Quality Standards (43 FR 9028). In accordance with the Act, the rulemaking provided that the March 3, 1978, designations may, when appropriate, be revised by the State and resubmitted to the Administrator. Based on that provision, the Oregon Department of Environmental Quality (DEQ), on March 2, 1979, has requested that the following redesignations be made.

1. *Medford-Ashland AQMA—TSP.* The DEQ has requested that the Medford-Ashland AQMA be redesignated as non-attainment for primary TSP standards in addition to secondary standards.

The previous designation of non-attainment for the secondary TSP standard was based on information available at the time the designation was made. This information included (1) that the 24-hour primary standard had not been violated during 1975 through the first half of 1977; (2) that the air quality had fluctuated around the annual standard but was not consistently above the standard; and (3) that a drought occurring during 1976, made the data for that period of time unrepresentative.

Data subsequent to 1977, however, has shown that there was persistent primary annual geometric mean attainment problem. Therefore, EPA is proposing to redesignate the Medford-Ashland AQMA as non-attainment for primary TSP standards. The Medford-TSP redesignation is being made pursuant to the authority of Section 107(d)(5) of the Act, and accordingly, a SIP revision for this area must satisfy the requirements of Part D of Title I of the Act. As the Medford area is being redesignated for TSP subsequent to EPA's initial promulgation of such Part D non-attainment areas (43 FR 8962, March 3, 1978), the July 1, 1979 approval deadline imposed by Sections 110(a)(2)(I) and 172 is not applicable. However, the statutory timeframe for state submittal and EPA action on a SIP revision remains applicable. Therefore the state will have nine (9) months, as specified in Sections 11 and 406 of the Clean Air Act from final action on this proposal to prepare the TSP non-attainment SIP revision. Thereafter, EPA will have six (6) months in which to take action on such proposed revision prior to the imposition of the growth limitations required by Sections 110(a)(2)(I) and 172(a) of the Act.

2. *Eugene-Springfield AQMA—Ozone.* The second request by the DEQ is that Eugene-Springfield AQMA be redesignated attainment for the ozone standard in view of EPA's February 9, 1979 (44 FR 8734) relaxation of the standard from 0.08 ppm to 0.12 ppm. An examination of the monitored ozone data shows non-attainment of the 0.08 ppm standard but shows attainment at the new 0.12 ppm standard. However, these data are from a single air monitoring site located close to Eugene and do not represent the maximum expected down wind concentrations which are more likely to occur from 10 to 15 miles from Eugene. Therefore, EPA is proposing to redesignate this area as "attainment/unclassifiable" and encouraging further monitoring be completed in this area of expected maximum concentrations.

3. *Eugene-Springfield AQMA—TSP.* The third request made by the DEQ is to redesignate the Eugene-Springfield AQMA from non-attainment for primary TSP to non-attainment for secondary TSP standard.

EPA's initial designation of non-attainment of the primary TSP was based on data available at that time within the Eugene-Springfield AQMA. On June 28, 1979 DEQ provided addtional monitoring data and identified an undue influence from sources proximate to the City Shops monitoring site. The data also showed that no monitor, except the City Shops site, would have violated the annual primary TSP standard during the years 1974 through 1978. Because of the undue influence at the City Shops monitor, EPA proposes to redesignate the Eugene-Springfield AQMA as non-attainment for secondary TSP standard. In conjunction with this action, EPA encourages the DEQ to maintain the City Shop monitoring site to assess the adequacy of the localized TSP control

efforts in the microscale problem area around the City Shops site.

(Sec. 107(d), 171(2), 301(a), of the Clean Air Act, as amended [42 U.S.C. 7407(d), 7501(2), 7601(a)])

Dated: September 21, 1979.

Donald P. Dubois,

*Regional Administrator.*

[FR Doc. 79-32322 Filed 10-18-79; 8:45 am]

BILLING CODE 6560-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Health Resources Administration

### 42 CFR Part 121

### National Guidelines for Health Planning; Availability of Draft Regulations

**AGENCY:** Department of Health, Education, and Welfare.

**ACTION:** Notice of Availability of Draft Regulations.

**SUMMARY:** This notice announces that draft regulations concerning National Guidelines for Health Planning setting forth a statement of National Health Planning Goals are available to the public for review.

**DATE:** Comments must be received by December 3, 1979.

**ADDRESS:** Any interested individual may obtain a copy of these draft regulations and submit written comments and recommendations by writing to the Office of Planning, Evaluation, and Legislation, Health Resources Administration, Room 10-22, 3700 East-West Highway, Hyattsville, Maryland, 20782. All materials received in response to the draft regulations will be available for public inspection and copying at the above location during business hours.

**FOR FURTHER INFORMATION CONTACT:** James W. Stockdill, Associate Administrator for Planning, Evaluation, and Legislation, Health Resources Administration, Center Building, Room 10-22, 3700 East-West Highway, Hyattsville, Maryland, 20782, 301-436-7270.

**SUPPLEMENTARY INFORMATION:** Section 1501 of the Public Health Service Act, as amended by the National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641), requires the Secretary of Health, Education, and Welfare to issue by regulation, guidelines concerning national health planning policy. The guidelines are to include two components:

(1) Standards respecting the appropriate supply, distribution, and organization of health resources, and

(2) A statement of national health planning goals developed after consideration of the priorities set forth in section 1502 of the PHS Act, which goals, to the maximum extent practicable, shall be expressed in quantitative terms.

The Health Resources Administration announces that draft regulations setting forth a statement of National Health Planning Goals pursuant to section 1501(b)(2) of the Act are available to the public. A statement of resource standards with respect to certain acute inpatient resources and services, issued pursuant to section 1501(b)(1), was published as a final regulation on March 28, 1978 (42 CFR Part 121; 43 FR 13040).

The draft statement of national health planning goals is divided into two parts. The first includes goals with respect to institutional and personal resources and systems of care. The second includes goals with respect to disease prevention, health promotion, and health status outcomes. The proposed goals are designed to service two primary purposes. They are set forth in order to help establish, clarify, and coordinate national health policy. Thus, they are to serve as a statement of health goals for national achievement. The second purpose is to assist Health Systems Agencies in setting goals for Health Service Areas during development of the plans required by the Act.

In line with the consultation provisions of section 1501, copies of the draft regulations are being provided to Health Systems Agencies, State Health Planning and Development Agencies, Statewide Health Coordinating Councils, a number of associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development for their review for a 45 day period of comment. The Secretary has not approved these draft regulations.

Dated: October 17, 1979.

Henry A. Foley, Ph.D.,

*Administrator.*

[FR Doc. 79-32578 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-83-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA 5702]**

### National Flood Insurance Program; Proposed Flood Elevation Determinations

*Correction*

In FR Doc. 79-30561 appearing on page 57432 in the issue of Friday, October 5, 1979, add the following communities:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|---|---|---|
| Michigan | (TWP) South Haven, Van Buren County. | Lake Michigan | Entire reach with Township of South Haven | *584 |
| | | Black River | Downstream corporate limits | *584 |
| | | | Just upstream of Interstate 196 | *585 |
| | | South Branch Black River | Just upstream of 71½ Street | *586 |
| | | | Upstream corporate limits | *587 |
| | | North Branch Black River | At confluence with Black River | *585 |
| | | | Upstream corporate limits | *585 |
| | Maps available at: Township Hall, M140 and Blue Star Highway, South Haven, Michigan. | | | |
| | Send comments to: Mr. Ray Guntunberg, Township Supervisor, Township of South Haven, R.R. #3, South Haven, Michigan 49090. | | | |
| Minnesota | St. Paul Park, Washington County | Mississippi River | At downstream corporate limit | *701 |
| | | | Approximately 1,000 feet downstream from County— State Route 24/Chicago, Rock Island & Pacific Railroad bridge | *702 |
| | | | At northern corporate limit | *703 |
| | Maps available at: St. Paul Park City Hall, 639 2nd Street, St. Paul Park, Minnesota. | | | |
| | Send Comments to The Honorable Robert S. Mann, Mayor, City of St. Paul Park, City Hall, 639 2nd Street, St. Paul Park, Minnesota 55071. | | | |

BILLING CODE: 1505-01-M

# Notices

Federal Register
Vol. 44, No. 204
Friday, October 19, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Programmatic Memorandum of Agreement Concerning the Federal Surplus Property Program

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice.

**SUMMARY:** The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to Section 800.8 of the regulations for the "Protection of Historic and Cultural Resources" (36 CFR Part 800) with the Heritage Conservation and Recreation Service, Department of the Interior, and the Federal Property Resource Service, General Services Administration, concerning the Federal surplus property program authorized by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(k)(3)). The agreement provides a system that will ensure adequate protection of historic properties transferred to States or municipalities for use as historic monuments.

**COMMENTS DUE:** November 19, 1979.

**ADDRESS:** Comments should be addressed to Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005; telephone: 202–254–3495.

**SUPPLEMENTARY INFORMATION:** This notice of the proposed programmatic memorandum of agreement invites comments from interested parties. Copies of the proposed agreement are available from the Council. The agreement concerns the manner in which the General Services Administration and the Heritage Conservation and Recreation Service will meet their responsibilities under Section 106 of the National Historic Preservation Act and the Council's implementing regulations, 36 CFR Part 800. Section 106 requires that the head of any Federal agency having indirect or direct jurisdiction over a proposed Federal or federally assisted or licensed undertaking affecting properties in or eligible for the National Register of Historic Places shall afford the Council a reasonable opportunity for comment. The proposed agreement provides that the professional staff (as defined in 36 CFR Part 61) of the Heritage Conservation and Recreation Service shall review each historic monument transfer application and devise appropriate conditions or stipulations to be included in the deed of conveyance by the Federal Property Resource Service to ensure the preservation of the property's significant elements. The Secretary of the Interior's Standards for Historic Preservation Projects are to be observed in the development and execution of all transfer proposals. If the Council, the Heritage Conservation and Recreation Service, the Federal Property Resource Service, or the appropriate State Historic Preservation Officer determines that a proposed transfer will have an adverse effect on a Register property that is not adequately mitigated through the use or the stipulated conditions, the comments of the Council shall be requested in accordance with 36 CFR Part 800.

Robert R. Garvey, Jr.,
*Executive Director.*

[FR Doc. 79-32383 Filed 10-18-79; 8:45 am]
BILLING CODE 4310-10-M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### National School Lunch, School Breakfast, and Child Care Food Programs; Payment Rates for the State of Alaska for the Period July 1–December 31, 1979

Pursuant to Sections 11, 12, and 17 of the National School Lunch Act (42 U.S.C. 1759a), as amended, notice is hereby given of adjustments to the national average payment rates and to the maximum rates of payment for meals and supplements served in the State of Alaska during the six-month period July 1–December 31, 1979, to children participating in the National School Lunch, School Breakfast, and Child Care Food Programs. For lunches served during the aforementioned period to children participating in the National School Lunch Program or Child Care Food Program, and for suppers served in the Child Care Food Program in the State of Alaska, payment rates are as follows: (a) 27.50 cents from general cash-for-food assistance funds for each lunch or supper; (b) an additional 113.50 cents from special cash assistance funds for each reduced-price lunch or supper, and (c) an additional 123.50 cents from special cash assistance funds for each free lunch or supper. The reduced-price special assistance payment factor reflects the currently effective 10 cent charge for each reduced-price lunch served in the National School Lunch Program in Alaska. If, in the State of Alaska, the maximum statewide reduced-price charge for a lunch changes from the current 10 cent charge, the special assistance factor prescribed for reduced-price lunches shall be the lesser of (a) the special assistance factor for free lunches minus the maximum reduced-price charge established by the State of Alaska, or (b) the special assistance factor for free lunches minus 10 cents.

The total amount of general cash-for-food assistance payments and special cash assistance payments, to be made to the State of Alaska from the sums appropriated therefor, shall be based upon such factors.

For the six-month period July 1–December 31, 1979, the maximum per lunch rates of payment for lunches served in the National School Lunch Program shall be as follows: (a) 37.25 cents from general cash-for-food assistance funds and (b) from a combination of general cash-for-food assistance and special cash assistance 175.25 cents for a free lunch and 165.25 cents for a reduced-price lunch.

For breakfast served during the aforementioned period to children participating in the School Breakfast Program or Child Care Food Program in the State of Alaska payment rates are as follows: (a) 22.00 cents for all breakfast; (b) an additional 41.25 cents for each reduced-price breakfast; and (c) an additional 54.75 cents for each free breakfast. The total amount of breakfast assistance payments to be made to the State of Alaska from sums appropriated therefor, shall be based upon the aforementioned adjustments to national average payment factors: *Provided, however,* That additional payments shall be made in such amounts as are

needed to finance payment rates assigned for schools with severe need under § 220.9 of regulations governing the School Breakfast Program (7 CFR Part 220).

For Schools in the State of Alaska not in severe need, the maximum rates of payment for paid breakfasts, for reduced-price breakfasts, and for free breakfasts shall be equal to the respective factors set out above.

For schools in the State of Alaska in severe need, the maximum rates of payment for breakfasts are established pursuant to Section 4(b) of the Child Nutrition Act of 1966, as amended. This law requires that these rates be computed using two methods and that the method yielding the higher rates be used. Accordingly, for schools in severe need in Alaska, the maximum rate of payment for paid breakfasts shall be equal to the adjusted national average factor for all breakfasts (22.00 cents), and the maximum rate of payment for reduced-price and free breakfasts shall be 88.00 cents and 93.00 cents, respectively.

For supplements served in the Child Care Food Program in the State of Alaska, the payment factors shall be: (a) 11.50 cents for each supplement served to children from families whose incomes do not meet the eligibility criteria for free or reduced-price school meals, (b) 34.25 cents for each supplement served to children whose families meet the eligibility criteria for reduced-price school meals, and (c) 45.25 cents for each supplement served to children from families whose incomes meet the eligibility criteria for free school meals.

The food costs payment factors for meals served under the Child Care Food Program in family and group day care homes in the State of Alaska shall be: (a) 48.50 cents for each breakfast served, (b) 86.75 cents for each lunch or supper served, and (c) 29.50 cents for each supplement served.

**Supplementary Information**

Pub. L. 95–627 provides the Secretary with discretionary authority to make adjustments in the national average payment factors to Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands and the Northern Mariana Islands. Section 10 of Pub. L. 95–627 amends Section 12 of the National School Lunch Act to read ". . . the Secretary may establish appropriate adjustments for each such State to the national average payments rates . . . to reflect the differences between the costs of providing lunches and breakfasts in those States and the costs of providing lunches and breakfasts in all other States." Similarly, section 17 of the National School Lunch Act, as amended by Pub. L. 95–627, allows the Secretary to prescribe rates for supplements served in institutions participating in the Child Care Food Program. After enactment, the Department undertook to document the existence and degree of higher than average costs in those areas and to determine what additional assistance, if any, should be made available to those States, commonwealths, and territories.

To compare national average costs with those of the outlying areas, an index of food and labor costs was constructed using the U.S. national average of such costs as the base of 100. Food and labor were selected as the two most significant cost items in producing a meal, accounting for over 90 percent of the total costs. (For purposes of this analysis, other costs and donated goods and services were assumed to vary in the same manner as the weighted average of food and labor.) A variety of data sources were examined to construct the index including routine reports received by FNS and various surveys conducted by other Federal Agencies. Data from the September 1976 Thrifty Food Plan (for food) and the 1976 County Business Patterns prepared by the Bureau of the Census, Department of Commerce (for labor) were selected as the best available data sources to construct the indices. To compute a weighted average index to reflect the cost of producing a meal, indices for food and labor were separately constructed, a ratio of food and labor costs to total costs was calculated from FY 1975 FNS–13 Annual Statement of Income and Expenditures data, and the indices were weighted and averaged. Based on these calculations the average cost of producing a meal in Alaska is 62.4 percent greater than the national average cost. Costs are 17.4 percent greater in Hawaii. Appropriate data were not available for the commonwealths and territories.

In this notice, the Department authorizes payment factors for the State of Alaska that are 62 percent greater than corresponding national average payment factors. The costs cited above are well in excess of the national average, and there is ample evidence that the current level of reimbursement presents financial hardships to school food authorities (SFAs) in Alaska. In 1978 there were 219 schools which offered the National School Lunch Program, 22 percent less than the total participating in 1974. Total meals served also declined during that period, from 5.3 million meals in 1974 to 4.6 million in 1978. Many SFAs indicated high costs and financial losses as a factor in their decision to leave the program.

In addition, a number of complaints from SFAs still participating in the NSLP illustrate the proportionate disparity between the Federal contribution to the cost of producing a meal in Alaska compared to the rest of the nation. Most of the SFAs which contacted the Department indicated that the same financial problems exist and potentially threaten their ability to continue to offer the program.

Recognizing that Pub. L. 95–627 gives the Secretary discretion to adjust payment factors for outlying areas other than Alaska, the Department will continue to assess meal costs of Hawaii, the commonwealths and the territories to determine whether further adjustments to the national average payment factors are appropriate. It is noted, however, that States' costs of providing meals vary above or below a national average level. Such variance above and below an average level is to be expected. At this time the Department has not determined the normal variance around the average. It is conceivable that Hawaii, with costs represented as 17 percent above the national average, may be within the normal range of variance of the remaining States. To maintain equity among the States on this issue, the Department plans to develop more information about meal costs in the mainland States before proposing any other changes to the national average payment amounts.

*Definitions.* The terms used in this notice shall have the meanings ascribed to them in regulations governing the National School Lunch Program (7 CFR Part 210), the School Breakfast Program (7 CFR Part 220), the Child Care Food Program (7 CFR Part 226), and in regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Programs, Nos. 10.553; 10.555; and 10.558)

*Effective Date.* This notice shall be effective as of July, 1, 1979.

Dated: October 11, 1979.

[FR Doc. 79–31962 Filed 10–18–79; 8:45 am]

BILLING CODE 3410–30–M.

## Animal and Plant Health Inspection Service

### 1980 Cooperative Gypsy Moth Suppression and Regulatory Activities; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service and the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture in Washington, DC, in cooperation with the Division of Parks and Forestry of the Department of Environmental Protection in the State of New Jersey, the Division of Plant Industry of the Department of Agriculture in the State of New Jersey, the Bureau of Forest Resource Management of the Department of Environmental Conservation in the State of New York, and the Bureau of Forestry of the Department of Environmental Resources of the Commonwealth of Pennsylvania, will prepare an environmental impact statement that outlines the proposed 1980 Gypsy Moth Cooperative Suppression and Regulatory Activities.

The statement will be based on information and data provided by cooperating state agencies and on comments and issues presented by agencies, private organizations, and the general public as expressed at local township, county, or municipal meetings held during the fall and winter of 1979–80. In addition, a scoping meeting will be held at the Ramada Inn in Essington, Pennsylvania, on October 4, 1979, to further clarify the issues, alternatives, and impacts to be addressed in the environmental document.

Insecticides under consideration for treatment of gypsy moth populations are the chemicals carbaryl, trichlorfon, diflubenzuron, acephate, disparlure and the biologicals, Bacillus thuringiensis and the nucleopolyhedrosis virus. These pesticides are registered with the Environmental Protection Agency for use against gypsy moth. Unregistered insecticides used as part of an integrated pest management system will be applied under experimental use permits or exemptions issued by the Environmental Protection Agency.

The proposed USDA Forest Service cooperative suppression projects involve aerial treatment of approximately 15,000 acres on state-owned forest and parks and 25,000 acres of forested residential and recreational areas in dozens of municipalities in New Jersey; 50,000 acres of state and private timberlands and forested residential areas in approximately 50 municipalities in New York and 50,000 acres of forested residential areas in Pennsylvania. The proposed Animal and Plant Health Inspection Service's regulatory program involves intervention against infestations in Michigan, South Carolina, Wisconsin, Maryland, Washington, West Virginia, Virginia, Ohio, and Illinois, which are removed from the generally infested area and applying regulatory treatments to infested campsites and other sites of regulatory significance in New York, New Jersey, Pennsylvania, and the New England States.

The environmental assessment will require about one month to complete. The draft environmental impact statement is due for completion on or before December 31, 1979, and will have a 60-day review period. The final environmental impact statement will be filed with the Environmental Protection Agency on or before March 31, 1980.

The responsible officials are R. Max Peterson, Chief, Forest Service, and Frank J. Mulhern, Administrator, Animal and Plant Health Inspection Service.

Comments on the proposed 1980 Forest Service/State Cooperative Gypsy Moth Suppression Program should be sent to R. Max Peterson, Chief, USDA, Forest Service, P.O. Box 2417, Washington, DC 20013.

Comments on the proposed 1980 Gypsy Moth Regulatory Activities should be sent to Frank J. Mulhern, Administrator, USDA, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, Room 312–E, Administration Building, Washington, DC 20250.

Dated: October 10, 1979.

Jerome A. Miles,

*Acting Chief, Forest Service.*

Frank J. Mulhern,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc 79-32030 Filed 10-18-79; 8:45 am]

BILLING CODE 3410-11-M

## CIVIL AERONAUTICS BOARD

[Docket 36897]

### Kansas City–Salt Lake City Subpart Q Proceeding

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Order to Show Cause (79–10–84), *Kansas City-Salt Lake City Subpart Q Proceeding*, Docket 36897.

**SUMMARY:** The Board is instituting the *Kansas City-Salt Lake City Subpart Q Proceeding* and is proposing to grant Kansas City-Salt Lake City nonstop authority to Republic Airlines, Trans World Airlines, Western Air Lines and USAir under the expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than November 16, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**ADDRESSES:** Objections to the issuance of a final order should be filed in Docket 36897, which we have entitled the *Kansas City-Salt Lake City Subpart Q Proceeding*. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Reinke, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5105.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 79–10–84 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79–10–84 to that address.

By the Civil Aeronautics Board: October 16, 1979.

Phyllis T. Kaylor,

*Secretary.*

[FR Doc 79-32329 Filed 10-18-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36896]

### Kansas City-Tulsa Subpart Q Proceeding

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Order to Show Cause (79–10–83), Kansas City-Tulsa Subpart Q Proceeding, Docket 36896.

**SUMMARY:** The Board is instituting the *Kansas City-Tulsa Subpart Q Proceeding* and is proposing to grant Kansas City-Tulsa authority to Ozark Air Lines and Trans World Airlines under the expedited procedures of Subpart Q of its Procedural Regulations. The applications involve the removal of certificate restrictions in the market. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than November 16, 1979, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

**ADDRESSES:** Objections or additional data should be filed in Docket 36896, which we have entitled the *Kansas City-Tulsa Subpart Q Proceeding.* They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Reinke, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5105.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 79-10-83 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-10-83 to that address.

By the Civil Aeronautics Board: October 16, 1979.

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 79-32328 Filed 10-18-79; 8:45 am]

BILLING CODE 6320-01-M

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[Docket 36815]

## Southwest Alaska Service Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Alexander N. Argerakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., October 15, 1979.

Joseph J. Saunders,

*Chief Administrative Law Judge.*

[FR Doc. 79-32237 Filed 10-18-79; 8:45 am].

BILLING CODE 6320-01-M

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[Docket 36815]

## Southwest Alaska Service Investigations; Prehearing Conference

Notice is hereby given that a prehearing conference will be convened in the above-entitled matter on November 6, 1979, at 9:30 a.m. (local time), in Room 1003-A, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C., with the undersigned presiding.

The Bureau of Domestic Aviation will serve on all parties on or before October 26, 1979, a statement of proposed issues, proposed stipulations, requests for information, and proposed procedural dates. The other parties to this proceeding will serve on each other and the Bureau of Domestic Aviation on or before November 2, 1979, a proposed statement of issues, proposed stipulations, requests for information, and proposed procedural dates, provided that the submissions of other parties are to be restricted to matters upon which they differ with the Bureau's proposals. The parties are directed to adopt the Bureau's lettering and numbering format to facilitate cross-referencing.

Six copies of all submissions will be served on the administrative law judge promptly.

Dated at Washington, D.C., October 15, 1979.

Alexander N. Argerakis,

*Administrative Law Judge.*

[FR Doc. 79-32330 Filed 10-18-79; 8:45 am]

BILLING CODE 6320-01-M

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## COMMISSION ON CIVIL RIGHTS

## Colorado, Utah, Arizona, New Mexico Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Colorado, Utah, Arizona, New Mexico Advisory Committees (SAC) of the Commission will convene at 9:00 a.m. and will end at 5:00 p.m., on November 7, 1979, at the Gold Room, Strater Hotel, 699 North Main Avenue, Durango, Colorado 81301.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colorado 80202; Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, California 90012; Southwestern Regional Office of the Commission, 418 South Main, San Antonio, Texas 78204.

The purpose of this meeting is to prepare for panels and fact-finding meeting to follow on November 8-10, 1979.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1979.

John I. Binkley,

*Advisory Committee Management Officer*

[FR Doc. 79-32270 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

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## Colorado, Utah, Arizona, New Mexico Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Colorado, Utah, Arizona, New Mexico Advisory Committees (SAC) of the Commission will convene at 8:30 am and will end at 5:00 pm, on November 8, 9, 10, 1979, at the Student Union Building, Fort Lewis College Campus, Durango, Colorado 81301.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colorado 80202; Western Regional Office of the commission, 312 North Spring Street, Room 1015, Los Angeles, California 90012; Southwestern Regional Office of the Commission, 418 South Main; San Antonio, Texas 78204.

The purpose of this meeting is to hear testimony regarding issues of discrimination against women, minorities, elderly and handicapped resulting from current or pending energy development or policies in the Four-Corners Area.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1979.

John I. Binkley,

*Advisory Committee Management Officer*

[FR Doc. 79-32271 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

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## Connecticut Advisory Committe; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provision of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Connecticut Advisory Committee (SAC) of the Commission will convene at 7:00 pm and will end at 8:00 pm, on November 15, 1979, at the Holiday Inn, Morgan and Markets Streets, Hartford, Connecticut 06103.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55

Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[FR Doc. 79-32273 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

## Michigan Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Michigan Advisory Committee (SAC) of the Commission will convene at 10:30 am and will end at 4:00 pm, on November 8, 1979, at the Howard Johnson Hotel, G3129 Miller Road, Flint, Michigan 48507.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to discuss implementation of housing equality project; also corrections and education issues.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[FR Doc 79-32269 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

## Missouri Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Missouri Advisory Committee (SAC) of the Commission will convene at 9:00 am and will end at 1:00 pm, on November 16, 1979, at the Missouri Delta Ecumenical Ministries Building, Highway 84, Hayti, Missouri 63851.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106.

The purpose of this meeting is to plan for current and fiscal 1980 program activities.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 16, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[Doc. 79-32274 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

## West Virginia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the West Virginia Advisory Committee (SAC) of the Commission will convene at 7:00 pm and will end at 10:00 pm, on November 15, 1979, and will convene at 8:30 pm and will end at 10:30 pm, on November 16, 1979, at the Town House Motel, U.S. Highway 340, Charles Town, West Virginia 85414.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Washington, D.C. 20037.

The purpose of this meeting is to discuss civil rights issues within West Virginia, particularly in the eastern pandemic counties of Berkeley and Jefferson.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[FR Doc. 79-32272 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### Industry and Trade Administration

### Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Telecommunications Equipment Technical Advisory Committee will be held on Thursday, November 8, 1979, at 10:00 a.m. in Room 1851, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Telecommunications Equipment Technical Advisory Committee was initially established on April 5, 1973. On March 12, 1975, March 16, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to telecommunications equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has five parts:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Nomination and election of a new chairman.
4. Discussion of work assignments for the annual report.

Executive Session

5. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5) the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned

with matters listed in 5 U.S.C. 552(c)(1). Such matters are specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Telecommunications Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on September 26, 1978 (43 FR 43531).

Copies of the minutes of the General Session will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202-377-2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: October 16, 1979.

Kent Knowles,

*Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.*

[FR Doc. 79-32388 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-25-M

## Bureau of the Census

### Special Censuses

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. However, because of the need to avoid conflicts with activities involving the conduct of the 1980 census, no additional special censuses will be conducted during the period from August 1, 1979 to January 1, 1981. The Bureau is, therefore, not accepting requests for cost estimates for special censuses at this time. Beginning in the fall of 1980 the Bureau will resume accepting such requests.

The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since September 30, 1978, for which tabulations were completed between September 1, 1979 and September 30, 1979.

Dated: October 16, 1979.

Vincent P. Barabba,

*Director, Bureau of the Census.*

| State/place, special area | County | Date of census | Population |
|---|---|---|---|
| Illinois: | | | |
| Forsyth Village | Macon | June 11 | 998 |
| Hawthorn Woods Village | Lake | June 6 | 1,558 |
| New Mexico: Santa Fe City | Santa Fe | May 15 | 46,689 |

[FR Doc. 79-32370 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-07-M

## Economic Development Administration

### Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from fourteen firms: (1) Jeri Morton, Inc., 14 East 32nd Street, New York, New York 10016, a producer of women's sleepwear (accepted October 1, 1979); (2) Paley Associates, Inc., 1235 Adams Street, Dorchester, Massachusetts 02124, a producer of men's and women's coats (accepted October 4, 1979); (3) Elizabeth Fashions, 300 Observer Highway, Hoboken, New Jersey 07030, a producer of men's, women's and children's coats (accepted October 5, 1979); (4) Audio Enclosures, Inc., 8401 Standustrial Avenue, Stanton, California 90680, a producer of speaker cabinets and systems (accepted October 9, 1979); (5) Jafree Shirt Company, Inc., 1200 West Main Street, Wytheville, Virginia 24382, a producer of men's and women's shirts (accepted October 9, 1979); (6) Daedalus Jewelry Corporation, 65 West 36th Street, New York, New York 10018, a producer of jewelry (accepted October 9, 1979); (7) Maguire Brothers Brush Company, Inc., 49 Beech Street, Port Chester, New York 10573, a producer of brushes (accepted October 9, 1979); (8) Bonders, Inc., 200 Bonders Drive, Dunn, North Carolina 28334, producer of women's coats (accepted October 10, 1979); (9) American Durable Products Corporation, 505 Maple Avenue, Carpenteria, California 93013, a producer of leather and nylon bags, wallets, belts and accessories (accepted October 10, 1979); (10) Bait Guard, Inc., 135 East Cuyahoga Falls Avenue, Akron, Ohio 44310, a producer of fishing lures (accepted October 10, 1979); (11) Hardware and Industrial Tool Company, Inc., 2607 River Road, Cinnaminson, New Jersey 08077, a producer of garden and hand tools (accepted October 10, 1979); (12) SJA Industries, Inc., 10023 Canoga Avenue, Chatsworth, California 91311, a producer of loudspeakers (accepted October 11, 1979); (13) Olds Investment, Inc., (doing business as Toms Sports Company), Box 3232, Abilene, Texas 79604, a producer of training weights and other athletic equipment (accepted October 12, 1979); and (14) Breier of Amsterdam, Inc., Edson Street, Amsterdam, New York 12010, a producer of men's and women's leather coats and jackets (accepted October 12, 1979);

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports in to the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development

Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on October 29, 1979.

Jack W. Osburn, Jr.,

*Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.*

[FR Doc. 79-32300 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-24-M

## Minority Business Development Agency

### Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA) formerly the Office of Minority Business Enterprise announces that it is seeking applications under its program to operate one project for a 12 month period beginning January 1, 1980 to serve throughout the state of South Carolina. The cost of the project is estimated to be $400,000 and the Project Number is 04-10-30520-00.

*Funding Instrument:* It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

*Program Description:* Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to:

A. To mobilize and apply educational and business information; develop procurement opportunities; develop financial, technical, management, and marketing resources of the private, federal, state and local sectors on behalf of the minority business community, in general, and their client portfolio, specifically.

B. Provide management services and technical assistance to upgrade the construction marketing and performance skills among minority contractors; to provide assistance to minority contractors in the areas of cost accounting, estimating, bidding, bonding and construction management.

*Eligibility Requirements:* There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

*Application Materials:* An application kit for each of the projects may either be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Program Support Staff, Room 5713, Box FR 78-2, 14th & Constitution Avenue, N.W., Washington, D.C. 20230 or by calling (202) 377-1714.

In requesting an application kit, the applicant should specify if it is either a State or local Government, Federally recognized Indian Tribunal Unit, Educational Institution, Hospital, other type of nonprofit organization, or if the applicant is a for-profit firm. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

*Award Process:* All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a non-competitive basis when determined by the Awards Office to be in the best interest of the Government.

*Closing Date:* Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of *November 30, 1979.* Detailed submission procedures are outlined in each application kit.

11.800 Minority business Development

(Catalog of Federal Domestic Assistance)

Dated: October 16, 1979.

Allan A. Stephenson,

*Acting Director.*

[FR Doc. 79-32373 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-21-M

### Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA) (formerly the Office of Minority Business Enterprise) is seeking applications under its consultant services program for one project for a 12-month period beginning January 1, 1980 that will serve all of the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Kentucky and Tennessee. The cost of the project will be $274,000 and the Project No. is 04-10-30370-00.

*Funding Instrument:* It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

*Program Description:* Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide feasibility studies in all disciplines on an as needed basis. The recipient will be required to evaluate clients so as to determine the feasibility of further in-depth studies and expenditures for specific projects as the need arises. Recipient must also demonstrate the ability to contract specialized projects with proper consultants for final studies of excellence.

*Eligibility Requirements:* There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

*Application Materials:* An application kit for each of the projects may either be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Program Support Staff, Room 5713, Box FR 78-1, 14th & Constitution Avenue, N.W., Washington, D.C. 20230 or by calling (202) 377-1714.

In requesting an application kit, specify (1) the project number, (2) the city or state the project will serve and (3) if the applicant is either a State or Local Government, Federally recognized Indian Tribunal Unit, Educational Institution, Hospital, other type of nonprofit organization, or if the applicant is a for-profit firm. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

*Award Process:* All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their prior experience, quality of the referral evaluation system, quality of the sub-contractor assignment system, cost, quality of personnel, ownership, and plan. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

*Closing Date:* Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of *November 30, 1979.* Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: October 16, 1979.

Allan A. Stephenson,

*Acting Director.*

[FR Doc. 79-32372 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee (SSC) which will meet to discuss: Committee review of Northeast Fishery Task Force Overview Document; review of progress on Groundfish Plan development; review of management strategies for the Sea Scallop Fishery Management Plan (FMP); and other Council business.

**DATES:** The meeting will convene on Tuesday, November 13, 1979, at approximately 9 a.m. and will adjourn at approximately 5 p.m. The meeting is open to the public.

**ADDRESS:** The meeting will take place at the Children's Museum, Conference Room, 300 Congress Street, Boston, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts, telephone (617) 535-5450.

Dated: October 16, 1979.

Winfred H. Meibohm,

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 79-32396 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-22-M

### South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Preliminary review of draft Snapper-Grouper Fishery Management Plan (FMP); (2) Review draft Coral FMP; (3) Objective setting—Swordfish FMP; (4) Update status for Calico Scallop FMP; (5) Review foreign fishing permit applications, if any; and (6) Other management business.

**DATES:** The meeting will convene on Tuesday, November 27, 1979, at 1:30 p.m. and will adjourn on Thursday, November 29, 1979, at approximately 12 noon. The meeting is open to the public.

**ADDRESS:** The meeting will take place at the Holiday Inn, Highway 1, Islamarada, Florida.

**FOR FURTHER INFORMATION CONTACT:** The South Atlantic Fishery Management Council 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, telephone (803) 571-4366.

Dated: October 16, 1979.

Winfred H. Meibohm,

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 79-32397 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-22-M

### Modification of Permit

Notice is hereby given that pursuant to the provisions of Sections 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 269 issued to Dr. Kenneth S. Norris, Environmental Field Program, University of California at Santa Cruz, Santa Cruz, California 95064, on June 19, 1979, is modified as follows:

Section A-1 (take authority) is modified by deleting "Sixty-five (65) spinner dolphins (*Stenella longirostris*) . . ." and substituting therefor the following:

"Sixty-two (62) spinner dolphins (*Stenella longirostris*) . . ." and substituting therefor the following:

"Sixty-two (62) spinner dolphins (*Stenella longirostris*) and three (3) spotted dolphins (*Stennella attenuata*). . ."

This modification became effective on October 9, 1979.

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Winfred H. Meibohm,

*Associate Director, National Marine Fisheries Service,*

October 9, 1979.

[FR Doc. 79-32404 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-22-M

### Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: California Department of Fish and Game (P191A).
   b. Address: 1416 Ninth Street, Sacramento, California 95814.
2. Type of Permit: Scientific Research.
3. Name and Number of Animals:

| | |
|---|---|
| California sea lion (*Zalophus californianus*) | 015 |
| Steller sea lion (*Eumetopias jubatus*) | 105 |
| harbor seal (*Phoca vitulina*) | 105 |
| Northern elephant seal (*Mirounga angustirostris*) | 15 |
| minke whale (*Balaenoptera acutorostrata*) | 6 |
| bottlenose dolphin (*Tursiops truncatus*) | 45 |
| common dolphin (*Delphinus delphis*) | 6 |
| Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) | 45 |
| harbor porpoise (*Phocoena phocoena*) | 45 |
| Northern right whale dolphin (*Lissodelphis borealis*) | 15 |
| Risso's dolphin (*Grampus griseus*) | 15 |
| pilot whale (*Globicephala macrorhynchus*) | 30 |
| Dall's porpoise (*Phocoenoides dallii*) | 15 |
| pygmy sperm whale (*Kogia breviceps*) | 3 |
| dwarf sperm whale (*Kogia simus*) | 3 |
| Baird's beaked whale (*Berardius bairdii*) | 6 |
| ginkgo-toothed whale (*Mesoplodon ginkgodens*) | 3 |
| Hubbs' beaked whale (*Mesoplodon carlhubbsi*) | 3 |

4. Type of Take: Animals will be retrieved from those killed inadvertently by commercial fishermen who have certificates of inclusion. Additionally, pinniped censusing will be conducted which may potentially harass individuals of California sea lions (pop. estimate 50,000), Steller sea lions (pop. estimate 2,000), harbor seals (pop. estimate 7,500), and Northern elephant seals (pop. estimate 60,000).
5. Location of Activity: California.
6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application

should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C., 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 15, 1979.

William Aron,

*Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.*

[FR Doc. 79-32403 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1979; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1979 services to be provided by and commodity to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** October 19, 1979.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** C. W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On June 15, 1979, July 27, 1979, and August 10, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (44 FR 34626, 44 FR 44206, and 44 FR 47134) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the services and the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following services and commodity are hereby added to Procurement List 1979:

*SIC 7399*

Packaging-Canteen, Water, Disposable (8465-01-062-5854), General Services Administration, Region 8, Denver, Colorado.

*SIC 7349*

Janitorial Service, Federal Building, U.S. Courthouse, Eugene, Oregon.

*CLASS 7530*

Pad, Writing Paper (Easel) 7530-00-619-8880, For GSA Regions 1, 5, 6, 7, 8, 9, 10.

C. W. Fletcher,

*Executive Director.*

[FR Doc. 79-32290 Filed 10-18-79; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1979; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1979 commodities to be produced by workshops for the blind and other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** November 21, 1979.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** C. W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1979, November 15, 1978 (43 FR 53151):

*No NSN*

Seal, Metal Band
Postal Service Item No. 0816A
Postal Service Item No. 0816B

*Class 7210*

Insect Bar, Field Type, Nylon Netting, 7210-00-266-9736

*Class 8340*

Shelter Half, Tent, 8340-00-577-4168

C. W. Fletcher,

*Executive Director.*

[FR Doc. 79-32291 Filed 10-18-79; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1979; Correction of Proposed Addition

The document published in the Federal Register on September 28, 1979 (44 FR 55920) proposing the addition to Procurement List 1979 is amended to correct the proposal for Pallet, Material Handling as follows:

*Class 3990*

Pallet, Material Handling, 3990-00-599-5326

The above for requirements of Mechanicsburg, Pennsylvania location only.

Comments on the proposed addition to the Procurement List of the above Pallet must be received on or before November 21, 1979.

C. W. Fletcher,

*Executive Director.*

[FR Doc. 79-32292 Filed 10-18-79; 8:45 am]

BILLING CODE 6820-33-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Product Safety Advisory Council; Meeting

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of Meeting: Product Safety Advisory Council

**SUMMARY:** This notice announces a meeting of the Product Safety Advisory Council on Monday, November 5, 1979, from 9:30 a.m. to 4:30 p.m. and Tuesday, November 6, 1979, from 9:30 a.m. to 4:00 p.m. The meeting will be held at 1111 18th Street, NW, Washington, DC 20207, Third Floor Conference Room.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bolger, Office of the Secretary, Suite 300, 1111 18th Street, NW, Washington, DC 20207, 202/634-7700.

**SUPPLEMENTAL INFORMATION:** The Product Safety Advisory Council was established by section 28 of the Consumer Product Safety Act, which provides that the Commission may consult with the Council before prescribing a consumer product safety rule or taking other action under the Act.

The proposed agenda for the November 5-6 meeting includes an orientation for new members and issues relating to recall effectiveness, the carcinogen policy, identification of

developing safety problems, and consumer outreach. For further information on the order of the agenda, contact Ms. Bolger at the address and telephone number noted above.

The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentation to the Product Safety Advisory Council should notify the Office of the Secretary (see address above) by October 31, 1979. The notification should list the name of the individual who will make the presentation, the person, the company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Council may be allowed by the presiding officer.

Dated: October 18, 1979.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 79-32612 Filed 10-18-79; 12:00 pm]

BILLING CODE 6355-01-M

## COUNCIL ON ENVIRONMENTAL QUALITY

### Proposed List of Federal Agencies and Federal-State Agencies With Jurisdiction by Law or Special Expertise on Environmental Quality Issues

**AGENCY:** Council on Environmental Quality, Executive Office of the President.

**ACTION:** Proposed List of Federal Agencies and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues.

**SUMMARY:** This proposed list of Federal agencies and Federal-State agencies with jurisdiction by law or special expertise on environmental quality issues is submitted for public comment. This list will serve as a reference guide to facilitate agency compliance with the National Environmental Policy Act (NEPA) and the Regulations of the Council on Environmental Quality.

**DATES:** Comments must be received on or before December 18, 1979.

**ADDRESSES:** Comments should be addressed to Nicholas C. Yost, General Counsel, Attention—Proposed List of Federal Agencies, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Bell, Counsel, 202–395–4616, or Foster Knight, Counsel, (202) 395–5750, Council on Environmental Quality (address same as above).

**SUPPLEMENTARY INFORMATION:** This proposed list will revise Appendix II to the Council on Environmental Quality's Guidelines on the Preparation of Environmental Impact Statements (40 CFR Part 1500, 38 FR 20549, Aug. 1, 1973) which were replaced by the Council's NEPA regulations on July 30, 1979. For further information regarding the content and organization of the list, refer to its introductory paragraph.

The Council will publish in the near future a separate list of federal agency offices responsible for undertaking environmental reviews, including addresses and telephone numbers, in order to facilitate the use of this list.

We invite agencies and the public to comment on this proposed list. We are particularly interested in suggestions for improving the way in which the proposed list organizes and displays federal agencies with jurisdiction by law and special expertise on proposals involving effects on environmental quality. Please submit any comments in writing to Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006. Comments must be submitted by December 18, 1979 in order to receive timely consideration.

Nicholas C. Yost,

*General Counsel.*

October 16, 1979.

### Proposed List of Federal Agencies and Federal-State Agencies With Jurisdiction by Law or Special Expertise on Environmental Quality Issues [1]

The following list is a compilation of all federal agencies with jurisdiction by law or special expertise on environmental quality issues. Agencies with "jurisdiction by law" are defined in section 1508.15 of the Council's NEPA regulations as federal agencies with authority to approve, veto or finance all or part of a proposal. Federal regulatory approval requirements (including permits and licenses) administered by agencies with jurisdiction by law are listed under the appropriate agency and marked by an asterisk (*).[2]

"Special expertise" is defined in Section 1508.26 of the NEPA regulations as statutory responsibility, agency mission or related program experience. The subject of "special expertise" is listed in parentheses opposite the appropriate agency. These designations are intended to provide examples rather than to define the limits of an agency's expertise.

The Council on Environmental Quality has prepared this list to supplement its National Environmental Policy Act (NEPA) regulations which became effective on July 30, 1979. Both the public and private sectors and governmental agencies may use this list as a reference guide to facilitate their participation in and compliance with the NEPA process. This list will be helpful in the following ways:

First, the Council on Environmental Quality's NEPA regulations require the federal agency having primary responsibility for preparing an environmental impact statement (EIS) under NEPA (the lead agency) to determine whether any other federal agencies have jurisdiction by law or special expertise with respect to any environmental effects involved in a proposal for legislation or other major federal action significantly affecting the human environment. 40 CFR 1501.5(a), 1501.6(a), 1501.7(a). The federal lead agency must, at the earliest possible time in the NEPA process, request the participation of federal cooperating agencies with jurisdiction by law or special expertise concerning the proposal. 40 CFR 1501.6(a), 1501.7(a). The lead agency and those involved in the "scoping process" (See 40 CFR 1501.7.) may use this list to help determine which other federal agencies should be requested to participate as cooperating agencies in the NEPA process.

Second, this compilation will prove useful to those whose activites or proposed actions require federal regulatory approvals by facilitating the identification of those federal agencies with the authority to issue applicable permits, licenses or other federal regulatory approvals.

Furthermore, a major goal of NEPA and the CEQ regulations is to encourage public participation in agency decisionmaking. 40 CFR 1500.2(d). Individuals, citizen groups and state and local governments who are interested in an environmental issue may use the list to help identify those agencies that have jurisdiction by law over or special

[1] River Basin Commissions (Delaware, Great Lakes, Missouri, New England, Ohio, Pacific Northwest, Souris-Red-Rainy, Susquehanna, Upper Mississippi) and similar federal-state agencies should be consulted on actions affecting the environment of their special geographic jurisdictions. In all cases where a proposed action will have significant international environmental effects, the Department of State should be consulted and should be sent a copy of any draft and final impact statement that covers such action.

[2] Because laws are amended or new laws enacted, these responsibilities may change and new ones may be added. Thus, the definitive designation of an agency with jurisdiction by law depends on the law and not on this index.

expertise in a proposal. Those interested may then contact the potentially involved agencies to obtain information on the issues and to participate in the NEPA process.

The list is organized into four broad categories: pollution control, energy, land use, and natural resource management. Because some activities may fall into more than one of these categories, users of the list should consult all pertinent entries.

Index

*I. Pollution Control*

A. Air Pollution.
B. Water Pollution.
C. Solid Waste.
D. Noise.
E. Radiation.
F. Hazardous Substances.
Toxic Materials.
Food Additives and Contamination of Food Stuff.
Pesticides.

*II. Energy*

A. Electric Power.
B. Petroleum.
C. Natural Gas.
D. Coal and Minerals.

*III. Land Use*

A. Land Use Changes, Planning, and Regulation of Land Development.
B. Public Land Management.
C. Coastal Areas.
D. Environmentally Critical Areas
E. Community Development.
Built-up or Distressed Areas.
Density and Congestion Mitigation.
Neighborhood Character.
F. Historic, Architectural, and Archeological Preservation.
G. Outdoor Recreation.

*IV. Natural Resource Management*

A. Weather Modification.
B. Waterway Regulation and Stream Modification.
C. Soil and Plant Conservation and Hydrology.
D. Fish and Wildlife.
E. Renewable Resources.
F. Energy and Natural Resources Conservation.

## I. Pollution Control

### *A. Air Pollution*

*Department of Agriculture*

Forest Service (effects of air pollution on vegetation and visibility; fire smoke management).

Soil Conservation Service (effects of air pollution on vegetation; wind erosion).

*Department of Commerce*

National Oceanic and Atmospheric Administration (meteorological and climatological research and monitoring; urban pollution).

*Department of Defense*

Department of the Air Force (pollution from military aircraft).

*Department of Energy*

Energy Information Administration (emissions from energy sources).

*Approvals of plans for power plants and major fuel-burning facilities:

Federal Energy Administration Act of 1974, 15 U.S.C. 761–790h.

Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289.

*Department of Health, Education, and Welfare*

Public Health Service:

Center for Disease Control (effects of air pollution on health).

National Institutes of Health (effects of air pollution and health).

*Department of Housing and Urban Development (housing and community planning)*

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (public lands).

Bureau of Mines (air pollution for mining and minerals processing and fossil and gaseous fuel combustion).

Fish and Wildlife Service (effects of air pollution on fish and wildlife).

Geological Survey (emissions from outer-continental shelf lease operations).

Heritage Conservation and Recreation Service (recreation).

National Park Service (visibility in national parks).

Office of Surface Mining Reclamation and Enforcement (surface mining).

*Department of Labor*

Mining Safety and Health Administration (airborne pollutants in workplace (mines)).

Occupational Safety and Health Administration (airborne pollutants in workplace.

*Department of Transportation*

Coast Guard (cargo tank venting and vapor recovery systems).

Federal Aviation Administration (aircraft emissions).

Federal Highway Administration (highway related air quality impacts; vehicle emissions).

Federal Railroad Administration (locomotive emissions).

Urban Mass Transportation Administration (urban transportation systems).

*Environmental Protection Agency (effects of air pollution on public health and welfare; air quality criteria and standards; vehicle and aircraft emissions)*

* Prevention of significant deterioration of air quality. 42 U.S.C. 7470 *et seq.*

* Application for primary non-ferrous smelter order. 42 U.S.C. 7419.

* Assuring that federal projects conform to state implementation plans under Clean Air Act. 42 U.S.C. 7616.

*National Aeronautics and Space Administration (advanced technology for remote sensing of air quality parameters and for reduction of aircraft engine emissions)*

*Nuclear Regulatory Commission (radioactive substances)*

*Tennessee Valley Authority ( Tennessee Valley region)*

### *B. Water Pollution*

Water Quality

*Department of Agriculture*

Agriculture Stabilization and Conservation Service (agricultural lands).

Forest Service (National Forest lands).

Soil Conservation Service (watershed protection)

*Department of Commerce*

Maritime Administration (marine pollution from ships).

National Oceanic and Atomospheric Administration (management and protection of coastal and marine resources.

*Department of Defense*

Army Corps of Engineers:

* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 40k, 403 and 419.

* Permits for river and harbor improvement projects. 33 U.S.C. 541.

* Authority to enjoin or force removal of refuse placed in or on the banks of a navigable water or tributary of a navigable water 33 U.S.C. 407.

* Permits for private projects to improve navigable waters. 33 U.S.C. 565.

* Permits for discharges of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

* Permits for transportation of dredged materials for dumping into ocean waters. 33 U.S.C. 1413.

Department of Navy (ship pollution control).

*Department of Energy (energy programs)*

*Department of Health, Education, and Welfare*

Public Health Service (effects of pollution on health).

*Department of the Interior*

Bureau or Indian Affairs (Indian lands).

Bureau or Land Management public lands, coastal zone management, outer continental shelf).

Bureau of Mines (mining activities).

Bureau of Reclamation (public works).

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey (hydrology).

Heritage Conservation and Recreation Service (effects on historic or recreational values).

National Park Service (National Parks).

Office of Surface Mining Reclamation and Enforcement (hydrologic balance in surface mining activities).

Office of Water Research and Technology (water resources planning) Department of Transportation.

Assistant Secretary for Policy and International Affairs (environmental review of departmental programs).

Coast Guard (oil spills, ship sanitation):

* Tanker construction, equipment, manning, operation. 46 U.S.C. 391a.

* Oil and hazardous substances discharge prevention. 33 U.S.C. 1321.

* Pollution prevention (33 CFR 151, 154–6).

* Vessel navigation, waterfront facility regulations. 33 U.S.C. 1221 (50 U.S.C. 191).

* Certification of marine sanitation devices. 33 U.S.C. 1322 (33 CFR 159).

*Environmental Protection Agency (treatment works; effluent limitations; oil and hazardous substance discharges)*

* Permits for discharge of specific pollutants under aquaculture project. 33 U.S.C. 1328.

* Permits for disposal of sewage sludge. 33 U.S.C. 1345.

* Oil spill prevention, containment and countermeasure plans (prepared by facility owner/operator). 33 U.S.C. 1321, 1361 (40 CFR 1112.7).

* Permits for treatment, storage or disposal of hazardous wastes. 42 U.S.C. 6925.

* Temporary underground injection permits. Safe Drinking Water Act. 41 U.S.C. 300h(C)(1).

* National Pollutant Discharge Elimination System (NPDES) permits. 33 U.S.C. 1342.

*Federal Maritime Commission*

* Certificates of financial responsibility for water pollution. 33 U.S.C. 1321 (46 CFR Part 542); 42 U.S.C. 1643 (46 CFR Part 543); 43 U.S.C. 1815 (46 CFR Part 544).

*National Aeronautics and Space Administration (advanced technology for remote sensing of water quality)*

*Nuclear Regulatory Commission (radioactive substances)*

*Tennessee Valley Authority (Tennessee Valley Region)*

*Water Resources Council (principles and standards)*

River Basin Commissions (as geographically appropriate)

*Pollution of Marine Resources*

*Department of Commerce*

Maritime Administration (port, coastal and ocean pollution):

* Merchant vessels, polluting discharges and dumping. 46 U.S.C. 1101, *et seq.*

* Port operations, polluting discharges, and dumping. 46 U.S.C. 867 (41 Stat. 992).

National Oceanic and Atmospheric Administration (coastal zone management; ocean pollution).

*Department of Defense*

Army Corps of Engineers:

* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 401, 403 and 419.

* Permits for river and harbor improvement projects. 33 U.S.C. 541.

* Permits for private projects to improve navigable waters. 33 U.S.C. 5651.

* Permits for discharges of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

* Permits for transportation of dredged materials for dumping into ocean waters. 33 U.S.C. 1413.

* Authority to enjoin or force removal of refuse placed in or on the banks of a navigable water or tributary of a navigable water. 33 U.S.C. 407.

* Regulation of artificial islands, installations and devices on the outer continental shelf. 43 U.S.C. 1333(e)

Department of the Navy (oceanography; pollution from ships).

*Department of Energy (energy programs)*

*Department of Health, Education, and Welfare*

Public Health Service (effects on health).

Food and Drug Administration (shellfish sanitation; contamination of fish and shellfish with toxics).

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (public lands):

* Coral harvesting (outer continental shelf). 43 U.S.C. 1334 (43 CFR 6224).

* Mineral leasing on the outer continental shelf. 43 U.S.C. 1331–1343.

Bureau of Mines (ocean mining).

Fish and Wildlife Service (effects on sport fisheries).

Geological Survey:

* Permits for geological and geophysical exploration on outer continental shelf. 43 U.S.C. 1340 (30 CFR 251).

* Permits for exploration and development activities on federal oil and gas leases on the outer continental shelf. 43 U.S.C. 1331 *et seq.* (30 CFR 250).

* Estuarine Areas Act. 16 U.S.C. 1224.

Heritage Conservation and Recreation Service (effects on historic and recreational values of marine resources).

Ocean Mining Administration (ocean-mining).

*Department of State (international marine resource issues)*

*Department of Transportation*

Coast Guard (ocean dumping enforcement, and marine resource protection).

*Environmental Protection Agency*

* Permits for ocean discharges. 33 U.S.C. 1343.

* Discharge of specific pollutants under aquaculture project. 33 U.S.C. 1328.

* Permits for disposal of sewage sludge. 33 U.S.C. 1345.

* Permits for transportation of ocean discharge materials. 33 U.S.C. 1412, 1414.

*National Aeronautics and Space Administration (advance technology for remote sensing of water quality)*

*Nuclear Regulatory Commission (radioactive substances)*

*Water Resources Council (principles and standards for water plans)*

River Basin Commissions (as geographically appropriate).

*C. Solid Waste*

*Department of Agriculture*

Forest Service (National Forests and Grasslands).

Soil Conservation Service (watershed protection).

*Department of Commerce*

Maritime Administration (marine pollution from ships).

*Department of Defense*

Army Corps of Engineers:

* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 401, 403 and 419.

* Discharge of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

* Transportation of dredged materials for dumping into ocean waters. 33 U.S.C. 1413.

*Department of Health, Education, and Welfare*

Public Health Service:

Center for Disease Control (effects on health).

Food and Drug Administration (contamination of food resulting from disposal of municipal and industrial waste treatment sludge).

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (public lands).

Bureau of Mines (mineral waste, mine acid waste, municipal solid waste, recycling).

Geological Survey (geologic and hydrologic effects).

National Park Service (National Parks).

Office of Surface Mining Reclamation and Enforcement (surface mining wastes).

*Department of Transportation*

Coast Guard (ship sanitation).

*Environmental Protection Agency (solid wastes and recycling—generally)*

* Permits for disposal of sewage sludge. 33 U.S.C. 1345.

* Control and disposal of solid waste. —— U.S.C. ————.

* Resource Conservation and Recovery Act. 42 U.S.C. 6964 (40 CFR 3, 33, 255).

* Permits for treatment, storage, or disposal of hazardous wastes. 42 U.S.C. 6925.

* Use of restricted toxic substances—exemptions from rules/regulations. 15 U.S.C. 2601–2629.

* Transportation and handling of hazardous substances.—— U.S.C. ————.

*General Services Administration (public buildings)*

*Nuclear Regulatory Commission (radioactive waste)*

* Licensing of radioactive wastes. 42 U.S.C. 2071–2114, 5842 (10 CFR Parts 20, 40).

*Tennessee Valley Authority (Tennessee Valley region)*

*Water Resources Council*

River Basin Commissions (as geographically appropriate).

*D. Noise*

*Department of Agriculture*

Forest Service (National Forests and Grasslands).

*Department of Commerce*

National Bureau of Standards (measurements, standards, and methods).

*Department of Defense*

Department of the Air Force (military aircraft noise).

*Department of Health, Education, and Welfare (effects on health)*

*Department of Housing and Urban Development*

Office of Community Planning and Development (environmental criteria and standards for housing and land use).

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (public lands):

* Lease of public lands for airports. 49 U.S.C. 211–214 (43 CFR 2640).

* Off-road vehicle noise. (E.O. 11644), —— FR ————.

Bureau of Mines (mine noise, blasting and vibration).

*Department of Labor*

Mining Safety and Health Administration (noise in the workplace).

Occupational Safety and Health Administration (noise in the workplace).

*Department of Transportation*

Federal Aviation Administration:

Office of Environment and Energy:

* Airport construction, alteration, etc. 49 U.S.C. 1350, 1354, 1355 (14 CFR 157).

Federal Highway Administration (traffic and motor carrier noise).

Federal Railroad Administration (railroad noise).

Urban Mass Transportation Administration (transit noise).

*Environmental Protection Agency*

* Noise Control Act of 1972. 42 U.S.C. 4901–4918.

* National Aeronautics and Space Administration (advance technology for reduction of aircraft noise)

*E. Radiation*

*Department of Commerce*

National Bureau of Standards (measurements, standards, methods and data).

*Department of Energy*

Office of Energy Technology (nuclear energy).

*Department of Health, Education, and Welfare*

Public Health Service:

Food and Drug Administration (health and safety; contamination of food with radioactive materials).

National Institutes of Health (health).

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (public lands):

* Leases for phosphate and uranium. —— U.S.C. ————.

* Leases for withdrawal of public lands for radiation waste depository (deep burial). —— U.S.C. ————.

Bureau of Mines (uranium mines).

Geological Survey (waste disposal).

*Department of Labor*

Mining Safety and Health Administration (uranium mines).

Occupational Safety and Health Administration (worker exposure to sources of radiation not covered by the Department of Energy).

*Department of Transportation*

Federal Highway Administration:

Bureau of Motor Carrier Safety (enforcement of hazardous materials regulation for highway transportation in interstate commerce).

*Environmental Protection Agency (radioactive air emissions)*

*Nuclear Regulatory Commission (radiation effects—generally)*

* Licenses for special nuclear material. 42 U.S.C. 2073–2078 (10 CFR Part 70).

* Licenses for source material. 42 U.S.C. 2091–2099 (10 CFR Part 40).

* Licenses for by-product material. 42 U.S.C. 2111–2114 (10 CFR Parts 30–35).

* Licensing for utilization or production facilities for industrial or commercial purposes. 42 U.S.C. 2131–2133 (10 CFR Part 50).

* Licensing utilization or production facilities for medical therapy and research and development. 42 U.S.C. 2134 (10 CFR Part 50).
* Nuclear power reactor operators license. 42 U.S.C. 2137 (10 CFR Part 55).
* Licensing and regulating Department of Energy demonstration reactors. 42 U.S.C. 5842.
* Licensing Department of Energy facilities for receipt and storage of high-level radioactive wastes. 42 U.S.C. 5842.

*F. Hazardous Substances*

Toxic Materials

*Consumer Product Safety Commission (consumer product safety)*

*Department of Agriculture*

Agricultural Marketing Services (consumer protection).
Animal and Plant Health Inspection Service (disease vectors).

*Department of Commerce*

Maritime Administration (port, coastal and ocean pollution):
* Merchant vessels, polluting discharges and dumping. 46 U.S.C. 1101 *et seq.*
* Port operations, polluting discharges and dumping. 46 U.S.C. 867 (41 Stat. 992).
National Bureau of Standards (measurements, standards methods and data.)
National Oceanic and Atmospheric Administration (coastal and marine resources management and protection).

*Department of Defense (military operations)*

*Department of Health, Education, and Welfare*

Public Health Service:
Center for Disease Control (health issues).
Food and Drug Administration (contamination of food).
National institutes of Health (health issues).

*Department of Housing and Urban Development*

Office of Policy Development and Research (lead-based paint poisoning prevention research).

*Department of the Interior*

Bureau of Indian Affairs (Indians and Indian lands).
Bureau of Land Management (public lands).
Bureau of Mines (disposal methods for selected milling and mine wastes).
Fish and Wildlife Service (effects on fish and wildlife resources).
National Park Service (National parks).
Office of Surface Mining Reclamation and Enforcement (surface mining).

*Department of Labor*

Mining Safety and Health Administration (mining hazards).
Occupational Safety and Health Administration (workplace hazards).

*Department of Transportation*

Coast Guard:
* Transportation of hazardous materials by vessel. 46 U.S.C. 170, 375, 391a, 416; 49 U.S.C. 1655, 1803, 1804, 1808; 50 U.S.C. 198.
* Navigation and waterfront facility regulation. 33 U.S.C. 1221, 1224, 1321; 50 U.S.C. 191.
* Hazardous substance discharge to navigable waters. 33 U.S.C. 1321.
Federal Highway Administration.
Bureau of Motor Carrier Safety (hazardous material transportation in interstate commerce).
Federal Railroad Administration (railroad transport).
Research and Special Programs Administration (hazardous cargo, pipelines).
Materials Transportation Bureau:
* Transportation of hazardous materials. 42 U.S.C. 1805–1806.
* Permits for facilities to handle hazardous materials. 42 U.S.C. 1805–1806.

*Environmental Protection Agency (hazardous air and water pollutants)*

* Permits for treatment, storage or disposal of hazardous wastes. 42 U.S.C. 6925.
* Use of restricted toxic substances—exemptions from rules/regulations. 15 U.S.C. 2601–2629.
* Transportation and handling of hazardous substances. —— U.S.C.

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*Food Additives and Contamination of Foodstuffs*

*Department of Agriculture*

Food Safety and Quality Service (meat and poultry products).

*Department of Health, Education, and Welfare*

Public Heath Service.
Food and Drug Administration (effects on health).

*Environmental Protection Agency (effects of pollution)*

*Pesticides*

*Department of Agriculture*

Animal Plant Health and Inspection Service (control of animal and plant pests).
Food Safety and Quality Service (consumer protection).
Forest Service (National Forest and Grasslands).
Science and Education Administration (biological controls, food and fiber production).
Soil Conservation Service (watershed protection).

*Department of Commerce*

Maritime Administration (merchant ship operations).
National Oceanic and Atmospheric Administration (effects on marine life and the coastal zone).

*Department of Defense*

Armed Forces Pest Management Board (pesticide use on DOD lands, facilities and equipment; control of disease vectors).
Armed Services Explosive Safety Board (control of pests for munitions and explosive devices).

*Department of Health, Education, and Welfare*

Public Health Service:
Center for Disease Control (effects on health)
Food and Drug Administration (contamination of food)

*Department of the Interior*

Bureau of Indian Affairs (indian lands).
Bureau of Land Management (public lands).
Bureau of Reclamation (irrigated lands).
Fish and Wildlife Service (effects on fish and wildlife resources).
National Park Service (national Parks).

*Department of Labor*

Occupational Safety and Health Administration (worker exposures during manufacture of pesticides).

*Department of Transportation*

* Permits for transportation of hazardous materials. 49 U.S.C. 1805–1806.
* Approval for shipments of Class A explosives. 46 U.S.C. 170(7).
* Permits for facilities to handle hazardous materials. 49 U.S.C. 1805–1806.
Coast Guard:
* Permits for transportation of hazardous substances. 46 U.S.C. 170. 391a.
* Navigation and waterfront facility, regulation. 33 U.S.C. 1221, 1321; 50 U.S 191.
Federal Aviation Administration (transport by air).

Federal Highway Administration.
Bureau of Motor Carrier Safety (pesticide transport in interstate commerce).
Federal Railroad Administration (transport by rail).
Research and Special Programs Administration.
Materials Transportation Bureau (transport).

*Environmental Protection Agency*

* Permits for treatment, storage or disposal of hazardous wastes. 42 U.S.C. 6925.
* Certification of pesticide users. 7 U.S.C. 135–136y (40 C.F.R. Part 171).
* Registration of pesticides. 7 U.S.C. 163a.
* Experimental Use Permits. 7 U.S.C. 163a. (40 C.F.R. Part 172).

**II. Energy**

*A. Electric Power Development, Generation and Transmission, and Use*

*Department of Agriculture*

Forest Service (National Forests and Grasslands).
* Rights-of-way for electrical, communication, water facilities and roadways. 16 U.S.C. 522 *et seq.* (CFR 251.50).
Rural Electrification Adminsitration (rural areas)
* Electrical generation and transmission projects. 7 U.S.C. 901 *et seq.*

*Department of Defense*

Army Corps of Engineers (Hydro):
* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 403.
* Permits for discharges of dredged or fill material into navigable waters. 33 U.S.C. 1344.
* Regulation of artificial islands, installations, and devices on the outer continental shelf. 43 U.S.C. 1333(e).

*Department of Energy*

Federal Energy Regulatory Commission (hydroelectric power, electric transmission, electric supply, facility siting):
*Regulation of interconnection of electric transmission facilities, and regulation of enlargement of electric transmission facilities for wheeling. 16 U.S.C. 824–825K (18 CFR 32).
*Regulation of the development of water power including the licensing of non-Federal hydroelectric power projects. Federal Power Act. 16 U.S.C. 791–825r (18 CFR 4–25, 36, 131, 141).
Office of Conservation and Solar Applications (transportation industry; public buildings; industrial heating).
Office of Energy Technology (technology development).
Power Marketing Administration (as geographically appropriate).
*Approvals for plans for power plans and major fuel-burning facilities:
Federal Energy Administration Act of 1974, 15 U.S.C. 761–790h.
Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–629, 92 Stat. 3289.

*Department of Health, Education, and Welfare*

Public Health Service.
National Institutes of Health (radiation effects).

*Department of Housing and Urban Development (urban areas)*

*Department of the Interior*

Bureau of Indian Affairs:
*Leases of Indian lands. 25 U.S.C. 392–403b, 415 (25 CFR Part 131).
*Leases, permits, easements of public lands. 43 U.S.C. 931c, 931d (43 CFR Part 9).
*Rights-of-way over Indian lands. 25 U.S.C. 311 *et seq.* (25 CFR Part 161); 25 U.S.C. 15 (25 CFR Parts 231–233).
Bureau of Land Management (public lands):
*Licenses for synthetic liquid fuel facilities. 30 U.S.C. 323.
*Placer mining claims on lands withdrawn or reserved for power development or power sites. 30 U.S.C. 621.
*Geothermal leases. 30 U.S.C. 1002–1011.
*Rights-of-way (various purposes, e.g., power lines and authorities). *See* 43 CFR Parts 2800, 2811, 2820, 2840, 2850, 2870, 2880, 2890.
*Mineral leasing on the outer continental shelf. 43 U.S.C. 1331–1343.
*Uranium leases (acquired lands). —— U.S.C. ——.
*Solar energy facility siting. —— U.S.C. ——.
*Public works—leases, permits, easements. 43 U.S.C. 931c, 931d (43 CFR Part 9).
Bureau of Mines (mining research).
Bureau of Reclamation.
* Public works—leases, permits, easements. 43 U.S.C. 931c, 931d (43 CFR Part 9).
Geological Survey (classification of federal lands as to their water power and water storage values).
* Geothermal lease operations. 30 U.S.C. 1023 (30 CFR 270–271).
Fish and Wildlife Service (effects on fish and wildlife resources).
* Public works—leases, permits, easements. 43 U.S.C. 931c, 931d (43 CFR Part 9).
Heritage Conservation and Recreation Service (effects on historic or recreational values).
National Park Service.
* Rights-of-way through parks or reservations for power and communications facilities. 16 U.S.C. 5.

*Department of Transportation*

Federal Highway Administration.
* Relocation and accomodation of utility facilities on highway rights-of-way 23 U.S.C. 109(1), 116, 123 (23 CFR Part 645).
Environmental Protection Agency (pollution control).

*Nuclear Regulatory Commission*

* Licensing for utilization or production facilities for industrial or commercial purposes. 42 U.S.C. 2133 (10 CFR 50).
* Nuclear power reactor operator's licneses. 42 U.S.C. 2137 (10 CFR Part 55).
* Licensing uranium milling operations. 42 U.S.C. 2091 *et seq.* (10 CFR Part 40).
* Licensing and regulating demonstration reactors. 42 U.S.C. 2134, 5842 (10 CFR Part 50).

*Department of Transportation (transport of sources)*

Federal Aviation Administration.

*Tennessee Valley Authority (Tennessee Valley Region)*

*Water Resources Council (water resources planning and data)*

River Basin Commissions (as geographically appropriate).

*B. Petroleum Development, Extraction, Refining, Transport and Use*

*Department of Agriculture*

Forest Service (National Forests and Grasslands).

*Department of Commerce*

National Oceanic and Atmospheric Administration (costal and marine resources—management and protection).
Maritime Administration (port, costal and ocean pollution).
* Merchant vessels, 42 U.S.C. 1101 *et seq.*
* Port operations. 42 U.S.C. 867 (41 Stat. 992).

*Department of Defense*

Army Corps of Engineers.
* Rules governing work or structures in or affecting the navigable waters of the United States. 33 U.S.C. 403.
* Permits for discharges of dredged or fill materials into navigable water. 33 U.S.C.1344.

* Regulation of artificial islands, installations, and devices on the outer continental shelf. 43 U.S.C. 1333 (e).

*Department of Energy*

Office of Energy Technology (technology development).

*Department of the Interior*

Bureau of Indian Affairs.

* Rights-of-way over Indian lands. 25 U.S.C. 311, *et seq.* (25 CFR Part 161, 171, 172, 183, 184).

* Leases for mining, oil and gas, farming and other uses on federal lands. 25 U.S.C.393 *et seq.* (25 CFR 171, 172).

Bureau of Land Management (public lands and outer continental shelf).

* Application for patents on phosphate, nitrate, oil and asphaltic mineral deposits. 30 U.S.C. 121, 122, 123.

*Oil and gas leases. 30 U.S.C. 221.

*Lease of oil and gas deposits located in rights-of-way. 30 U.S.C. 301.

*Oil pipeline rights-of-way; leases for oil shale, native asphalt, solid and semi-solid bitumen, and bituminous rock. 30 U.S.C. 241.

Bureau of Mines (environmental effects of oil mining).

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey.

*Oil and gas lease operations:

Public domain. 30 U.S.C. 181, *et seq.* (30 CFR 221).

Acquired land. 30 U.S.C. 351, *et seq.* (30 CFR 221).

Outer continental shelf lands. 43 U.S.C. 1331, *et seq.* (30 CFR 250, 251).

Indian lands. 25 U.S.C. 396a, *et seq.* (25 CFR 171, 172, 174, 183, 184).

*Sale and purchase of government royalty oil application. 30 U.S.C. 189, 192, 359; 43 U.S.C. 1334 (30 CFR Part 225).

Heritage Conservation and Recreation Service (effects on historical or recreational values).

National Park Service.

*Permits and leases for oil and gas. 16 U.S.C. Ch. 1.

*Department of State*

*Facilities for export/import of petroleum products, coal, minerals, water, sewage permits. Executive Order 14423.

*Department of Transportation (transport and pipeline safety)*

Coast Guard:

*Tank vessel regulation. 46 U.S.C. 391a.

*Ports and waterways safety. 33 U.S.C. 1221.

*Construction and alteration of bridges over navigable waters (for pipelines). 33 U.S.C. 525; 33 U.S.C. 494, 495; 33 U.S.C. 513–14.

*Outer continental shelf structures. 43 U.S.C. 1331.

Federal Highway Administration.

*Relocation and accommodation of pipelines on highway rights-of-way. 23 U.S.C. 109(1), 116, 123 (23 CFR Part 645).

Research and Special Programs Administration

Materials Transportation Bureau (pipeline safety).

*Environmental Protection Agency (pollution control)*

*Federal Maritime Commission*

Office of Environmental Analysis (carrier rates or agreements)

*Interstate Commerce Commission (regulation of carriers)*

*C. Natural Gas Development, Production, Transmission, and Use*

*Department of Agriculture*

Forest Service (National Forests and Grasslands).

*Department of Commerce*

National Oceanic and Atmospheric Administration (coastal and marine resources—management and protection).

Maritime Administration:

*Liquid natural gas vessels. 42 U.S.C. 1101, *et seq.*

*Liquid natural gas terminals. 46 U.S.C. 867 (41 Stat. 992).

*Department of Defense*

Army Corps of Engineers:

*Rules governing work or structures in or affecting the navigable waters of the United States. 33 U.S.C. 403.

*Permits for discharges of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

*Regulation of artificial islands, installations, and devices on the outer continental shelf. 43 U.S.C. 1333(3).

*Department of Energy*

Federal Energy Regulatory Commission.

*Certificates for natural gas facilities (underground storage fields, LNG facilities, and transmission pipeline facilities); sale, exchange and transportation of gas; abandonment of facilities; and curtailment of natural gas service. Natural Gas Act. 15 U.S.C. 717–717w.

*Department of Housing and Urban Development*

Office of Community Planning and Development (residential and other lands).

*Department of the Interior*

Bureau of Indian Affairs.

*Leases for mining, oil and gas, farming and other uses on federal lands. 25 U.S.C. 393 *et seq.* (25 CFR 171, 172).

Bureau of Land Management (public lands):

*Application for patents on phosphate, nitrate, oil and asphaltic mineral deposits. 30 U.S.C. 121, 122, 123.

*Oil and Gas Leases. 30 U.S.C. 221.

*Lease of oil and gas deposits located in rights-of-way. 30 U.S.C. 301.

*Leasing of oil and gas deposits on the outer continental shelf. 43 U.S.C. 1331–1343.

*Gas pipeline rights-of-way. —— U.S.C. ——.

Bureau of Mines (methane; drainage and subsidence problems. Federal Helium Program).

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey:

*Communitization of federal oil and gas leases. 30 U.S.C. 181 *et seq.*, 315 *et seq.*

*Oil and gas lease operations:

Public domain. 30 U.S.C. 181, *et seq.* (30 CFR 221).

Acquired lands. 30 U.S.C. 351 *et seq.* (30 CFR 221).

Outer continental shelf land. 43 U.S.C. 1331 *et seq.* (30 CFR 250, 251).

Indian lands. 25 U.S.C. 3969, *et seq.* (25 CFR 171, 172, 173, 174, 183, 184).

Heritage Conservation and Recreation Service (effects on historical and recreational values).

National Park Service.

* Permits and leases for oil and gas. 16 U.S.C. Ch. 1.

*Department of Transportation (transport and safety)*

Coast Guard:

* Tank vessel regulation. 46 U.S.C. 391a.

* Navigation and waterfront facility regulation. 33 U.S.C. 1221, 1321; 50 U.S.C. 191.

* Construction and alteration of bridges over navigable waters (for pipelines). 33 U.S.C. 525; 33 U.S.C. 494–95; 33 U.S.C. 513–14.

* Outer continental shelf structures. 43 U.S.C. 1331.

Federal Highway Administration.

* Relocation and accommodation of pipelines on highway rights-of-way. 23 U.S.C. 109(1), 116, 123 (23 CFR Part 645).

Federal Railroad Administration (railroad transport).

Research and Special Programs Administration.

Materials Transportation Bureau (pipeline safety).

*Environmental Protection Agency (pollution control)*

*Interstate Commerce Commission (regulation of carriers)*

*D. Coal and Minerals Development, Mining Conversion, Processing, Transport and Use*

*Appalachian Regional Commission (Appalachian region)*

*Department of Agriculture*

Forest Service (National Forests and Grasslands):

* Surface use of public domain lands under U.S. mining laws. 16 U.S.C. 478–555 (36 CFR 252).

* Mineral development on acquired lands for solid (hardrock) minerals, 16 U.S.C. 520 (36 CFR 252), and for phosphate, oil, gas, oil shale, sodium, potassium and sulphur, 30 U.S.C. 352.

* Coal leasing. 30 U.S.C. 201–352.

* Surface coal mining operations. 30 U.S.C. 1272.

* Geothermal resource developments. 30 U.S.C. 1014.

Rural Electrification Administration.

* Financial assistance for purchase of coal mines and mining facilities. 7 U.S.C. 901 *et seq.*

Soil Conservation Service (abandoned mined land; transportation).

*Department of Commerce (technical and economic information)*

*Department of Defense*

Army Corps of Engineers:

* Rules governing work or structures on or affecting navigable waters of the United States. 33 U.S.C. 403.

* Permits for discharges of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

* Authority to enjoin or force removal of refuse placed in or on the banks of a navigable water or tributary of a navigable water. 33 U.S.C. 407.

*Department of Energy*

Federal Energy Regulatory Commission.

* Approvals for plans for powerplants and major fuel-burning facilities:

Federal Energy Administration Act of 1974, 15 U.S.C. 761–790h.

Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289.

*Department of Housing and Urban Development*

Office of Policy development and Research (subsidence).

*Department of the Interior*

Bureau of Indian Affairs:

* Rights-of-way over Indian lands. 25 U.S.C. 311 *et seq.* (25 CFR Part 161, 171, 172, 177).

* Leases for mining, oil and gas, farming and other uses on federal lands. 25 U.S.C. 392 *et seq.* (25 CFR Part 131, 171, 172, 177).

Bureau of Land Management (public lands):

* Patents on coal deposits. 30 U.S.C. 81, 82.

* Patents on lands with reservation of coal. 30 U.S.C. 85.

* Leases and permits for coal lands. 30 U.S.C. 181.

* Permits to take coal for domestic needs. 30 U.S.C. 208.

* Lease of mineral deposits in acquired lands. 30 U.S.C. 352.

* Lease of partial or future interests in mineral deposits. 30 U.S.C. 354.

* Leases and permits for phosphate, potassium, and sodium. 30 U.S.C. 181 *et seq;* 30 U.S.C. 351–359; Reorganization Act of July 16, 1946.

* Leases and permits for sulpher in Louisiana and New Mexico. 30 U.S.C. 181 *et seq;* 30 U.S.C. 351–359; Reclamation Act of July 16, 1946.

* Determination of unpatented mining claims. 30 U.S.C. 527.

* Mining location for source material. 30 U.S.C. 541.

* Conveyance of title to an unpatented mining claim. 30 U.S.C. 701–709.

* Leases, permits and licenses for mining in wild and scenic rivers system. 16 U.S.C. 1280.

Bureau of Mines (mining activities).

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey:

* Consolidation of coal leases. 30 U.S.C. 202a.

* Coal lease exploration. 30 U.S.C. 201b.

* Exploration and mining operations for leaseable minerals other than coal. 30 U.S.C. 211, 241, 261, 281. (30 CFR 231).

Heritage Conservation and Recreation Service (effects on historical and recreational values).

National Park Service:

* Leases, permits and licenses for mining subject to regulations of Secretary of the Interior on lands involved in Wild and Scenic River Systems. 16 U.S.C. 1280.

* Access permits for mining activity within the National Park System. 16 U.S.C. 1902, 1908 (36 CFR 9).

Office of Minerals Policy and Research Analysis (research).

Office of Surface Mining Reclamation and Enforcement:

* Permits for surface coal mining. 30 U.S.C. 1256–1262 (30 CFR Ch. VII).

* Permits for underground coal mining. 30 U.S.C. 1266(b) (30 CFR Ch. VII).

*Department of Labor*

Mine Safety and Health Administration (worker safety).

Occupational and Safety and Health Administration (worker safety in very limited situations).

*Department of Transportation*

Federal Highway Administration (coal haul roads, effects of railroad coal transport on roads and streets).

Federal Railroad Administration (railroad transport).

*Environmental Protection Agency (pollution control)*

*Interstate Commerce Commission (regulation of carriers)*

*Tennessee Valley Authority (Tennessee Valley region)*

**III. Land Use**

*A. Land Use Changes, Planning, and Regulation of Land Development*

*Department of Agriculture*

Agricultural Stabilization and Conservation Service (agricultural land use programs).

Forest Service (National Forest and Grasslands):

* Special use permits, archaeological permits, leases and easements. 16 U.S.C. 497; 16 U.S.C. 580d; 48 U.S.C. 341 (36 CFR 251), section 261.

* Mineral exploitation of acquired lands. 16 U.S.C. 520 (36 CFR 252).

* Easement and road rights-of-way in National Forests and other lands. 16 U.S.C. 533 (36 CFR 212.10).

* Grazing permits. 16 U.S.C. 580 (K) and (L) (36 CFR 227.1).

* Geothermal resource developments. 30 U.S.C. 1014.

* Multiple-use sustained-yield units, 16 U.S.C. 528 (36 CFR 223).

* Surface use on public domain lands under U.S. mining laws. 16 U.S.C. 478–551 (36 CFR 252).

* Minerals development on acquired lands:

Solid (hardrock) minerals. 16 U.S.C. 520.

Phosphate oil, gas, oil shale, sodium, potassium and sulphur. 30 U.S.C. 352.

* Coal leasing. 30 U.S.C. 201–352.

* Surface coal mining operations. 30 U.S.C. 1272.

* Bankhead-Jones Farm Tenant Act, Title III—Administration of national grasslands. 7 U.S.C. 1010–1012 (36 CFR 213.3).

* Claim of privately owned horses and burros. (36 CFR 222).

Economics, Statistics and Cooperatives Service (data; natural resources).

Science and Education Administration (rural and community development).

Soil Conservation Service (watershed protection).

*Department of Defense*

Army Corps of Engineers (flood plains).

Department of the Air Force (land use around airfields).

*Department of Housing and Urban Development*

Office of Interstate Land Sales (land sales).

Office of Community Planning and Development (community development; planning activities).

* Subdivided land sales, registration. Interstate Land Sales Full Disclosure Act. 15 U.S.C. 1701.

*Department of the Interior*

Bureau of Indian Affairs:

* Sale by Secretary of the Interior of land purchased for Indian administrative uses. 25 U.S.C. 293.

* Rights-of-way over Indian lands. 25 U.S.C. 311–328 (25 CFR 161).

* Irrigation lands. 25 U.S.C. 381 (25 CFR 191, 203).

* Leasing for mining, oil and gas, farming and other uses on federal lands. 25 U.S.C. 393 *et seq.* (25 CFR 171, 172).

* Grazing permits (25 CFR 151; 141).

Bureau of Land Management (public lands):

* Disposition of lands in Indian reservations. 30 U.S.C. 86, 87, 88.

* Limitations on entry upon saline lands. 30 U.S.C. 162.

* Securing rights-of-way for pipeline purposes. 30 U.S.C. 185(a).

* Use of surface of public lands withdrawn or reserved for power development or power sites for placer mining. 30 U.S.C. 621.

* Management of outer continental shelf for mineral leasing. 43 U.S.C. 1331–1343.

* Federal Land Policy and Management Act. 43 U.S.C. 1701 *et seq.*

* Grazing permits. Taylor Grazing Act. 43 U.S.C. 315, 315a–r.

* The Act of August 28, 1937. 43 U.S.C. 1181d.

* Mineral leases and permits under the Mineral Leasing Act of 1920, as amended. 30 U.S.C. 181 *et seq.*

* The Acquired Lands Mineral Leasing Act of 1947, as amended. 30 U.S.C. 315–359.

* Permits for underground coal mining. 30 U.S.C. 1266(b).

* Leasing lands to government or non-profit groups. 43 U.S.C. 869.

* Lease of public lands for airports. 49 U.S.C. 211–214 (43 CFR 2640).

* Special land use permits. Federal Land Policy and Management Act of 1976 (43 CFR Part 2920).

* Disposal and use of sand, stone and gravel. 30 U.S.C. 601, 602.

Bureau of Mines (minerals).

Bureau of Reclamation (public works).

Fish and Wildlife Service (effects on fish and wildlife resources).

* National Wildlife Refuge use permits. 16 U.S.C. 668dd–668ee (50 CFR 24.41).

Geological Survey (land use, geographic hazards, topographic, and photographic mapping).

Heritage Conservation and Recreation Service (conservation, national trails).

National Park Service (National Parks):

* Leases, permits and licenses for mining subject to regulations of Secretary of the Interior on lands involved in Wild and Scenic River System. 16 U.S.C. 1280.

* Access permits for mining activity within the National Park System. 16 U.S.C. 1902, 1908 (36 CFR 9).

* Special use permits, archeological permits, grazing permits, leases and easements, rights-of-way. 16 U.S.C. Ch. 1.

Office of Surface Mining Reclamation and Enforcement (surface mining).

*Federal Maritime Commission*

Office of Environmental Analysis (carrier rates and agreements).

*Department of Transportation*

Coast Guard:

* Permits for causeways. 33 U.S.C. 401.

* Bridges over navigable waters—33 U.S.C. 401, 491, 525.

* Approval of plans to alter a bridge, 33 U.S.C. 514.

Federal Aviation Administration (airports, land acquisition, release of airport property from surplus property disposal restrictions, construction or alternation of objects affecting navigable airspace, land use compatability).

Federal Highway Administration:

* Approval of highway projects and programs. 23 U.S.C. 101–156, generally, and 23 U.S.C. 204, 208–210, 212–219.

* Regulation of highway-related land use.

Highway beautification. 23 U.S.C. 131 (23 CFR Part 750)

Junkyard control and acqusition. 23 U.S.C. 136, 315 (23 CFR Part 751).

Landscapes and roadsides development. 23 U.S.C. 131, 315, 319 (23 CFR Part 752).

*Environmental Protection Agency (pollution effects)*

*National Aeronautics and Space Administration (advanced technology for remote sensing of land use and land cover)*

*National Capitol Planning Commission*

* Approval of land-use plans and construction in National Capitol D.C. Code 5–428; 40 U.S.C. 74a (DC Code 9–304; D.C. Code 8–104; Pub. L. 90–553, Section 4; 40 U.S.C. 122 (D.C. Code 8–115).

*Water Resources Council*

River Basin Commissions (as geographically appropriate)

*B. Public Land Management*

*Department of Agriculture*

Forest Service (National Forests and Grasslands management):

* Special use permits; archaeological permits, leases and easements. 16 U.S.C. 497, 16 U.S.C. 580d, 48 U.S.C. 341 (36 CFR 251); see also section 261.

* Geothermal resource developments. 30 U.S.C. 1014.

* Surface coal mining operations. 30 U.S.C. 1272.

* Coal leasing. 30 U.S.C. 201–352.

* Mining development on acquired lands.

Solid (hardrock) minerals. 16 U.S.C. 520 (36 CFR 252.

Phosphate, oil, gas, oil shale, sodium, potassium and sulphur. 30 U.S.C. 352.

* Easement and road rights-of-way in National Forests and other lands. 16 U.S.C. 533 (36 CFR 212.10).

* Grazing permits. 16 U.S.C. 580 (K) and (L) (36 CFR 227.1).

* Multiple use sustained-yield units. 16 U.S.C. 528 (36 CFR 223).

* Bankhead-Jones Farm Tenant Act, Title III—Administration of National Grasslands. 7 U.S.C. 1010–12 (36 CFR 213.3).

* Claim of privately owned horses and burros. 36 CFR 222.

*Department of Defense (Lands Under Department Control)*

Army Corps of Engineers (project recreation lands).

Department of the Air Force (land use around airfields).

*Department of the Interior*

Bureau of Indian Affairs:

* Sale by Secretary of the Interior of land purchased for Indian administrative uses. 25 U.S.C. 293.

* Leases, permits and easements on public land under the jurisdiction of BIA. 43 U.S.C. 931c; 931d (43 CFR Part 9).

* Irrigation lands. 25 U.S.C. 381 (25 CFR 203.4).

* Grazing permits. 25 CFR 151.

Bureau of Land Management:

* Placer mining claims on lands withdrawn or reserved for power development of ower sites. 30 U.S.C. 621.

* Federal Land Policy and Management Act. 433 U.S.C. 1701, *et seq.*

* Grazing permits. Taylor Grazing Act. 43 U.S.C. 315, 315a–315r.

* Act of August 28, 1937. 43 U.S.C. 1181d.

* Antiquities permits. —— U.S.C. ——.

* Special Recreation permits. —— U.S.C. ——.

* Mineral leasing on the Outer Continental Shelf. 43 U.S.C. 1331–1343.

* Leases, permits and licenses for mining in Wild and Scenic Rivers Areas. 16 U.S.C. 1280.

* Leasing lands to government or non-profit groups. 43 U.S.C. 869.

* Lease of public lands for airports. 49 U.S.C. 211–214 (43 CFR 2640).

* Rights-of-way (various purposes (e.g., roads, railroads power lines, irrigation, pipelines, mineral leasing) and authorities). *See* 43 CFR Parts 2800, 2811, 2820, 2840, 2850, 2870, 2880, 2890.

* Special land use permits. Federal Land Policy and Management Act of 1976 (43 CFR Part 2920).

* Disposal and use of sand, stone and gravel. 30 U.S.C. 601, 602.

Bureau of Mines (mineral land assessment).

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey:

* Outer Continental Shelf. 43 U.S.C. 1331–1343.

* Onshore oil, gas, mining. 30 U.S.C. 181 *et seq.*

* Onshore oil, gas, mining on Indian lands. 25 U.S.C. 396, 396a–298, 35 Stat. B12.

* Geothermal. 30 U.S.C. 1023.

Heritage Conservation and Recreation Service (conservation, fund state programs).

National Park Service (public lands):

* Leases, permits and licenses for mining subject to regulations of Secretary of the Interior on lands involved in Wild and Scenic River System. 16 U.S.C. 1280.

* Access permits for mining activity within the National Park System. 16 U.S.C. 1902, 1908 (36 CFR 9).

* Special use permits, archeological permits, grazing permits, leases and easements, rights-of-way. 16 U.S.C. Ch. 1.

Office of Surface Mining Reclamation and Enforcement:

* Permits for surface coal mining. 30 U.S.C. 1256–1262.

* Permits for underground coal mining. 30 U.S.C. 1266(b).

*Department of Transportation*

* Transportation programs with measures to protect land traversed (particularly parks, recreation areas and historic sites). Department of Transportation Act as amended. 49 U.S.C. 1651–1659.

Federal Highway Administration (construction and management of National Park Service roads and forest highways):

* Approval of projects for Indian reservation roads and bridges. 23 U.S.C. 208.

* Construction of public lands highways. 23 U.S.C. 209.

* Approval of projects for public lands development roads and trails. 23 U.S.C. 214.

*General Services Administration (public buildings management)*

Federal Property Resources Service (excess land disposal).

*National Aeronautics and Space Administration (advanced technology remote sensing of land use and land cover)*

*Tennessee Valley Authority (project lands)*

*C. Land Use in Coastal Areas*

*Department of Agriculture*

Forest Service (National Forest and Grasslands).

Soil Conservation Service (soil stability, hydrology).

*Department of Commerce.*

Maritime Administration (ports).

National Oceanic and Atomospheric Administration (coastal and marine resources and protection):

* Permits for activities in designated marine sanctuaries. 16 U.S.C. 143 *et seq.* (15 CFR 922).

* Approval and funding of state coastal management programs. 16 U.S.C. 1451 *et seq.* (15 CFR 923, 930).

* Protection of endangered species and critical habitats. 16 U.S.C. 1531 *et seq.* (50 CFR 222).

* Establishment of estuarine santuaries. 16 U.S.C. 1461 (15 CFR 921).

*Department of Defense*

Army Corps of Engineers (beaches, dredge and fill permits, Refuse Act permits):

* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 401, 403 and 419.

* Authority to enjoin or force removal of refuse placed in or on the banks of a navigable water or tributary of a navigable water 33 U.S.C. 407.

* River and harbor improvement projects. 33 U.S.C. 541.

* Permits for private projects to improve navigable waters. 33 U.S.C. 565.

* Permits for discharges of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

* Permits for transportation of dredged materials for dumping into ocean waters. 33 U.S.C. 1413.

*Department of Housing and Urban Development (development in coastal areas)*

*Department of the Interior*

Bureau or Indian Affairs (Indian lands).

Bureau or Land Management (public lands):

* Cooperation with states in developing coastal zone plans. 86 Stat. 1280.

*Limitations on entry upon saline lands. 30 U.S.C. 162.

*Mineral leasing on the outer continental shelf. 43 U.S.C. 1331–1343.

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey (estuarine areas):

* Permits for geological and geophysical exploration on outer continental shelf. 43 U.S.C. 1340 (30 CFR 251).

* Permits for exploration and development activities on federal oil and gas leases on the outer continental shelf. 43 U.S.C. 1331 *et seq.* (30 CFR 250).

Heritage Conservation and Recreation Service (historical and recreational values).

National Park Service (barrier island ecology and coastal processes).

*Department of Transportation*

Coast Guard (bridges, navigation and deepwater ports):

* Bridges over navigable waters—permits 33 U.S.C. 525.

* Approval of plans to alter a bridge. 33 U.S.C. 514.

* Permits for causeways. 33 U.S.C. 401.

* Waterfront facilities. 33 U.S.C. 1221, 1321.

* Deepwater port regulation. 33 U.S.C. 1503–1524.

* Vessel operating requirements. —— U.S.C. ——.

* Licensing of persons to engage in the ownership, construction or operation of a deepwater port. 33 U.S.C. 1503–1520.

Environmental Protection Agency (pollution effects):

* Permits for ocean discharges. 33 U.S.C. 1343.

* Permits for disposals of sewage sludge. 33 U.S.C. 1345.

* Oil spills prevention, containment, and countermeasure plans (prepared by facility owner/operator). Sections 3111, 501, 33 U.S.C. 1321, 1361 (40 CFR 112.7).

Federal Maritime Commission. Office of Environmental Analysis (terminal agreements).

National Aeronautics and Space Administration (advanced technology for remote sensing of land use and land cover).

*D. Protection of Environmentally Critical Areas—*

Floodplains, Wetlands, Beaches and Dunes, Unstable Soils, Steep Slopes, Aquifer Recharge Areas, Tundra, Etc.

*Department of Agriculture*

* Watershed Protection and Flood Prevention Act. 16 U.S.C. 1001–1009 (7 CFR Parts 15, 23, 600).

Agricultural Stabilization and Conservation Service (commodity and land use programs; Water Bank).

Forest Service (National Forest lands).

Science and Education Administration (soil and water conservation program).

Soil Conservation Service (watershed protection and flood control; soil and water conservation).

*Department of Commerce*

National Oceanic and Atmospheric Administration (coastal and marine resources, management and protection):

* Protection of endangered species and critical habitats. 16 U.S.C 1531, *et seq.* (50 CFR 222)

* Permits for activities in designated marine sanctuaries. 16 U.S.C. 1431, *et seq.* (15 CFR 922).

* Establishment of estuarine sanctuaries. 16 U.S.C. 1461 (15 CFR 921).

* Approval and funding of state coastal management programs. 16 U.S.C. 1451 *et seq.* (15 CFR 923; 930).

*Department of Defense*

Army Corps of Engineers:

* Permits for discharge of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 401, 403, 419.

*Department of Health, Education, and Welfare*

Public Health Service.

Center for Disease Control (health issues).

*Department of Housing and Urban Development*

Office of Community Planning and Development (urban and floodplain areas).

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Managment:

* Limitations on entry upon saline lands. 30 U.S.C. 162.

* Management of areas of critical environmental concern. 43 U.S.C. 1701.

Bureau of Reclamation (public works).

Fish and Wildlife Service (protection of fish and wildlife resource values).

Geological Survey (topography, geology, hydrology).

Heritage Conservation and Recreation Service (historical and recreational values).

National Park Service (National Park lands).

Office of Surface Mining Reclamation and Enforcement (designation of areas unsuitable for surface coal mining).

Office of Water Research and Technology (water resource planning).

*Department of Transportation*

Coast Guard.

* Establishment of port access routes. 33 U.S.C. 1221.

Federal Highway Administration:

* Approval of federal-aid highway projects. 23 U.S.C. 101–156, generally.

* Approval of highway bridge replacement and rehabilitation. 23 U.S.C. 144 (23 CFR Part 650).

*Environmental Protection Agency (pollution effects)*

* Temporary underground injection permits. Safe Drinking Water Act. 42 U.S.C. 300h(C)(1).

*Water Resources Council (coordination of floodplain and wetland initiatives)*

River Basin Commissions (as geographically appropriate).

*E. Community Development*

*Advisory Council on Historic Preservation (historic preservation)*

*Department of Agriculture*

Science and Education Administration (rural and community development program).

Soil Conservation Service (soil survery).

*Department of Commerce*

Economic Development Administration (designated areas).

*Department of Health, Education, and Welfare*

Public Health Service.

Center for Disease Control (health).

Office of Human Development Services (problems of handicapped, aged, children and Native Americans).

*Department of Housing and Urban Development*

Office of Community Planning and Development (community development; effects on low income populations: economic revitalization in distressed areas; density and congestion mitigation; rehabilitation and urban homesteading).

*Department of the Interior*

Bureau of Indian Affairs (Indian Lands).

Geological Survey (flood, seismic, and geologic hazards).

Heritage Conservation and Recreation Service (landmarks, archeological remains, outdoor recreation, historic preservation).

*Department of Transportation*

Federal Aviation Administration (airports).

Federal Highway Administration:

* Relocation assistance in connection with highway projects. 42 U.S.C. 4601 *et seq.* (23 CFR Part 740, 49 CFR Part 25).

* Approval of economic growth center development highways. 23 U.S.C. 143.

Urban Mass Transportation Administration.

* Urban Mass Transportation Act. 49 U.S.C. 1610.

*Environmental Protection Agency (pollution control)*

*General Services Administration (building design and construction)*

*National Capitol Planning Commission (Washington, D.C. area)*

* Approval of Land use plans and construction in the National Capitol. D.C. Code 5–428, 40 U.S.C. 74a (D.C. Code 9–304); D.C. Code 8–104; Pub. L. 90–553, section 4; 40 U.S.C. 122 (D.C. Code 8–115).

*National Endowment for the Arts (artistic values)*

*F. Historic, Architectural, and Archeological Preservation*

*Advisory Council on Historic Preservation (historic preservation)*

*Department of Agriculture*

Forest Service (National Forest and Grasslands).

*Department of Housing and Urban Development (in urban areas)*

*Department of the Interior*

* Permits to examine ruins, excavations and gathering of objects on land under jurisdiction of Interior, Agriculture and Army. 16, U.S.C. 432.

Bureau of Indian Affairs (Indian lands).

* Preservation of antiquities. 16 U.S.C. 432 (25 CFR 132).

Bureau of Land Management (public lands).

* Antiquities search and collection permit. Antiquities Act. 16 U.S.C. 432 (43 CFR 3).

Heritage Conservation and Recreation Service (historic and cultural landmarks):

* Antiquities Act of 1906. 16 U.S.C. 431–433 (43 CFR 3). National Historic Preservation Act of 1966. 16 U.S.C. 470 *et seq.*

* Archaeological and Historic Preservation Act. 16 U.S.C. 469.

National Park Service (National Park lands).

*Department of Transportation*

* Approval of transportation programs or projects that require the use of an historic site. 42 U.S.C. 1653(f).

Federal Highway Administration.

* Approval of transportation programs or projects that require the use of an historic site. 42 U.S.C. 138.

* Archeological and paleontological salvage on federal and federal-aid highway projects. 23 U.S.C. 305 (23 CFR Part 765).

*General Services Administration*

(Public Buildings Service (in urban areas).

*National Capitol Planning Commission*

* Approval of land use plans and construction in National Capitol. D.C. Code 5–428; 40 U.S.C. 74a (D.C. Code 9–304); D.C. Code 8–104; Pub. L. 90–553, section 3; 40 U.S.C. 122 (D.C. Code 8–115).

*National Endowment for the Arts*

*G. Outdoor Recreation*

*Department of Agriculture*

Forest Service (National Forest land).

Soil Conservation Service (watershed protection).

*Department of Defense*

Army Corps of Engineers (recreation areas on DOD lands).

*Department of Health, Education, and Welfare*

Public Health Service.

Center for Disease Control (Health).

*Department of Housing and Urban Development (urban areas)*

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (public lands).

Fish and Wildlife Service (effects on fish and wildlife resources).

Heritage Conservation and Recreation Service.

* Land and Water Conservation Act. 16 U.S.C. 460(L)4–(L)11–(L)22.

National Park Service (National park lands).

*Department of Transportation*

Coast Guard.

* Recreational boating regulation. 46 U.S.C. 1451.

Federal Highway Administration:

* Preservation of parklands. 23 U.S.C. 138.

* Access highways to public recreation areas on lakes. 23 U.S.C. 155.

*Environmental Protection Agency (pollution control)*

*Water Resources Council (water and related land resources)*

River Basin Commission (as geographically appropriate)

**IV. Natural Resource Management**

*A. Weather Modification*

*Department of Agriculture*

Forest Service (National Forests and Grasslands).

Soil Conservation Service (snow survey).

World Food and Agricultural Outlook and Situation Board (data relating to commodities).

*Department of Commerce*

National Oceanic and Atmospheric Administration (research and development; reports on private activities).

*Department of Defense*

Department of the Air Force (fog dissipation).

*Department of the Interior*

Bureau of Reclamation (water resources research).

National Park Service (public lands).

*B. Waterway Regulation and Stream Modification*

*Department of Agriculture*

Agricultural Stabilization and Conservation Service (resource conservation; Water Bank).

Forest Service (National Forests and Grasslands).

Science and Education Administration (soil and water conservation).

Soil Conservation Service (watershed protection).

*Department of Commerce*

Maritime Administration (merchant vessels, barges and inland vessels).

*Department of Defense*

Army Corps of Engineers:

* Rules governing work or structures in or affecting navigable waters of the United States. 33 U.S.C. 401, 403, and 419.

* Permits for discharges of dredged or fill materials into navigable waters. 33 U.S.C. 1344.

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).

Bureau of Land Management (Public lands).

Bureau of Reclamation (public works).

Fish and Wildlife Service (effects on fish and wildlife resources).

Geological Survey (hydrology).

National Park Service (National Parks).

*Department of Transportation*

Coast Guard (vessels, bridge, port, and waterway safety; navigation aids):

* Deepwater port regulation. 33 U.S.C. 1503–1524.

* Tank vessel regulation. 46 U.S.C. 391a.

* Ports and waterways safety, 33 U.S.C. 1221.

* Construction and alterations on bridges and causeways over navigable waters. 33 U.S.C. 401, 491, 525; 33 U.S.C. 494–95; 33 U.S.C. 513–14).

Federal Highway Administration:

* Approval of federal-aid highway and bridge projects involving navigable waters and channel changes. 23 U.S.C. 144 (23 CFR Part 650)

* Approval of toll bridge and ferry projects. 23 U.S.C. 129.

*Environmental Protection Agency (pollution control)*

*Federal Maritime Commission*

Office of Environmental Analysis (approval of terminal agreements).

*Water Resources Council*

* Water Resources Planning Act. 42 U.S.C. 1962 (18 CFR 701–706; 33 CFR 252).

River Basin Commissions (as geographically appropriate).

*C. Soil and Plant Conservation and Hydrology*

*Department of Agriculture*

Agricultural Stabilization and Education Service (soil conservation).

Farmers Home Administration (soil erosion).

Forest Service (National Forest lands).

Science and Education Administration (water and soil conservation):

Soil Conservation Service (soil and watershed conservation).

* Grazing Permits. 16 U.S.C. 580 (K) and (L) (36 CFR 227.1).
* Multiple-use sustained-yield units. 16 U.S.C. 528 (36 CFR 223).
* Bankhead-Jones Farm Tenant Act, Title III—Administration of National Grasslands. 7 U.S.C. 1010–1012 (36 CFR 213.3).

*Department of Commerce*

National Oceanic and Atmospheric Administration (coastal and marine resources-management and protection).

*Department of Defense*

Army Corps of Engineers (dredging, aquatic plants).

*Department of the Interior*

Bureau of Indian Affairs (Indian lands):
* Irrigation lands. 25 U.S.C. 381 (25 CFR 203.4).
* Timber cutting permits. 25 CFR 141.19.
* Grazing permits. 25 CFR 151.
Bureau of Land Management (public lands).
* Timber permits for free use. 30 U.S.C. 601 *et seq.*, 189; 43 U.S.C. 315, 1201; 48 U.S.C. 423 (43 CFR Part 5010).
Bureau of Mines (hydraulic effects of mining).
Bureau of Reclamation (public works).
Fish and Wildife Service (effects on fish and wildlife resources).
* Endangered plants—permit. 50 CFR 17.62.
Geological Survey (geology).
National Park Service (National park lands).
* Special use permits, grazing permits, permits to collect soil, rock, water, and plant specimens. 16 U.S.C. Ch. 1, 3.

*Department of Transportation*

Federal Highway Administration (erosion control in highway projects).

*Environmental Protection Agency (pollution control)*

*National Aeronautics and Space Administration (advanced technology for remote sensing of land covers)*

*Water Resources Council (floodplain and wetland initiatives)*

River Basin Commissions (as geographically appropriate).

*D. Fish and Wildlife*

*Department of Agriculture*

Animal and Plant Health Inspection Service (importation of wildlife and birds; endangered species enforcement).
Forest Service (National Forests and Grasslands).
*Claim of privately owned horses and burros. 36 CFR 222.
Soil Conservation Service (habitat, fish ponds, aquaculture).

*Department of Commerce*

National Oceanic and Atmospheric Administration (coastal and marine resources management and protection):
*Permit for importing marine mammals or products thereof. 16 U.S.C. 1371, 73, 74 (50 CFR 216).
*Scientific research and public display of marine mammals. 50 CFR 618; 50 CFR 216.31, 220.
*Control of fishing by foreign and domestic vessels. 16 U.S.C. 1801, *et seq.* (50 CFR Ch. VI).
*Fish and Wildlife Coordination Act. 16 U.S.C. 1361, *et seq.*
*Permits for activities in designated marine sanctuaries. 16 U.S.C. 1431, *et seq.* (15 CFR 922).
*Approval and funding of state coastal management programs. 16 U.S.C. 1451, *et seq.* (15 CFR 923; 930).
*Protection of endangered species and critical habitats. 16 U.S.C. 1531, *et seq.* (50 CFR 222).
*Protection of marine mammals. 16 U.S.C. 1361, *et seq.* (50 CFR 216).
*Establishment of estuarian sanctuaries. 16 U.S.C. 1461 (15 CFR 921).
*Trustee of natural resources. 43 U.S.C. 1813 (E.O. 12123).
*Scientific, propagation or survival of marine reptile—permits. 50 CFR 227.72.
National Marine Fisheries Service (endangered species).

*Department of Defense*

Department of the Air Force (bird-aircraft strike hazard reduction).

*Department of the Interior*

Bureau of Indian Affairs (off-reservation treaty fishing).
Bureau of Land Management (wild horses and burros; public lands).
Fish and Wildlife Service (endangered species; effects on fish and wildlife):
*Bald and golden eagle protection—permits (takings for scientific, agricultural, other uses). 16 U.S.C. 668–668d.
*Permits for endangered species export and import. 16 U.S.C. 1538(d).
*Permits for scientific research involving endangered species. 16 U.S.C. 1539.
*Mitigation/compensation for harm to endangered or threatened species or critical habitat. 16 U.S.C. 1539.
*Permits for taxidermy on migratory birds, nests, or eggs for commercial uses. 16 U.S.C. 704.
*Fish and Wildlife Coordination Act. 16 U.S.C. 661 *et seq.* (43 CFR Part 17).
*Anadromous Fish Conservation Act. 16 U.S.C. 755 *et seq.*
Heritage Conservation and Recreation Service (outdoor recreation).
National Park Service:
*Permits for collecting animal specimens from National Park System areas. 16 U.S.C. Ch. 1, 3.
*Licenses and permits for sport or commercial fishing in certain National Park System areas. 16 U.S.C. Ch. 1, 3.
*Disposition of surplus animals from National Park System areas. 16 U.S.C. Ch. 1, 3.

*Department of Health, Education, and Welfare*

Public Health Service (health).
Food and Drug Administration (contamination of fish and shellfish with toxics).

*Department of Transportation*

Federal Highway Administration (highway construction).

*Environmental Protection Agency (effects of water pollution)*

*Department of State (international issues)*

*E. Renewable Resource Development, Production, Management, Harvest, Transport and Use*

*Department of Agriculture*

Economic Statistical Cooperation Service (data).
Forest Service (timber sale, free use and other timber management activities in National Forests and Grasslands).
Science and Education Administration (forest and range management).
Soil Conservation Service (watershed protection; soil conservation).

*Department of Commerce*

National Oceanic and Atmoshperic Administration (coastal and marine resources management and development).

*Department of Defense*

Army Corps of Engineers (hydro).

*Department of Energy (hydroelectric power, Office of Conservation and Solar Applications).*

Federal Energy Regulatory Commission.
* Regulation of development of water resources. Federal Power Act. 16 U.S.C. 791–825r (18 CFR 4–25, 36, 131, 141).

*Department of Housing and Urban Development (building materials)*

*Department of the Interior*

Bureau of Indian Affairs (Indian lands).
* Leases of Indian lands. 25 U.S.C. 392–403b, 415, (25 CFR Parts 131, 141–

142, 144, 151–153, 231–233). 25 U.S.C. 311 *et seq. (25 CFR Part 161).*

* Rights-of-way over Indian lands. 141, 142, 144, 151–153, 231–233.

Bureau of Land Management (public lands).

* Federal Land Policy and Management Act. 43 U.S.C. 1701 *et seq.*

* Grazing permits. Taylor Grazing Act. 43 U.S.C. 315, 315a–4.

* The Act of August 28, 1937. 43 U.S.C. 1181d.

Bureau of Reclamation (public works).

Fish and Wildlife Service (effects on fish and wildlife resources).

Heritage Conservation and Recreation Service (effects on historical and recreational values).

National Park Service (National Park lands).

* Permits for sport fishing, hunting and grazing. 16 U.S.C. Ch. 1, 3.

*Department of Transportation*

Federal Highway Administration (logging haul roads, access roads).

*Environmental Protection Agency (pollution control)*

*Federal Maritime Commission*

Office of Environmental Analysis (carrier rates).

*Interstate Commerce Commission (freight rates)*

*F. Energy and Natural Resources Conservation*

*Department of Agriculture*

Agricultural Stabilization and Conservation Service (resource conservation).

Forest Service (National Forests and Grasslands).

Science and Education Administration (soil and water conservation; forest and range management).

Soil Conservation Service (soil and water conservation).

*Department of Energy*

* Energy Conservation Standards for New Buildings Act. 42 U.S.C. 6834.

Federal Energy Regulatory Commission (hydroelectric power and natural gas facilities).

*Department of Commerce*

National Bureau of Standards (energy efficiency).

National Oceanic and Atmospheric Administration (coastal and marine resources—management and protection).

*Department of Housing and Urban Development*

Office of Housing (previously FHA) (housing standards).

Office of Policy Development and Research (energy, building technology and standards research).

*Department of the Interior*

Bureau of Indian Affairs (Indian resources).

Bureau of Land Management (public lands).

Bureau of Mines (land reclamation; recycling; and processing and use of materials).

Bureau of Reclamation (water projects).

Geological Survey (oil and gas storage).

* Geothermal lease operations. 30 U.S.C. 1023 (30 CFR 270).

[FR Doc. 79-32331 Filed 10-18-79; 8:45 am]

BILLING CODE 3125-01-M

## COUNCIL ON WAGE AND PRICE STABILITY

### Amendment to Charter of Pay Advisory Committee

The Council on Wage and Price Stability is revising the Charter of the Pay Advisory Committee (44 FR 56917) to increase the membership from 15 to 18.

Accordingly, subparagraphs (4) and 6(a) of the charter of the Pay Advisory Committee are amended to read as follows:

(4) *Membership*

The Committee shall consist of eighteen members, six each from labor, business, and the public. Alternates may serve in place of the Chairman and members from labor and business with respect to recommendations under Paragraph 3 (b), (c), and (d). The President will select the members and alternates and will designate one of the public members as Chairman. Both the members and the alternates will be appointed by the Chairman of the Council.

* * * * *

(6) *Procedures of the Committee*

(a) *Quorum*

Twelve members of the Committee, four each from labor, business, and the public, shall constitute a quorum. Recommendations of the Committee shall require the affirmative vote of ten or more members.

* * * * *

Dated: October 16, 1979.

Sally Katzen,

*Advisory Committee Management Officer.*

[FR Doc. 79-32395 Filed 10-18-79; 8:45 am]

BILLING CODE 3175-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Regulatory Permit Action Involving a Coal-Fired Steam Electric Generating Plant by Virginia Electric & Power Co. (VEPCO) in Greensville County, Va.; Mecklenburg County, Va.; or Buckingham County, Va.

**AGENCY:** US Army Corp of Engineers, Wilmington and Norfolk Districts.

**ACTION:** Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** VEPCO proposes to construct from one to four coal-fired steam electric generating units of 800 to 1000 megawatts each on the selected site. Each unit will require a net withdrawal of approximately 20 CFS of process and cooling water. The Greensville and Mecklenburg County sites will require intake and discharge pipelines from Roanoke Rapids Lake and John H. Kerr Reservoir, respectively. The Buckingham County site will require intake construction of a cooling and process water reservoir and flow skimming from the James River. The three sites were chosen from an original 100 potential sites. The first unit will be scheduled for operation in the late 1980's. The Greensville and Mecklenburg County sites will require approximately 2500 and 2000 acres of land respectively. The Buckingham County site will require approximately 9500 acres of land due to need for construction of a cooling water and process water reservoir. All sites will require from 2.5 to 3 miles of new access roads, from 1.8 to 5.5 miles of widening of existing roads, and from 1.2 to 3 miles of existing highway relocation. From 6.2 to 8.2 miles of new railroad will be necessary and from 1 to 20 miles of upgrading of existing track will be required.

Three (3) scoping meetings will be held jointly by the Wilmington and Norfolk Districts one near each of the potential sites. All affected or concerned Federal, State and local agencies and the general public are encouraged to attend. The purpose of the meetings will also be to identify issues and concerns which should be addressed by the DEIS. Information received will be furnished VEPCO for their use in preparing an Environmental Report and in site selection. The information will be used to prepare the District's scope of work for the DEIS. Written participation in the scoping process is also encouraged and

will be accepted before, during and within 10 days after the scoping meeting. Significant issues to be analyzed in depth will be identified as a result of the scoping process.

Scoping meetings will be held as follows:

a. 23 October 1979, 7:30 p.m. Greensville County Learning Center, Cafetorium Halifax Street Emporia, VA.

b. 24 October 1979, 7:30 p.m. Boydton Primary School, Cafetorium Route 58, Bypass Boydton, VA.

c. 25 October 1979, 7:30 p.m. Arvonia Primary School, Cafeteria Route 15 Arvonia, VA.

It is estimated that the DEIS will be available to the public by the summer of 1981.

Questions regarding the proposed action and DEIS should be directed to Dr. G. Wayne Wright, Regulatory Function Branch, US Army Engineer District, PO Box 1890, Wilmington, NC 28402, (919) 343–4630, FTS 674–4630 or Mr. Bob Hume, Regulatory Functions Branch, US Army Engineer District, 803 Front Street, Norfolk, VA 23510, (804) 441–3657, FTS 827–3657.

A. A. Kopcsak,

*LTC, Corps of Engineers, Acting District Engineer.*

[FR Doc. 79-32250 Filed 10-18-79; 8:45 am]

BILLING CODE 3710-GN-M

## Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Smith Island, Maryland and Virginia, Shore Erosion Control, Flood Control, and Navigation Study

**AGENCY:** U.S. Army Corps of Engineers, Baltimore, DOD.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** 1. In order to satisfy the study objectives three plans have been identified.

Plan A—Shore erosion control for bayside of barrier island west of Rhodes Point by providing five 200-foot long segments of headland breakwater and six acres of wetland habitat development.

Plan D—Navigation and shore erosion control for bayside by providing five 200-foot long segments of headland breakwater, six acres of wetland habitat development, a channel 50 feet wide, six feet deep, 6,900 feet long from the northern limit of the Federal navigation project at Rhodes Point through Sheep Pen Gut to the six foot depth contour in the Chesapeake Bay. A 400-foot long rubble mound jetty would be constructed north of the channel entrance to the Chesapeake Bay. This channel will be oriented in a southwesterly direction to take advantage of naturally deep water.

Plan E (combined plans A & D)—Bayside navigation channel and shore erosion control by providing ten 100-foot long rubble mound groins and artificial beach nourishment. The groin field will be filled to its capacity of 54,000 CY. A channel 50-feet wide, 6 feet deep, and 6,900 feet long would be dredged from the northern limit of the Federal navigation project at Rhodes Point through Sheep Pen Gut to the six-foot depth contour in the Chesapeake Bay. A 400-foot long rubble mound jetty would be constructed north of the channel entrance to the Chesapeake Bay. This channel will be oriented in a southwesterly direction to take advantage of naturally deep water.

2. The alternatives for shore erosion control include stone revetment, bulkheads, and upland habitat development. Other than the alternatives in Section 1 for navigation, no others were identified.

3.a. This study was authorized in December, 1973 and begun in February, 1977. A public meeting was held in May, 1977. This meeting was organized to give interested parties an opportunity to express views on the investigation and to solicit information as to the direction the study should take. Plan formulation efforts have been directly coordinated with designated representatives of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the Maryland Department of Natural Resources.

3.b. The significant issue to be analyzed in depth in the DEIS are (1) the selection of a structural plan that will have the least damaging impacts to the wetland environment of Smith Island, and (2) the selection of a plan that is the most appropriate with respect to the natural environment, the economy of the Smith Island area, and Federal water resources planning guidelines.

4. A public meeting and workshop are scheduled for November, 1979 on Smith Island to supplement the scoping outlined in Section 3a. Coordination with the various resource agencies providing input to the plan formulation will be maintained. These coordination meetings will likely take place at the Baltimore District Office. Additional site visits to Smith Island may be necessary for resource agencies to document environmental impacts.

5. The DEIS will be available to the public in November, 1980

**ADDRESS:** Questions about the proposed action and DEIS can be answered by Mr. G. N. Fach, Jr., NABPL–F, Baltimore District, Corps of Engineers, P.O. Box 1715, Baltimore, Maryland 21203 (301) 962–2530.

Dated: 9 October 1979.

James W. Peck,

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 79-32260 Filed 10-18-79; 8:45 am]

BILLING CODE 3710-41-M

## Office of the Secretary

## Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows:

Thursday, 15 November 1979, Pomponio Plaza, Rosslyn, Virginia. The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the United States Code and therefore will be closed to the public. Subject matter will be used in a study on the intelligence data base required for intelligence assessments.

October 16, 1979.

H. E. Lofdahl,

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

[FR Doc. 79-32293 Filed 10-18-79; 8:45 am]

BILLING CODE 3810-70-M

## Defense Science Board Task Force on Cruise Missiles; Advisory Committee Meeting

The Defense Science Board Task Force on Cruise Missiles will meet in closed session on November 13 and 14, 1979 at the Center for Naval Analyses, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will provide an analysis of the major issues concerning strategic cruise missile employment, and potential defenses to the U.S. deployment of cruise missile systems.

In accordance with 5 U.S.C. App. I Section 10(d)(1976); it has been

determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1976), and that accordingly this meeting will be closed to the public.

H. E. Lofdahl,

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

October 16, 1979.

[FR Doc. 79-32294 Filed 10-18-79; 8:45 am]

BILLING CODE 3810-70-M

## Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 4, 1979; Tuesday, December 11, 1979; and Tuesday, December 18, 1979 at 10:00 a.m. in Room 3D-325, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports, and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)], and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)].

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)], and the detailed wage data considered by the Committee during its meetings have been obtained from officals of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (4)].

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D-281, The Pentagon, Washington, D.C.

H. E. Lofdahl,

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

October 16, 1979.

[FR Doc. 79-32295 Filed 10-18-79; 8:45 am]

BILLING CODE 3810-70-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 79-17-NG, et al.]

### Midwestern Gas Transmission Co., et al.; Final Order Authorizing Importation of Natural Gas at Newly Established Canadian Border Price

In the matter of Midwestern Gas Transmission Company (ERA Docket No. 79-17-NG; FERC Docket Nos. G-18314, CP66-121, CP70-25 AND CP77-458); Great Lakes Gas Transmission Company (ERA Docket Nos. 79-18-NG, 79-02-NG; FERC Docket Nos. CP66-110 *et al.*, CP70-19 *et al.*, CP70-100 AND CP71-222, *et al.*); Montana Power Company (ERA Docket No. 79-19-NG; FERC Docket No. CP74-187); Michigan Wisconsin Pipe Line Company (ERA Docket No. 79-20-NG; FERC Docket No. CP70-22); Inter-City Minnesota Pipelines Ltd., Inc., (ERA Docket No. 79-21-NG; FERC Docket No. CP70-289); Northwest Pipeline Corp. (ERA Docket No. 79-22-NG; FERC Docket Nos. CP75-341 AND CP75-342). Final order authorizing the importation of natural gas at the newly established Canadian border price.

On August 10, 1979, the Economic Regulatory Administration (ERA) issued a notice of the receipt of *Applications for Amendment to Import Authorizations to Provide for Increase in Border Price of Gas Imported from Canada, and Invitation to Submit Petitions to Intervene, and of Interim Order Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price* (44 FR 48323) (Notice).

Applications were received from:

Midwestern Gas Transmission Company (Midwestern) (ERA Docket No. 79-17-NG) on July 16, 1979.

Great Lakes Gas Transmission Company (Great Lakes) (ERA Docket No. 79-18-NG) on July 17, 1979.

Montana Power Company (Montana) (ERA Docket No. 79-19-NG) on July 19, 1979.

Michigan Wisconsin Pipe Line Company (Mich. Wisc.) (ERA Docket No. 79-20-NG) on July 19, 1979.

Northwest Pipeline Corporation (Northwest) (ERA Docket No. 79-22-NG) on July 19, 1979.

Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City) (ERA Docket No. 79-21-NG) on July 23, 1979.

The above named Applicants filed petitions with the ERA requesting an amendment to their existing authorizations to increase the border export price paid to import volumes of natural gas from Canada.

Applicants' requests were in response to an order issued by the Privy Council of the Government of Canada on July 12, 1979, setting the price for gas exported from Canada under existing licenses at $2.80 per million British thermal units (MMBtu) except under License GL-29 where the new price is set at $2.50 per MMBtu (for further details, see Inter-City's application, ERA Docket No. 79-21-NG). These new Canadian export prices were effective August 11, 1979.

Appended to the August 10, 1979, Notice was ERA's *Interim Order Authorizing the Imporation of Natural Gas at the Newly Established Canadian Border Price* (44 FR 48324) (Interim Order). In the Notice, ERA requested comments and petitions for intervention in regard to the applications to be submitted by August 20, 1979.

On August 23, 1979, Northern States Power Company (Minnesota) (NSP Minn), and Northern States Power Company (Wisconsin) (NSP Wisc) filed a joint petition to intervene in the matter of Midwestern Gas Transmission Company, ERA Docket No. 79-17-NG. The joint petition expressed support for the application and did not request a hearing. No other petitions, comments or requests for hearing were received.

Applicants asserts that although they are deeply concerned about the continuous, substantial increases in the export price of Canadian gas, cessation of delivery of all or any part of the existing flow of Canadian gas would critically jeopardize the customers served by gas distribution utilities totally or substantially dependent upon imported Canadian gas.

#### Conclusion

Based on the information filed with the applications, ERA determined preliminarily, in its Interim Order, with final approval subject to further review and comments, that all previous authorizations to import natural gas from Canada issued to Midwestern, Great Lakes, Northwest Pipeline,

Montana, Inter-City, and Michigan Wisconsin should be amended to permit Applicants to continue to import natural gas at currently authorized volumes at a price of $2.80 per MMBtu ($2.50 per MMBtu under License GL-29), effective August 11, 1979.

ERA continues to find merit in Applicants' assertions and no comments were received in opposition to ERA's interim order. In addition, U.S. Government policies have emphasized the significant role natural gas can play in reducing U.S. reliance on oil imports. The approval of these petitions will ensure the continued availability of natural gas for displacement of fuel oils and will contribute to the overall success of DOE's national program of encouraging end-users with an alternate fuel capability to switch from fuel oils to natural gas.

Accordingly, ERA finds that the increase in the U.S.A-Canadian Border price for natural gas from $2.30 per MMBtu to $2.80 per MMBtu will not be inconsistent with the public interest.

## Order

A. Pursuant to the authority under Section 3 of the Natural Gas Act (1) import authorizations previously amended by ERA in its order dated April 30, 1979, and granted to:

Midwestern Gas Transmission Company, ERA Docket No. 77-004-NG
Great Lakes Gas Transmission Company, ERA Docket No. 79-09-NG
Northwest Pipeline Corporation ERA Docket No. 79-10-NG
Montana Power Company ERA Docket No. 79-11-NG
Michigan Wisconsin Pipe Line Company ERA Docket No. 79-13-NG
Inter-City Minnesota Pipelines Ltd., Inc. Under Licenses GL-28 and GL-30 ERA Docket No. 79-12-NG; and

(2) import authorizations previously granted by ERA in its order date August 10, 1979, and granted to:

Great Lakes Gas Transmission Company, ERA Docket No. 79-02-NG [1]

for the importation of natural gas from Canada at $2.30 per million Btu are hereby further amended to permit the import of previously authorized volumes of natural gas from Canada at a price of $2.80 per MMBtu effective August 11, 1979. The new border price for gas to be imported under License GL-29 by Inter-city Minnesota Pipelines Ltd., Inc., is $2.50 per MMBtu.

This amendment to the authorizations to purchase natural gas imported from Canada affects only the price to be paid, and in no manner changes any other condition imposed in the respective existing authorizations to import issued to each Applicant.

NSP Minn. and NSP Wisc. are hereby permitted to intervene in ERA Docket No. 79-17—NG, provided, however that their participation as interveners shall be limited to matters affecting the rights and interests specifically set forth in the petition to intervene; and provided, further, that the admission of such interveners shall not be construed as recognition that petitioners might be aggrieved because of any order or orders issued by DOE/ERA in this proceeding.

Issued in Washington, D.C., on October 5, 1979.

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

[FR Doc. 79-32308 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[1] ERA's Interim Order of August 10, 1979, stated, at page 4, that Great Lakes' import authorizations previously amended by ERA on July 19, 1979, in ERA Docket No. 79-09-NG to allow natural gas to be imported at $2.30 per MMBtu are futher amended by this order. ERA also issued on August 10, 1979, in ERA Docket No. 79-02-NG its *Order Authorizing Amendment to Existing Import Authorization Permitting Sale of Imported Natural Gas Previously Restricted to Company use and Granting Petitions to Intervene* (44 FR 48322). This order amended a previous import authorization issued by the FPC in its Docket No. CP71-223. To avoid any ambiguity, it is ERA's intention that this amendment authorizing the increased border price of $2.80 per MMBtu include the amendment to the existing authorization granted to Great Lakes in FPC Docket No. CP71-223 by ERA's order of August 10, 1979.

## Tipperary Oil & Gas 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.

**COMMENTS BY:** November 21, 1979.

**ADDRESS:** Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

**FOR FURTHER INFORMATION CONTACT:** Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767-7745.

**SUPPLEMENTARY INFORMATION:** On October 11, 1979, the Office of Enforcement of the ERA executed a Consent Order with Tipperary Oil and Gas Corporation (Tipperary) of Midland, Texas. Under 10 CFR § 205.199J(b), the 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

Tipperary, with its office located in Midland, Texas, is a firm engaged in crude oil production, 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 crude oil sales, the Office of Enforcement, ERA, and Tipperary, entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through September 30, 1976, and it included all sales of crude oil which were made during that period.

2. Tipperary improperly applied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and Tipperary have agreed to a settlement in the amount of $213,533.00. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and Tipperary.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with 10 CFR Part 205, Subpart V as provided below.

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

In this Consent Order, Tipperary 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 total sum of $213,533.00 twenty-four (24) months from the date of the execution 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, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your coments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Tipperary Oil and Gas Corporation Consent Order." We will consider all comments we received by 4:30 p.m., local time, on November 21, 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 11th day of October 1979.

**Herbert F. Buchanan,**

*Dep. District Manager, Southwest District Enforcement, Economic Regulatory Administration.*

[FR Doc. 79-32315 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Action Taken on Consent Orders

**AGENCY:** Economic Regulatory Administration.

**ACTION:** Notice of action taken on consent orders.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of September 1979. These Consent Orders concern prices charged by retail motor gasoline dealers allegedly in excess of the maximum lawful selling price for motor gasoline. The purpose and effect of these Consent Orders is to bring the consenting firms into present compliance with the Mandatory Petroleum Price Regulations and the General Allocation and Price Regulations, and they do not address or limit any liability with respect to the consenting firms' prior compliance or possible violation of the aforementioned regulations. Pursuant to the Consent Orders, the consenting firms agree to the following actions.

1. Reduce prices for each grade of gasoline to no more than the maximum lawful selling price;

2. Post the maximum lawful selling price, or a certification that the current selling price is equal to or less than the maximum allowed, for each grade of gasoline on the face of each pump in numbers and letters not les than one-half inch in height, or in a prominent place elsewhere at the retail outlet in numbers or letters not less than four inches high;

3. Properly maintain records required under the aforementioned regulations; and

4. Cease and desist from employing any discriminatory and/or unlawful business practices prohibited by the aforementioned regulations.

For further information regarding these Consent Orders, please contact Bob Jones, Program Manager, Department of Energy, Economic Regulatory Administration, Rocky Mountain District, 1075 South Yukon Street, Lakewood, CO 80226, telephone number 303-234-3195.

*Firm Name, Address, and Audit Date*

Lingle Standard, Lingle, WY 82228—9/5/79
Interstate Chevron, 1230 N. 7th, Bozeman, MT 59715—9/6/79
Castle Rock Skelly, I-25, Exit 182, Castle Rock, CO 80104—9/5/79
Conners Chevron, Box 345, Aspen, CO 81611—9/6/79
Corner Service Station, P.O. Box 369, Wiggins, CO 80654—9/10/79
Northwest 66, 12401 West 64th, Arvada, CO 80004—9/12/79
R & V Standard, P.O. Box 46, Roggen, CO 80652—9/14/79
Wallace Texaco, 2127 Grand Avenue, Laramie, WY 80270—9/13/79
Orange Street Chevron, 426 North 3rd Street, Missoula, MT 59801—9/10/79
West Glacier Chevron, Box 398, West Glacier, MT 59936—9/11/79
Lee's Texaco, 6727 Wadsworth Boulevard, Arvada, CO 80002—9/13/79
Canyon Texaco, 148 Canyon Boulevard, Boulder, CO 80302—9/14/79
Fred Schlegel, Jr., 2755 Pearl Street, Boulder, CO 80302—9/13/79
Kirk's Westland Texaco 9998 W. Colfax, Lakewood, CO—9/19/79
Green Mountain Texaco, 12380 W. Alameda, Lakewood, CO 80226—9/20/79
Jay Sadler, 3308 W. Russell St., Jct. of Hwy 38 & I-29, Sioux, Falls, SD 57104—9/18/79
Campus Husky, Husky Oil Company, 803 Medary Avenue, Brooking, SD 47104—9/20/79
Teddy Bear Chevron, Rowley Junction, UT, 84029—9/20/79
24th & Central Exxon, 2344 Central Avenue, Billings, MT 59102—9/20/79
Marv's Service Center, 1303 Central Avenue, Billings, MT 59102—9/20/79
Crazy Charlie's Truck Stop, Lusk, WY 82225—9/17/79
Dickinson Husky Travel Center, Dickinson, ND 58601—9/19/79
Bill's Interstate Exxon, Richardton, ND 58652—9/9/79
Lander Husky, Box 429, Lander, WY 82520—9/18/79
Robert E. Way, 51 Coffeen Avenue, Sheridan, WY 82801—9/20/79
Danald L. Manning, 1208 9th Street, Wheatland, WY 82201—9/21/79
George W. Barber, 3590 South 2700 West, Salt Lake City, UT 84117—9/10/79
Central Standard, 202 South Central, Sidney, MT 59270—9/25/79
Al's Interstate Standard, Box 396, Glendive, MT 59330—9/25/79
Consumers Oil Co. of Ruggen, Inc., 33824 Colorado Hwy. 52, Keenesburg, CO 80643—9/27/79
Cass's Texaco, Box 298, Idaho Springs, CO 80452—9/28/79
Top's Truck Stop, Inc., P.O. Box 98, Sterling, ND 58572—9/24/79
Hidden Valley Skelly Flowing Inc., P.O. Box 747, Idaho Springs, CO 80452—9/27/79
Valley View Chevron, 7699 E. Belleview Ave., Englewood, CO—9/28/79
Big D Oil Co. Family Thrift Center, 919 E. St. Pat., Rapid City, SD—9/27/79

Wall Standard Service, 218 S. Boulevard, Wall, SD 57790—9/28/79

Issued in Lakewood, Colorado on this 11th day of October, 1979.

Dated: October 11, 1979.

George C. Brancucci,

*Acting District Manager, Rocky Mountain Enforcement District.*

Concurrence:

Charles F. Dewey,

*Regional Counsel.*

[FR Doc. 79-32392 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-089]

## Ford Aerospace & Communications Corp.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

Ford Aerospace and Communications Corporations (Ford) filed an application for certification of an eligible use of natural gas to displace fuel oil at its Lansdale Plant in Lansdale, Pennsylvania, with the Administrator of the Economic Regulatory Administration pursuant to 10 CFR Part 595 on September 10, 1979. Notice of that application was published in the Federal Register (44 FR 55630, September 27, 1979) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Ford's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Ford's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. A copy of the transmittal letter and the actual certification are appended to this notice.

Issued in Washington, D.C., October 12, 1979.

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

Department of Energy,
*Washington, D.C. 20461.*

October 16, 1979.

Mr. Kenneth F. Plumb,
*Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.*

Re: ERA Certification of Eligible Use; ERA Docket No. 79-CERT-089; Ford Aerospace and Communications Corporation.

Dear Mr. Plumb: Pursuant to the provisions of 10 CFR Part 595, I am hereby transmitting to the Commission the enclosed certification of an eligible use of natural gas to displace fuel oil. This certification is required by the Commission as a precondition to interstate transportation of fuel oil displacement gas in accordance with the authorizing procedures in 18 CFR Part 284, Subpart F. As noted in the certificate, it is effective for one year from the date of issuance, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. A copy of the enclosed certification is also being published in the Federal Register and provided to the applicant.

Should the Commission have any further questions, please contact Mr. Finn K. Neilsen, Director, Import/Export Division, Economic Regulatory Administration, 2000 M Street, N.W., Room 4126, Washington, D.C. 20461, telephone (202) 254-8202. All correspondence and inquiries regarding this certification should reference ERA Docket No. 79-CERT-089.

Sincerely,

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

Enclosure.

**Certification by the Economic Regulatory Administration to the Federal Energy Regulatory Commission of the Use of Natural Gas for Fuel Oil Displacement by the Ford Aerospace & Communications Corp.**

ERA Docket No. 79-CERT-089

*Application for Certification*

Pursuant to 10 CFR Part 595, Ford Aerospace and Communications Corporation (Ford) filed an application for certification of an eligible use of 65,000 Mcf of natural gas per year at its Lansdale Plant in Lansdale, Pennsylvania, with the Administrator of the Economic Regulatory Administration (ERA) on September 10, 1979. The application states that the eligible seller of the gas is National Gas and Oil Corporation (National) and that the gas will be transported by the Texas Eastern Gas Transmission Corporation and the Philadelphia Electric Company. The application and supplemental information indicate, among other things, that the use of natural gas will displace approximately 425,000 gallons of No. 2 fuel oil (0.1% sulfur) per year and that neither the gas nor the displaced fuel oil will be used to displace coal in the applicant's facilities.

*Certification.*

Based upon a review of the information contained in the application, as well as other information available to ERA, the ERA hereby certifies, pursuant to 10 CFR Part 595, that the use of approximately 65,000 Mcf of natural gas per year at Ford's Lansdale Plant purchased from National is an eligible use of gas within the meaning of 10 CFR Part 595.

*Effective Date.*

This certification is effective upon the date of issuance, and expires one year from that date, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. It is effective during this period of time for the use of up to the same certified volume of natural gas at the same facility purchased from the same eligible seller.

Issued in Washington, D.C., on October 12, 1979.

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

[FR Doc. 79-32391 Filed 10-18-79; 8:45 am]

BILLING CODE 6540-01-M

## Federal Energy Regulation Commission

[Docket No. RM79-22]

## Arkansas Louisiana Gas Co. et al.; Extension of Time

Take notice that by letters dated October 12, 1979, the following interstate pipelines were notified that their evidentiary submissions made pursuant to 18 CFR 154.94(j) were defective and would not be accepted for filing by the Director of the Office of Pipeline and Producer Regulation pursuant to his authority under 18 CFR 3.5(f) until the deficiencies were corrected:

Arkansas Louisiana Gas Company
Colorado Interstate Gas Company
McCulloch Interstate Gas Corporation
Michigan Wisconsin Pipe Line Company
West Texas Gathering Company

Pursuant to "Order Amending Regulations Relating to Evidentiary Submissions and Extending Deadlines for the Filing of Third-Party Protests" issued in Docket No. RM79-22 on October 11, 1979, the period for third party protests made pursuant to 18 CFR 154.94(j)(3) will run for sixty days from the date corrected Evidentiary Submissions are filed with the Commission.

[FR Doc. 79-32268 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RM79-22]

## Gulf States Utilities Cos. et al.; Extension of Time

Take notice that on October 12, 1979, the Federal Energy Regulatory Commission's Acting Director of the Office of Pipeline and Producer Regulation (Director) granted relief to the third parties listed on the attached appendix for the filing of protests required to be filed pursuant to 18 CFR 154.94(j). The extensions of time shown on the attached appendix were granted pursuant to the authority delegated to the Director in 18 CFR 3.5(f)(5).

Appendix

| Third party | Filing date | Pipeline | Date requested |
|---|---|---|---|
| Gulf States Utilities Cos. | 10-5-79 | United Gas Pipeline Co. | 11-12-79 |
| State of Michigan and Michigan PSC | 9-19-79 | Panhandle Eastern Pipeline Co., and Trunkline Gas Co. | 11-5-79 |
| State of California and PUC of California | 9-26-79 | Transwestern Pipeline Co | 10-29-79 |
| Associated Gas Distributors | 9-27-79 | Columbia Gas Transmission Corp | 11-14-79 |
| PSC of New York State | | El Paso Natural Gas Co | 11-13-79 |
| Kansas Corp. Comm. | | Zenith Natural Gas | 11-13-79 |
| Arizona Corp. Comm. | | Oklahoma Natural Gas Gathering Corp | 11-13-79 |
| Gas Consumers Group: | | | |
| Winfield, Kans. | | United Gas Pipe Line Co. | 11-12-79 |
| Magnum, Okla. | | Sea Robin Pipeline Co. | 11-24-79 |
| State of Mitchigan | | Southern Natural Gas Co | 11-13-79 |
| Michigan PSC | | Northern Natural Gas Co | 11-13-79 |
| Congressman Andrew Maguire; South Dakota PUC; Southern California Gas Co.; Memphis Light, Gas, and Water Division; Wisconsin PSC; Minnesota PSC; and PUC of California. | | | |

[FR Doc. 79-32267 Filed 10-18-79; 8:45 am]
BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. EL79-8]

### Central Power & Light Co., Public Service Co. of Oklahoma, Southwestern Electric Power Co., and West Texas Utilities Co.; Informal Conference

October 12, 1979.

Take notice that the Applicants in this proceeding have indicated to Staff a desire to enter into informal discussions pursuant to 18 CFR 1.18. Staff will convene an informal conference at 2:00 p.m. on October 29, 1979, in a meeeting room on the second floor of the Commission's offices at 825 North Capitol Street, N.E., Washington, D.C. 20426. Applicants will circulate to the parties in advance a memorandum outlining a tentative agenda. Parties who plan to attend this conference should be prepared to continue the discussion on October 30, 1979.

Kenneth F. Plumb,
*Secretary*

[FR Doc. 79-32257 Filed 10-18-79; 8:45 am]
BILLING CODE 6450-01-M

[Project No. 2960]

### City of Gonzales, Tex.; Application for Short-Form License (Minor) for an Unconstructed Project

October 12, 1979.

Take notice that on August 28, 1979, the City of Gonzales, Texas (City) filed an application for license [pursuant to the Federal Power Act, 16 USC, Section 791(a)—825(r)] for redevelopment of an existing water power project to be known as the Gonzales Project No. 2960 located on the Guadalupe River in Gonzales County, near the Town of Gonzales, Texas.

Correspondence with the Applicant should be directed to: City of Gonzales (c/o Calvin Spacek) P.O. Box 547 Gonzales, Texas 78629.

*Purpose of the Project*—Power from the rehabilitated project would be used in the City's municipal power distribution system.

*Project Description*—The proposed project would be operated as run-of-river and would consist of: (1) and existing concrete dam approximately 15 feet high, 258 feet long, and 78 feet wide, impounding; (2) a reservoir with a surface area of 300 acres and storage capacity of 1,400 acre-feet at elevation 259.6 feet msl; (3) and existing powerhouse approximately 80 by 20 feet; (4) three new 380-kW vertical shaft open flume propeller type units; (5) two existing substations—one of 69 and one of 12 kV; (6) trash racks; and (7) appurtenant facilities.

All lands to be affected are owned by the State of Texas. Projected annual power generation would be 6.8 million kWh, dropping to 6.4 million kWh as additional river water is diverted in later years by existing hydroelectirc projects upstream. Applicant estimates the cost of redevelopment at $1,923,000.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If any agency does not file comments within the time set below, it will be presumed to have no comments.

*Protests, and Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, Section 1.8 or Section 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before *December 17, 1979*. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C., 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 79-32258 Filed 10-18-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. EL80-1]

### Delmarva Power & Light Co.; Request for Authority To Sell Certain Facilities

October 12, 1979.

The filing Company submits the following:

Take notice that on October 5, 1979, the Delmarva Power and Light Company (Delmarva) filed a request for authority under Section 203 of the Federal Power Act to sell certain of its facilities to the Mayor and City Council of New Castle, Delaware (New Castle).

Delmarva has agreed to sell, and New Castle has agreed to purchase, Delmarva's New Castle "Local 12470/

4160 volt substation for $176,185.27. No other facilities of Delmarva are involved, except those specifically listed and necessary for New Castle to take delivery.

The sale and transfer are scheduled to occur on October 26, 1979. Delmarva requests expedition of processing and such waivers as necessary to comply with the purposed delivery date.

A copy of this filing has been served upon New Castle and the Public Service Commission of Delaware.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32259 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-8]

## Florida Power & Light Co.; Filing of Amendment to Transmission Service Agreement

October 12, 1979.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on October 5, 1979, tendered for filing an Amendment, entitled "Amendment Number Two To Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and New Smyrna Beach Utilities Commission."

FPL states that under the Amendment FPL will transmit power and energy for New Smyrna Beach Utilities Commission (New Smyrna) as is required by New Smyrna in the implementation of its interchange agreement with the Jacksonville Electric Authority. A letter from New Smyrna requesting that the Amendment be filed is attached to the filing. However, New Smyrna does not agree or assent to the rates, terms and conditions of FPL's transmission service, and the Amendment is thus not executed by New Smyrna.

FPL requests that the 60 day filing requirement be waived and that the Amendment take effect immediately. According to FPL, copies of the filing were served on New Smyrna's Director of Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32260 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES79-75]

## Iowa Power & Light Co.; Application

October 12, 1979.

Take notice that on September 24, 1979, Iowa Power and Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act, to issue on or before December 31, 1981, bank notes maturing not more than one year after date of issue and commercial paper notes maturing not more than nine months after the date of issue in principal amounts not exceeding $125,000,000.

Applicant is incorporated under the laws of the State of Iowa with its principal business office at Des Moines, Iowa, and is engaged in the electric and gas utility business within the State of Iowa.

Any person desiring to be heard or to make any protest with reference to the application should on or before November 1, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32261 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-1]

## Kansas City Power & Light Co.; Application

October 12, 1979.

Take notice that on September 28, 1979, Kansas City Power & Light Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $150,000,000 principal amount of short-term debt, of which $75,000,000 may be in the form of commercial paper, to be issued not later than December 31, 1980, with maturities not later than December 31, 1981. Applicant is incorporated under the laws of the State of Missouri with its principal business office at Kansas City, Missouri, and is engaged primarily in the electric utility business in Kansas.

The proceeds will basically be used to finance in part Applicant's construction program to December 31, 1981, and might be used to finance acquisition and storage, prior to use, of coal and oil. The authorization to issue up to $150,000,000 of said short-term instruments will allow the Applicant more freedom in selecting the appropriate times under market conditions to fund its short-term debt.

Any person desiring to be heard or to make any protest with reference to the application should, on or before November 1, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32262 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-2]

## Montana-Dakota Utilities Co.; Application

October 12, 1979

Take notice that on October 2, 1979, Montana-Dakota Utilities Company (Applicant), a corporation organized under the laws of the State of Delaware and is engaged primarily in the electric and natural gas business in the States of Minnesota, Montana, North Dakota, South Dakota, and Wyoming, with its principal business office at Bismarck, North Dakota, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order for authority to issue up to 500,000 shares of Common Stock, par value $10 per share. pursuant to the Applicant's Automatic Dividend Reinvestment and Stock Purchase Plan.

If approved by the appropriate regulatory agencies, the Common Stock will be reserved for issuance pursuant to the Automatic Dividend Reinvestment and Stock Purchase Plan. The net proceeds from the issuance and sale of the Common Stock are to be used for the Applicant's continuing construction program, which may include the repayment of short-term borrowings incurred for that purpose.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 1, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

*Secretary*

[FR Doc. 79-32263 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

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[Docket No. ER80-6]

## Ohio Power Co.; Agreement

October 12, 1979.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on October 5, 1979, tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio Power), Modification No. 8 dated September 15, 1979 to the facilities and Operating Agreement dated May 1, 1967 between Ohio and Dayton Power and Light Company (Dayton), designated Ohio's Rate Schedule FERC No. 36.

This Modification No. 8 provides that, for the purpose of conserving energy resources during extended fuel shortages Ohio Power or Dayton may arrange to obtain Conservation Energy from the other. When supplied, the charge for Conservation Energy generated on the supplying party's will be 110% of the out-of-pocket replacement cost of generating the energy, plus 5.00 mills per kilowatt-hour. The new Modification No. 8 also provides for a transmission service charge of 1.7 mills per killowatt-hour for deliveries to Dayton of Conservation Energy from systems interconnected with Ohio Power and transmission service charge of 1.3 mills per kilowatt-hour for deliveries to Ohio Power of Conservation Energy from systems interconnected with Dayton.

Because of the current uncertainty of fuel supplies and the possibility that transactions will be required immediately under the proposed Modification No. 8, the parties have requested that the Commission waive its notice requirements and that the proposed Schedule becomes effective as soon as possible.

Copies of the filing were served upon The Dayton Power and Light Company and The Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest with said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32264 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 1121]

## Pacific Gas & Electric Co.; Application for Amendment of License

October 12, 1979.

Take notice that an application for an amendment of license was filed on July 10, 1979, under the Federal Power Act (16 U.S.C. 791(a)—825(r)), by the Pacific Gas and Electric Company (applicant) for the Battle Creek Project No. 1121. The project is located on the Cross Country Canal in Shasta County near Manton, California. Correspondence with applicant regarding the application should be sent to: Mr. W. M. Gallavan, Vice President—Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106.

The applicant seeks to amend the project license to authorize construction of the proposed Volta 2 Hydroelectric Plant, which would consist of: (1) a 4-foot-diameter, 492-foot-long steel penstock to be located parallel to and about 15 feet from a pipe section of the Cross Country Canal, and that would receive water from the canal; (2) a semi-indoor type powerhouse containing a 1,000-kW generating unit that would discharge water back into the canal; and (3) a 1,500-foot-long, 12 kV pole-type transmission line to be located within the penstock-pipeline right-of-way, connecting the powerhouse with the non-project Manton Branch of the Volta 1101 distribution line.

The new unit would develop energy that is now being lost in an energy dissipation device within the conduit system. This energy would enter applicant's distribution system to serve existing and future customers. No land outside the existing project boundary would be occupied by the new facilities.

Anyone desiring to be heard or to make any protests about this application should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 CFR § 1.10 or § 1.8 (1979). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before November 23, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426. The application

is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32265 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. CP79-344 and CP79-405]

## Transcontinental Gas Pipe Line Corp. and Tennessee Gas Pipeline Co.; Informal Settlement Conference

October 12, 1979.

Take notice that on October 24, 1979, at 10:00 a.m. an informal conference will be held in the above-captioned cases. Said conference will be held in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, and will consist of a discussion of the technical aspects of the above-captioned dockets, and the possibility of resolving the same through settlement and compromise. Any interested person may attend, but mere attendance will not serve to make any person formally a party to this proceeding.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-32266 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

## Cases Filed; Week of July 27, 1979 Through August 3, 1979

Notice is hereby given that during the week of July 27, 1979 through August 3, 1979 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 29461.

October 12, 1979.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

**Week of July 27, 1979, Through Aug. 3, 1979**

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| July 27, 1979 | Cini-Grisson Associates, Inc., Potomac, Md | DEE-7518 | Exception to Emergency Building Temperature Restrictions. If granted: Cini-Grisson Associates, Inc. would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 27, 1979 | Exxon Company U.S.A., Houston, Tex | DEA-0560 | Appeal of Assignment Order. If granted: The June 28, 1979 Assignment Order issued by the Economic Regulatory Administration Region III to Exxon Company, U.S.A. regarding its supply obligations to H. L. Mills Petroleum Products would be rescinded. |
| July 27, 1979 | Lilyblad Petroleum, Inc., Tacoma, Wash | DEE-7519 | Allocation Exception. If granted: Lilyblad Petroleum, Inc. would receive an exception from the provisions of 10 CFR 211, permitting the firm a supply of unleaded fuel for the purpose of blending gasohol. |
| July 27, 1979 | New York Telephone Co., New York, N.Y. | DFA-0559 | Appeal of Information Request Denial. If granted: The July 9, 1979 Information Request Denial issued by the Region V Operations and Regional Office would be rescinded and the New York Telephone Company would be granted access to certain DOE documents. |
| July 27, 1979 | Paradee Oil Co., Dover, Del | DEE-7527 | Allocation Exception. If granted: Paradee Oil Company would receive an exception to the provisions of 10 CFR 211, permitting the firm a supply of unleaded fuel to be used in the blending of gasohol. |
| July 27, 1979 | Total Petroleum, Inc., Oklahoma City, Okla | DEA-0561, DES-0561, DST-0561. | Appeal of Temporary Assignment Order, Request for Stay and Request for Temporary Stay. If granted: The July 20, 1979 Temporary Assignment Order issued by Economic Regulatory Administraton, Region VII to Total Petroleum Inc. regarding its supply obligations to Midland Energy Corporation would be modified. The firm would receive a Stay and a Temporary Stay pending final determination on its appeal. |
| July 27, 1979 | Union Oil Co. of California, Schaumburg, Ill | DEH-0577 | Motion for Evidentiary Hearing. If granted: An evidentiary hearing would be convened with respect to the Proposed Decision and Order issued to Publix Oil Company (Case No. DEE-5462). |
| July 27, 1979 | Union Oil Co. of California, Schaumburg, Ill | DEA-0557, DES-0557. | Appeal of Assignment Order, Request for Stay. If granted: The June 21, 1979 Assignment Order issued by Economic Regulatory Administration, Region IV to Union Oil Company of California regarding its supply obligations to Publix Oil Company would be modified. The firm would receive a Stay pending final determination of its appeal. |
| July 27, 1979 | Wayne F. Johnson, Inc., Hobbs, N. Mex | DEE-7540 | Allocation Exception. If granted: Wayne F. Johnson, Inc. would be granted exception to the provisions of 10 CFR 211, permitting the firm an allocation of unleaded fuel for the purpose of blending gasohol. |
| July 30, 1979 | Alexanders Department Store, Inc., Wilmington, N.C. | DEE-7571 | Exception to the Emergency Building Temperature Restrictions. If granted: Alexanders Department Store, Inc., would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Allied Materials Corp., Oklahoma City, Okla | DEA-0563 | Appeal of an Emergency Crude Oil Allocation Order. If granted: The June 29, 1979 Emergency Crude Oil Allocation Order issued by the Economic Regulatory Administration to Allied Materials Corporation regarding re-entry into crude oil Buy/Sell Program would be modified. |
| July 30, 1979 | Associated Master Barbers & Stylists of North Carolina, Charlotte, N.C. | DEE-7572 | Exception to the Emergency Building Temperature Restrictions. If granted: Associated Master Barbers & Stylists of North Carolina would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Connie's Great Bend, Kans | DEE-7568 | Exception to the Emergency Building Temperature Restrictions. If granted: Connie's would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Continental Construction Corp., Milwaukee, Wis | DEE-7558 | Exception to the Emergency Building Temperature Restrictions. If granted: Continental Construction Corporation would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Country Club Apartments, Columbus, Ga | DEE-7546 | Exception to the Emergency Building Temperature Restrictions. If granted: Country Club Apartments would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Donna Durbin, Los Angeles, Calif | DEE-7552 | Exception to the Emergency Building Temperature Restrictions. If granted: Donna Durbin would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Elaine Powers Figure Salons, Inc., Milwaukee, Wis | DEE-7542 | Exception to the Emergency Building Temperature Restrictions. If granted: Elaine Powers Figure Salons, Inc. would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Earl S. Feick, Neche, N. Dak | DEE-7553 | Exception to the Emergency Building Temperature Restrictions. If granted: Earl S. Feick would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |

Week of July 27, 1979, Through Aug. 3, 1979—Continued

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| July 30, 1979 | Fowler State Bank, Fowler, Colo | DEE-7561 | Exception to the Emergency Building Temperature Restrictions. If granted: Fowler State Bank would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | The Full Cry Shop, Vienna, Va | DEE-7569 | Exception to Emergency Building Temperature Restrictions. If granted: The Full Cry Shop would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | The Funeral Directors Association of Washington, D.C., Inc., Washington, D.C. | DEE-7543 | Exception to Emergency Building Temperature Restrictions. If granted: The Funeral Directors Association of Washington, D.C., Inc., would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Gasco, Inc., Washington, D.C | DES-0263 | Request for Stay. If granted: Gasco, Inc. would receive a stay of the DOE Decision and Order (Case Nos. DMR-0020 and DMR-0038) dated July 3, 1979 regarding an increase allocation of propane to Oahu Gas Service, Inc. |
| July 30, 1979 | Goodwill Industries of America, Inc | DEE-7549 | Exception to Emergency Building Temperature Restrictions. If granted: Goodwill Industries would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Gordon Pacific Supply Co., Los Angeles, Calif | DEE-7547 | Exception to Emergency Building Temperature Restrictions. If granted: Gordon Pacific Supply Company would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Edward I. Gorman, Los Angeles, Calif | DEE-7557 | Exception to Emergency Building Temperature Restrictions. If granted: Edward I. Gorman would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Grosvenor Properties (Hawaii) Ltd., Honolulu, Hawaii. | DEE-7573 through DEE-7576. | Exception to Emergency Building Temperature Restrictions. If granted: Grosvenor Properties (Hawaii) Ltd. would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | H. J. Unger, Inc., Norfolk, Va | DEE-7544 | Exception to Emergency Building Temperature Restrictions. If granted: H. J. Unger, Inc. would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Harbor Island Spa, Miami Beach, Fla | DEE-7570 | Exception to Emergency Building Temperature Restrictions. If granted: Harbor Island Spa would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Hayman's Tavern Square, Alexandria, Va | DEE-7565 | Exception to Emergency Building Temperature Restrictions. If granted: Hayman's Tavern Square would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Kenner Council on Aging, Kenner, La | DEE-7555 | Exception to Emergency Building Temperature Restrictions. If granted: Kenner Council on Aging would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | The Lighthouse, San Antonio, Tex | DEE-7554 | Exception to Emergency Building Temperature Restrictions. If granted: The Lighthouse would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Mrs. Harold Mandel, Asbury Park, N.J | DEE-7545 | Exception to Emergency Building Temperature Restrictions. If granted: Mrs. Harold Mandel would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Meridan Medical Group, Indianapolis, Ind | DEE-7556 | Exception to Emergency Building Temperature Restrictions. If granted: Meridan Medical Group would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Page Boy Maternity Fashions, Dallas, Tex | DEE-7563 | Exception to Emergency Building Temperature Restrictions. If granted: Page Boy Maternity Fashions would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Potomac Lung Association, Fairfax, Va | DEE-7577 | Exception to Emergency Building Temperature Restrictions. If granted: Potomac Lung Association would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Beatrice Smolen, Los Angeles, Calif | DEE-7548 | Exception to Emergency Building Temperature Restrictions. If granted: Beatrice Smolen would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Harvey Strassman, Los Angeles, Calif | DEE-7550 | Exception to Emergency Building Temperature Restrictions. If granted: Harvey Strassman would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Tames & Williams Orthopedic Shoes, Los Angeles, Calif. | DEE-7562 | Exception to Emergency Building Temperature Restrictions. If granted: Tames & Williams Orthopedic Shoes would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Taylor Burgess Hairstyling Salon, Hampton, Va | DEE-7581 | Exception to Emergency Building Temperature Restrictions. If granted: Taylor Burgess Hairstyling Salon would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Restrictions. |
| July 30, 1979 | Thorn Tree, Washington, D.C | DEE-7559 | Exception to Emergency Building Temperature Restrictions. If granted: Thorn Tree would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Travis Association for the Blind, Austin, Tex | DEE-7551 | Exception to Emergency Building Temperature Restrictions. If granted: Travis Association for the Blind would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Tri, The Rehabilitation Institute, Long Island, N.Y. | DEE-7567 | Exception to Emergency Building Temperature Restrictions. If granted: Tri, The Rehabilitation Institute would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 30, 1979 | Union Oil Co. of California, Los Angeles, Calif | DEA-0562 | Appeal of a Decision and Order. If granted: The June 29, 1979, Decision and Order issued by the Economic Regulatory Administration to Union Oil Company of California regarding the use of multiple allocation fractions would be rescinded. |
| July 30, 1979 | Virginia Specialty Stores, Inc., Washington, D.C | DEE-7560 | Exception to Emergency Building Temperature Restrictions. If granted: Virginia Specialty Stores, Inc. would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 31, 1979 | Atlantic Richfield Co., Los Angeles, Calif | DST-3603 | Request for Temporary Stay. If granted: The DOE's July 12, 1979 Interim Decision and Order (Case No. DEN-3603) issued to L. S. Riggins regarding Atlantic Richfield Company's supply of obligation to L. S. Riggins would be stayed. |
| July 31, 1979 | David Marmer, DDS, P.C., Fresh Meadows, N.Y | DEE-7751 | Exception to Emergency Building Temperature Restrictions. If granted: David Marmer would receive exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 31, 1979 | James M. Forgotson, Shreveport, La | DRW-0031 | Proposed Remedial Order for which no objections have been filed. If granted: The Proposed Remedial Order of May 15, 1979 issued to James M. Forgotson by DOE Region VI would be issued as a Remedial Order by the Department of the Energy. |
| July 31, 1979 | Gulf Oil Corp., Tulsa, Okla | DXE-7603 | Extension of relief granted in Gulf Oil Corporation. If granted: Gulf Oil Corporation would be permitted to continue to sell the crude oil produced from the NW Graylin "D" Sand Unit located in Logan County, Colo. at upper tier ceiling prices. |

Week of July 27, 1979, Through Aug. 3, 1979—Continued

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| July 31, 1979 | Hunt Oil Co., Dallas, Tex | DEE-7604 | Allocation Exception. If granted: Hunt Oil Company would receive an exception from the provisons of 10 CFR 211.63 with respect to the firm's obligations to supply crude oil to Ashland Oil, Inc. and Shell Oil Company. |
| July 31, 1979 | Marathon Oil Co., Washington, D.C | DED-3212 | Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company with respect to the Application for Exception submitted by Fortune Oil Company (Case No. DEE-3212). |
| July 31, 1979 | Marathon Oil Co., Findlay, Ohio | DED-5462 | Motion for Discovery. If granted: Discovery would be granted with respect to an Application for Exception filed by Publix Oil Co. (Case No. DEE-5462). |
| July 31, 1979 | Mobil Oil Corp., New York N.Y | DEA-0564, DES-0564, DST-0564. | Request for Stay and Request for Temporary Stay, Appeal of Assignment Order. If granted: The June 25, 1979 Assignment Order issued to Cantro Petroleum Corporation by the Economic Regulatory Administration Region I, regarding the supply obligations of Cantro Petroleum Corporation, a branded jobber of Mobil Oil Corporation, to Beshara's Self Service would be rescinded. |
| July 31, 1979 | Mobil Oil Corp., Valley Forge, Pa | DEA-0565, DES-0565. | Request for Stay and Appeal of Assignment Order. If granted: The June 22, 1979 Assignment Order issued to Home Oil Company, by the Economic Regulatory Administration Region III regarding supply obligations to Home Oil Company, a Mobil Oil branded jobber, to B & O Mobil Service, would be rescinded. |
| July 31, 1979 | Mobil Oil Corp., Raleigh, N.C | DEA-0566, DES-0566. | Request for Stay, Appeal of Assignment Order. If granted: The June 19, 1979 Assignment Order issued to Home Oil Company by the Economic Regulatory Administration Region III, regarding supply obligations of Home Oil Company, a Mobil Oil jobber, to Joyce Oil Company would be rescinded. |
| July 31, 1979 | Mobil Oil Corp., Valley Forge, Pa | DEA-0567, DEA-0568; DES-0567, DES-0568. | Appeal of Assignment Order; Request for Stay. If granted: The June 21, 1979 Assignment Order issued to Home Oil, Inc. by the Economic Regulatory Administration, Region III regarding the supply obligations of Home Oil, Inc., a branded jobber of Mobil Oil Corporation, to Bobby J. Nicholston would be rescinded. |
| July 31, 1979 | Murphy Oil Corp., El Dorado, Ark | DED-0023 | Motion for Discovery. If granted: Discovery would be granted to Murphy Oil Corporation with respect to the June 14, 1979 Proposed Decision and Order (Case No. DEN-5462) issued to Publix Oil Company. |
| July 31, 1979 | North Side Service, Hutchinson, Kans | DEE-7601 | Allocation Exception. If granted: North Side Service would receive an exception from the provisions of 10 CFR 211 permitting the firm a supply of unleaded fuel for the purpose of blending gasohol. |
| July 31, 1979 | San Diego County Law Library, San Diego, Calif | DEE-7599 | Exception to Emergency Building Temperature Restrictions. If granted: The San Diego County Law Library would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| July 31, 1979 | Young Refining Corp., Douglasville, Ga | DEH-3445 | Motion for Evidentiary Hearing. If granted: An evidentiary hearing would be convened with respect to the Statement of Objections of Young Refining Corporation in response to the June 19, 1979 Decision and Order (Case No. DXE-3445). |
| Aug. 1, 1979 | Amdahl Corp., Sunnyvale, Calif | DFA-0569 | Appeal of Information Request Denial. If granted: The June 29, 1979 Information Request Denial issued by Oak Ridge Operations Division, Region IX to Amdahl Corporation would be rescinded and the firm would be granted access to certain DOE data. |
| Aug. 1, 1979 | Exxon Co., U.S.A., Houston, Tex | DRA-0570, DRS-0570. | Appeal of an Ancillary Order and Request for Stay. If granted: The June 29, 1979 Ancillary Order issued by Economic Regulatory Administration Region VI to Exxon Company, U.S.A. implementing to consent order entered into between R. Lacy, Inc. and Economic Regulatory Administration, would be rescinded. |
| Aug. 1, 1979 | Gas Marketing, Inc., Lafayette, La | DEE-7646 | Price Exception. If granted: Gas Marketing, Inc. would be permitted to sell the crude oil produced from the Bayou Boullion 3D Lease, located in St. Martinville Parish, La. at upper tier ceiling prices. |
| Aug. 1, 1979 | Ben Logan, San Antonio, Tex | DEE-7598 | Exception to Emergency Building Temperature Restrictions. If granted: Ben Logan would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 1, 1979 | Manufacturers Business Forms, Ltd., Springfield, Va | DEE-7632 | Exception to Emergency Building Temperature Restrictions. If granted: Manufacturers Business Forms, Ltd. would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 1, 1979 | Smith-Cranford Barber Shop, Charlotte, N.C | DEE-7629 | Exception to Emergency Building Temperature Restrictions. If granted: Smith-Cranford Barber Shop would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Temperature Restrictions. |
| Aug. 1, 1979 | Texaco, Inc., Denver, Colo | DXE-7602 | Extension of relief granted in Texaco, Inc. 4 DOE Par. —— (May 18, 1979). If granted: Texaco, Inc. would be permitted to continue to sell a portion of the crude oil produced from the Government T. F. Stroock lease, located in Moffat County, Colo. at upper tier ceiling prices. |
| Aug. 1, 1979 | Texaco Inc. Park County, Wyo | DXE-7634 | Extension of relief granted in Texaco, Inc., —— DOE Par. —— (May 5, 1979). If granted: Texaco, Inc. would be permitted to continue to sell the crude produced from the Gwen Knapp Lease, located in Park County, Wyo., at upper tier ceiling prices. |
| Aug. 1, 1979 | Vickers Petroleum, Corp., Wichita, Kans | DES-0573; DEA-0573, and DST-0573. | Appeal fo Assignment Order, Request for Stay and Temporary Stay. If granted: The July 20, 1979 Assignment Order issued to Midland Energy Corporation by the Economic Regulatory Administration Region VII, with respect to Vickers Petroleum Corporation's obligation to supply Midland Energy Corporation would be rescinded. Vickers Petroleum Corporation would receive a Stay and a Temporary Stay pending a final determination of the firm's appeal. |
| Aug. 2, 1979 | LaSalle Oil Company, Inc., Nunmore, Pa | DEA-0571 | Appeal of Assignment Order. If granted: The May 10, 1979 Assignment Order issued by the Econmic Regulatory Administration to LaSalle Oil Company. |
| Aug. 2, 1979 | Limback Construction Co., Pompano Beach, Fla | DEA-0632 | Appeal of ERA Determination. If granted: The July 5, 1979 determination issued by the Economic Regulatory Administration Region IV would be rescinded and remanded to the Region for action. |
| Aug. 2, 1979 | State of Alaska, Juneau, Alaska | DEL-7639, DES-7639. | Request for Temporary Exception and Request for Stay. If granted: The State of Alaska would receive a Stay and a Temporary Exception from the provisions of 10 CFR 212.93, with respect to the pricing of motor gasoline pending a final determination on the Application for Exception which it intends to file. |
| Aug. 3, 1979 | Louise S. Barge, Tucker, Ga | DEE-6468 | Exception to Emergency Building Temperature Restrictions. If granted: Louise S. Barge would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Roller Skating Rink Operators Association, Lincoln, Nebr. | DEE-6400 | Exception to Emergency Building Temperature Restrictions. If granted: The Roller Skating Rink Operators Association would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Spruce Oil Corp., Denver, Colo | DMR-0064 | Petition for Modification or Rescission. If granted: The June 18, 1979 Decision and Order issued to Diamond Shamrock Corp., regarding its supply obligations to Spruce Oil Co. would be modified. |
| Aug. 3, 1979 | Vickers Petroleum Corp., Wichita, Kans | DSG-0060 | Petition for Special Redress. If granted: The June 11, 1979 Decision and Order issued by the DOE Region VII to Vickers Petroleum Corp. regarding supply obligations would be rescinded. |

## List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

### Week of July 27 Through Aug. 3, 1979

If granted: The following firms would receive an exception from the activation of the Standby Petroleum Product Allocation Regulations with respect to motor gasoline.

| | | | |
|---|---|---|---|
| Bullock's Exxon | DEE-7541 | 07/27/79 | Ohio. |
| City of Ely, Minnesota | DEE-7737 | 07/27/79 | Minnesota. |
| City of Santa Fe Springs | DEE-7531 | 07/27/79 | California. |
| Gas N Groceries | DEE-7523 | 07/27/79 | North Carolina. |
| Gas N Groceries | DEE-7524 | 07/27/79 | North Carolina. |
| Gas N Groceries | DEE-7525 | 07/27/79 | North Carolina. |
| Gas N Groceries | DEE-7526 | 07/27/79 | North Carolina. |
| Hearn Circle Shell | DEE-7522 | 07/27/79 | South Carolina. |
| Hess Gulf Service Station | DEE-7521 | 07/27/79 | Maryland. |
| John's Standard Service | DEE-7520 | 07/27/79 | Georgia. |
| Murphy's Service | DEE-7529 | 07/27/79 | Kansas. |
| Purser Oil Company | DEE-7530 | 07/27/79 | Georgia. |
| Ray's Auto Station | DEE-7528 | 07/27/79 | Rhode Island. |
| Ruscom Big C Stores | DEE-7532 | 07/27/79 | Alabama. |
| Ruscom Big C Stores #2 | DEE-7567 | 07/27/79 | Alabama. |
| Steamboat Springs Station #1 | DEE-7534 | 07/27/79 | Colorado. |
| Bob's Mini-Mart, Inc. | DEE-7585 | 07/30/79 | Maryland. |
| City of Holyoke, Massachusetts | DEE-7582 | 07/30/79 | Massachusetts. |
| Clearview Shell | DEE-7591 | 07/30/79 | Louisiana. |
| East Campus 66 Service | DEE-7594 | 07/30/79 | Nebraska. |
| Freeway Autocar Shell Service | DEE-7539 | 07/30/79 | Arizona. |
| Geico Courier Services, Inc. | DEE-7535 | 07/30/79 | Oregon. |
| Hartge Yacht, Inc. | DEE-7566 | 07/30/79 | Maryland. |
| Hayna's Shell Service | DEE-7589 | 07/30/79 | North Carolina. |
| Highland Park Exxon | DEE-7583 | 07/30/79 | Louisiana. |
| Kirschberger Gulf Service | DEE-7593 | 07/30/79 | Arkansas. |
| New Orleans East, Inc. | DEE-7537 | 07/30/79 | Louisiana. |
| Northside Country Store | DEE-7538 | 07/30/79 | Pennsylvania. |
| Reiner Oil Co. | DEE-7595 | 07/30/79 | North Carolina. |
| Route 40 Amoco | DEE-7536 | 07/30/79 | Pennsylvania. |
| Virginia City Station | DEE-7586 | 07/30/79 | Nevada. |
| All-Dade Driveway Maintenance | DEE-7615 | 07/31/79 | Florida. |
| Bevins Motor Co., Inc. | DEE-7623 | 07/31/79 | Kentucky. |
| Cosmo Oil Company | DEE-7776 | 07/31/79 | Florida. |
| Country Mart | DEE-7592 | 07/31/79 | North Carolina. |
| Days Inns of America | DEE-7609 | 07/31/79 | South Carolina. |
| Dwyer Motor's, Inc. | DEE-7617 | 07/31/79 | Louisiana. |
| Gable's Minimarket | DEE-7612 | 07/31/79 | Pennsylvania. |
| General Gas & Oil Company | DEE-7640 | 07/31/79 | Illinois. |
| Go-Lo Self/Serve | DEE-7579 | 07/31/79 | California. |
| Haywood Oil Co., Inc. | DEE-6842 | 07/31/79 | North Carolina. |
| L. A. Legg & Son | DEE-7616 | 07/31/79 | Illinois. |
| M.G.C. Sales | DEE-7607 | 07/31/79 | California. |
| Marsh, William D. | DEE-7584 | 07/31/79 | Pennsylvania. |
| Melstrand Store | DEE-7606 | 07/31/79 | Minnesota. |
| Miller Grocery & Service Station | DEE-7622 | 07/31/79 | Louisiana. |
| Plaza Exxon | DEE-7614 | 07/31/79 | South Carolina. |
| Shideler Tire Mart | DEE-7605 | 07/31/79 | Indiana. |
| Spelman Memorial Hospital | DEE-7613 | 07/31/79 | Missouri. |
| Tony's Gulf | DEE-7597 | 07/31/79 | California. |
| Virginia Partners, Ltd. | DEE-7580 | 07/31/79 | Virginia. |
| Ward's Service Center | DEE-7611 | 07/31/79 | Ohio. |
| Weiss Oil Company, Inc. | DEE-7608 | 07/31/79 | Illinois. |
| Whiting Oil Company | DEE-7558 | 07/31/79 | Oklahoma. |
| Bayshore Tires & Service | DEE-7761 | 08/01/79 | Florida. |
| Beacon Oil Company | DEE-7635 | 08/01/79 | Michigan. |
| Belanger, Roger P. | DEE-7795 | 08/01/79 | New Hampshire. |
| Brookside Store | DEE-7628 | 08/01/79 | New Hampshire. |
| Budget Rent-A-Car | DEE-7631 | 08/01/79 | Missouri. |
| Elliot Rose Co. of Dover, Inc. | DEE-7796 | 08/01/79 | New Hampshire. |
| Enders & Cooper, Inc. | DEE-7625 | 08/01/79 | New York. |
| Gold Oil Company | DEE-7734 | 08/01/79 | West Virginia. |
| Junior's Exxon | DEE-7626 | 08/01/79 | Tennessee. |
| Monts Texaco | DEE-7610 | 08/01/79 | South Carolina. |
| R. P. Patnode's Texaco | DEE-7793 | 08/01/79 | New Hampshire. |
| Rayon's Country Store | DEE-7794 | 08/01/79 | New Hampshire. |
| Rich's Service Station | DEE-7760 | 08/01/79 | Pennsylvania. |
| White Mountain Airport | DEE-7797 | 08/01/79 | New Hampshire. |
| Wilhem's Service Center | DEE-7630 | 08/01/79 | Arkansas. |
| Atlantic Richfield Company | DEE-7733 | 08/02/79 | California. |
| Bohannons Exxon | DEE-7763 | 08/02/79 | Florida. |
| Farmers Union Oil Company | DEE-7636 | 08/02/79 | Montana. |
| Kennedy's Garage & Market | DEE-7954 | 08/02/79 | Pennsylvania. |
| Patrich, Ray | DEE-7874 | 08/02/79 | Louisiana. |

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline —Continued

Week of July 27 Through Aug. 3, 1979

If granted: The following firms would receive an exception from the activation of the Standby Petroleum Product Allocation Regulations with respect to motor gasoline.

| | | | |
|---|---|---|---|
| Brazoria County of Texas | DEE-7645 | 08/03/79 | Texas. |
| Charlotte St. Shell | DEE-7661 | 08/03/79 | North Carolina. |
| D & K Coals, Inc. | DEE-7663 | 08/03/79 | Virginia. |
| Garrett's Amoco | DEE-7659 | 08/03/79 | West Virginia. |
| Lake Erie Patrol, Inc. | DEE-7644 | 08/03/79 | Ohio. |
| Murphy's Chevron Standard | DEE-7670 | 08/03/79 | Florida. |
| Nursery Park Gulf Service | DEE-7660 | 08/03/79 | Pennsylvania. |
| Owens, Willie | DEE-7642 | 08/03/79 | South Carolina. |
| Phil's Mini-Market | DEE-7671 | 08/03/79 | Pennsylvania. |
| Town of Westport | DEE-6221 | 08/03/79 | Connecticut. |
| Weaverville Shell | DEE-7662 | 08/03/79 | North Carolina. |
| Items Retrieved 85 | | | |

[FR Doc. 79-32227 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of April 9 Through April 13, 1979

Notice is hereby given that during the week of April 9 through April 13, 1979, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

### Appeals

*Paul R. Duckworth, Las Vegas, Nev., DFA-0318 Freedom of Information*

Paul R. Duckworth filed an Appeal from a determination which was issued to him by the Chief Counsel for the DOE Nevada Operations Office in response to a Freedom of Information Act request which sought information concerning drilling and water delivery costs at an underground testing site in Nevada. In considering the Appeal, the DOE determined that the Chief Counsel had failed to provide an adequate statement of his reasons for denying the Duckworth request. Accordingly, the DOE remanded the matter to the DOE Nevada Operations Office for further consideration.

*Gardere, Porter & DeHay, Houston, Tex., DFA-0344 Freedom of Information*

The law firm of Gardere, Porter & DeHay filed an Appeal from a determination which was issued to it by the Director of the DOE Division of Freedom of Information and Privacy Act Activities in response to a Freedom of Information Act request. In the request for information, Gardere sought documents concerning the allocation of costs of general refinery products. The Director identified five documents as responsive to the firm's request but found that these documents were exempt from mandatory disclosure pursuant to 5 U.S.C. 552(b)(5). In considering the Appeal, the DOE found that Gardere had merely expressed disbelief that there were no documents which could be released. The DOE therefore dismissed the Appeal for failure to raise more specific arguments which could provide a basis for reviewing the Director's determination.

*Newport News Shipbuilding and Dry Dock Co., Washington, D.C., DFA-0337 Freedom of Information*

Newport News Shipbuilding and Dry Dock Company appealed from a partial denial by the Deputy Director of the DOE Division of Naval Reactors of a request for information that the firm had submitted. In its Appeal, Newport News requested the release of 39 documents that had been withheld pursuant to 5 U.S.C. 552(b)(7)(A). In considering the Appeal, the DOE determined that the Deputy Director had properly withheld 36 documents consisting of investigatory records compiled for law enforcement purposes. However, the DOE directed the release of two other documents on the grounds that disclosure of that material was not likely to interfere with an investigation of Newport News. A third document which had been inadvertently withheld was also required to be released.

*Public Citizen, Washington, D.C., DFA-0346, Freedom of Information*

Public Citizen filed an Appeal from a denial by the Assistant Administrator for Enforcement of the ERA of a request of information which it had submitted under the Freedom of Information Act. In its initial request, Public Citizen sought information regarding various compliance proceeding. In considering the Appeal, the DOE noted that the Office of Enforcement had agreed to make available to Public Citizen all of the information that it had requested. Accordingly, the Appeal was dismissed.

### Remedial Order

*King Resources Company, Osage County, Okla., DRO-0101, Crude Oil*

King Resources Company filed a Statement of Objections to a Proposed Remedial Order which was issued to the firm on August 11, 1978 by DOE Region VIII. In the PRO, Region VIII concluded that during the period December 1973 through December 1975 King had unlawfully sold crude oil from the Happy Hollow S.E. 10 Lease at stripper well prices. In order to remedy this violation, Region VIII tentatively directed King to refund $97,696 plus interest to the purchasers of the crude oil. In considering King's objection, the DOE held that the firm's alleged reliance on informal oral advice provided by the IRS could not ratify pricing violations. In addition, the DOE found that the record did not support King's contention that Ruling 1974-29 was inconsistent with statements made by agency officials prior to its promulgation. Accordingly, King's Statement of Objections was denied and the PRO was issued as a Remedial Order.

### Petition for Special Redress

*Tesoro Petroleum Corporation, San Antonio, Tex., DES-0161; DSG-0047, Petroleum Products*

Tesoro Petroleum Corporation filed a Petition for Special Redress in which it sought to quash or modify a subpoena which had been issued to it on December 13, 1977 by the DOE Deputy Special Counsel. In considering the firm's Petition, the DOE found that the Special Counsel was sufficiently removed from the earlier stages of the subpoena proceeding to be considered a "disinterested party" within the meaning of 10 CFR 205.8(h)(4). The DOE also determined that the subpoena's statement of purpose was

appropriate, that the material requested was relevant, and that no legitimate evidentiary privilege would be jeopardized by compliance with the subpoena. The DOE also concluded that the subdelegation of subpoena power to the Deputy Special Counsel was appropriate. The DOE did note that a subpoena must specify the circumstances which warrant its issuance; however, that requirement was determined to have been met by specific findings of the Deputy Special Counsel. Finally, the firm's claim that compliance with the subpoena would constitute an undue financial buden was rejected on the grounds that the firm had failed to engage in negotiations designed to reduce its burden. However, the DOE stated that it would permit reargument of that issue if Tesoro could subsequently demonstrate the precise nature of the alleged burden and its good faith efforts to reduce that burden. The DOE therefore dismissed Tesoro's Petition for Special Redress.

**Requests for Exception**

*Agricultural Products Industrial Utilization Committee of the State of Nebraska, Lincoln, Nebr., DEE—2238, Gasohol*

The Agricultural Industrial Utilization Committee of the State of Nebraska filed an Application for Exception on behalf of all marketers in the State of Nebraska who wish to sell Gasohol, a blend of ethyl alcohol and unleaded gasoline. In its Application, Nebraska requested exception relief from the DOE pricing regulations and from the requirement that retailers post the octane levels of the Gasohol which they sell. In consideing the Application, the DOE noted that the pricing regulations had recently been amended to permit sellers of Gasohol to include in their prices the costs associated with the ethyl alcohol portion of the blend. The DOE therefore concluded that price relief was no longer needed. The DOE did find, however, that the octane posting requirement imposes a burden on retailers who are unable to determine the octane level of the Gasohol which they sell. Accordingly, the DOE granted exception relief that relieves sellers of Gasohol in Nebraska from the octane posting requirement.

*American Petroleum Refiners Association, Inc., Washington, D.C., FEE–4443, Aviation Fuel*

The American Petroleum Refiners Association, Inc. filed an Application for Exception in which it requested retroactive class exception relief which would permit certain refiners and resellers to increase the price charged for aviation fuel supplied to the Defense Fuel Supply Center. In considering the Application, the DOE found that the record did not indicate that the proposed class was so numerous as to make individual applications administratively burdensome or that the proposed class shared issues of fact or law that would justify the maintenance of a class exception proceeding. The Application was therefore dismissed.

*Aminoil USA, Inc., Los Angeles, Calif., DXE–2114, Crude Oil*

Aminoil USA, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The firm requested an extension of the exception relief previously granted to permit it to continue to sell certain quantities of crude oil which it produces from the California State Lease 392, Lower Main Zone, at upper tier ceiling prices. In considering the request, the DOE found that exception relief was necessary to provide an economic incentive to continue production activities from that property. Accordingly, exception relief was granted.

*Energy Cooperative, Inc., Washington, D.C., DPI–0026, Crude Oil*

Energy Cooperative, Inc. (ECI) filed an Application for Exception from the provisions of 10 CFR 213.35(c), which, if granted, would permit it to import on a license fee-exempt basis 6,975,000 barrels of crude oil into Districts I–IV during the 1978–79 allocation period. In considering ECI's request, the DOE found that the firm did not have a domestic base period supplier of crude oil and was consequently required to import crude oil and exchange it with other domestic firms in order to obtain crude oil feedstocks for its refinery. The DOE also found that ECI had made a convincing showing that it was experiencing serious financial difficulties which would be exacerbated by the payment of license fees during March and April 1979. Accordingly, the ECI Application for Exception was granted.

*Stephens and Cass, Midland, Tex., FEE–4095, Crude Oil*

Stephens and Cass (S&C) filed an Application for Exception, which, if granted, would provide the firm with retroactive exception relief permitting it to retain revenues realized from the sale of crude oil from 14 different properties at prices later found to be unlawful in a Remedial Order which was issued to S&C. In considering the Application, the DOE determined that S&C had failed to submit reliable financial information demonstrating that the firm would suffer an irreparable injury in the absence of exception relief. The DOE also found no merit to S&C's argument that exception relief was warranted because the Remedial Order would force the firm to operate the 14 properties at a loss. Accordingly, the Application for Exception was denied.

*Wylain, Inc., Dallas, Tex., DEE–2129, Furnaces*

Wylain, Inc., a manufacturer of gas and oil boilers, filed an Application for Exception from the provisions of 10 CFR, Part 340, in which the firm sought to modify the DOE testing procedures for measuring the energy efficiency of new furnaces. In considering the request, the DOE found that exception relief was necessary to produce reliable and consisfent results on those gas boilers which are equipped with integral diverters. Accordingly, exception relief was granted.

**Motion for Evidentiary Hearing**

*J. R. Parten, Houston, Tex., DRH–0129, Crude Oil*

J. R. Parten filed a Motion for Evidentiary Hearing in connection with a Statement of Objections to a Proposed Remedial Order which DOE Region VI issued to him on October 2, 1978. In the PRO, Region VI found that during the period November 1, 1973 through August 31, 1976, Parten sold crude oil produced from the Seven J. Stock Farm, Inc. lease at prices which exceeded the maximum permissible selling prices. In his Motion for Evidentiary Hearing, Parten stated that he intended to present expert testimony in support of his position that two distinct geological formations underlie the Seven J. lease. In considering Parten's Motion, the DOE determined that there was a substantial dispute as to the geology of the Seven J. lease. The DOE also determined that this factual dispute was relevant to the determining the validity of Parten's claim that the "very large tract" provision of Ruling 1977–1 allowed him to treat the Seven J. lease as two separate properties for purposes of the DOE price regulations. Moreover, the DOE concluded that the testimony and cross-examination of knowledgable experts would lead to a better understanding of the issue than the submission of documents and other written memoranda. Accordingly, the Parten Motion for Evidentiary Hearing was granted.

**Motion for Discovery**

*Time Oil Company, Portland, Oreg., DRD–0083, Aviation Fuel*

Time Oil Company filed a Motion pursuant to 10 CFR 205.199G for an extension of time to file a Motion for Discovery. In considering the Motion, the DOE found that Time had already been granted considerable procedural flexibility in the proceeding and had not demonstrated that an extension of time was crucial to its case. Accordingly, the Time Motion was denied.

**Supplemental Order**

*Lunday-Thagard Oil Company, South Gate, Calif., DEX–0004, Crude Oil*

On three separate occasions, the DOE granted exceptions from the provisions of 10 CFR 211.67 (the Entitlements Program) to Lunday-Thagard Oil Company. These exceptions relieved Lunday-Thagard from a portion of its projected entitlement purchase obligations for the fiscal year ended June 30, 1977. In the Orders, the DOE indicated that it would conduct a review of the exception relief at the completion of the firm's fiscal year to determine whether it had received either excessive or insufficient relief. Based on such a review, the DOE determined that Lunday-Thagard had received excessive relief. Lunday-Thagard was therefore required to purchase additional entitlements with a total value of $20,527 during the period April through September 1979.

**Petitions Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline**

The following firms filed Applications for Stay and/or Temporary Stay of the provisions of Standby Regulation Activation Order No. 1. The stay requests, if granted, would result in an increase in the base period allocation of motor gasoline pending determination of the Applications for Exception. The DOE issued Decisions and Orders which determined that the stay requests be granted:

*Company Name, Location, and Case No.*

Brook Plaza Exxon Service Center, Brooksville, FL, DES–2938, DST–2938.
Charles & 20th Exxon, Baltimore, MD, DES–3346, DST–3346.
P&W Oil Company, Inc., Athens, AL, DES–2890, DST–2890.
A. A. Grocery #2, Delvalle, TX, DES–3113.
Boulder Valley Oil Company, Lafayette, CO, DES–2495.
Big John's Exxon, Jacksonville, FL, DES–3183, DST–3183.
Big K Oil Company, Inc., Hattiesburg, MS, DST–2494.
Brilad Oil Company, Vidalia, GA, DEX–0150.
Edwards Auto Service, Richmond, VA, DES–2994.
Hannah's Service Station, Florence, AL, DES–3428, DST–3428.
Shoal's Creek Chevron, Florence, AL, DES–2467, DST–2476.
Sumter Oil & Gas Company, Sumter, SC, DES–2725.
Kenny's Food Markets, Richfield, MN, DES–2892, DST–2892.
Brockbridge Exxon, Laurel, MD, DES–3046.
Burnsville Crosstown Mobil, Burnsville, MN, DES–2775.
C. J. Enterprises, Inc., Amherst, MA, DES–2729.
E. Lee Young d/b/a/ Big Quickstop, Ruston, LA, DES–3390.
Emerald Hills Citgo, Hollywood, FL, DES–2940.
Gonzales Truck Stop, Priarieville, LA, DES–3002.
Harry's 66, Ft. Myers, FL, DES–2989.
Hassan & Hassan, N. Miami Beach, FL, DES–2583, DST–2583.
Luvern A. Maricle, W. Concord, MN, DES–2689.
Walkey's Exxon, Nashua; NH, DES–3256, DST–3256.
Bob's Vintage Texaco, Napa, CA, DES–2772.
Browning's Exxon, Hazelwood, NC, DES–3126.
Clary's Auto Service, Vidor, TX, DES–2481.
Dundalk Exxon, Baltimore, MD, DES–3026.
Red Clay Creek Exxon, Wilmington, DE, DES–2720.
Sissie Car Wash, Inc., Phoenix, AR, DES–3135, DST–3135.
Uco Oil Company, Whittier, CA, DES–2487.
Weekly's Exxon Service Center, Montclair, CA, DES–3036.

The following firms filed Applications for Stay and/or Temporary Stay of the provisions of Standby Regulation Activation Order No. 1. The stay requests, if granted, would result in an increase in the base period allocation of motor gasoline pending determination of the Applications for Exception. The DOE issued Decisions and Orders which determined that the stay requests be denied:

*Company Name, Location, and Case No.*

Industrial Petroleum Supply of Evansville; Inc., Evansville, IN, DES–2404.
McManon Oil Company, Inc., Newton, TX, DST–2346.

The following firms filed Applications for Exception and/or Applications for Stay and/or Temporary Stay from the provisions of Standby Regulation Activation Order No. 1. After reviewing the material presented by these firms, the DOE issued Decisions and Orders which determined that each of these petitions should be dismissed without prejudice to a refiling at a later date:

*Company Name and Case No.*

Ideal Oil Company, DEE–3097, DST–3097.
Bob's Chevron, DEE–2530; DES–2530; DST–2530.
Tripus Chevron, DEE–2501; DES–2501; DST–2501.
Barry Ivers Chevron, DEE–2196.
Scoville Leasing, DEE–2701.
Jack's C. & E. Service, DEE–2768.
Meadows Chevron, DEE–2877; DES–2877.
Cebula, Edward, DEE–3041.
B. J. Johns, DEE–3102; DES–3102.
Gay's Service Station, DEE–3219.
Stuart Enterprises, DEE–3215.
Enterprise Oil Company, DEE–3134.
Coldwater Oil Company, DEE–2514.
Hood Oil Company, Inc., DEE–3031; DST–3031.
John Cheretis Shell, DEE–3297.
Fazlollah Bazarganan, DEE–3082
Daigle Oil Company, DEE–2647.
Larry McDonnell, DEE–2781.
Sallie L. Nance, DEE–2977.
Manet Shell, Inc., DES–0191.
D & D Shell, DEE–2880; DES–2880.
Merrydale Shell, DEE–3208; DST–3208.
Alpena Oil Company, DEE–2641; DES–2641.
Mr. Noaldo Rebustillo d.b.a. Al's S. Center, DEE–3009.
Pete's Shell, DEE–3246; DES–3246.
Colburns Shell, DEE–2762; DES–2762.
Rasnick's Shell, DEE–0190; DST–0190.
Ole Toll Shell, DEE–2567; DES–2567; DST–2567.
Wayne's Standard Service, DEE–2463.
Village Amoco, DEE–2545.
J. Henricks, DEE–2677.
Clifton American, DEE–2645; DES–2645.
Rusher Oil Company, DEE–2982.
Van's Amoco, DEE–3060.
Millers Standard Service, DEE–2976.
Walworth Standard Carwash, DEE–3165.
Martin Automotive, DEE–3057.
Moe Oil Company, DEE–3163.
Molnar's Standard DEE–3069.
Stanton's Standard, DEE–3129.
Green Bay Standard, DEE–3223.
Oakland Quik Six, DEE–3224.
Northgate Amoco, DEE–3369; DES–3369; DST–3369.
Dzamko's Amoco, DEE–3364.
Shoreline Petroleum Company, DEE–2424; DES–2424; DST–2424.
Schaeffer Oil, Inc., DEE–2332; DES–2332; DST–2332.
Zippy Mart, Inc., DEE–2381; DES–2381.
Riverside Oil Company, DES–2415; DST–2515.

Dismissals

The following submissions were dismissed without prejudice to a refiling at a later date:

*Name, Location, and Case No.*

Tesoro Petroleum Corporation, Washington, D.C., DES–0153.
Amtel, Inc., Houston, Texas, DES–2573; DST–2573; DEE–2573.
Silver Oil Company, Inc., Cincinnati, Ohio, DEE–2734; DST–2734.
Parker Distributing Company, Inc., Rittendorf, Iowa, DEE–2865.
Commerce & Hiller Shell, West Bloomfield, New York, DEE–3079.
Waddell Oil Company, Delano, Minnesota, DEE–2714.
Pure Water & Gas Company, Inc., Lyons, Georgia, DEE–2747; DES–2747; DST–2747.
Getty Refining & Marketing Company, Tulsa, Oklahoma, DEE–2905.
Evans Oil Company, Lancaster, South Carolina, DEE–3005.
Orlando & Sons Exxon, Ormond Beach, Florida, DEE–3384.
Radcliffe Oil Company, Washington, Indiana, DEE–2593.
Grosskopf Oil, Inc., Shawano, Wisconsin, DEE–3373.

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

October 12, 1979.

[FR Doc. 79–32228 Filed 10–18–79; 8:45 am]
BILLING CODE 6450–01–M

## Objection to Proposed Remedial Orders Filed Week of September 24 Through September 28, 1979

Notice is hereby given that during the week of September 24 through September 28, 1979, the Notices of Objection to Proposed Remedial Orders listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

On or before October 29, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). On or before November 19, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy,

Washington, D.C. 20461. Issued in Washington, D.C.

October 12, 1979

Melvin Goldstein,

*Director, Office of Hearings and Appeals.*

**Proposed Remedial Orders**

*Edwards Producing Company, Inc., Jackson, Miss., Crude Oil, DRO-0400*

On September 25, 1979, Edwards Producing Company, Inc., 1755 Lelia Dr., Suite 301, Jackson, Mississippi 39216, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast Enforcement District issued on September 6, 1979. In the Proposed Remedial Order, the Enforcement Office found that during the time period September 1, 1973 to December 31, 1977, Edwards Producing Company committed pricing violations in the sale of crude oil in the State of Mississippi. According to the Proposed Remedial Order, these pricing violations resulted in overcharges to the firm's customers of approximately $127,000.

*JOC Oil, Inc., New York, N.Y., Fuel Oil, DRO-0404*

On September 28, 1979, JOC Oil, Inc., 645 Fifth Avenue, New York, New York 10022, filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast Enforcement District, Region 2, issued to JOC on September 7, 1979. In the Proposed Remedial Order, the Enforcement District found that during the period from November 1, 1973 to June 30, 1974, JOC committed pricing violations in connection with the sales of No. 2 heating oil and No. 6 fuel oil. According to the proposed Remedial Order, JOC's violations resulted in overcharges to the firm's customers of $941,517.

[FR Doc. 79-32229 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decisions And Orders; September 24 Through September 28, 1979

Notice is hereby given that during the period September 24 through September 28, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the Date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.d.t., except federal holidays.

October 12, 1979.

Melvin Goldstein,

*Director, Office of Hearings and Appeals.*

*Chevron U.S.A. Inc., San Francisco, Calif., Crude Oil, DEE-7939.*

Chevron U.S.A. Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Stevens Property located in Kern County, California, at market prices. On September 24, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part, with respect to the applicant's exception application.

*Fields Field Company, Houston, Tex., Crude Oil, DEE-3706*

On April 16, 1979, Fields Field Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart K. The exception request, if granted, would permit the firm to increase the selling price of the natural gas liquids it produces in connection with a natural gas cycling and condensate producing process at the Wilcox B Sand Unit, located in Fields Field, Beauregard Parish, Louisiana. On September 28, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Gulf Oil Corporation, St. Martin Parish, La., Crude Oil, DEE-7350*

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Gulf to sell at upper tier ceiling prices a portion of the crude oil produced from the Rycade Oil Corporation, *et al.* Lease, located in the Section 28 Field in St. Martin Parish, Louisiana. On September 27, 1979, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Longwood Furnace Corp., Gallatin, Mo., Consumer Product, DEE-7840*

Longwood Furnace Corporation filed an Application for Exception from the provisions of 10 CFR 430, the Energy Conservation Program for Consumer Products. The exception request, if granted, would permit the firm to market its combination wood and fossil fuel furnaces without regard to the energy efficiency test procedures specified in Appendix N of Part 430. On September 27, 1979, the DOE issued a Proposed Decision and Order which determined that exception relief should be granted.

**List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline**

Week of September 24 Through September 28, 1979

The following firms filed Applications for Exception from the provisions of the motor gasoline allocation regulations. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

*Company Name, Case No., and Location*

Abernathy's Exxon, DEE-4327, LaGrange, GA.
Bolduc Service Centers, DEE-4670, Ludlow, MA.
G & G Oil Co., DEE-4989, Flagstaff, AZ.
Home Oil, Inc., DEE-4544, Washington, DC.
Lyon Oil Co., DEE-2684, Charleston, WV.
Monarch Products, Ltd., DEE-3666, Milwaukee, WI.
Ruscon Big C Stores, DEE-7532, Talladega, AL.
#1 & #2, DEE-7587.
Shaw's Gulf, DEE-4316, Wallingford, VT.
Sparkle Car Wash, DEE-2761, San Bernadino, CA.

**List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline**

Week of September 24 Through September 28, 1979

The following firms filed Applications for Exception from the provisions of the motor gasoline allocation regulations. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

*Company Name, Case No., and Location*

A. Abart, Enterprises, DEE-6991, Falls Church, VA.
Arnold Shell, DEE-7478, Arnold, CA.
Cox's Amoco, DEE-6187, Baltimore, MD.
Dan's Getty Station, DEE-4017, Barre, VT.
Diamond Gas & Fuel, DEE-2248, Englewood, CO.
Enka Shell, DEE-7516, Enka, NC.
Gilroy Mobil, DEE-3572, Gilroy, CA.
High Street Exxon, DEE-6762, Danvers, MA.
Hollywood Foreign Auto Repair, DEE-6734, Van Nuys, CA.
Independent Oil & Tire Co., DEE-4273, Elyria, OH.
Jabus W. Breeland, DEE-7077, Shreveport, LA.

Jack's Arco, DEE–6100, Caledonia, NY.
Jurdi's, DEE–5264, Granada Hills, CA.
March Bros., Inc., DEE–6782, Poultney, VT.
Mike's Tire & Super Service, Inc., DEE–4191, Los Angeles, CA.
Nesbit's Service, DEE–5698, Pittsfield, MA.
Nick's Gulf, DEE–7303, Rockland, MA.
Pete & Frank's 66 Service, Inc., DEE–7124, Tampa, FL.
Savory Corporation, DEE–7050, San Francisco, CA.
Sittard Service, DEE–7300, Chicopee, MA.
South Hill, Inc., DEE–7342, Stamford, CT.
Thomas Oil Co., DEE–2312, Gainesville, FL.
Times News, DEE–4955, Kingsport, TN.
Viger's Shell, DEE–6332, Lincoln Park, MI.
Unimed Management Corporation, DEE–7141, New York, NY.
West Texas Gas, Inc., DEE–3521, Midland, TX.
William L. Gibbs, DEE–7473, DEE–7474, Greenville, SC.

[FR Doc. 79–32230 Filed 10–18–79; 8:45 am]
BILLING CODE 6450–01–M

## Cases Filed; Week of September 21, 1979 Through September 28, 1979

Notice is hereby given that during the week of September 21, 1979 through September 28, 1979 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

October 12, 1979.

Melvin Goldstein,
*Director, Office of Hearings and Appeals.*

### List of Cases Received by the Office of Hearings and Appeals

[Week of Sept. 21, 1979, through Sept. 28, 1979]

| Date | Name and location of applicant | Case no. | Type of submission |
|---|---|---|---|
| Sept. 21, 1979 | Cibro Petroleum Products, Inc., Washington, D.C. | DEE–8287 | Allocation exception. If granted: Cibro Petroleum Products, Inc. would be granted an exception from the provisions of 10 CFR 211.65 regarding the Buy/Sell Program. |
| Sept. 21, 1979 | Cities Service Co., Tulsa, Okla. | DEA–0657 | Appeal of assignment order. If granted: The August 24, 1979 Assignment Order issued by the Economic Regulatory Administration to Kerr-McGee Corp. regarding Cities Service Co.'s supply obligations to Triangle Refinery, Inc., a subsidiary of Kerr-McGee Corp., would be rescinded. |
| Sept. 21, 1979 | Union Carbide Caribe, Inc., New York, N.Y. | DEE–8288 | Allocation exception. If granted: Union Carbide Caribe, Inc. would receive additional entitlements equal in value to the cost of the investment required to adapt the firm's petrochemical plant to process LPG feedstock. |
| Sept. 24, 1979 | Chevron U.S.A. Inc., San Francisco, Calif. | DEN–5818 | Request for interim order. If granted: Chevron U.S.A. Inc. would be granted exception relief on an interim basis from the provisions of 10 CFR 212, with respect to the crude oil produced from the Colonial Unit and State Lease P.R.C. 735–1, both located in Ventura County, Calif., pending a final determination on the firm's Application for Exception (Case No. DEE–5818). |
| Sept. 24, 1979 | Clean Coal Corp., Glenview, Ill. | DEE–8290 | Allocation exception. If granted: Clean Coal Corp. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 24, 1979 | Clemco, Wood County, Tex. | DEE–8293 | Price exception (section 212.73). If granted: Clemco would be permitted to sell the crude oil produced from the Fouse Lease and the O.M. McCorley Lease, both located in Wood County, Tex., at upper tier ceiling prices. |
| Sept. 24, 1979 | David A. Wheatley Oil Co., Morehead City, N.C. | DEE–8291 | Allocation exception. If granted: David A. Wheatley Oil Co. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 24, 1979 | H & H Oil Co., Dickson, Tenn. | DEE–5975 | Allocation exception. If granted: H & H Oil Co. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 24, 1979 | Kern County Refinery, Inc., Los Angeles, Calif. | DRD–0027 | Motion for discovery. If granted: Discovery would be granted to Kern County Refinery, Inc. with respect to the May 24, 1979, Interim Remedial Order for Immediate Compliance issued to Tenneco Oil Co. |
| Sept. 24, 1979 | Lone Star Gas Co., Dallas, Tex. | DEE–8285<br>DES–8285 | Exception to the reporting requirements, request for stay. If granted: Lone Star Gas Co. would not be required to file Form EIA–149, "Natural Gas Supply, Distribution, and Usage." The firm would receive a stay pending a final determination on its Application for Exception. |
| Sept. 24, 1979 | Mobil Gas Service Corp., Mobile, Ala. | DEE–8295 | Exception to reporting requirements. If granted: Mobil Gas Service Corp. would not be required to file Form EIA–149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 24, 1979 | Monarch Aviation, Inc., Grand Junction, Colo. | DRW–0032 | Interim remedial order for immediate compliance for which no objection has been filed. If granted: An Interim Remedial Order for Immediate Compliance issued to Monarch Aviation, Inc. on May 8, 1979, would be issued as a final Remedial Order for Immediate Compliance. |
| Sept. 24, 1979 | Standard Oil Co. of Ohio, Cleveland, Ohio | DEA–0658<br>DES–0658 | Appeal of assignment order, request for stay. If granted. The August 30, 1979, Assignment Order issued by the Economic Regulatory Administration Region I to BP Oil, Inc., a subsidiary of Standard Oil Company of Ohio, regarding BP's supply obligations to F.L. Roberts and Company would be rescinded. The firm would receive a Stay of the Assignment Order pending a final determination on its appeal. |
| Sept. 24, 1979 | United Independent Oil Co., Washington, D.C. | DSG–0067<br>DRS–0124<br>DRT–0124 | Petition for special redress, request for stay and temporary stay. If granted: The July 13, 1979, Notice of Probable Violation issued by the Office of Enforcement to United Independent Oil Co. and 3 other refiners would be quashed. The firm would receive a stay and temporary stay of the provisions of 10 CFR 205.191 pending a final determination on its Petition for Special Redress. |
| Sept. 24, 1979 | Woods Petroleum Corp., Oklahoma City, Okla. | DEE–8284 | Price exception (section 212.73). If granted: Woods Petroleum Corp. would be permitted to sell the crude oil produced from the Johnson State #20–1 unit located in Harding County, S. Dak., at market prices. |
| Sept. 25, 1979 | Anderson Clayton, Phoenix, Ariz. | DEE–8296 | Exception to reporting requirements. If granted: Anderson Clayton would not be required to file Form EIA–149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 25,1979 | Butler County Oil Co., Poplar Bluff, Mo. | DEE–8283 | Allocation exception. If granted: Butler County Gas Co. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 25, 1979 | City Public Service Board, San Antonio, Tex. | DEE–8297 | Exception to reporting requirements. If granted: City Public Service Board of San Antonio, Tex. would not be required to file Form EIA–149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 25, 1979 | Continental Oil Co., Stamford, Conn. | DEX–0207 | Supplemental order. If granted: Continental Oil Co. would be permitted to sign an escrow agreement by October 1, 1979, with Bankers Trust Co., in connection with the implementation of special refund procedures. |

## List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Sept. 21, 1979, through Sept. 28, 1979]

| Date | Name and location of applicant | Case no. | Type of submission |
|---|---|---|---|
| Sept. 25,1979 | Ferel Little Oil Co., San Augustine, Tex | DMR-0076 | Request for modification/rescission. If granted: The August 20, 1979, Decision and Order (Case No. DEE-2627) issued to Ferel Little Oil Co. would be modified permitting the firm to receive an increased allocation of motor gasoline. |
| Sept. 25,1979 | Gasco, Inc., Honolulu, Hawaii | DEE-8298 | Exception to reporting requirements. If granted: Gasco, Inc. would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 25,1979 | Gibbons Oil Co., Bath, Maine | DRD-0332 | Motion for discovery. If granted: Discovery would be granted to Gibbons Oil Co. with respect to its Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. DRO-0332). |
| Sept. 25,1979 | Harper Heights Gas Co., Beckley, W. Va | DEE-8299 | Exception to reporting requirements. If granted: Harper Heights Gas Co. would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 25,1979 | J. M. Huber Corp., Houston, Tex | DEE-8300 | Exception to reporting requirements. If granted: J. M. Huber Corp. would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 25,1979 | Kayo Oil Co., Houston, Tex | DMR-0075 | Request for modification/rescission. If granted: The May 7, 1979, Decision and Order issued to Kayo Oil Co. would be modified with respect to the location of a new motor gasoline retail outlet which the firm intends to open. |
| Sept. 25,1979 | Mobil Oil Corp., Washington, D.C | DST-0073 | Request for temporary stay. If granted: Mobil Oil Corp. would receive a temporary stay of its crude oil supply obligations to Commonwealth Oil Refining Co. (Corco) pending a determination on Corco's Application for Exception (Case No. DEE-8020) and Petition for Special Redress (Case No. DSG-0083). |
| Sept. 25,1979 | Office of Special Counsel, Washington, D.C | DEX-0208 | Supplemental order. If granted: Conoco, Inc. would be permitted to negotiate an escrow agreement with a banking institution of its choice, subject to the approval of the Office of Hearings and Appeals, for the implementation of special refund procedures. |
| Sept. 25,1979 | Pargas, Waldorf, Md | DEE-8301 | Exception to reporting requirements. If granted: McCloud Gas Co., a subsidiary of Pargas, would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 25,1979 | Simon, Kesner & Simon, Inc., Los Angeles, Calif | DEE-4607 | Exception to the emergency temperature restrictions. If granted: Simon, Kesner & Simon, Inc. would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions. |
| Sept. 25,1979 | Total Petroleum, Inc., Detroit, Mich | DED-3188 | Motion for discovery. If granted: Discovery would be granted to Total Petroleum, Inc. with respect to documents submitted by Midland Energy Corp. (Case No. DEE-3188) regarding Total's Application for Exception. |
| Sept. 25,1979 | True Oil Co., Casper, Wyo | DFA-0317 | Appeal of information request denial. If granted: The August 16, 1979, Information Request Denial issued by the Rocky Mountain District, Office of Enforcement, would be rescinded and True Oil Co. would receive access to certain documents. |
| Sept. 25,1979 | UV Industries, Salt Lake City, Utah | DEE-5194 | Exception from the reporting requirements. If granted: UV Industries would receive an extension of time in which to file Form EIA-23, "Annual Survey of Domestic Oil and Gas Reserves." |
| Sept. 25,1979 | William N. Tipka, Middleburg Heights, Ohio | DEE-6000 | Exception to reporting requirements. If granted: William N. Tipka would not be required to file Form EIA-23, "Annual Survey of Domestic Oil and Gas Reserves." |
| Sept. 26, 1979 | Commonwealth Oil Refining Co., Inc., San Antonio, Tex. | DMR-0078 | Request for modification/rescission. If granted: The determination reached in the Decision and Order issued to Commonwealth Oil Refining Co., Inc. (Corco) on August 15, 1979, would be reversed and Corco would receive additional naptha entitlements. |
| Sept. 26, 1979 | E. I. du Pont de Nemours & Co., Louisville, Ky | DEE-6391 | Exception to emergency building temperature restrictions. If granted: E. I. du Pont de Nemours & Co. (Louisville, Ky.) would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions. |
| Sept. 26, 1979 | Exxon Nuclear Company, Inc., Washington, D.C | DFA-0659 | Appeal of information request denial. If granted: The August 22, 1979, Information Request Denial issued by DOE Oak Ridge Operations would be rescinded and Exxon Nuclear Co. would receive access to information related to DOE's selection of contractors for the manufacture of gas centrifuge machines. |
| Sept. 26, 1979 | Hunter Enterprises Orillia, Orillia, Ont | DEE-5971 | Exception to energy conservation program for consumer products. If granted: Hunter Enterprises Orillia would receive an exception permitting the firm to market its dual fuel furnaces without regard to the energy efficiency test procedures specified in 10 CFR 430. |
| Sept. 26, 1979 | Imperial Refineries, Inc., St. Louis, Mo | DSG-0068 | Petition for special redress. If granted: An Order would be issued preventing the Economic Regulatory Administration from taking additional action with respect to the Special Report Order issued by the ERA Region VII to Imperial Refineries Corp. on March 13, 1979. |
| Sept. 26, 1979 | Pryor Interprises, Inc., Griffin, Ga | DEE-5441 | Allocation exception. If granted: Pryor Interprises would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 27, 1979 | C & H Refinery, Inc., Washington, D.C | DSG-0070<br>DES-0284<br>DST-0284 | Petition for special redress, application for stay and temporary stay. If granted: The July 13, 1979, Notice of Probable Violation issued by the Office of Enforcement to C & H Refinery Inc. and three other refiners would be quashed. The firm would receive a stay and temporary stay of the provisions of 10 CFR 205.191 pending a final determintion on its Petition for Special Redress. |
| Sept. 27, 1979 | Cubbon Lumber Co., Oil City, Pa | DRR-0079 | Request for modification/rescission. If granted: The September 14, 1979 Remedial Order issued to Cubbon Lumber Co. (Case No. DRW-0029) regarding a pricing violation would be modified. |
| Sept. 27, 1979 | Golden Gate Petroleum Co., San Francisco, Calif | DRH-0253<br>DRD-0253 | Motion for evidentiary hearing, motion for discovery. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with Golden Gate Petroleum Co.'s Statement of Objections to a Proposed Remedial Order issued to the firm on September 24, 1979. |
| Sept. 27, 1979 | Research Fuels, Inc., Washington, D.C | DEA-0661<br>DES-0661<br>DST-0661 | Appeal of temporary assignment orders, request for stay and temporary stay. If granted: The August 28, 1979, and September 7, 1979, Temporary Assignment Orders issued by the Economic Regulatory Administration, Region VI, to Champlin Petroleum Co. regarding its supply obligations to Research Fuels, Inc. would be rescinded. The Orders would be stayed pending a final determination on the firm's appeal. |
| Sept. 27, 1979 | Saveway Service Stations, Inc., Washington, D.C | DRD-0288 | Motion for discovery. If granted: Discovery would be granted to Saveway Service Stations, Inc. with respect to the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. DRO-0288) issued to the firm on July 19, 1979. |
| Sept. 27, 1979 | Standard Oil Co. of Indiana, Chicago, Ill | DEA-0660 | Appeal of ERA decision and order. If granted: The August 23, 1979, Decision and Order issued by the Economic Regulatory Administration to Archer Daniels Midland Co. designating the firm as a producer of Petroleum Substitute entitled to participate in the Domestic Crude Oil Allocation Program would be rescinded. |
| Sept. 27, 1979 | West Gulf Maritime Association, Houston, Tex | DEE-8304 | Allocation exception. If granted: West Gulf Maritime Association would be granted an exception to the provisions of 10 CFR 211, granting the Association an allocation of diesel fuel. |
| Sept. 28, 1979 | Borough of Chambersburg, Chambersburg, Pa | DEE-6575 | Exception from reporting requirements. If granted: The Borough of Chambersburg would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |

### List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Sept. 21, 1979, through Sept. 28, 1979]

| Date | Name and location of applicant | Case no. | Type of submission |
|---|---|---|---|
| Sept. 28, 1979 | Chevron U.S.A. Inc., San Francisco, Calif | DRD-0196 | Motion for discovery. If granted: Discovery would be granted to Chevron U.S.A. Inc. with respect to the Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. DRO-0196). |
| Sept. 28, 1979 | Frankfort Fuels, Inc., Frankfort, Ill | DEE-8306 | Allocation exception. If granted: Frankfort Fuels, Inc. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 28, 1979 | James Allan & Sons, Stockton, Calif | DEE-6201 | Exception to reporting requirements. If granted: James Allan & Sons would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 28, 1979 | Liberty Hill Oil Corp., Denver, Colo | DEE-6132 | Price Exception (section 212.73). If granted: Liberty Hill Oil Corporation would be permitted to sell the crude oil produced from the Spur Ranch "A" Lease located in Chautauqua County, Kans., at upper tier ceiling prices. |
| Sept. 28, 1979 | Ohio River Pipeline Corp., Indianapolis, Ind | DEE-6226 | Exception to the Reporting Requirements. If granted: Ohio River Pipeline Corp. would not be required to file Form EIA-149, "Natural Gas Supply Distribution, and Usage." |
| Sept. 28, 1979 | Piedmont Water, Gas and Sewer Board, Piedmont, Ala. | DEE-6082 | Exception to the reporting requirements. If granted: Piedmont Water, Gas and Sewer Board would not be required to file Form EIA-149, "Natural Gas Supply, Distribution, and Usage." |
| Sept. 28, 1979 | Radiant Oil Co. of Tampa, Inc., Tampa, Fla | DSG-0069 | Petition for special redress. If granted: The Assignment Orders issued by the Economic Regulatory Administration Region IV, to Radiant Oil Co. of Tampa, Inc. assigning the firm a base period supply of motor gasoline would be rescinded. |
| Sept. 28, 1979 | Seaview Petroleum Co., Washington, D.C | DEE-6942 | Exception to the entitlements program. If granted: Seaview Petroleum Co. would receive an exception from the provisions of 10 CFR 211.67, regarding its entitlement purchase obligations. |
| Sept. 28, 1979 | So. Mo. Gasohol, Inc., Cabool, Mo | DEE-7517 | Allocation exception. If granted: So. Mo. Gasohol, Inc. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an increased allocation of unleaded gasoline for the purpose of blending gasohol. |
| Sept. 28, 1979 | Texaco, Inc., White Plains, N.Y | DEA-0663 | Appeal of ERA decision and order. If granted: The August 23, 1979, Decision and Order issued by the Economic Regulatory Administration Office of Petroleum Operations to Archer Daniels Midland Co. designating the firm as a producer of Petroleum Substitute entitled to participate in the Domestic Crude Oil Allocation Program would be rescinded. |
| Sept. 28, 1979 | Truckstops Corp. of America, Miami, Fla | DFA-0662 | Appeal of information request denial. If granted: The August 31, 1979, Information Request Denial issued by the Acting Director, Office of Petroleum Operations, Region V would be rescinded and Truckstop Corp. of America would receive access to certain DOE data. |

### Notices of Objection Received

| Date | Name and location of applicant | Case No. |
|---|---|---|
| September 24, 1979 | Arlin F. Roat Standard, Wichita, KS | DEO-0392 |
| September 24, 1979 | Beer World, Washington, DC | DEE-4371 |
| September 24, 1979 | Billykay Service Station, Brooklyn, NY | DEO-0401 |
| September 24, 1979 | Bob's Autotorium, Whitaker, PA | DEE-4668 |
| September 24, 1979 | Central Auto Service, Oak Park, IL | DEO-0391 |
| September 24, 1979 | Lake Erie Patrol, Inc., Put-in-Bay, OH | DEE-7644 |
| September 25, 1979 | Alexander's Dept. Store, Inc., Wilmington, NC | DEE-7571 |
| September 25, 1979 | Buy-Rite Oil Company, Weseca, MN | DEO-0398 |
| September 25, 1979 | Citadel Corporation, Washington, DC | DEE-3870 |
| September 25, 1979 | Downtown Exxon, Harrodsburg, KY | DEE-5491 |
| September 25, 1979 | John Fries (Gold Key Shell) Sunrise, FL | DEO-0393 |
| September 25, 1979 | J&B Car Wash, York, PA | DEO-0396 |
| September 25, 1979 | Kreiner Bros. Motor & Implement Co., Hampton, IA | DEO-0395 |
| September 25, 1979 | Maplewood Auto Service, St. Paul, MN | DEO-0397 |
| September 25, 1979 | North River Gulf, Atlanta, GA | DXE-1196 |
| September 25, 1979 | Patterson Texaco Service, Harlington, TX | DEO-0394 |
| September 26, 1979 | Ramada Inn Texaco, Alexandria, LA | DEO-0402 |
| September 27, 1979 | Marine Oil Co., Washington, DC | DEO-0403 |
| September 27, 1979 | Ronald Boyle's Amoco, Homestead, PA | DEE-3653 |
| September 28, 1979 | Diversified Properties, Inc., Nitro, WV | DEO-0408 |
| September 28, 1979 | Memorial Exxon Station, Alexandria, VA | DEO-0405 |
| September 28, 1979 | Quality Oil Company, Winston-Salem, NC | DEO-0406 |
| September 28, 1979 | Sevell's Automotive, Westfield, NV | DEO-0407 |
| September 28, 1979 | T. G. Heinen, Tulsa, OK | DEO-0409 |
| September 28, 1979 | William R. Green, Camden, NJ | DEO-0410 |

## List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

[Week of Sept. 21 through Sept. 28, 1979]

If granted: The following firms would receive an exception from the activation of the standby petroleum product allocation regulations with respect to motor gasoline.

| | | | |
|---|---|---|---|
| Autohaus V.I.C | DEE-8277 | 09/21/79 | California. |
| Bruck's Automotive | DEE-8275 | 09/21/79 | Texas. |
| Five Star Service Station | DEE-8278 | 09/21/79 | California. |
| Hampton Park Exxon | DXE-7774 | 09/21/79 | South Carolina. |
| Holiday Foods, Inc | DXE-8273 | 09/21/79 | Washington. |
| Kim Electric Service | DEE-5830 | 09/21/79 | California. |
| Morgan Grocery | DEE-8274 | 09/21/79 | Texas. |
| Service Oil Company | DEE-8286 | 09/21/79 | District of Columbia. |
| State of New Jersey | DXE-8279 | 09/21/79 | New Jersey. |
| B & T Automotive Service | DEE-8281 | 09/24/79 | Maryland. |
| E & F Forklift Co | DEE-8289 | 09/24/79 | California. |
| Mukhar, Jack K | DEE-7771 | 09/24/79 | California. |

| | | | |
|---|---|---|---|
| Gums, Lloyd P | DEE-8292 | 09/25/79 | California. |
| Mountain Oil Company | DXE-8302 | 09/25/79 | North Carolina. |
| Murray Oil Company | DEE-8264 | 09/25/79 | Missouri. |
| Robo of Dayton, Inc | DXE-7451 | 09/25/79 | Ohio. |
| Smithkline Clinical Labs | DEE-5436 | 09/26/79 | Massachusetts. |
| Warlick, Roy/Warlick's Exxon | DEE-5547 | 09/26/79 | Texas. |
| Johnson's Arco Mini Market | DXE-8303 | 09/28/79 | California. |
| M & G Auto Repair | DEE-8313 | 09/28/79 | Massachusetts. |
| Monument Ford, Inc | DEE-8312 | 09/28/79 | Massachusetts. |

Items retrieved—21.

[FR Doc. 79-32231 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Cases Filed; Week of September 7, 1979 Through September 14, 1979

Notice is hereby given that during the week of September 7, 1979 through September 14, 1979 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 29461.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

October 12, 1979.

**Week of Sept. 7, 1979 Through Sept. 14, 1979**

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Sept. 7, 1979 | Golden Eagle Oil Co., Inc., Washington, D.C. | DHR-0286, DRD-0286. | Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened with respect to the Statement of Objections submitted in response to a Proposed Remedial Order issued on June 20, 1979 to Golden Eagle Oil Company, Inc. |
| Sept. 7, 1979 | Gulf Oil Corp., Washington, D.C | DRZ-0194 | Interlocutory Order. If granted: The DOE's September 6, 1979 Decision and Order issued to *Texaco, Inc. et al.* (DRZ-0004) would be modified with respect to the filing schedule for discovery matters involving Gulf Oil Corporation. |
| Sept. 7, 1979 | J. M. Davis Industries, Inc., Morehead City, N.C. | DEE-8081 | Allocation Exception. If granted: J. M. Davis Industries, Inc. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an allocation of unleaded gasoline for the purposes of blending gasohol. |
| Sept. 7, 1979 | Ware Oil Co., Dunnsville, Va | DEE-8086 | Allocation Exception. If granted: Ware Oil Company would be granted an exception from the provisions of 10 CFR 211 regarding an increase allocation of No. 2 fuel oil and kerosene. |
| Sept. 10, 1979 | Cities Service Co., Tulsa, Okla | DEE-8088, DEL-8088, DES-8088. | Price Exception, Request for Stay, Request for Temporary Exception. If granted: Cities Service Company would receive an exception to the provisions of 10 CFR 212.83 permitting the firm to pass through incremental expenses relating to the blending, storage, distribution, and marketing of gasohol. The firm would receive a stay and temporary stay pending a final determination on its Application for Exception. |
| Sept. 10, 1979 | La Costa Refining Corp., Houston, Tex | DEE-8085 | Allocation Exception. If granted: La Costa Refining Corporation would receive an exception to the provisions of 10 CFR 211 and 212 with respect to a future refinery acquisition. |
| Sept. 11, 1979 | Exxon Co., U.S.A., Washington, D.C | DEA-0588 | Appeal of Temporary Assignment Order. If granted: The August 7, 1979 Temporary Assignment Order issued by the Economic Regulatory Administration Region VI to Exxon Company, U.S.A. regarding the firm's supply obligations to Jones & Brown Enterprises, Inc. would be rescinded. |
| Sept. 11, 1979 | Galloway Oil Co., Inc. Methuen, Mass | DEE-8087 | Allocation Exception. If granted: Galloway Oil Company, Inc. would receive an increase allocation for the winter months of No. 2 heating oil. |
| Sept. 11, 1979 | Gulf Oil Corp. (E. G. Robinson), Liberty County, Tex | DXE-8084 | Extension of Relief granted in *Gulf Oil Corp.*, 3 DOE Par.——(July 31, 1979). If granted: Gulf Oil Corporation would be permitted to continue to sell the crude oil produced from the E. G. Robinson Unit, located in Liberty County, Texas at upper tier ceiling prices. |
| Sept. 11, 1979 | Hunt Oil Co., Dallas, Tex | DEE-6107 | Price Exception. If granted: Hunt Oil Company would be permitted to sell the crude oil produced from the Outer Continental Shelf Lease No. 0424 at upper tier ceiling prices. |
| Sept. 11, 1979 | Jack C. Mitchell Oil Co., Anniston, Ala | DEE-8097 | Allocation Exception. If granted: Jack C. Mitchell Oil Company would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an increase allocation of unleaded motor gasoline for the purpose of blending gasohol. |
| Sept. 11, 1979 | Rex Monahan (Sandbar "B"), Campbell County, Wyo. | DXE-7950 | Extension of Relief granted in *Rex Monahan* 3 DOE Par.——(July 31, 1979). If granted: Rex Monahan would be permitted to sell the crude oil produced from the Sandbar "B" Unit located in Campbell County, Wyoming at upper tier ceiling prices. |
| Sept. 11, 1979 | S & W Engine Supply, Oklahoma City, Okla | DXE-7167 | Extension of Relief granted in *S & W Engine Supply*, 3 DOE Par. —— (August 15, 1979). If granted: S & W Engine Supply would be permitted to continue to sell the crude oil produced from the Baker Townsend Lease, located in Oklahoma County, Oklahoma at upper tier ceiling prices. |
| Sept. 12, 1979 | Energy Cooperatives, Inc., Rosemont, Ill | DXE-8112 | Extension of Relief granted in *Energy Cooperatives, Inc.*, 3 DOE Par. —— (May 10, 1979). If granted: Energy Cooperatives, Inc. would be granted an exception from the provisions of 10 CFR 211 with respect to the Buy/Sell and Entitlements Programs. |
| Sept. 12, 1979 | Exxon Co., U.S.A., Houston, Tex | DES-0639 through 0642 and DEA-0639 through 0642. | Appeal of ERA Decision and Order; Request for Stay. If granted: The four Economic Regulatory Administration Decisions and Orders issued to Exxon Company U.S.A. by the Region IV Office of Fuels Regulations on August 27, 1979, August 28, 1979, and August 31, 1979 regarding Exxon's supply obligations to Newman Oil Company, Lynch Oil Company, Phillip Sloan Oil Company and Suncoast Oil Company would be rescinded. Exxon Company U.S.A. would receive a stay of the four orders pending a final determination on its Appeal. |
| Sept. 12, 1979 | Gulf Oil Corp., Houston, Tex | DRX-0208 | Supplemental Order. If granted: The DOE's May 6, 1977 Decision and Order (Case No. FRA-1171) issued to Gulf Oil Corporation regarding service station rental overcharges would be rescinded. |

Week of Sept. 7, 1979 Through Sept. 14, 1979—Continued

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Sept. 12, 1979 | Hawthorne Oil & Gas Corp., Houston, Tex | DRD-0208, DRH-0208. | Motion for Discovery and request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened with respect to the Statement of Objections submitted in response to a Proposed Remedial Order (Case No. DRO-0208) to Hawthorne Oil & Gas Corporation. |
| Sept. 12, 1979 | Koch Industries, Inc., Wichita, Kans | DEA-0633 through DEA-0637. | Appeal of ERA Assignment of Orders. If granted: The five July 30, 1979 Assignment Orders issued by the Economic Regulatory Administration Region II to Koch Industries, Inc. regarding the firm's supply obligations to Green's Gas and Go; Progressive Fuel Oil Co., Inc., Lavari Oil Company; Harry's Gas-N-Go; and Jack's Service Center would be rescinded. |
| Sept. 12, 1979 | Texas Recovery Co., Tyler, Tex | DRH-0267 | Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened with respect to the Statement of Objections submitted in response to a Proposed Remedial Order issued on June 18, 1979 to Texas Recovery Company. |
| Sept. 12, 1979 | L. O. Ward, Enid, Okla | DFA-0638 | Appeal for Information Request Denial. If granted: The DOE's August 1979 Information Request Denial issued by the Acting District Manager for the Southwest District of Enforcement would be rescinded and L. O. Ward would receive access to certain DOE documents. |
| Sept. 13, 1979 | Malcolm Harkins, Washington, D.C | DFA-0492 | Appeal of Information Request Denial. If granted: The August 2, 1979 Information Request Denial issued by the Economic Regulatory Administration would be rescinded and Malcolm Harkins would receive access to certain DOE documents. |
| Sept. 13, 1979 | Highway Oil Inc., Topeka, Kans | DEE-4833 | Allocation Exception. If granted: Highway Oil Inc. would be granted an exception from the provisions of 10 CFR 211 permitting the firm to receive an allocation of unleaded gasoline for the purpose of blending gasohol. |
| Sept. 13, 1979 | Reserve Gas Co., Inc., Rochester, N.Y | DEE-8131 | Exception to the Reporting Requirements. If granted: Reserve Gas Company, Inc. would not be required to file form EIA-149 "Natural Gas Supply, Distribution and Usage." |
| Sept. 13, 1979 | Standard Oil Co. of Indiana, Chicago, Ill | DES-6160 | Request for Stay. If granted: Standard Oil Company of Indiana would receive a stay of its supply obligations of propane, pending a final determination on its Application for Exception. |
| Sept. 13, 1979 | The Gentry, Potomac, Md | DEE-8119 | Exception to the Emergency Building Temperature Restrictions. If granted: The Gentry would receive an exception from the provisons of 10 CFR 490, the Emergency Building Temperature Restrictions. |
| Sept. 14, 1979 | American Solar Corp., Bailey's Crossroads, Va | DFA-0643 | Appeal of Information Request Denial. If granted: The Information Request Denial by the manager of the Small Solar Thermal Power Section would be rescinded, and the firm would be granted access to a report entitled "Review of American Solar Corporation Proposal for a Closed Cycle Thermal Hydroelectric Engine Development." |
| Sept. 14, 1979 | Bath Electric, Gas & Water Systems, Bath, N.Y | DEE-8122 | Exception to reporting requirements. If granted: Bath Electric, Gas & Water Systems would be granted an extension of time in which to file EIA Form 149 "Natural Gas Supply, Distribution and Usage." |
| Sept. 14, 1979 | Hartford Ballet, Hartford, Conn | DEE-8129 | Exception to the Emergency Building Temperature Restrictions. If granted: The Hartford Ballet would receive an exception from the provisions of 10 CFR 490 the Emergency Building Temperature Restrictions. |
| Sept. 14, 1979 | Pennsylvania & Southern Gas Co., Sayre, Pa | DEE-8127 | Exception to reporting requirements. If granted: Pennsylvania & Southern Gas Company would not be required to file EIA Form 149 "Natural Gas Supply Distribution and Usage." |
| Sept. 14, 1979 | R.J.P. Service Station, Inc., New York, N.Y | DEE-8124 | Price Exception. If granted: R.J. P. Service Station, Inc. would be granted an exception from the provisions of 10 CFR 212 permitting the firm to sell motor gasoline above the applicable ceiling price. |
| Sept. 14, 1979 | R.L. Jordan Oil Co., Inc., Spartansburg, S.C | DEE-8132, DEE-8133. | Allocation Exception. If granted: R. L. Jordan Oil Co., Inc. would receive an exception from the provisions of 10 CFR 211 permitting the firm to receive an allocation of unleaded gasoline for the purpose of blending gasohol. |
| Sept. 14, 1979 | Allen M. Sakler, M.D., Louisville, Ky | DEE-8194 | Exception to the Emergency Building Temperature Restrictions. If granted: Allen M. Sakler, M.D. would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions. |
| Sept. 14, 1979 | South Jersey Gas Co., Folsom, N.J | DEE-3123 | Exception to reporting requirements. If granted: South Jersey Gas Company would be granted an extension of time in which to file Form EIA 149 "Natural Gas Supply Distribution and Usage." |
| Sept. 14, 1979 | Terry S. Vincent, M.D., San Antonio, Tex | DEE-8120 | Emergency Building Temperature Restrictions. If granted: Terry S. Vincent, M.D. would receive an exception from the provisions of 10 CFR 490, the Emergency Building Temperature Restrictions. |
| Sept. 14, 1979 | Willowbrook Service Station, Staten Island, N.Y | DEE-8125 | Price Exception. If granted: Willowbrook Service Station would be granted an exception from the provisions of 10 CFR 212, permitting the firm to sell motor gasoline above the applicable ceiling price. |

## Notices of Objection Received

| Date | Name and location of applicant | Case No. |
|---|---|---|
| Sept. 7, 1979 | Jerry's Exxon, Philadelphia, Pa | DEE-2680 |
| Sept. 11, 1979 | Kalbow Service Center, Brenham, Tex | DEO-0372 |
| Sept. 11, 1979 | Anderson's Exxon, Baltimore, Md | DEE-2848 |
| Sept. 11, 1979 | Bill's Pershing Mobil, Ansonia, Conn | DEE-3349 |
| Sept. 11, 1979 | Lantz Texaco, Tucson, Ariz | DEE-4569 |
| Sept. 11, 1979 | Chilcote, Inc., El Cajon, Calif | DEE-7784 |
| Sept. 11, 1979 | Shaw Shell Service, Los Angeles, Calif | DEO-0373 |
| Sept. 11, 1979 | Shelby Arco Station, Madison, Va | DEO-0374 |
| Sept. 12, 1979 | Forgione's Service Station, Scranton, Pa | DEO-0369 |
| Sept. 12, 1979 | Trinity Arco, Providence, R.I | DEE-4650 |
| Sept. 12, 1979 | Highway Oil, Inc., Washington, D.C | DEE-6872 |
| Sept. 12, 1979 | Olson's Exxon Service Station, Hot Springs, Ark | DEO-0376 |
| Sept. 13, 1979 | Thunderbird Chevron, Phoenix, Ariz | DEO-0378 |
| Sept. 14, 1979 | Lite-Ning Auto, Inc., Los Angeles, Calif | DEO-0379 |

## List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

### Week of Sept. 7 Through Sept. 14, 1979

If granted: The following firms would receive an exception from the activation of the Standby Petroleum Product Allocation Regulations with respect to motor gasoline.

| | | | |
|---|---|---|---|
| Amarillo 76 Truck Stop | DEE-8073 | 09/07/79 | Texas. |
| J. A. Nere Co., Inc | DEE-8091 | 09/07/79 | Virginia. |
| Marina South Carwash | DXE-8075 | 09/07/79 | California. |
| Rapid Service Oil Co., Inc | DXE-8076 | 09/07/79 | Wisconsin. |
| Records Sohio Service | DEE-8074 | 09/07/79 | Ohio. |
| Barrett Cafe | DEE-8107 | 09/10/79 | California. |
| Brd. of County Road Commission | DEE-8077 | 09/10/79 | Michigan. |
| Cobb's Corner Arco | DEE-8078 | 09/10/79 | Massachusetts. |
| K & W Oil Company | DEE-8090 | 09/10/79 | Pennsylvania. |
| Tri-State Amoco, Inc | DEE-8079 | 09/10/79 | West Virginia. |
| Whitmans Superette | DEE-8080 | 09/10/79 | West Virginia. |
| Alumimum City of San Diego | DEE-8099 | 09/11/79 | California. |
| Colesville Exxon | DEE-8083 | 09/11/79 | Maryland. |
| D&W Markette & Service Station | DEE-8098 | 09/11/79 | Kentucky. |
| Enders & Cooper, Inc | DEE-8098 | 09/11/79 | New York. |
| Evans Oil Company | DEE-8089 | 09/11/79 | Georgia. |
| Jim's Arco Service | DEE-8094 | 09/11/79 | California. |
| Lopez Trucking, Inc | DEE-8095 | 09/11/79 | Massachusetts. |
| Northland Texaco | DEE-8092 | 09/11/79 | Kentucky. |
| Seaway Arco | DEE-8100 | 09/11/79 | Ohio. |
| Upper Riverdale Chevron | DEE-8093 | 09/11/79 | Georgia. |
| Auto Clean, Inc | DEE-8104 | 09/12/79 | Maryland. |
| Avis Rent-A-Car | DEE-8102 | 09/12/79 | Illinois. |
| Bill's Amoco | DXE-8108 | 09/12/79 | Pennsylvania. |
| Bonfield Brothers, Inc | DEE-8109 | 09/12/79 | Kentucky. |
| Irv's Service Center | DXE-8111 | 09/12/79 | Louisiana. |
| M.F.A. Oil Company | DEE-8101 | 09/12/79 | Missouri. |
| Melton's Exxon | DEE-5474 | 09/12/79 | South Carolina. |
| Minshew, Lavon & Jean | DEE-8103 | 09/12/79 | Utah. |
| Stephens, Tommy | DEE-8110 | 09/12/79 | Texas. |
| Webco Southern Oil, Inc | DXE-8105 | 09/12/79 | Georgia. |
| Carr, Anne B | DEE-8116 | 09/13/79 | Mississippi. |
| Martinis Auto Service | DEE-8118 | 09/13/79 | New York. |
| Mr. K Exxon Self Service | DXE-8117 | 09/13/79 | South Carolina. |
| Public Oil Company, Inc | DEE-8115 | 09/13/79 | Tennessee. |
| Vish Chevron Service | DXE-8114 | 09/13/79 | Kentucky. |
| Air-Tech Corp | DEE-8159 | 09/14/79 | Maine. |
| Bishop Mfg. Co., Inc | DEE-8165 | 09/14/79 | Connecticut. |
| Blue Line Express, Inc | DEE-8190 | 09/14/79 | New Hampshire. |
| Blue Sun Super Service | DEE-8177 | 09/14/79 | Rhode Island. |
| Bob's Exxon | DEE-8137 | 09/14/79 | Maine. |
| Brattle Cab | DEE-8145 | 09/14/79 | Massachusetts. |
| Browning Exxon | DXE-8193 | 09/14/79 | North Carolina. |
| Burt's Beverage Co | DEE-8172 | 09/14/79 | Connecticut. |
| Cape Cod Gas Co | DEE-8173 | 09/14/79 | Massachusetts. |
| Carl's Garage | DEE-8151 | 09/14/79 | Connecticut. |
| Central City Shell | DXE-8126 | 09/14/79 | Missouri. |
| Chittenden, William | DEE-8153 | 09/14/79 | Massachusetts. |
| Colby's Garage | DEE-8187 | 09/14/79 | Maine. |
| Corcleino, John L | DEE-8192 | 09/14/79 | Rhode Island. |
| Dick's Sunoco | DEE-8141 | 09/14/79 | Connecticut. |
| Don's Cities Service, Inc | DEE-8140 | 09/14/79 | Massachusetts. |
| Dostie Brothers Inc | DEE-8186 | 09/14/79 | Maine. |
| Dover News, Inc | DEE-8134 | 09/14/79 | New Hampshire. |
| Easton Center Store | DEE-8162 | 09/14/79 | Maine. |
| Finnegan's Shell Station | DEE-8143 | 09/14/79 | Massachusetts. |
| Gardner, Michael J | DEE-8157 | 09/14/79 | Massachusetts. |
| Gerrior, Charles E., Et Ux | DEE-8169 | 09/14/79 | Massachusetts. |
| Gervasio's Elm St. Exxon | DEE-8150 | 09/14/79 | Connecticut. |
| Grant's Arco Service | DEE-8188 | 09/14/79 | Massachusetts. |
| Hampden Gulf & Tire Service | DEE-8171 | 09/14/79 | Massachusetts. |
| Henkels & McCoy, Inc | DEE-8108 | 09/14/79 | Connecticut. |
| Hyannis Gulf & Tire Service | DEE-8154 | 09/14/79 | Massachusetts. |
| J & S, Inc | DEE-8128 | 09/14/79 | Pennsylvania. |
| Ledoux, Bertrand J | DEE-8178 | 09/14/79 | Rhode Island. |
| Marv's Mobil | DEE-8152 | 09/14/79 | Massachusetts. |
| Menard & Holmberg | DEE-8155 | 09/14/79 | Massachusetts. |
| Mercury System, Inc. | DEE-8189 | 09/14/79 | Massachusetts. |
| Menden Yellow Cab Co , Inc | DEE-8179 | 09/14/79 | Connecticut. |
| Middlesex Equipment Co | DEE-8175 | 09/14/79 | Massachusetts. |
| Mike's Service Station | DEE-8156 | 09/14/79 | Massachusetts. |
| Minor's Country Store | DEE-8130 | 09/14/79 | Vermont. |
| Mutti's Service Station, Inc | DEE-8168 | 09/14/79 | Massachusetts. |
| Norm's Trading Post | DEE-8176 | 09/14/79 | New Hampshire. |
| Okemo Mountain, Inc | DEE-8182 | 09/14/79 | Vermont. |
| P & C Food Markets, Inc | DEE-8144 | 09/14/79 | Vermont. |
| Peabody, Frank | DEE-8181 | 09/14/79 | New York. |
| Perry, Joseph | DEE-8166 | 09/14/79 | Rhode Island. |
| Powers Country Store | DEE-8142 | 09/14/79 | New Hampshire. |
| Practical Mechanics, Inc | DEE-8158 | 09/14/79 | Maine. |
| Ralph's Getty | DEE-8146 | 09/14/79 | Maine. |
| Ray's Sandy Lane Arco | DEE-8147 | 09/14/79 | Rhode Island. |
| Research Park Exxon | DEE-8121 | 09/14/79 | Alabama. |
| Rich's Gulf Station | DEE-8170 | 09/14/79 | Maine. |
| Rowe's Gas Station | DEE-8185 | 09/14/79 | New Hampshire. |
| Stanley Sack Co., Inc | DEE-8139 | 09/14/79 | Connecticut. |

| | | | |
|---|---|---|---|
| Steele's Corners, Inc. | DEE-8149 | 09/14/79 | Massachusetts. |
| The Kaufman Fuel Co | DEE-8167 | 09/14/79 | Connecticut. |
| Tobey's General Store | DEE-8148 | 09/14/79 | Maine. |
| Town of Hampton Falls | DEE-8184 | 09/14/79 | New Hampshire. |
| Town of North Hampton | DEE-8183 | 09/14/79 | New Hampshire. |
| Town of Plymouth, Mass | DEE-8163 | 09/14/79 | Massachusetts. |
| Town of Watertown, Connecticut | DEE-8164 | 09/14/79 | Connecticut. |
| Ward's Service Center | DEE-8161 | 09/14/79 | Massachusetts. |
| West Hartford Chevron, Inc | DEE-8138 | 09/14/79 | Connecticut. |
| Whalley Fitch Service, Inc | DEE-8174 | 09/14/79 | Connecticut. |
| Worchester Quality Foods | DEE-8180 | 09/14/79 | Massachusetts. |
| Yoney, Paul S. Inc | DEE-8160 | 09/14/79 | Connecticut. |
| Items Retrieved | 98 | | |

[FR Doc. 79-32309 Filed 10-18-79; 8:45 am]
BILLING CODE 6450-01-M

## Cases Filed; Week of August 3 Through August 10, 1979

Notice is hereby given that during the week of August 3, 1979 through August 10, 1979, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

October 12, 1979.

[Week of Aug. 3, 1979, Through Aug. 10, 1979]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Aug. 3, 1979 | Andre Fantasies Originals, Fort Lauderdale, Fla | DEE-7657 | Exception to Emergency Building Temperature Restrictions. If granted: Andre Fantasies Originals would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Arthur Young & Co., Milwaukee, Wisc | DEE-7658 | Exception to Emergency Building Temperature Restrictions. If granted: Arthur Young & Co. would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Katherine Aymond, Hammond, La | DEE-7666 | Exception to Emergency Building Temperature Restrictions. If granted: Katherine Aymond would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Brenton Bank & Trust Co., Cedar Rapids, Iowa | DEE-7647 | Exception to Emergency Building Temperature Restrictions. If granted: Brenton Bank and Trust Co. would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Conwood Corp., Memphis, Tenn | DEE-7669 | Exception to Emergency Building Temperature Restrictions. If granted: Conwood Corp. would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | J. Fleet Cowden, Century City, Calif | DEE-7651 | Exception to Emergency Building Temperature Restrictions. If granted: J. Fleet Cowden would receive an exception from the provisions of 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Crawford County Board of Mental Retardation, Bucyrus, Ohio. | DEE-7650 | Exception to Emergency Building Temperature Restrictions. If granted: Crawford County Board of Mental Retardation would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Crown Central Petroleum Corp., Baltimore, Md | DEE-7756, DES-7756, DST-7756. | Allocation Exception, Request for Stay and Temporary Stay. If granted: Crown Central Petroleum Corp. would receive an exception from the provisions of 10 CFR 211, regarding the firms supply obligations of motor gasoline to refiners. The firm would receive a stay and temporary stay pending a final determination on its Application for Exception. |
| Aug. 3, 1979 | Cypress Recreation and Park District, Cypress, Calif. | DEE-7649 | Exception to Emergency Building Temperature Restrictions. If granted: Cypress Recreation and Park District would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Lloyd J. Engeran, Hammond, La | DEE-7665 | Exception to Emergency Building Temperature Restrictions. If granted: Lloyd J. Engeran would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Fabric Corner (Annapolis), Fabric Corner (Glen Burnie), Annapolis, Md., Glen Burnie, Md. | DEE-7667 and DEE-7668. | Exception to Emergency Building Temperature Restrictions. If granted: Fabric Corner (Annapolis) Fabric Corner (Glen Burnie) would receive an exception from the provisions of 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Highwoods Racquetball Club, Raleigh, N.C | DEE-7654 | Exception to Emergency Building Temperature Restrictions. If granted: Highwoods Racquetball Club would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | David H. Krathen, Fort Lauderdale, Fla | DEE-7656 | Exception to Emergency Building Temperature Restrictions. If granted: David H. Krathen would receive an exception from the provisions to 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 3, 1979 | Oasis Oil, Inc., Fort Worth, Tex | DRD-0243 | Motion for Discovery. If granted: Discovery would be granted to Oasis Oil Inc. with respect to the Statement of Objections submitted in response to the June 5, 1979, Proposed Remedial Order issued to Hughes & Hughes Oil & Gas (Case No. DRO-0243). |
| Aug. 3, 1979 | TV Guide, Hollywood, Fla | DEE-7655 | Exception to Emergency Building Temperature Restrictions. If granted: TV Guide would receive an exception to the provisions of 10 CFR 490, with respect to the Emergency Building Temperature Restrictions. |
| Aug. 8, 1979 | T & V Auto Service Center, Inc., Long Island City, N.Y. | DRS-0268 | Request for Stay. If granted: The Interim Remedial Order for Immediate Compliance issued by the Economic Regulatory Administration Region II to T & V Auto Service Center, Inc., would be stayed regarding overcharges on sales of motor gasoline. |
| Aug. 3, 1979 | West Virginia Department of Culture & History, Charleston, W. Va. | DEE-7648 | Exception to Emergency Building Temperature Restrictions. If granted: West Virginia Department of Culture & History would be excepted to the provisions of 10 CFR 490 regarding Emergency Building Temperature Restrictions. |
| Aug. 6, 1979 | Exxon Company, USA, Houston, Tex | DEA-0572 | Appeal of Assignment Order. If granted: The June 28, 1979, Assignment Order issued by Economic Regulatory Administration, Region III, regarding Exxon Co. USA's supply obligations to H. L. Mills Petroleum Products would be rescinded. |
| Aug. 6, 1979 | Farmland Industries, Inc., Kansas City, Mo | DEE-7731 and DEL-7731. | Allocation Exception and Request for Temporary Exception. If granted: Farmland Industries, Inc., would receive an exception from the provisions of 10 CFR 211.65 regarding its supply obligations of motor gasoline to Mid America Refining Co., Hudson Oil Co.; Phillips Petroleum Co. and Amoco Oil Co. |

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Aug. 6, 1979 | General Aluminum Corp., Carrollton, Tex | DEE-7730 | Exception to Emergency Building Temperature Restrictions. If granted: General Aluminum Corp. would receive an exception from the provisions of 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 6, 1979 | Gulf Oil Corp., Houston, Tex | DXE-7729 | Extension of relief granted in Gulf Oil Corporation DOE Par.—— (June 20 1979). If granted: Gulf Oil Corp. would be permitted to continue to sell the crude oil produced from Mirian Partlow *et al.* Unit lease, located in Liberty County, Texas, at upper tier ceiling prices. |
| Aug. 6, 1979 | Little America Refining Co., Washington, D.C. | DMR-0065 | Request for Modification/Rescission. If granted: The March 19, 1979, Supplemental Order issued to Little America Refining Co. would be modified with respect to the firm's entitlements purchase obligations. |
| Aug. 7, 1979 | Harry D. Abell, Jr., MD, Paducah, Ky | DEE-7738 | Exception to Emergency Building Temperature Restrictions. If granted: Harry D. Abell, Jr., MD, would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 7, 1979 | Agway Petroleum Corp., Syracuse, N.Y. | DED-0090 | Motion for Discovery. If granted: Discovery would be granted to Agway Petroleum Corp. with respect to Vantage Petroleum Corp. Applications for Exception. |
| Aug. 7, 1979 | Barbizon School, Syracuse, N.Y | DEE-7739 | Exception to Emergency Building Temperature Restrictions. If granted: Barbizon School would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 7, 1979 | Barnosky Oils, Inc., Washington, D.C. | DEZ-7777 | Interlocutory Order. If granted: The DOE's Protective Order issued in reference to Barnosky Oils, Inc. Applications for Exception, Stay and Temporary Stay regarding an increase allocation of motor gasoline would be issued an Order by the DOE. |
| Aug. 7, 1979 | Croix Oil Co., Stillwater, Minn | DES-0316 | Request for Stay. If granted: The July 2, 1979, Interim Decision and Order issued by the Economic Regulatory Administration, Region IV, regarding Mobil Oil Corp.'s supply obligations to Croix Oil Co. would be stayed. |
| Aug. 7, 1979 | Grace Cathedral, Akron Ohio | DEE-7757 | Exception to Emergency Building Temperature Restrictions. If granted: Grace Cathedral would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 7, 1979 | Gulf Oil Corp., Houston, Tex | DRD-0194 | Motion for Discovery. If granted: Discovery would be granted to Gulf Oil Corp. with respect to the Statement of Objection submitted in response to the May 1, 1979, Proposed Remedial Order (Case No. DRO-0194). |
| Aug. 7, 1979 | Kings Point, Delray Beach, Fla | DEE-7740 | Exception to Emergency Building Temperature Restrictions. If granted: Kings Point would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 7, 1979 | Martha Kundert, Phoenix, Ariz | DEE-7755 | Exception to Emergency Building Temperature Restrictions. If granted: Martha Kundert would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 7, 1979 | Midwest Solvents Co., Atchison, Kans | DEE-7741 | Allocation Exception. If granted: Midwest Solvents Co. would receive an exception to the provisions of 10 CFR 211, permitting the firm to receive increased allocations of unleaded gasoline to be used in the blending of gasohol. |
| Aug. 7, 1979 | Mobil Oil Corp., New York, N.Y | DED-7009 | Motion for Discovery. If granted: Discovery would be granted to Mobil Oil Corp. with respect to the June 28, 1979 Dismissal of the Application Exception filed by Northville Industries Corp. |
| Aug. 7, 1979 | Town of West Seneca, N.Y., West Seneca, N.Y | DEE-7749 | Exception to Emergency Building Temperature Restrictions. If granted: Town of West Seneca, New York would receive an exception from the provisions of 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 8, 1979 | American Management Associates, New York, N.Y. | DEE-7750 | Exception to Emergency Building Temperature Restrictions. If granted: American Management Associates would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 8, 1979 | Hammermill Paper Co., Erie, Pa | DEE-7747 and DEE-7748. | Exception to Emergency Building Temperature Restrictions. If granted: The Hammermill Paper Co. would receive an exception from the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 8, 1979 | Marathon Oil Co., Findlay, Ohio | DED-6865 | Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company regarding Colonial Oil Co.'s Application for Exception (Case No. DEE-6865). |
| Aug. 8, 1979 | Talbot Perkins Children's Services, New York, N.Y. | DEE-7753 | Exception to Emergency Building Temperature Restrictions. If granted: Talbot Perkins Children's Services would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 8, 1979 | The 341 Tract Unit, Mobile County, Ala | DEE-7746 and DEL-7746. | Request for Temporary Exception and Price Exception. If granted: The 341 Tract Unit of the Citronelle Field would receive an exception from the provisions of 10 CFR 212 and would be permitted to sell the crude oil produced from the 341 Tract Unit at market prices. The 341 Tract Unit would receive a Temporary Exception pending a final determination of its Exception Request. |
| Aug. 8, 1979 | United Refining Co., Warren, Pa | DEL-0267 and DES-0267. | Temporary Exception, Request for Stay. If granted: United Refining Co. would receive an exception to the provisions of 10 CFR 212.83 permitting the firm to pass through incremental expenses relating to the blending, storage, distribution and marketing gasohol. |
| Aug. 8, 1979 | Weston Richardson Drug Co., Weston, Mass | DEE-7754 | Exception to Emergency Building Temperature Restrictions. If granted: Weston Richardson Drug Co. would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 9, 1979 | Amoco Production Co., Chicago, Ill | DRA-0575 | Appeal of Ancillary Order. If granted: The June 29, 1979 Ancillary Order issued to Amoco Production Co. by the Economic Regulatory Administration, Region VI, in connection with a Consent Order issued to R. Lacy, Inc., regarding refunds of alleged overcharges would be modified. |
| Aug. 9, 1979 | Atlantic Richfield Co., Philadelphia, Pa | DEA-0576 | Appeal of Assignment Order. If granted: The February 22, 1979 Assignment Order issued by DOE Region II to Atlantic Richfield Co. regarding the firms supply obligations to Croton-Harmon Service, would be modified. |
| Aug. 9, 1979 | Chevron USA, Inc., San Francisco, Calif | DEN-4508 | Motion for Interim Order. If granted: Chevron USA, Inc., would be permitted to sell the crude oil produced from the Vickers 2 Lease, located in Los Angeles County, Calif., at upper tier ceiling prices pending a final determination of the Application for Exception. |
| Aug. 9, 1979 | Guzman Enterprises, Inc., Truckee, Calif | DEE-7791 | Price Exception. If granted: Guzman Enterprises, Inc., would receive an exception to the provisions of 10 CFR 212, with respect to the 15.4 price margin. |
| Aug. 9, 1979 | Joe Maider's Mobil, Plainville, Mass | DEE-7792 | Price Exception. If granted: Joe Maider's Mobil would receive an exception price relief to the provisions of 10 CFR 212, with respect to the 15.4 price margin. |
| Aug. 9, 1979 | Marathon Oil Co., Findlay, Ohio | DRD-0195 | Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Co. with respect to the Statement of Objections submitted in response to the May 1, 1979, Proposed Remedial Order (Case No. DRO-0195). |
| Aug. 9, 1979 | Mobil Oil Corp., Schaumburg, Ill | DEA-0557 and DST-0269. | Appeal of Assignment Order; Request for Temporary Stay. If granted: The July 26, 1979, Assignment Order issued by the Economic Regulatory Administration Region VII Office regarding Mobil Oil Corp. supply obligations to Onyx Corp. would be rescinded. The Mobile Oil Corporation would be granted a Temporary Stay of the Assignment Order pending a final determination of the firm's appeal. |
| Aug. 9, 1979 | Peerless Petrochemicals, Inc., Rosslyn, N.Y. | DEA-0584; DST-0584 and DES-0584. | Appeal of ERA Decision and Order; Request for Temporary Stay; Request for Stay. If granted: The August 6, 1979 Decision and Order issued to Peerless Petrochemicals, Inc., by the Economic Regulatory Administration denying Peerless' request for an allocation of crude oil under the emergency allocation provisions of the Crude Oil Allo- |

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| | | | cation (Buy/Sell) Program would be rescinded. Peerless Petrochemicals, Inc., would receive a Temporary Stay and Stay of the Decision and Order pending a final determination on its appeal. |
| Aug. 10, 1979 | Alpha Fitness Center, Omaha, Nebr | DEE-7779 | Exception to Emergency Building Temperature Restrictions. If granted: Alpha Fitness Center would receive an exception to the provisions of 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 10, 1979 | Arkansas Big A Truck Stop, Inc., Little Rock, Ark | DEE-7643 | Price Exception. If granted: Arkansas Big A Truck Stop, Inc., would receive an exception price relief to the provisions of 10 CFR 212, with respect to the 15.4 price margin. |
| Aug. 10, 1979 | Allan Auslander, Marlow Heights, Md | DEE-7781 | Exception to Emergency Building Temperature Restrictions. If granted: Allan Auslander would receive an exception to the provisions of 10 CFR 490 regarding the Emergency Building Temperature Restrictions. |
| Aug. 10, 1979 | Chilcote, Inc., El Cajon, Calif | DEE-7784 | Exception to Emergency Building Temperature Restrictions. If granted: Chilcote, Inc., would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 10, 1979 | Gulf Oil Co., Philadelphia, Pa | DEA-0578 | Appeal of an Assignment Order. If granted: The June 18, 1979, Assignment Order issued by the Economic Regulatory Administration Region I regarding Gulf Oil Company's supply obligations to Rymes Heating Oil, Inc. would be rescinded. |
| Aug. 10, 1979 | Gulf Oil Co., Philadelphia, Pa | DEA-0579 | Appeal of Assignment Order. If granted: The June 11, 1979, Assignment Order issued by Economic Regulatory Administration Region I regarding Concord Oil Co., a branded Gulf Oil Corp. jobber would be rescinded. |
| Aug. 10, 1979 | Gulf Oil Co., Philadelphia, Pa | DEA-0580 | Appeal of Assignment Order. If granted: The June 11, 1979, Assignment Order issued to Concord Oil Co., Inc., by the Economic Regulatory Administration, Region I, regarding Concord Oil Co.'s a branded Gulf Oil Co. jobber supply obligations to Federal Petroleum would be rescinded. |
| Aug. 10, 1979 | Jerol R. Hodges, Los Angeles, Calif | DEE-7780 | Exception to Emergency Building Temperature Restrictions. If granted: Jerol R. Hodges would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 10, 1979 | Larry Flynt Publications, Inc., Los Angeles, Calif | DEE-7783 | Exception to Emergency Building Temperature Restrictions. If granted: Larry Flynt Publications, Inc., would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 10, 1979 | St. Petersburg Times, St. Petersburg, Fla | DFA-0582 | Appeal of Information Request Denial. If granted: The July 27, 1979, Information Request Denial issued by the Office of Freedom and Privacy Act Activities. |
| Aug. 10, 1979 | Salon Del Rio, Fort Wayne, Ind | DEE-7775 | Exception to Emergency Building Temperature Restrictions. If granted: Salon Del Rio would receive exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |
| Aug. 10, 1979 | Shell Co. (Puerto Rico), Ltd., San Juan, P.R. | DEN-2541 | Interim Order. If granted: The DOE Decision and Order would be issued granting the exception relief set forth in the July 13, 1979, Proposed Decision and Order (Case No. DEE-2541) assigning Shell Oil Co. as Shell Puerto Rico's base period supplier of gasoline on an interim basis. |
| Aug. 10, 1979 | Texaco, Inc., Denver, Colo | DXE-7359 | Extension of relief granted in Texaco, Inc., DOE Par. —— (June 28, 1979). If granted: Texaco, Inc., would be permitted to continue to sell a portion of the crude oil produced from the Government Graves Lease, located in Campbell County, Wyo., at upper tier ceiling prices. |
| Aug. 10, 1979 | Mary Kay Thompson, Kingwood, W. Va | DEE-7782 | Exception to Emergency Building Temperature Restrictions. If granted: Mary Kay Thompson would receive an exception to the provisions of 10 CFR 490 with respect to the Emergency Building Temperature Restrictions. |

## List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

### Week of Aug. 3 Through Aug. 10, 1979

If granted: The following firms would receive an exception from the activation of the standby petroleum product allocation regulations with respect to motor gasoline.

| | | | |
|---|---|---|---|
| Brazoria County of Texas | DEE-7645 | 08/03/79 | Texas. |
| Charlotte St. Shell | DEE-7661 | 08/03/79 | North Carolina. |
| D & K Coals, Inc. | DEE-7663 | 08/03/79 | Virginia. |
| Garrett's Amoco | DEE-7659 | 08/03/79 | West Virginia. |
| Lake Erie Patrol, Inc. | DEE-7644 | 08/03/79 | Ohio. |
| Murphy's Chevron Standard | DEE-7670 | 08/03/79 | Florida. |
| Nursery Park Gulf Service | DEE-7660 | 08/03/79 | Pennsylvania. |
| Owens, Willie | DEE-7642 | 08/03/79 | South Carolina. |
| Phil's Mini-Market | DEE-7671 | 08/03/79 | Pennsylvania. |
| Town of Westport | DEE-6221 | 08/03/79 | Connecticut. |
| Weaverville Shell | DEE-7662 | 08/03/79 | North Carolina. |
| A. J. Leblanc Heating Co., Inc | DEE-7687 | 08/06/79 | New Hampshire. |
| Anderson Gulf | DEE-7727 | 08/06/79 | Connecticut. |
| Auburn Arco | DEE-7703 | 08/06/79 | Massachusetts. |
| Benton Bros. Film Express, Inc | DEE-7732 | 08/06/79 | Florida. |
| Benton Brothers Film Express | DEE-7769 | 08/06/79 | Florida. |
| Bob's Auto & Marine | DEE-7716 | 08/06/79 | New Hampshire. |
| Brookside Self Service | DEE-7715 | 08/06/79 | New Hampshire. |
| Carlos Chevron Service | DEE-7676 | 08/06/79 | California. |
| Carter & Towers Engineering | DEE-7698 | 08/06/79 | Massachusetts. |
| Charles George Trucking Co | DEE-7685 | 08/06/79 | Massachusetts. |
| Christensen's Chubbuck Service | DEE-7633 | 08/06/79 | Idaho. |
| Connecticut General Life Ins. | DEE-7699 | 08/06/79 | Connecticut. |
| Dewey's Automotive Service Cen | DEE-7704 | 08/06/79 | Massachusetts. |
| Duane's Lakeland Shell | DEE-7724 | 08/06/79 | Virginia. |
| Ed's Garage, Inc. | DEE-7693 | 08/06/79 | Connecticut. |
| Edward H. Spencer Inc. | DEE-7705 | 08/06/79 | Massachusetts. |
| Elm Street Arco | DEE-7688 | 08/06/79 | New Hampshire. |
| Falmouth Exxon | DEE-7719 | 08/06/79 | Maine. |
| Feldman, Michael | DEE-7697 | 08/06/79 | Maine. |
| Floreks Dairy Store | DEE-7728 | 08/06/79 | Massachusetts. |
| Frank's Servicenter, Inc. | DEE-7673 | 08/06/79 | South Carolina. |
| General Services Administration | DEE-7664 | 08/06/79 | District of Columbia. |
| George W. Prescott Publishing | DEE-7696 | 08/06/79 | Massachusetts. |
| Gloenco Newport, Inc. | DEE-7722 | 08/06/79 | New Hampshire. |
| Hodgdon Sales & Service | DEE-7713 | 08/06/79 | Vermont. |
| Imperial Service Station | DEE-7700 | 08/06/79 | Massachusetts. |
| James R. Drummond, Inc. | DEE-7679 | 08/06/79 | Louisiana. |
| Jim's 41 Shell Station | DEE-7682 | 08/06/79 | Michigan. |
| John J. Nissen Baking Co., Inc. | DEE-7712 | 08/06/79 | Massachusetts. |

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|---|---|---|---|
| Johnson's Garage, Inc. | DEE-7708 | 08/06/79 | Maine. |
| Jones Service Station | DEE-7701 | 08/06/79 | Vermont. |
| Jordan's Exxon Service Center | DEE-7683 | 08/06/79 | North Carolina. |
| M & S Family Enterprises | DEE-7876 | 08/06/79 | Massachusetts. |
| Malellan's Garage | DEE-7720 | 08/06/79 | Vermont. |
| Midway Excavators, Inc. | DEE-7675 | 08/06/79 | New Hampshire. |
| Norwalk Currie Tire Co., Inc. | DEE-7714 | 08/06/79 | Connecticut. |
| Paquin's Garage | DEE-7692 | 08/06/79 | Rhode Island. |
| Paxton Gulf Service | DEE-7702 | 08/06/79 | Massachusetts. |
| R. W. Mathews & Sons | DEE-7711 | 08/06/79 | Maine. |
| Randall Memorial Texaco, Inc. | DEE-7691 | 08/06/79 | Massachusetts. |
| Robert Winston Sunoco | DEE-7690 | 08/06/79 | Massachusetts. |
| Bagamore Amoco | DEE-7695 | 08/06/79 | Massachusetts. |
| Sanford Oil | DEE-7678 | 08/06/79 | Oklahoma. |
| Shoppers Choice | DEE-7680 | 08/06/79 | Tennessee. |
| Springfield Sugar & Products | DEE-7694 | 08/06/79 | Connecticut. |
| Stowe Machine Company, Inc. | DEE-7707 | 08/06/79 | Connecticut. |
| The Country Mile | DEE-7709 | 08/06/79 | New Hampshire. |
| The Gellatly Construction Co. | DEE-7684 | 08/06/79 | Connecticut. |
| Tolson Motors | DEE-7718 | 08/06/79 | Massachusetts. |
| Town of Concord, Utah | DEE-7721 | 08/06/79 | Utah. |
| Veterans Cab Co. of Newton, Inc. | DEE-7723 | 08/06/79 | Massachusetts. |
| Village Mobil | DEE-7759 | 08/06/79 | New Hampshire. |
| Wade Hampton Shell | DEE-7725 | 08/06/79 | South Carolina. |
| Walker Oil Company, Inc. | DEE-7735 | 08/06/79 | Missouri. |
| Walls, Grover A. | DEE-7681 | 08/06/79 | Georgia. |
| Waterhouse Country Store | DEE-7717 | 08/06/79 | New Hampshire. |
| Williams General Store | DEE-7706 | 08/06/79 | Vermont. |
| Amerada Hess Corporation | DEE-7736 | 08/07/79 | District of Columbia. |
| Broad & Parham Exxon | DEE-7742 | 08/07/79 | Virginia. |
| City of Naples, Florida | DEE-7744 | 08/07/79 | Florida. |
| Davison Dawn Donuts, Inc. | DEE-7758 | 08/07/79 | Michigan. |
| Newark Intermodal Truck Stop | DEE-7745 | 08/07/79 | New Jersey. |
| Providence Hospital | DEE-7743 | 08/07/79 | District of Columbia. |
| Spring Creek Stores | DEE-7533 | 08/07/79 | Arizona. |
| Bernosky Oils, Inc. | DEE-7777 | 08/08/79 | District of Columbia. |
| C&C Service Station | DEE-7770 | 08/08/79 | Rhode Island. |
| Carlson, Emory L. | DEE-7764 | 08/08/79 | Virginia. |
| Center 66 | DEE-7774 | 08/08/79 | Nebraska. |
| Dale's Shell Service | DEE-7790 | 08/08/79 | Michigan. |
| Eggars, Oscars | DEE-7955 | 08/08/79 | Kentucky. |
| Joe Donald's Amoco | DEE-7765 | 08/08/79 | Pennsylvania. |
| Joe's Amoco | DEE-7767 | 08/08/79 | Pennsylvania. |
| John C. Resetar Amoco | DEE-7766 | 08/08/79 | Pennsylvania. |
| Link, Lloyd | DEE-7762 | 08/08/79 | Tennessee. |
| Mitchell's Exxon | DEE-7768 | 08/08/79 | Georgia. |
| Tri-Valley School District | DEE-7873 | 08/08/79 | Pennsylvania. |
| Artemisa Shell Service | DEE-7772 | 08/09/79 | Florida. |
| Heintz Oil Company, Inc. | DEE-7773 | 08/09/79 | North Dakota. |
| Kanat Corp. dba Costa Mesa | DEE-7786 | 08/09/79 | California. |
| Mid Coast Oil Sales | DEE-7778 | 08/09/79 | Texas. |
| Town Pump, Inc. | DEE-7771 | 08/09/79 | Montana. |
| Airline Exxon | DEE-7808 | 08/10/79 | Alabama. |
| Aldrich's Garage & Auto Body | DEE-7809 | 08/10/79 | New Hampshire. |
| B & J Taxi, Inc. | DEE-7815 | 08/10/79 | Massachusetts. |
| Bob & Roy's Standard | DEE-7785 | 08/10/79 | Minnesota. |
| Bob's Service Center | DEE-7810 | 08/10/79 | Rhode Island. |
| Bob's Taxi Company, Inc. | DEE-7812 | 08/10/79 | Massachusetts. |
| Cities Service Company | DEE-7788 | 08/10/79 | Louisiana. |
| City of Mayfield, Kentucky | DEE-7822 | 08/10/79 | Kentucky. |
| Crossroads Gulf Service Stat. | DEE-7806 | 08/10/79 | Virginia. |
| Dekalb County School System | DEE-7820 | 08/10/79 | Georgia. |
| Dennis Wesley Chevron Service | DEE-7807 | 08/10/79 | California. |
| Draper Fuel Company, Inc. | DEE-7710 | 08/10/79 | New Hampshire. |
| Lake Hemet Muni Water District | DEE-7787 | 08/10/79 | California. |
| Lazarou Motors, Inc. | DEE-7578 | 08/10/79 | Maine. |
| Midwest City/Del City School | DEE-7819 | 08/10/79 | Oklahoma. |
| Miller Oil Company | DEE-7818 | 08/10/79 | District of Columbia. |
| Morgan's Exxon | DEE-7814 | 08/10/79 | Maine. |
| Sage Creek Refining Company | DEE-7025 | 08/10/79 | Wyoming. |
| Santa Fuel, Inc. | DEE-7811 | 08/10/79 | Connecticut. |
| Skogen's Standard | DEE-7816 | 08/10/79 | Minnesota. |
| Tankersley's Service Center | DEE-7817 | 08/10/79 | Alabama. |
| Village Arco | DEE-7813 | 08/10/79 | Massachusetts. |
| West Canyon Mobil | DEE-7956 | 08/10/79 | Oregon. |

Items retrieved—115.

[FR Doc. 79-32310 Filed 10-19-79; 8:45 am]

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## Issuance of Proposed Decisions and Orders; August 6 Through August 10, 1979

Notice is hereby given that during the period August 6 through August 9, 1979 the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrived person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any filing or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except federal holidays.

Melvin Goldstein,

*Director, Office of Hearings and Appeals.*

October 15, 1979.

*Great Southern Oil & Gas Co., Inc., Shreveport, La., crude oil DXE-6729*

Great Southern Oil & Gas Co., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the St. Martin Bank & Trust Company Lease for the benefit of the working interest owners at upper tier ceiling prices. On August 9, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's St. Martin Bank & Trust Company Lease.

*Keystone Propane Service, Inc., Throop, Pa., propane DEE-2038*

Keystone Propane Service, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 211.9. The exception request, if granted, would result in the issuance of an Order by the DOE assigning Keystone a new, lower-priced supplier of propane to replace its base period supplier, Pargas. On August 9, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be denied to Keystone.

*Mobil Oil Corp., Ventura County, Calif., DEE-2210 crude oil*

Mobil Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Mobil to sell at upper tier ceiling prices a portion of the crude oil produced from the Miley-Top-Intermediate Zone, Ferguson Lease, located in Ventura County, California. On August 6, 1979, the DOE issued a Proposed Decison and Order which determined that the exception request be granted and that Mobil be permitted to sell 78.42 percent of the crude oil produced from the lease at upper tier ceiling prices.

*Monsanto Co., Houston, Tex., DXE-7621 crude oil*

Monsanto Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which produces from the Hendrick "C" Property for the benefit of the working interest owners at upper tier ceiling prices. On August 9, 1979, the DOE issued a Proposed Decision and Order tentatively determined that an extension of exception relief should be granted with respect to the applicant's Hendrick "C" Property.

*Raypak, Inc., Teledyne Laars, Westlake Village, Calif., North Hollywood, Calif., DEE-3439, DEE-3950 consumer products*

Raypak, Inc. and Teledyne Laars filed Application for Exception from the provisions of 10 CFR, Part 430, the Energy Conservation Program for Consumer Products. The exception request, if granted, would permit the firms to make specified modifications in the energy efficiency and fuel utilization test procedures applicable to the finned copper tube type boilers which they manufacture. On August 10, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that the firms should be permitted to make certain modifications in the energy efficiency test procedures applicable to the finned copper tube type boilers which they manufacture.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of August 6 Through August 10, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulations Activation Order No. 1. The exception request, if granted, would result in an increase in the firms' base period allocation of motor gasoline.

The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

*Company Name, Case No., and Location*

Rainbow Oils of San Angelo, Inc., DEE–5501, San Angelo, Texas.
Brent-West Car Wash, DEE–4531, W. Los Angeles, California.
Cottam Co., DEE–3277, St. George, Utah.
Palm Oil Co., DXE–5897, DXE–7461, DEL–7461, Washington, D.C.
Brown's Service, DEE–4672, Westerly, Rhode Island.
Bruder's Exxon, DXE–6319, Baltimore, Maryland.
Laveen Country Store, DEE–6660, Laveen, Arizona.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of August 6 Through August 10, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulations Activation Order No. 1. The exception request, if granted, would result in an increase in the firms' base period allocation of motor gasoline.

The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

*Company Name, Case No., and Location*

Midway Oil Corp., DEE–4496, Rutland, Vermont.
Tom & Jim's Service, DEE–5285, E. Lakewood, Connecticut.
Baker's Gulf, DEE–6879, Dallas, Texas.
Stemmon's Freeway Mobil Service, DEE–6880, Dallas, Texas.
Doussan Shell, Inc., DEE–6177, New Orleans, Louisiana.
Red Clay Creek Exxon, DXE–7347, Wilmington, Delaware.
Rolling Road Mobil, DEE–6609, Springfield, Virginia.
Seabrook Sunoco, DEE–4830, Seabrook, New Hampshire.
Vogelgesang's Travel Center, DEE–2616, St. Clair, Missouri.
Walker's Service, DEE–6495, Jacksonville, Florida.
Bouquet Exxon, DEE–3074, Sangus, California.
Herco, Inc., DEE–3532, Hershey, Pennsylvania.
Joe's Car Wash, DEE–4144, Mesa, Arizona.
McKenney Tire Center, DEE–7290, S. Portland, Maine.

[FR Doc. 79–32311 Filed 10–19–79; 8:45 am]

BILLING CODE 6450–01–M

## Issuance of Decisions and Orders; Week of May 29 Through June 1, 1979

Notice is hereby given that during the week of May 29 through June 1, 1979, the Decisions and Orders summarized below were issued with respect to appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

*Requests for Exception*

*Energy Reserves Group, Inc. Wichita, Kans., DEE–2107 crude oil*

Energy Reserves Group, Inc. (ERG) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the working interest owners to sell the crude oil production from the Angelina Lumber Company D WIL A SU C Property, which is located in the North Bayou Cocodrie Field in Concordia Parish, Louisiana, at market prices. In considering the exception application, the DOE found that the operating costs incurred by ERG had increased to the point where the firm no longer had all economic incentive to continue production from the Angelina lease. Accordingly, the DOE determined that ERG should be permitted to sell at market prices 100 percent of the crude oil produced from the Angelina lease for the benefit of the working interest owners.

*McAlester Fuel Co., Billings, Mont., DEE–2010 crude oil*

McAlester Fuel Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the working interest owners to sell the crude oil produced from the Kelly Field Tyler Sand Unit at upper tier ceiling prices. In considering the request the DOE found that exception relief was necessary to provide the working interest owners with an incentive to continue production at the property. Accordingly, exception relief was granted.

*Phillips Petroleum Co., Bartlesville, Okla., DEE–2169 crude oil*

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell a portion of the crude oil produced from the Crone "C" Lease, located in Columbia County, Arkansas, at market prices. In considering the exception request, the DOE found that Phillips' operating costs had increased to the point where the firm no longer had an economic incentive to continue production from the Crone lease. On the basis of the criteria applied in previous Decisions, the DOE determined that Phillips should be permitted to sell at upper tier ceiling prices 65.18 percent of the crude oil produced from the Crone lease for the benefit of the working interest owners during the period February 13, 1979 through August 31, 1979.

*Texaco, Inc., White Plains, N.Y., DEE–2170 crude oil*

Texaco, Inc. filed an Application for Exception which, if granted, would permit the firm to sell the crude oil produced from the V. F. Semlek "C" lease, located in Crook County, Wyoming, at prices in excess of those permitted under 10 CFR 212.72. In considering the Application, the DOE found that the operating costs incurred by the working interest owners exceeded the revenues that they could obtain from sales of the crude oil. Accordingly, the DOE granted Texaco's request and permitted the firm to see 82.4 percent of the crude oil produced for the benefit of the working interest owners at upper tier ceiling prices.

### Requests for Stay

*Diamond Shamrock Corporation, Amarillo, Texas; DES-0420; DST-0420, motor gasoline*

Diamond Shamrock Corporation filed an Application for Stay and an Application for Temporary Stay in which it requested that the provisions of a Temporary Assignment Order issued to the firm by the ERA be stayed pending a Decision on the merits of the firm's Appeal of that Order. Under the terms of the Temporary Assignment Order, Diamond was required to supply the Spruce Oil Company with 350,000 gallons of motor gasoline during the month of May 1979. In considering the stay request, the DOE concluded that the Order was procedurally defective because the ERA did not afford Diamond an opportunity to comment and that Diamond had made a very strong showing that it would prevail on the merits of its Appeal. Accordingly, the Diamond Application for Stay was granted.

*Exxon Company, U.S.A., Houston, Texas; DST-0410 through DST-0417; DES-0410 through DES-0417, motor gasoline*

Exxon Company, U.S.A. filed eight related Applications for Stay and Applications for Temporary Stay of the requirements of eight Redirection Orders issued to the firm by ERA Region VI. In those Orders, the ERA required Exxon to supply motor gasoline to eight wholesale purchaser-resellers located in Arkansas and Texas. In considering the stay requests, the DOE determined that Exxon had made a convincing showing that it would succeed on the merits of its Appeals since the Redirection Orders did not conform to the procedural requirements set forth in 10 CFR 211.107(c). Therefore, the eight Applications for Stay were granted.

*Phillips Petroleum company, Bartlesville, Oklahoma; DST-5113; DES-5113, crude oil*

Phillips Petroleum company requested a temporary stay and stay of its sales obligations under the Mandatory Crude Oil Buy/Sell Program (10 CFR 211.65). In considering the requests, the DOE concluded that Phillips had not shown that the operation of the Buy/Sell Program directly resulted in a serious hardship or gross inequity to it. The DOE pointed out that it was not clear that Phillips' low motor gasoline allocation fraction during 1979 directly resulted from its Buy/Sell Program obligations. In addition, the DOE noted that the requested relief would adversely affect other participants in the Buy/Sell Program. Accordingly, Phillips' stay requests were denied.

### Supplemental Order

*New York Petroleum Corporation, New Orleans, Louisiana; DRX-0169, crude oil*

On January 19, 1979, the DOE issued a Decision and Order in response to an Appeal from a Remedial Order filed by New York Petroleum Corporation (NYPC). In the January 19 Decision and Order, the DOE found that the overcharge figure presented in the Remedial Order was excessive and that the firm's refund liability should be reduced. The adjustment which was made to NYPC's refund liability was inadvertently applied to the amount due Ashland Oil Inc. rather than to the refund amount due to Koch Oil Company. On its own motion, the DOE therefore issued a Supplemental Order correcting this error.

### Petitions Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

The following firms filed Applications for Stay, Temporary Stay, and/or Interim Order of the provisions of Standby Regulation Activation Order No. 1. The stay requests, if granted, would result in an increase in the base period allocation of motor gasoline pending determination of the Applications for Exception. The DOE issued Decisions and Orders which determined that the stay requests be granted:

*Company Name, Location, and Case No.*

C & B Exxon, Huntsville, AL; DEN-4520.
Cheatham Oil Co., Inc., Wewoka, OK; DEN-5597.
Clyde Oil Company, Ypsilanti, MI; DEN-3719.
Johnson's Arco Mini Market, Sunnyvale, CA; DES-3939.
Boggs Exxon, Jacksonville, FL; DEN-3105.

The following firm filed an Application for Stay of the provisions of the Motor Gasoline Allocation Regulations. The stay request, if granted, would result in an increase in the base period allocation of motor gasoline pending determination of the Application for Exception. The DOE issued a Decision and Order which determined that the stay request should be denied:

*Company Name, Location, and Case No.*

Waterbury Petroleum Products, Waterbury, CT; DES-3037.

The following firms filed Applications for Exception and/or Applications for Stay and/or Temporary Stay from the provisions of Standby Regulation Activation Order No. 1. After reviewing the material presented by these firms, the DOE issued Decisions and Orders which determined that each of these petitions should be dismissed without prejudice to a refiling at a later date:

*Company Name, Location, and Case No.*

Holston Oil Co., Inc., Johnson City, TN; DEE-2856.
Paul Cookson, Mitchellville, MD; DEE-3659.
Herb's Amoco, Washington, D.C.; DEE-3656.
Andrew D. Ramey; DEE-3637.
Terry Hedrick Chevron, Tustin, CA; DEE-3410.
Goldenwestn Chevron, Westminster, CA; DEE-3419.
Haskell Rodger, Tustin, CA; DEE-3978.
Ralphs Auto Center, Dover, FL; DEE-3994.

### Dismissals

The following submissions were dismissed without prejudice to a refiling at a later date:

| Company name | Case No. |
|---|---|
| Clyde Oil Company | DES-3719 |
| King Petroleum Co. | DEE-3794 |
| OK Service-Sales, Inc | DEE-4136 |
| Southgate Oil Co., Inc | DEE-3264 |
| Travelers Petroleum, Inc | DEE-4247 DES-4247 |
| Waggoner Oil Co., Inc | DEE-4053 |
| Desert Horizons, Inc | DEE-4068 |
| Hoyt Oil Company | DEE-3434 |
| Art's Amoco | DEE-3975 |
| Blanco Car Center | DEE-4774 |
| Bobber Auto Truck Plaza | DEE-4758; DST-4758 |
| Bud (Raymond) Root | DEE-5444, DES-5444 |
| C & M Gulf | DEE-4677 |
| Carey's Gulf Service | DEE-4678 |
| Cerroni's Gulf | DEE-5413 |
| Chandler Gulf Service | DEE-4679 |
| Christy's Market, Inc | DEE-5376 |
| Circle R Stores | DEE-4890; DES-4890; DST-4890 |
| Clarke's Amoco | DEE-5422 |
| Crosby's Service Station | DEE-4337 |
| Cut Rate Grocery | DEE-4593 |
| D. R. Delk | DEE-4596 |
| Derry Town Market | DEE-5679 |
| Downtown Chevron | DEE-4895 |
| Driscoll | DEE-4871 |
| Edward J. Gagan | DEE-4693 |
| Enfield Getty Station | DEE-4664 |
| Fullerton Car Wash | DEE-5449; DST-5449 |
| Galen E. Wilson Pet | DEE-3822 |
| Gallagher's Amoco | DEE-5496 |
| George Beall Mobil | DEE-4872 |
| George Johnson | DEE-5548 |
| Gilbert Lebovitz | DEE-4796 |
| Green Field Standard | DEE-4489; DES-4489 |
| Haynes Mobil Service | DEE-4429 |
| Hess of Chicopee | DEE-4695 |
| Industrial Turf, Inc | DEE-5775 |
| James R. Fullerton | DEE-4614 |
| Jeff Lawson Chevron | DEE-4873 |
| John's Place | DEE-4460 |
| K & S Oil Company | DEE-4898 |
| Kansas City-East Union Auto/Truck Stop. | DEE-3622 |
| Kenwood Citgo Station | DEE-2582; DES-2582 |
| Leroy Tanner | DEE-4479 |
| Loxtercamp Oil Co | DEE-2789 |
| M. E. Holmer Arco | DEE-4884, DES-4884 |
| Mel's Gulf | DEE-4902 |
| Navy Exchange Service Station | DEE-4767 |
| Newton's Exxon | DEE-5689 |
| Nick's Arco & Mini-Market | DEE-4654, DES-4654 |
| Northline Service | DEE-4769; DES-4769 |
| Pak's Gas Station & Grocery Store | DEE-4528; DES-4528 |
| Paul Pasch | DEE-4413 |
| Phil Engel Chevron | DEE-3757 |
| Prather Windsor Village Gulf | DEE-4445 |
| R. F. White Co., Inc | DEE-3119 |
| Raymond E. Taylor | DEE-4766; DES-4766 |
| Razorback Gulf | DEE-4904 |
| Reynolds Exxon | DEE-4905 |
| Roby's West Belt Mobil | DEE-5460 |
| Ron's Shell Service | DEE-5443; DES-5443 |
| Rozema's Standard | DEE-5482 |
| S & S Texaco | DEE-4127 |
| Salathe Oil Company | DEE-3519 |
| Sam E. Crume | DEE-4780 |
| Sanders Kerr McGee | DEE-4818 |
| Saratoga "66" | DEE-4401 |
| Selbyville Arco | DEE-5211, DES-5211 |
| Steve's Amoco | DEE-5416 |
| Tri-Ton, Inc | DEE-2723; DES-2723 |
| Warrington Auto Service | DEE-4324 |
| Wesco, Inc | DEE-4747 |
| Apponaug Gulf | DEE-4665 |
| Cliff's Crestline Service | DEE-3935 |
| James Helmuth Union | DEE-4701 |
| Joe Hood's Texaco | DEE-4354 |
| John's Service Center | DEE-3902 |
| Steven's Superette | DEE-4284 |
| Cheatham Oil Company | DST-0043 |
| Concord Oil of Newport Inc | DEE-3203; DES-3203 |
| Exxon Company, U.S.A. | DST-0423; DES-0423; DEA-0423; DST-0424, DES-0424, DEA-0424 |
| Fed-Mart Stores, Inc | DEE-3702; DST-3702 |
| Webber Oil Company | DEE-5164 |

| Company name | Case No. |
|---|---|
| A & P Mobil Station | DEE-3547 |
| Columbia Pike Shell | DEE-2434; DES-2434 |
| Comer Oil, Inc | DEE-2428; DST-2428 |
| Coy Burge Oil Company | DEE-2449 |
| Drummond Oil Company, Inc | DEE-2453 |
| Fairhaven Sunoco | DEE-5701 |
| Glider Oil Company | DEE-3190 |
| Gov. Francis Mobil | DEE-5697 |
| K & W Petroleum, Inc | DEE-2778; DES-2778 |
| Maritime Energy | DEE-4369; DST-4369 |
| Morgan's Amoco Service | DEE-4893 |
| Pasadena Shell | DEE-5950 |
| Pfluger Service Station | DEE-3040; DES-3040 |
| Ray Tucker Exxon | DEE-5464 |
| Rockford Oil Company | DEE-2697 |
| Ruffin Oil Company | DEE-2439; DES-2439 |
| Scotland Oil Company | DEE-2441; DES-2441 |
| Self Service | DEE-5688 |
| Weisman, William | DEE-3770; DES-3770; DST-3770 |

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published looseleaf reporter system.

October 15, 1979.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 79-32312 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Objection to Proposed Remedial Orders; Week of September 4 through September 7, 1979

Notice is hereby given that during the week of September 4 through September 7, 1979, the Notices of Objection to Proposed Remedial Orders listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

On or before November 1, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). On or before November 21, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. Issued in Washington, D.C.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

October 15, 1979.

*Bayside Fuel Oil Depot Corporation, Brooklyn, New York DRO-0361, fuel oil*

On September 5, 1979, Bayside Fuel Oil Depot Corporation, 510 Sackett Street, Brooklyn, New York 11231 filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on July 26, 1979.

In the Proposed Remedial Order the Northeast District found that during November 1, 1973 through April 30, 1974, Bayside overcharged its customers for purchases of No. 2 heating oil.

According to the Proposed Remedial Order the Bayside Fuel Oil Depot violation resulted in $81,145.66 of overcharges.

*Bayside Fuel Oil Corporation, Brooklyn, New York DRO-0362, fuel oil*

On September 5, 1979, Bayside Fuel Oil Corporation, 1820 Cropsey Avenue, Brooklyn, New York 11214 filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on July 26, 1979.

In the Proposed Remedial Order the Northeast District found that during November 1, 1973 through March 31, 1974, Bayside overcharged its customers for purchases of No. 2 heating oil.

According to the Proposed Remedial Order the Bayside Fuel Oil violation resulted in $112,345.21 of overcharges.

*Koch Industries, Inc., Wichita, Kansas, DRO-0411, motor gasoline*

On September 6, 1979, Koch Industries, Inc., P.O. Box 2256, Wichita, Kansas 67201 filed a Notice of Objection to an Amended Interim Remedial Order for Immediate Compliance (IROIC) which the DOE Office of Special Counsel, Southwest Refiner District issued to the firm on August 28, 1979.

In the IROIC the Office of Special Counsel found that from May 1, 1979 to July 3, 1979, Koch violated the provisions of 10 CFR 210.62(a) and 10 CFR Part 211 by failing to supply the Saturn Petroleum Company with motor gasoline. The IROIC directs Koch to supply Saturn with its May and June 1979 allocation entitlement of motor gasoline as reduced by the applicable allocation fractions, and to supply Saturn with its allocation entitlement of motor gasoline in subsequent months in accordance with the provisions of 10 CFR Parts 210, 211, and 212.

*Memphis Aero Corporation, Memphis, Tennessee DRO-0244, aviation gasoline*

On September 5, 1979, Memphis Aero Corporation, Memphis International Airport, Memphis, Tennessee 38116 filed a Notice of Objection to a Proposed Remedial Order that the DOE Region IV Office of Enforcement issued to the firm on August 21, 1979.

In the Proposed Remedial Order the Region IV Office found that during the period November 1, 1973 to September 1, 1976 Memphis Aero Corporation charged prices for aviation gasoline and jet fuel that exceeded its maximum lawful price under the provisions of 10 CFR 212.93.

According to the Proposed Remedial Order the Memphis Aero Corporation violation resulted in $755,301.48 of overcharges.

*Wellen Oil, Inc., Jersey City, New Jeresey DRO-0360, fuel oil*

On September 4, 1979, Wellen Oil, Inc., located on the Hackensack River, Foot of Howell Street, Jersey City, New Jersey 07306 filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on July 31, 1979.

In the Proposed Remedial Order the Northeast District found that during November and December 1973 Wellen failed to calculate its prices for sales of No. 2 heating oil to its barge class purchasers in accordance with 6 CFR § 150.359.

According to the Proposed Remedial Order the Wellen Oil, Inc. violation resulted in $849,713 of overcharges.

[FR Doc. 79-32313 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decisions and Orders; July 30 through August 3, 1979

Notice is hereby given that during the period July 30 through August 3, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in

any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except federal holidays.

Melvin Goldstein,

*Director, Office of Hearings and Appeals.*

October 15, 1979.

*Proposed Decisions and Orders*

*Crystal Oil Co., application for exception, DEE-2206*

Crystal Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Shongaloo [West Segment] Petit Sand Unit located in Webster Parish, Louisiana, at upper tier ceiling prices. On July 31, 1979, the DOE issued A Proposed Decision and Order and tentatively determined that exception relief should be granted in part.

*J&W Refining, Inc., Dallas, Tex., crude oil, DEX-0010, FEX-0172*

In accordance with Decisions and Orders isued to J&W Refining, Inc. which granted the firm exception relief from the provisions of 10 CFR 211.67 (the Entitlements Program), the firm submitted actual financial data for its 1977 and 1978 fiscal years. On July 30, 1979, after reviewing the level of exception relief granted to J&W, the DOE issued a Proposed Decision and Order which determined that J&W should be required to purchase $1,779,371 of entitlements.

*Rex Monahan, Sterling, Colo., crude oil, DEE-2161*

Rex Monahan filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Basin Unit located in Campbell County, Wyoming, at upper tier ceiling prices. On July 31, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part, with respect to the applicant's Application for Exception.

*Rex Monahan, Sterling, Colo., crude oil DEE-2188*

Rex Monahan filed and application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Sandbar Unit located in Campbell County, Wyoming, at upper tier ceiling prices. On July 31, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part, with respect to the applicant's Application for Exception.

*Oneida Heater Co., application for exception, DEE-4101*

Oneida Heater Company filed an application for Exception from the provisions of 10 CFR, Part 430, the Energy Conservation Program for Consumer Appliances. The requested relief, if granted, would permit the firm to market its combination wood/gas and wood/oil furnaces without regard to the applicable testing requirements of Part 430, Appendix N. On July 31, 1979, the DOE issued a Proposed Decision and Order in which it tentatively determined that the exception relief be granted.

*Peerless Petrochemicals, Inc., Washington, D.C., crude oil, DEE-1422*

Peerless Petrochemicals, Inc., filed an Application for Exception from the provisions of 10 CFR 211.67[i][4] which, if granted, would result in the issuance of an order eliminating the differential for foreign crude oil mandated under that section and thereby increasing the entitlement benefits afforded to the firm. On July 30, 1979 the DOE issued a Proposed Decision and Order in which it tentatively determined to grant the firm's request for the period from November 1978 through July 1979.

*List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline*

*Week of July 30 through August 3, 1979*

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

*Company Name, Case Number, and Location*

Duffy's Car Wash, DEE-4940, Newport, KT.
G. M. Pet. Distributors, DEE-4513, Billings, MT.
State of New Jersey, DEE-7485, DXE-7169, Woodbridge, NJ.
Brian's Auto Service, DEE-3916, Berlin CT.
Gillett Cement Products, Inc., DEE-3548, Gillett, WI.
Strickling Exxon, DEE-3668, Bryn Mawr, PA.
Alvin P. Barrington, DEE-4869, Yucaipa, CA.
Tony's Texaco, Inc., DEE-6341, Miami, FL.

*List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline*

*Week of July 30 through August 3, 1979*

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

*Company Name, Case Number, and Location*

Maplewood Conoco Service, DEE-5448, DST-5448, Arvada, CO.
Munro Pet. & Terminal Corp., DEE-4810, Biloxi, MS.
Rancho Murieta Properties, Inc., DEE-5782, Rancho Murieta, CA.
128 Tire Sales, DEE-5850, Reading, MS.
Ocean, Inc., DEE-4555, Ocean City, MD.
University Drive Service, DEE-5180, Fargo, ND.

[FR Doc 79-32214 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Objection To Proposed Remedial Orders Filed; Week of August 27 through August 31, 1979

Notice is hereby given that during the week of August 27 through August 31, 1979, the Notices of Objection to Proposed Remedial Orders listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

On or before November 1, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). Within 30 days of the publication of this notice, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C., October 15, 1979.

Melvin Goldstein,

*Director, Office of Hearings and Appeals.*

*Gulf Energy & Development Corp., Dallas, Tex. DRO-0356, condensate*

On August 28, 1979, Gulf Energy & Development Corporation filed a Notice of Objection to a Proposed Remedial Order which the Southwest Enforcement District of the Department of Energy issued to Gulf Energy on August 6, 1979. In the Proposed Remedial Order, the Enforcement District found that during the period September 1, 1973 through December 31, 1975 Gulf Energy violated the DOE price regulations in connection with the firm's sales of condensate. According to the Proposed Remedial Order, Gulf Energy overcharged its customers $86,095.68, which it would be required to refund in the event the Proposed Remedial Order is issued in final form.

*Sierra Petroleum Co., Inc., Wichita, Kans., DRO-0351, crude oil*

On August 27, 1979, Sierra Petroleum Company, Inc., (Sierra) of Wichita, Kansas filed a Notice of Objection to a Proposed Remedial Order which the DOE Central

Enforcement District issued on August 3, 1979. In the Proposed Remedial Order the Enforcement District found that during the period from November 1973 through January 1976, Sierra committed various pricing violations in connection with the production and sale of crude oil. According to the Proposed Remedial Order, Sierra's violations resulted in overcharges to its customers of $167,475.05.

[FR Doc. 79-32316 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## Cases Filed; Week of June 8 through June 15, 1979

Notice is hereby given that during the week of June 8, 1979 through June 15, 1979, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: October 15, 1979.

Melvin Goldstein,

*Director, Office of Hearings and Appeals.*

### List of Cases Received by the Office of Hearings and Appeals

[Week of June 8, 1979, through June 15, 1979]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| June 8, 1979 | CIBRO Petroleum Products, Inc., Albany, N.Y | DPI-0038 | Exception from base fee requirements. If granted: CIBRO Petroleum Products, Inc., would receive an exception from the provisions of 10 CFR 213.22(a) with regard to two recent sales by the firm of crude oil. |
| June 8, 1979 | Exxon Company, U.S.A., Washington, D.C | DEA-0452<br>DES-0452<br>DST-0452 | Appeal of ERA decision and order; request for stay; request for temporary stay. If granted: The Economic Regulatory Administration's May 29, 1979 Decision and Order regarding Exxon Company's supply obligations to E. J. Flemister & Son Oil Company would be rescinded. Exxon Company would receive a temporary stay and stay of the Decision and Order pending a final determination on its Appeal. |
| June 8, 1979 | Hill City Standard, Hill City, S. Dak | DEE-6367 | Price exception (section 212.93). If granted: Hill City Standard would receive an exception from the provisions of 10 CFR Part 212.93 which would permit the firm to increase its prices for motor gasoline. |
| June 11, 1979 | Amerada Hess Corp., Williams County, N. Dak | DEE-6417 | Price exception (section 212.73). If granted: Amerada Hess Corporation would be permitted to sell the crude oil produced from the Ives-Stenbak Silurian Unit, located in Williams County, North Dakota, at upper tier ceiling prices. |
| June 11, 1979 | Commonwealth Oil Refining Co., Inc., Washington, D.C. | DPI-0039<br>DES-0216 | Exception to the base fee requirement. If granted: Commonwealth Oil Refining Co., Inc., would be permitted to import crude oil on a fee-exempt basis. The firm would receive a stay should the license fees be reimposed. |
| June 11, 1979 | J. S. Eledge Oil Co., Inc. & J. C. Young Oil Co. Sevierville, Tennessee; Dayton, Tennessee, respectively. | DEE-6443<br>DEE-6454<br>DES-6443<br>DES-6454 | Exception to change supplier; request for stay. If granted: J. S. Eledge Oil Company, Inc., and J. C. Young Oil Company would be assigned a new base period supplier of motor gasoline to replace their present supplier, Publix Oil Company, Inc. A Stay would be granted pending a final determination on their request for an Exception. |
| June 11, 1979 | Shell Oil Company, Houston, Tex | DEA-0453<br>DES-0453<br>DST-0453 | Appeal of DOE temporary assignment order; request for stay; request for temporary stay. If granted: The DOE's June 1, 1979 Temporary Assignment Order regarding Shell Oil Company's supply obligations to Southwest Research Institute for the month of June would be rescinded. Shell Oil Company would receive a temporary stay and stay of the Temporary Assignment Order pending a final determination on its Appeal. |
| June 12, 1979 | Amoco Oil Co., Chicago, Ill | DES-0217<br>DST-0217 | Request for stay and temporary stay. If granted: Amoco Oil Company would be granted a Stay and Temporary Stay of the provisions of 10 CFR 212.83 regarding the pricing of gasohol. |
| June 12, 1979 | Dashner Gas Service Co., Red Bud, Ill | DEE-6456 | Exception to change supplier. If granted: Dashner Gas Service Company would be assigned to a new base period supplier of propane gas to replace its present supplier, Petrolane, Inc. |
| June 12, 1979 | First Minute Markets, Inc., Rocky Mount, Va | DEE-6462 | Exception to change supplier. If granted: First Minute Markets, Inc. would be granted a new supplier to replace its present base period supplier, Webb Oil Corp. |
| June 12, 1979 | R. W. Tyson Producing, Jackson, Miss | DEE-6515<br>through<br>DEE-6517 | Price exception (section 212.73). If granted: R. W. Tyson Producing would be permitted to sell crude oil produced from the Stevens' Lease No. 1 (Stevens' wells Nos. 4, 5, 6), Lease No. 2 (Stevens' wells Nos. 1 and 2), and Lease No. 3 (Stevens' well No. 3) located in Perry County, Mississippi, at market price levels. |
| June 12, 1979 | Walker, Laurence C., Nacogdoches, Tex | DFA-0451 | Appeal of information request denial. If granted: The DOE's May 8, 1979 Information Request Denial would be rescinded and Laurence C. Walker would be granted access to certain DOE Documents. |
| June 13, 1979 | Casey Snyder, Cheverly, Md | DFA-0459 | Appeal of an information request denial. If granted: The Department of Energy's June 5, 1979 Information Request Denial would be rescinded and Casey Snyder would receive a statement of the reasons why he was not offered a position as an Outdoor Recreation Planner with the Federal Energy Regulatory Commission. |
| June 13, 1979 | State of Illinois, Chicago, Ill | DFA-0455 | Appeal of information request denial. If granted: The DOE's June 4, Information Request Denial would be rescinded and the State of Illinois would receive access to certain DOE data. |
| June 13, 1979 | Fusion Energy Foundation, New York N.Y. | DFA-0454 | Appeal of information request denial. If granted: The DOE's April 10, 1979 Information Request Denial would be rescinded and the Fusion Energy Foundation would be granted access to certain DOE data. |
| June 14, 1979 | Class exception proceeding governing extension of allocation relief. | DEE-6525 | Allocation exception. If granted: A Class Exception would be granted regarding extension of relief previously granted in certain motor gasoline allocation cases. |
| June 14, 1979 | R. W. Tyson Producing Co., Inc., Perry County, Miss. | DXE-6554<br>through<br>DXE-6557 | Extension of relief granted in R. W. Tyson Producing Company, Inc., 5 DOE Par. ——— (April 27, 1979. If granted: R. W. Tyson Producing Company, Inc. would be permitted to continue to sell crude oil from Carter No. 1 Well, Vickers No. 3 Well, Federal Land Bank No. 1 Well, And McCann No. 1 Well located in Perry County, Mississippi at upper tier ceiling prices. |
| June 15, 1979 | Exxon Company, U.S.A., Houston, Tex | DEA-0456<br>DES-0456<br>DST-0456 | Appeal of DOE temporary assignment order; request for stay; request for temporary stay. If granted: The DOE's June 6, 1979 Temporary Assignment Order regarding Exxon Company, U.S.A.'s supply obligations to U.S. Oil Company would be rescinded. Exxon Company, U.S.A. would receive a Stay and Temporary Stay of the Region V Temporary Assignment Order of June 6, 1979, pending final determination of its Appeal. |
| June 15, 1979 | Gulf States Oil & Refining Co., Houston, Tex | DEA-0460 | Appeal of ERA allocation decision and order. If granted: The Economic Regulatory Administration's Decision and Order issued on May 16, 1979 to Gulf States Oil & Refining Co. would be modified with respect to the calculation of the relief granted. |

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of June 8, 1979, through June 15, 1979]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| June 15, 1979 | Happy Valley Exxon, Lochgelly, W.Va. | DEA-0483 | Appeal of assignment order. If granted: The Economic Regulatory Administration Region III's Assignment Order would be modified. |

## List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

[Week of June 8 through June 15, 1979]

If granted: the following firms would receive an exception from the activation of the standby petroleum product allocation regulations with respect to motor gasoline.

| | | | |
|---|---|---|---|
| Anaheim Car Wash | DEE-6363 | 06/08/79 | California. |
| Ardell's Mini Mart | DEE-6379 | 06/08/79 | Washington. |
| Beacon of Sheepshead Bay Inc. | DEE-6370 | 06/08/79 | New York. |
| Bubble Car Wash (Sacramento) | DEE-6353 | 06/08/79 | California. |
| Bubble Machine Car Wash (CARMI) | DEE-6354 | 06/08/79 | California. |
| C & R Riverside Motors | DEE-6785 | 06/08/79 | Connecticut. |
| Cary Stanley Texaco | DEE-6371 | 06/08/79 | California. |
| Cornell | DEE-6373 | 06/08/79 | Colorado. |
| D. V. Exxon | DEE-6372 | 06/08/79 | Colorado. |
| Fuel Oil Supply & Terminaling | DEE-6388 | 06/08/79 | District of Columbia. |
| Gene's Market | DEE-6364 | 06/08/79 | Virginia. |
| Gunn's Award Tune-up Center | DEE-6385 | 06/08/79 | Ohio. |
| Interstate Gulf | DEE-6375 | 06/08/79 | Arkansas. |
| Irvingate Shamrock | DEE-6374 | 06/08/79 | Texas. |
| Jim Davis Chevron | DEE-6359 | 06/08/79 | California. |
| Jim's Texaco Service | DEE-6428 | 06/08/79 | Washington. |
| Kawell Motors, Inc. | DEE-6362 | 06/08/79 | Wisconsin. |
| Keltner, O. W. | DEE-6386 | 06/08/79 | California. |
| Linn Co-operative Oil Co. | DEE-6369 | 06/08/79 | Iowa. |
| Los Osos Petroleum Products | DEE-6376 | 06/08/79 | California. |
| Marshall's American Service | DEE-6368 | 06/08/79 | Pennsylvania. |
| Martin, John | DEE-6392 | 06/08/79 | California. |
| McCann's Texaco | DEE-6378 | 06/08/79 | Texas. |
| Medical Center Texaco | DEE-6381 | 06/08/79 | Texas. |
| Meek, William J., Jr. | DEE-6357 | 06/08/79 | Texas. |
| Mideford Exxon Station | DEE-6384 | 06/08/79 | California. |
| Midway Exxon Service | DEE-6365 | 06/08/79 | Colorado. |
| North Eaton Shell | DEE-6382 | 06/08/79 | Michigan. |
| Otis Jones Oil Company, Inc. | DEE-6355 | 06/08/79 | Georgia. |
| Pocahontas Fuel Stores-Champio | DEE-6361 | 06/08/79 | Virginia. |
| Prospect Auto Repair, Inc. | DEE-6383 | 06/08/79 | Massachusetts. |
| R. P Layton's Mobile Service Sta | DEE-6360 | 06/08/79 | Texas. |
| Reilly's Coin-op Car Wash | DEE-6356 | 06/08/79 | California. |
| Stetler's Texaco | DEE-6358 | 06/08/79 | Texas. |
| Thomco #11 | DEE-6377 | 06/08/79 | Oklahoma. |
| U.S. Oil Company | DEE-6387 | 06/08/79 | Wisconsin. |
| Vic's Shell | DEE-6389 | 06/08/79 | California. |
| A-1 Exxon | DEE-6405 | 06/11/79 | California. |
| Allied Oil Co. | DXE-6455 | 06/11/79 | Michigan. |
| Bay Export Services | DEE-6419 | 06/11/79 | California. |
| Big Jeff's Car Wash | DEE-6427 | 06/11/79 | California. |
| Bill McCord's Texaco | DEE-6431 | 06/11/79 | Oregon. |
| Bill Moore's Exxon | DEE-6399 | 06/11/79 | Louisiana. |
| Boyd's Texaco | DEE-3436 | 06/11/79 | Texas. |
| BRD. of Cty. Rd. Cooms. of Ken | DEE-6425 | 06/11/79 | Michigan. |
| C & J Self Service | DEE-1974 | 06/11/79 | Texas. |
| C. E. Kerlin Gulf Service | DEE-6410 | 06/11/79 | Louisiana. |
| Cando Oil & Gas Co. | DEE-6430 | 06/11/79 | Texas. |
| Champion International Corp. | DEE-6453 | 06/11/79 | Montana. |
| Cloverleaf Gulf | DEE-6308 | 06/11/79 | Arkansas. |
| Crites Oil Co., Inc. | DEE-6403 | 06/11/79 | Texas. |
| Cummings Exxon | DEE-6440 | 06/11/79 | Maine. |
| Dave's Gen. Store | DEE-6437 | 06/11/79 | Maine. |
| Dollar Rent-A-Car | DEE-6401 | 06/11/79 | California. |
| Douglas Shell Service | DEE-6421 | 06/11/79 | California. |
| Downtown Standard | DEE-6415 | 06/11/79 | Mississippi. |
| E. H. Meiske | DEE-6423 | 06/11/79 | Texas. |
| Fair, B. D. | DEE-3396 | 06/11/79 | Arkansas. |
| Farwest Towing, Inc. | DEE-6429 | 06/11/79 | California. |
| Foster Oil Company | DEE-6414 | 06/11/79 | Wisconsin. |
| Gabbert Oil Co. | DEE-6422 | 06/11/79 | Michigan. |
| Giggey's Exxon | DEE-6439 | 06/11/79 | Maine. |
| Gunther, Francis A. | DEE-6396 | 06/11/79 | California. |
| Hank's Standard Service Station | DEE-6406 | 06/11/79 | Wisconsin. |
| Holmes Mobil Service | DEE-6441 | 06/11/79 | California. |
| Jack's Texaco & U-Haul | DEE-6397 | 06/11/79 | New Jersey. |
| K & K Pre-cast Mfg. Co. | DEE-6424 | 06/11/79 | California. |
| Kate's Mini Store | DEE-6436 | 06/11/79 | Maine. |
| Lander's Chevron | DEE-6432 | 06/11/79 | Kentucky. |
| Macbean Country Market | DEE-6438 | 06/11/79 | Maine. |
| McKay's Country Store | DEE-6433 | 06/11/79 | Maine. |
| Milt's Seafood Plant | DEE-6409 | 06/11/79 | Texas. |
| Minerva Exxon & Grocery | DEE-6412 | 06/11/79 | Texas. |
| Mosher Gateway Grocery | DEE-6413 | 06/11/79 | Texas. |
| P F & E Oil Company | DEE-6411 | 06/11/79 | Texas. |
| Petroleum Marketing Company | DEE-6407 | 06/11/79 | Oklahoma. |
| Pittman-Witherington Oil Co. | DEE-6416 | 06/11/79 | Arkansas. |

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| Pronto Food Stores | DEE-6426 | 06/11/79 | Missouri. |
| S & J General Store | DEE-6402 | 06/11/79 | North Carolina. |
| Sarko Equipment, Inc. | DEE-6420 | 06/11/79 | Michigan. |
| Selbyville Arco Service Station | DEE-6398 | 06/11/79 | Delaware. |
| Stan-Ann Oil Company | DEE-6408 | 06/11/79 | Texas. |
| Travaglino, J. A. | DEE-6442 | 06/11/79 | Connecticut. |
| Treadwell's Exxon | DEE-6434 | 06/11/79 | Maine. |
| Tupper's Exxon | DEE-6435 | 06/11/79 | Maine. |
| Turner's Grocery | DEE-3189 | 06/11/79 | Kentucky. |
| Van Natter, Harry F. | DEE-3159 | 06/11/79 | Texas. |
| Van Nuys Publishing Co. | DEE-6254 | 06/11/79 | California. |
| Walters North Bellmore | DXE-6682 | 06/11/79 | New York. |
| Wright's Phillips 66 | DEE-1986 | 06/11/79 | Texas. |
| Augusta Mall Gulf Service | DEE-6481 | 06/12/79 | Georgia. |
| B & T Gulf | DEE-6448 | 06/12/79 | Florida. |
| Belcher Exxon Service Station | DEE-6502 | 06/12/79 | Louisiana. |
| Bingo Exxon | DXE-6472 | 06/12/79 | Alabama. |
| Bruce's Service Center | DEE-6461 | 06/12/79 | California. |
| Burgman Supply Company | DEE-6446 | 06/12/79 | Florida. |
| Childers Oil Co., Inc. | DEE-6491 | 06/12/79 | West Virginia. |
| Cotton Service Stations & Rental | DEE-6464 | 06/12/79 | Texas. |
| Cranford's Groceries | DEE-6493 | 06/12/79 | Arkansas. |
| D. Hubbard & Son | DEE-6509 | 06/12/79 | Kentucky. |
| E. W. Massey Gulf Service | DEE-3996 | 06/12/79 | Texas. |
| Eddie & Mike's Sunoco | DEE-6467 | 06/12/79 | Massachusetts. |
| Eddie's Auto Truck Plaza | DEE-6480 | 06/12/79 | Pennsylvania. |
| El Sineitti, Joseph | DEE-6458 | 06/12/79 | California. |
| Freeman's Mobil Service Center | DEE-6501 | 06/12/79 | Missouri. |
| Front Range Exxon Service | DEE-6484 | 06/12/79 | Colorado. |
| Goodrich Oil Co. | DEE-6487 | 06/12/79 | California. |
| Great Lakes Development Co. | DEE-6465 | 06/12/79 | California. |
| Gunter's Country Store | DEE-6483 | 06/12/79 | North Carolina. |
| High Street Amoco | DEE-6444 | 06/12/79 | Virginia. |
| Highland Gulf | DEE-6476 | 06/12/79 | Louisiana. |
| Howard Self Service Oil Co. | DEE-6452 | 06/12/79 | Minnesota. |
| Iacobellis, Sam F. | DEE-6457 | 06/12/79 | California. |
| Jack Russell Oil Co., Inc. | DEE-6470 | 06/12/79 | Florida. |
| Johnny's Sunoco Service | DEE-6450 | 06/12/79 | Massachusetts. |
| Keystone Arco | DEE-6486 | 06/12/79 | Nevada. |
| Keystops, Inc. | DEE-6475 | 06/12/79 | Kentucky. |
| Kimball, H. M. | DEE-6489 | 06/12/79 | Louisiana. |
| Main Street Arco | DEE-6477 | 06/12/79 | Massachusetts. |
| Mainland Tire & Appliance Co. | DEE-6451 | 06/12/79 | Texas. |
| Monte Rio Chamber of Commerce | DEE-6459 | 06/12/79 | California. |
| Montgomery, Lytal, Reiter, Denney | DEE-6445 | 06/12/79 | Florida. |
| Mutual Gas-A-Rama, Inc. | DEE-6490 | 06/12/79 | Massachusetts. |
| Norm's Exxon | DEE-6447 | 06/12/79 | California. |
| Ozarks Petroleum Service | DEE-6488 | 06/12/79 | Missouri. |
| Parkmont Amoco | DEE-6496 | 06/12/79 | Maryland. |
| Peacock's Super Kwik Market | DEE-6482 | 06/12/79 | Maryland. |
| Queen City Car Wash | DEE-6479 | 06/12/79 | California. |
| R. P. Layton's Mobil | DEE-6494 | 06/12/79 | Texas. |
| Reece's Exxon | DEE-6460 | 06/12/79 | California. |
| Robertson Texaco | DEE-6492 | 06/12/79 | Texas. |
| S & S Mobil | DEE-6449 | 06/12/79 | California. |
| Sass, James | DEE-6474 | 06/12/79 | California. |
| Speedy Wash & Gas | DEE-6497 | 06/12/79 | Louisiana. |
| Spessum Grocery | DEE-6463 | 06/12/79 | Louisiana. |
| Stern Oil Co., Inc. | DEE-6478 | 06/12/79 | South Dakota. |
| Stroud's Fuel Oil Co. | DEE-6471 | 06/12/79 | Florida. |
| Texas Gulf Gas Corp. | DEE-6466 | 06/12/79 | Texas. |
| Walker's Service Station | DEE-6495 | 06/12/79 | Florida. |
| Wetherington & Houser Service | DEE-6473 | 06/12/79 | Arkansas. |
| Wherrell Oil Co., Inc. | DEE-6498 | 06/12/79 | Florida. |
| Charlie's Amoco Service Station | DEE-6500 | 06/13/79 | Maryland. |
| Craig, Warren H. Mrs. | DEE-6504 | 06/13/79 | Indiana. |
| Georgetown Chevron | DEE-6503 | 06/13/79 | Georgia. |
| Hills Chevron | DEE-6510 | 06/13/79 | Mississippi. |
| Hyster Company | DEE-6514 | 06/13/79 | California. |
| J. E. Dewitt, Inc. | DEE-6508 | 06/13/79 | California. |
| Jarmon's Bridge Texaco Service | DEE-6513 | 06/13/79 | Maryland. |
| Kiawah Island | DEE-6499 | 06/13/79 | South Carolina. |
| Mcwhirter Distributing Co. | DEE-6506 | 06/13/79 | California. |
| Polpet, Inc. | DEE-6507 | 06/13/79 | California. |
| Rocket Rent-A-Car | DEE-6505 | 06/13/79 | California. |
| Urbano's | DEE-6512 | 06/13/79 | California. |
| Weatherite | DEE-6511 | 06/13/79 | California. |
| A. G. Inc. Town Line Service | DEE-6541 | 06/11/79 | Massachusetts. |
| Allstar Nutrition Center | DEE-6529 | 06/14/79 | Colorado. |
| Altavista Minute Markets, Inc. | DEE-6523 | 06/14/79 | Virginia. |
| Amoco Quik-Six Shoppe (S. Broadway) | DEE-6531 | 06/14/79 | Colorado. |
| B-B Oil Co., Inc. (Search, Ar.) | DEE-6547 | 06/14/79 | Arkansas. |

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| B-B-F Oil Co., Inc. (Pine Bluff) | DEE-6548 | 06/14/79 | Arkansas. |
| Ca. Dept. of Transportation | DEE-6527 | 06/14/79 | California. |
| Clark's Exxon | DEE-6520 | 06/14/79 | Maryland. |
| Class Exception | DEE-6525 | 06/14/79 | |
| Doyle, Leonard | DEE-6542 | 06/14/79 | Massachusetts. |
| Edwards Gulf Service Station | DEE-6550 | 06/14/79 | Texas. |
| Emerson, Joe | DEE-6510 | 06/14/79 | Arkansas. |
| Federal Express Corp. | DEE-6526 | 06/14/79 | Tennessee. |
| Firestone Test Center | DEE-6518 | 06/14/79 | Texas. |
| Fowler Texaco | DEE-6524 | 06/14/79 | Texas. |
| George Adamian Texaco | DEE-6521 | 06/14/79 | California. |
| Homax Oil Sales, Inc. | DEE-6174 | 06/14/79 | Wyoming. |
| Jerry's Service & Auto Parts | DEE-7137 | 06/14/79 | California. |
| Lakewood Sunoco | DEE-6544 | 06/14/79 | North Carolina. |
| MacArthur Drive Mobil | DEE-6519 | 06/14/79 | Texas. |
| McDermitt Mine | DEE-6552 | 06/14/79 | Nevada. |
| Quik-Six #3 (third) | DEE-6536 | 06/14/79 | Colorado. |
| Quik-Six #9 (Coffman) | DEE-6537 | 06/14/79 | Colorado. |
| Quik-Six Shoppe (Dayton) | DEE-6533 | 06/14/79 | Colorado. |
| Quik-Six Shoppe (E. Alameda) | DEE-6533 | 06/14/79 | Colorado. |
| Quik-Six Shoppe (E. Colfax) | DEE-6534 | 06/14/79 | Colorado. |
| Quik-Six Shoppe (W. Colfax) | DEE-6540 | 06/14/79 | Colorado. |
| Quik-Six Shoppe (Wadsworth) | DEE-6538 | 06/14/79 | Colorado. |
| Quik-Six Shoppe #4(Pecos) | DEE-6530 | 06/14/79 | Colorado. |
| Quik-Six Shoppe (N. Washington) | DEE-6539 | 06/14/79 | Colorado. |
| Richards Oil Co. | DXE-6549 | 06/14/79 | North Carolina. |
| Rose Oil Co. | DEE-6522 | 06/14/79 | Idaho. |
| Royal Equipment Co., Inc. | DEE-6404 | 06/14/79 | Georgia. |
| Soukup, Albert V. | DEE-6553 | 06/14/79 | Colorado. |
| T & D Arco | DEE-6551 | 06/14/79 | Rhode Island. |
| Trusesdell's Texaco | DEE-6545 | 06/14/79 | New York. |
| Van's Grocery | DEE-7038 | 06/14/79 | Arkansas. |
| Wiggin's Standard | DEE-6532 | 06/14/79 | Colorado. |
| Abraham, Robert S. | DEE-6574 | 06/15/79 | Texas. |
| Applewood Exxon Service | DEE-6567 | 06/15/79 | Colorado. |
| Brown Ferris, Inc. | DEE-6571 | 06/15/79 | Louisiana. |
| Brusly Exxon | DEE-6561 | 06/15/79 | Louisiana. |
| Chalmette Shell | DEE-6568 | 06/15/79 | Louisiana. |
| County of Louisa | DEE-6558 | 06/15/79 | Virginia. |
| Digi-Data Corporation | DEE-6562 | 06/15/79 | Maryland. |
| Fontana Car Wash | DEE-6564 | 06/15/79 | California. |
| Lester's "66" | DEE-6573 | 06/15/79 | Oklahoma. |
| Martinez Exxon Service | DEE-6563 | 06/15/79 | Florida. |
| Perris Valley Service | DEE-6565 | 06/15/79 | California. |
| Rockside & 21 Shell | DEE-6559 | 06/15/79 | Ohio. |
| Stephan Oil Co. | DEE-6546 | 06/15/79 | Kansas. |
| Stuckey's, Inc. | DEE-6570 | 06/15/79 | District of Columbia. |
| Surry Lane Service Station | DEE-6566 | 06/15/79 | New York. I95 |

Items Retrieved—207.

[FR Doc 79-32317 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 1342-2]

### Approval of PSD Permit to Norton Co.

Notice is hereby given that on September 10, 1979 the Environmental Protection Agency issued a Prevention of Significant Deterioration (PSD) permit to Norton Company for approval to construct a vitrified bond plant and bauxite pellet dryer in Worcester, Massachusetts. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations (40 CFR Part 52.21), subject to certain conditions, including:

1. Construction and operation shall comply with all requirements of approval orders issued by the Massachusetts Department of Environmental Quality Engineering on September 13, 1978, May 16, 1979, and May 25, 1979.

2. This permit may be subject to reevaluation as a result of a final decision to be issued in the case of *Alabama Power Company* vs. *Douglas M. Costle* (78-1006 and consolidated cases).

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the First Circuit Court of Appeals. A petition for review must be filed on or before December 18, 1979.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

Department of Environmental Quality Engineering, Air and Hazardous Waste Division, 600 Washington Street, Boston, Massachusetts 02211.

Dated: October 10, 1979.

William R. Adams, Jr.,

*Regional Administrator, Region 1.*

[FR Doc. 79-32296 Filed 10-18-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1342-1]

## Approval of PSD Permit to the City of Cranston, R.I.

Notice is hereby given that on September 10, 1979, the Environmental Protection Agency issued a Prevention of Significant Deterioration (PSD) permit to the City of Cranston, Rhode Island for approval to contruct the sewage sludge incinerators at the Cranston Wastewater Treatment Facility. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations (40 CFR Part 52.21), subject to certain conditions, including:

1. The maximum design capacity of the existing incinerator and incinerator to be purchased shall not exceed a combined maximum dry solids input of 138,000 lbs/day.

2. Manufacturer's design specifications for the sewage sludge incinerator and venturi scrubber shall be submitted to EPA.

3. Construction and operation of the Sewage Sludge Incinerators shall comply with all requirements of the approval order to be issued by the Rhode Island Department of Environmental Management.

4. This permit may be subject to reevaluation as a result of a final decision to be issued in the case of *Alabama Power Company* vs. *Douglas M. Costle* (78-1006 and consolidated cases).

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the First Circuit Court of Appeals. A petition for review must be filed on or before December 18, 1979.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203

Department of Environmental Management, Cannon Building, Room 204, 75 Davis Street, Providence, Rhode Island 02908.

Dated: October 10, 1979.

William R. Adams, Jr.,

*Regional Administrator, Region I.*

[FR Doc. 79-32297 Filed 10-18-79; 8:45 am]

BILLING CODE 6560-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Equal Employment Opportunity in the Federal Government

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of Resolution.

Resolution

The Commission, recognizing the value of the investigative procedures developed under the Pilot Program for Investigating Federal EEO Complaints (44 FR 40496, July 11, 1979), resolves that:

The Commission shall offer, to all agencies requesting Commission investigations of complaints which meet the criteria set forth in EEOC Management Directive 401 (June 5, 1979), the utilization of the special investigative procedures developed under the Pilot Program.

The Director of the Technical Guidance Division, Office of Field Services, may execute, with any requesting agency wishing to have the Commission conduct an investigation using the Pilot Program procedures, an agreement which provides, inter alia, that (1) the Commission conduct the investigation using the procedures developed under the Pilot Program, including an investigative hearing; and (2) the agency adopt as its proposed disposition of the complaint the Commission's recommended disposition unless within 30 days after the agency receives the investigative file and recommended disposition the complaint has been informally adjusted in accordance with § 1613.217(a), or the agency has notified the complainant of its own proposed disposition in accordance with § 1613.217(b).

In order to inform complainants and others of agency adoption of the special investigative procedures by agreement with the Commission, the Commission will publish a list of agencies which have agreed to the use of the procedures, on a quarterly basis until the close of the Pilot Program.

**FOR FURTHER INFORMATION CONTACT:** John Rayburn, Director, Technical Guidance Division, Office of Field Services, EEOC, 2401 E Street, NW., Washington, D.C. 20506, (202) 634-6855.

Signed at Washington, D.C., this 9th day of October 1979.

For the Commission.

Eleanor Holmes Norton,

*Chair.*

[FR Doc. 79-32214 Filed 10-18-79; 8:45 am]

BILLING CODE 6570-06-M

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

### Regulation Z; Joint Notice of Statement of Enforcement Policy on Behalf of Its Constituent Agencies

**AGENCIES:** The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

**ACTION:** Proposed Amendments to the Statement of Enforcement Policy—Regulation Z.

**SUMMARY:** The Uniform Guidelines for Enforcement of Regulation Z were adopted, effective January 4, 1979, by the Federal agencies responsible for supervising depository institutions. The agencies believed that Guidelines would promote uniformity in enforcement of the Truth in Lending Act, and that more effective enforcement would be achieved by requiring specific corrective action by financial institutions, including reimbursement to borrowers who had received incorrect disclosures in violation of the Act. After reviewing the application of the Guidelines for nine months, the agencies believe that they are broadly serving the goals for which they were adopted and are significantly increasing awareness among financial institutions of the requirements of the Truth in Lending law. However, certain questions of equity and other problems with the application of the Guidelines have arisen which make amendments desirable. In addition, several questions have been raised on which the agencies desire further information and comment. Recognizing the value of public participation in the promulgation of these Guidelines, the agencies request comments on these proposed changes and questions.

**DATES:** Comments must be received on or before December 21, 1979.

**ADDRESSES:** Written comments should be addressed to: Interagency Enforcement Policy—Regulation Z, c/o Federal Deposit Insurance Corporation, 550 Seventeenth Street, N.W., Washington, D.C. 20429.

**FOR FURTHER INFORMATION CONTACT:** Glenn Loney, Federal Reserve Board, (202) 452-3585; Alan Dombrow, Comptroller of the Currency, (202) 447-1600; Peter M. Kravitz, Federal Deposit Insurance Corporation, (202) 389-4427; John Price, Federal Home Loan Bank Board, (202) 377-6524; and Harry Blaisdell, National Credit Union Administration, (202) 254-8760.

**SUPPEMENTARY INFORMATION:** This document sets forth proposed amendments to and questions concerning the Uniform Guidelines for Enforcement of Regulation Z, which were adopted effective January 4, 1979 (44 FR 1222). The Guidelines were adopted because coordination among the agencies is desirable in order to

bring about uniformity in the administrative actions which will be taken when violations of the Truth in Lending Act and Regulation Z are detected.

In issuing the Guidelines, the agencies said, "as new examination data concerning the extent and type of violations are received, the Guidelines will be reviewed and revised as appropriate." The agencies have undertaken a review of the Guidelines because of problems which have arisen with their implementation. During this review period, the agencies are continuing to require full prospective correction of Truth in Lending violations.

The agencies published the corrective action Guidelines in proposal form for public comment on October 18, 1977. More than three hundred comment letters were received and analyzed, and many recommendations were reflected in the final Guidelines published in December, 1978. In general, however, the public comments on the proposed Guidelines did not contain recommendations which, if adopted, would have prevented the problems which have developed since the Enforcement Policy went into effect. The difficulties have surfaced as a result of experience with implementing the policy.

The agencies believe that the problems which have arisen derive primarily from the complexity of the Truth in Lending law and its implementing Regulation Z. The law and regulation went into effect in 1969. Since that time, both the law and the regulation have been amended and expanded. Many staff opinion letters and interpretations have been published, and twelve thousand lawsuits have been brought under the Act.

The agencies strongly support the fundamental disclosure principles of Truth in Lending, and believe that the complexities which have developed result primarily from efforts to apply these broad principles in a highly specific manner to the numerous and complex creditor practices found in the marketplace. The detail and intricacy of the law's current requirements have the effect, in many instances, of confusing rather than assisting the prospective borrower, and of imposing extensive compliance burdens on financial institutions. The agencies strongly believe that statutory simplification of Truth in Lending is now necessary to achieve its purpose of providing borrowers with useful information.

Recent efforts by Congress to enact such simplification have been supported by the agencies, but have not yet been adopted.

In the absence of statutory simplification, the agencies issued corrective action Guidelines which are based on the current law and regulation, and which tend to reflect their continuing difficulties. In light of experience with implementing the Guidelines, the agencies now believe that administrative action is necessary to simplify them and make them more workable.

The agencies' primary concerns revolve around the following areas:

First, the agencies believe that the complexity of the Guidelines has resulted in confusion among creditors, borrowers, and agency examiners regarding their application. Some of the questions which have been raised were addressed through the publication of an interagency Question and Answer Paper on July 5, 1979. However, a large number of new questions and issues continue to arise, which suggests that serious difficulties are still being encountered in implementing the Guidelines.

Part of the reason for the great number of questions about the Guidelines is that they currently permit little agency flexibility and discretion in their interpretation and application. The agencies intentionally limited such discretion, because they believed that intra-and interagency uniformity must be maintained in order to assure equal treatment of all institutions and their customers. While the agencies continue to be committed to the principle of uniformity, experience indicates that greater flexibility is necessary to permit practical implemetation of corrective action. Also the agencies regulate different types of institutions which, to some extent, engage or specialize in different types of lending.

The agencies recognize that a degree of uniformity must be sacrificed in order to permit the flexibility needed for workable implementation of the Guidelines. Nevertheless, the agencies are committed to equal treatment of all parties and intend to use the review period to consider methods of increasing uniformity where it is important and feasible. This commitment to equal treatment of all parties was the reason for the original decision to issue uniform Guidelines.

In addition to recognizing a need for greater flexibility in general implementation, the agencies believe that the current Guidelines are too rigid, specifically in regard to the time period for which retroactive corrective action will be required. The Guidelines currently designate a single date, October 28, 1974, as the start of the period of retroactivity. While the agencies believe the use of this date is valid in principle, they have found that it raises problems in practice. In some instances, the 1974 date appears to impose unduly burdensome requirements on creditors, while in other cases it tends to hinder the appropriate resolution of problems which were in existence prior to 1974. The agencies believe that the Guidelines would operate more effectively if their retroactive application were tailored more precisely to the past performance of the individual institutions.

The agencies are also concerned about the extensive demands which implementation of the Guidelines is placing on their own personnel and resources. Given the current complexity and scope of the program, effective implementation is necessarily drawing resources away from enforcement of other consumer laws and from examination of the institutions for safety and soundness. While the agencies are committed to requiring corrective action for Truth in Lending violations, they believe that their resources could be allocated more effectively if the Guidelines were narrower in scope and focused more on significant problem areas.

In view of the foregoing considerations, the agencies are proposing three amendments to the Guidelines.

*1. Tolerance Limits*

The tolerance permitted for disclosure of the annual percentage rate would be increased from one-eighth to one-quarter of one percentage point. A tolerance margin is provided under the Guidelines in order to recognize the need for a degree of flexibility, as suggested by the provisions contained in 15 U.S.C. 1606 and 12 CFR 226.5 which permit rounding of APR calculations. The tolerance provision avoids discrimination against creditors attempting to disclose the exact APR as a service to their customers, rather than utilizing the method of rounding permitted by the Truth in Lending Act and Regulation Z to disclose less precise rates.

The agencies are proposing to increase the tolerance level because: (a) Computing precisely accurate annual percentage rates is difficult for many types of credit transactions, due to the need to account for the multiplicity of finance charges, odd days interest, and other complicating factors; (b) a widespread perception exists among creditors that rounding to the "nearest quarter of 1 percent," 12 CFR 226.5(a), implies an error tolerance of one-quarter of a percentage point; and (c) the

agencies believe that the use of a one-eighth percent tolerance frequently produces an administrative burden which is excessive in relation to the corresponding benefit to the customer.

*2. Retroactivity*

The time period to which the Guidelines apply would be modified. Corrective action would be required as follows: (1) For violations cited in the current examination, corrective action would be required on loans consummated since the date of the immediately preceding examination; or (2) where the creditor had failed to correct practices or procedures resulting in violations cited in previous examinations, corrective action would be required for loans consummated after the date on which notice of the violation was first given to the creditor.

Depending upon the compliance history of the violation, corrective action could be required back to the date of enactment of the Truth in Lending Act.

A "current examination" would be defined as an examination conducted subsequent to January 4, 1979, which was the effective date of the original Guidelines. Revisions in the Guidelines made pursuant to this proposal, however, would also be applied to earlier examinations.

The following table illustrates the periods for which corrective action would be ordered. The dates represent the dates of examinations, with 1979 being the current examination. "V" means that a pattern or practice constituting a given violation was cited in that examination, and "NV" means that the same type of violation was not cited.

In each case, retroactive corrective action would be required from the date of the examination which appears immediately below the horizontal lines shown in the table. This means that corrective action would be ordered on all loans containing the violation which were consummated after that date. No cut-off date is necessary on the corrective action period, because it would automatically terminate at the point at which the institution ceased engaging in the practice which caused the violation.

| Examination date | Representative situations | | | | |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| 1979 | V | V | V | NV | NV |
| 1978 | NV | V | V | NV | V |
| 1977 | NV | NV | V | V | V |
| 1976 | NV | NV | NV | NV | NV |

In situations 1 and 2, corrective action would be ordered for loans containing the violation which were consummated since the date of the 1978 examination. Note that the date in these two situations is the same, despite the fact that situation 2 involves a repeat violation and situation 1 does not. This is due to the fact that the proposed amendment would distinguish between past examinations and current ones. For past examinations, prior to January 4, 1979, corrective action would be triggered if an institution failed to respond adequately to notification from its supervisory agency that it was engaging in a practice which constituted a Truth in Lending violation. Thus, institutions would be able to avoid the retroactive requirements of the Guidelines if, upon initial notification that they were in violation of the law, they promptly took action to correct the practice prospectively. For current examinations, in contrast, the proposal would require reimbursement for newly-cited violations, on loans consummated since the date of the previous examination.

In situation 3, corrective action would be ordered for loans containing the violation which were consummated since the date of the 1977 examination. In situation 4, no corrective action would be ordered, because the institution corrected the violation upon initial notification. Situation 5 is similar to situation 2; corrective action would be ordered for loans containing the violation which were consummated since the date of the 1977 examination.

Note that, in determining whether corrective action would apply with respect to past examinations, the key would be whether the same pattern or practice constituting a violation was not corrected by the institution after being cited in the previous examination. Citations for different violations would not be covered for the purposes of retroactive corrective action. However, the agencies maintain the authority, made clear in the current Guidelines, to require corrective action beyond the minimum standard set by the Guidelines in any case where the institution has engaged in a willful or egregious pattern of violations.

The agencies believe that this proposed revision to the Guidelines will result in more equitable treatment of institutions and their customers, and more reasonable administrative costs for implementation and compliance.

*3. Flexibility*

A phrase would be added to the Guidelines to make it clear that the agencies retain flexibility to respond appropriately to unique circumstances or significant problems. The amendment would place greater reliance on the judgment and discretion of the agencies to deal with unique situations which raise technical questions concerning the application of the Guidelines. This step toward simplification would avoid the costs and administrative burdens of interagency coordination and action in situations which apply to very few institutions. The amendment also recognizes that the agencies may encounter situations which involve significant issues or common creditor practices which may require varying the implementation of the Guidelines. The proposal would permit such variations if they are consistent with the purposes of the Guidelines, after notification by the agency to the Federal Financial Institutions Examination Council. This notification process is intended to give the other agencies an opportunity to make similar rulings, or to ask for a review of variations which appear to depart significantly from uniform treatment of all institutions.

In addition to these three proposed amendments, the agencies wish to invite comment on any other aspects of the Guidelines which have raised problems or questions. For example, a large portion of the Question and Answer Paper which the agencies issued deals with the application of the Guidelines to credit insurance issues. The agencies would welcome recommendations for improving the Guidelines in these and any other areas.

In addition, there are three specific matters on which the agencies wish to solicit public comment and advice.

*1. Cost and Benefit Information*

The agencies believe that additional information on the costs associated with implementation of the Guidelines would be helpful. Two areas are of particular concern.

First, information is requested on the direct and indirect costs associated with implementation of the Guidelines, both for actual reimbursement and for required administrative processes such as locating and identifying loans requiring corrective action, contacting affected customers, and so forth.

Second, comments are requested on ways in which the Guidelines could be amended to reduce administrative burdens on financial institutions, while assuring benefits to customers entitled to corrective action, including reimbursement. Suggestions regarding the standards the agencies should use in evaluating these cost-benefit considerations are also requested.

*2. Treatment of Real Estate Loans*

The agencies want to invite comment on the treatment of real estate loans. It has been the experience of the enforcing agencies that long-term real property transactions (e.g., mortgage loans) have presented creditors with particular difficulties in achieving total compliance in the calculation of the Annual Percentage Rate (APR). To some extent, these difficulties result from the requirement that some, but not all of the numerous closing costs associated with the typical mortgage loan are included in the APR calculation. The fact that different rules apply to different types of charges, all of which may be collected together at closing, has often created creditor confusion and resulted in the inadvertent omission of one or more components of the finance charge when computing the APR.

Another prevalent cause for difficulty relates to the various uneven payment schedules encountered with mortgage loan transactions, so-called "irregular transactions." Such uneven schedules most often result from renewal premiums for private or government mortgage guarantee insurance. These renewal premiums, which must be included as part of the finance charge under the regulation, are assessed in a number of ways depending on the insurer. Many common policies compute the premium annually on the declining balance of the loan principal, with one-twelfth of the annual premium collected by the creditor monthly. Because the premium declines each 12-month period, it is necessary to create a loan amortization schedule, derive the anticipated annual renewal premium charge at each anniversary date, and then determine the resultant declining payment schedule. The APR for the payment schedule thus developed may be derived by the Federal Reserve Board's "General Formula" (*Supplement I to Regulation Z*) or the Federal Reserve Board's APR Tables, Volume II, for irregular transactions. Use of the Volume II table is complex and time consuming. Use of the "General Formula" requires, at the least, a financial function or programmable calculator, and if a significant volume of loans is to be achieved, complete automation of the entire computation process is desirable.

The same general process described above would apply to any mortgage loan transaction that involves unequal disbursements or payments over the term of the loan. A typical example would be a common construction loan where funds are disbursed as needed at irregular intervals. In such complex situations, creditors have been prone both to computational errors and to attempting mathematical shortcuts which may result in erroneous APR disclosures.

Because the disclosures given in connection with mortgage loans are often correct except for the final computation of the APR, and because of continuing creditor confusion with respect to (a) differentiating between closing costs which are and are not considered prepaid finance charges and (b) the correct method for calculating the APR on "irregular loan transactions," especially where mortgage guarantee insurance or construction financing is involved, the agencies request comment on the three questions set forth below.

First, comment is requested on the particular aspects of real property transactions that create the most serious problems for creditors attempting to comply with Regulation Z. Comment is requested on feasible solutions to these problems, including, but not limited to, such things as the availability of more extensive technical instructions, better education of creditor staffs and changes in lending practices designed to facilitate easier computation of APRs.

Second, the agencies request comment on how important or useful the APR disclosure is to the borrower's actual selection of a lender in real property credit transactions. In particular, comment is requested on whether borrowers normally have already selected a creditor on the basis of other information by the time APR (and other TIL) disclosures are provided prior to consummation of the loan contract. If creditor selection does take place prior to the receipt of Truth in Lending disclosures, the agencies request comment on: (1) what other comparative information and criteria are used in shopping for mortgage credit, and (2) what effect this situation should have on Truth in Lending enforcement procedures, especially with regard to reimbursement for understated APRs.

Third, comment is requested on whether it would be equitable to limit the minimum corrective action required by the Guidelines for understated APRs, in connection with real property transactions, to informing the affected borrowers of their correct APR and of the civil liability provision of Section 130 of the Truth in Lending Act. If such minimum corrective action requirement were adopted by the agencies, comment is requested on: (1) whether this provision should remain effective for only a limited period of time during which creditors would be expected to seek out expert advice and perfect their computational procedures, after which time understated APRs would require reimbursement, and (2) whether such limited minimum corrective action should apply only to "irregular transactions" such as loans having mortgage guarantee insurance or loans for construction financing.

*3. Treatment of Exempt States*

The Board of Governors of the Federal Reserve System requests comment on whether states which have received an exemption from the Truth in Lending requirements should be required to adopt enforcement policies substantially similar to the Guidelines in order to maintain their exemption. Currently five states (Maine, Massachusetts, Connecticut, Oklahoma, and Wyoming) have been granted exemptions from most of the Federal Truth in Lending requirements by virtue of their having substantially similar state laws and adequate provisions for enforcing those laws. Thus, state-chartered institutions normally subject to Federal Truth in Lending jurisdiction are instead subject to state jurisdiction. The issue is whether those states, as a condition of maintaining adequate provision for enforcement, and thus their eligibility for exemption, should be required to have provisions for reimbursement similar to those which would be imposed by the Federal agencies if the exemption did not exist.

* * * * *

The following amendments are proposed pursuant to the enforcement authority contained in 15 U.S.C. Section 1607 and 12 U.S.C. Section 1818(b) in the cases of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, pursuant to 15 U.S.C. Section 1607 and 12 U.S.C. Sections 1464(d)(2) and 1730(e) in the case of the Federal Home Loan Bank Board, and pursuant to 15 U.S.C. Section 1607 and 12 U.S.C. Section 1786(e)(1) in the case of the National Credit Union Administration.

1. Definitions, Section 3 is amended by substituting "¼ of 1 percentage point" for "⅛ of 1 percentage point."

2. General Policies, Section 3 is amended deleting the current section and substituting the following:

* * * Corrective action shall be required for all violations within the scope of these Guidelines (1) cited in the current examination, or (2) cited in an earlier examination or supervisory letter when an agency determines that the creditor failed to correct any such practice by the next succeeding examination. Corrective action under (1)

will be required for all loans consummated since the date of the examination immediately preceding the current examination. Corrective action under (2) will be required for all loans consummated after the date of such report or letter in which the practice was first cited. Current examinations shall mean examinations conducted after January 4, 1979.

3. General Policies, Section 1(a) is amended by adding the following at the end of the section:

* * * nor will it preclude any agency from deviating from the Guidelines (1) with regard to an individual creditor when the agency encounters unique situations raising technical questions as to the application of the Guidelines, or (2) after notice to the Federal Financial Institutions Examination Council, when the agency encounters situations which involve significant issues or common creditor practices. Any such deviations shall be consistent with the intent of the Guidelines.

Dated: October 15, 1979.

Theodore E. Allison,

*Secretary, Board of Governors of the Federal Reserve System.*

Dated: October 15, 1979.

J. J. Finn,

*Secretary, Federal Home Loan Bank Board.*

Dated: October 15, 1979.

Lewis G. Odom, Jr.,

*Senior Deputy Comptroller, Comptroller of the Currency.*

Dated: October 15, 1979.

Hoyle L. Robinson,

*Executive Secretary, Federal Deposit Insurance Corporation.*

Dated: October 15, 1979.

Rosemary Brady,

*Secretary to NCUA Board, National Credit Union Administration.*

[FR Doc. 79-32408 Filed 10-18-79; 8:45 am]

BILLING CODE 6722-01-M

## Joint Notice of Policy Statement on Discrimination

**AGENCIES:** The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

**ACTION:** Policy Statement on Discrimination.

**SUMMARY:** The five constituent Federal financial regulatory agencies of the Federal Financial Institutions Examination Council have approved a joint statement of policy on discrimination.

**EFFECTIVE DATE:** October 11, 1979.

**FOR FURTHER INFORMATION CONTACT:** Samuel H. Talley, Federal Reserve Board (202) 452-3354; Linda Cohen, National Credit Union Administration (202) 254-8760; Louis V. Roy, Federal Home Loan Bank Board (202) 377-6512; Henry Newport, Federal Deposit Insurance Corporation (202) 389-4668; and Dennis Arczynbski, Comptroller of the Currency (202) 447-0111.

**SUPPLEMENTARY INFORMATION:**

### The Policy Statement

The Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Federal Home Loan Bank Board and the National Credit Union Administration, as Federal agencies responsible for the regulation and supervision of depository institutions, in cooperation with other responsible authorities, are committed to identifying and eliminating illegal discrimination and to encouraging non-discriminatory practices in the operations of these institutions. Over the years, the attention of the Federal financial regulatory agencies has focused especially on such matters as discrimination on the basis of race, religion, national origin, sex, and marital status in the provision of lending and other financial services and the discriminatory aspects of mortgage and other lending practices which may have a disparate impact on various neighborhoods and communities. The various efforts of the agencies have been directed towards the enforcement of prohibitions against such discrimination, the development by the institutions they supervise of appropriate remedial or affirmative actions to help eradicate the effects of past discrimination, and the sponsorship or support of numerous special-emphasis programs that have the objective of assisting the financial institutions to meet the credit needs of all segments of the communities which they serve.

Within the boundaries of their jurisdiction, the five Federal financial regulatory agencies are committed to effective enforcement of the various civil rights laws of the nation. The agencies believe that illegal discrimination is contrary to the best interests of not only the people discriminated against but also the financial institutions themselves.

The provision of employment opportunity without discrimination on any prohibited basis is first and foremost the legal responsibility of the employer, and it is the policy of the agencies that the financial institutions which they regulate should review periodically their employment practices to ascertain that they are, in fact, nondiscriminatory and, to the extent that any discrimination is found, adopt appropriate remedial policies and practices to eliminate it.

Such an examination of employment practices should include consideration of the institutions' policies regarding the payment of dues on behalf of employees to private clubs which discriminate on the basis of race, sex, religion, color, or national origin. Because business is commonly conducted at such clubs, membership prohibition may have an adverse and discriminatory effect upon the career advancement of employees who are denied equal opportunity to access either as members or guests.

For this reason, the agencies discourage the payment by financial institutions, on behalf of their employees, officers or directors, of fees or dues for membership in private clubs where business is commonly conducted, which so discriminate. Payment by financial institutions of the costs of any business or social function held at any such club or organization which practices discrimination is also discouraged.

Dated: October 15, 1979.

Theodore E. Allison,

*Secretary, Board of Governors of the Federal Reserve System.*

Dated: October 15, 1979.

J. J. Finn,

*Secretary, Federal Home Loan Bank Board.*

Dated: October 15, 1979.

Lewis G. Odom, Jr.,

*Senior Deputy Comptroller, Comptroller of the Currency.*

Dated: October 15, 1979.

Hoyle L. Robinson,

*Executive Secretary, Federal Deposit Insurance Corporation.*

Dated: October 15, 1979.

Rosemary Brady,

*Secretary to NCUA Board, National Credit Union Administration.*

[FR Doc. 79-32371 Filed 10-18-79; 8:45 am]

BILLING CODE 6722-01-M

## FEDERAL HOME LOAN BANK BOARD

**[No. AC-65]**

## Beverly Hills Savings & Loan Association Beverly Hills, Calif.; Post Approval Amendment of Conversion Application (Notice of final action)

October 16, 1979.

Notice is hereby given that on October 9, 1979, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance

Corporation, by Resolution No. 79-508, approved Post-Approval amendment No. 2 to the application of Beverly Hills Federal Savings and Loan Association Beverly Hills, California, for permission to convert to the stock form of organization. The application to convert was approved on July 21, 1979, by Resolution No. 79-359. Post-approval Amendment No. 1 was approved on August 21, 1979 by Resolution No. 79-451. Copies of the application and the amendment are available for inspection at the Office of the Secretary of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J. J. Finn,

*Secretary.*

[FR Doc. 79-32324 Filed 10-18-79; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1790]

### Paxy's International Mohammed Reza Paksima, d.b.a.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Paxy's International, Mohamed Reza Paksima, d.b.a., One Houston Center, Suite 2512, Houston, Texas 77002, FMC No. 1790, was cancelled effective February 7, 1979.

By letter dated January 9, 1979, and sent to its last known address, Paxy's International, Mohammed Reza Paksima, d.b.a. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1790 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission. The letter was returned by the Post Office as undeliverable.

Paxy's International, Mohammed Reza Paksima, d.b.a. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1790 was revoked effective February 7, 1979; and

It is ordered, that Independent Ocean Freight Forwarder License No. 1790 issued by Paxy's International, Mohammed Reza Paksima, d.b.a. be returned to the Commission;

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Paxy's International, Mohammed Reza Paksima, d.b.a.

Robert G. Drew,

*Director, Bureau of Certification and Licensing.*

[FR Doc. 79-32325 Filed 10-18-79; 8:45 a.m.]

BILLING CODE 6730-01-M

### Venture Cruise Lines, Inc.; Order of Revocation

In the matter of certificate of financial responsibility for indemnification of passengers for nonperformance of transportation No. P-184 and certificate of financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages No. C-1,186.

Whereas, Venture Cruise Lines, Inc. has ceased to operate the passenger vessel S.S. AMERICA

It is ordered, that Certificate (Performance) No. P-184 and Certificate (Casualty) No. C-1,186 issued to Venture Cruise Lines, Inc. and Venture Cruise Lines of NY, Inc. be and are hereby revoked effective October 10, 1979.

It is further ordered, that a copy of this Order be published in the Federal Register and served on certificants.

By the Commission, October 10, 1979.

Francis C. Hurney,

*Secretary.*

[FR Doc. 79-32326 Filed 10-18-79; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL ACCOUNTING OFFICE

### Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 11, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed SEC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 6, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Securities and Exchange Commission

The SEC requests an extension without change clearance of Form R-31, Mandatory Monthly Report of Market Value and Volume of Sales on Exchange. Form R-31 is used in the collection of Market Value and Volume of Sales on all U.S. Stock Exchanges. The form must be filed within one month after the close of business on the last day of each month. The SEC estimates that respondents are the 10 U.S. Stock Exchanges and that reporting burden averages 10 minutes per monthly report.

Norman F. Heyl,

*Regulatory Reports Review Officer.*

[FR Doc. 79-32323 Filed 10-18-79; 8:45 am]

BILLING CODE 1610-01-M

## HARRY S TRUMAN SCHOLARSHIP FOUNDATION

### Closing Date for Nominations

Notice is hereby given that, pursuant to the authority contained in the Harry S Truman Memorial Scholarship Act, Pub. L. 93-642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR 1801, and were published in the Federal Register on June 19, 1978, (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, Box 2838, Princeton, N.J. 08541 postmarked no later than Thursday, December 1, 1979.

Malcolm C. McCormack,

*Executive Secretary.*

October 11, 1979.

[FR Doc. 79-32298 Filed 10-18-79; 8:45 am]

BILLING CODE 6115-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

### Advisory Committee; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committes and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| 1. Device Good Manufacturing Practices Advisory Committee | November 8 and 9, 9 a.m., Plaza Ball Room, Holiday Inn, 8777 Georgia Ave., Silver Spring, Md.. | Open public hearing November 8, 9 to 10 a.m.; open committee discussion Nov. 8, 10 a.m. to 4:30 p.m., Nov. 9, 9 a.m. to 4:30 p.m., Lincoln I. Gluscevitch (HFK-132), 8757 Georgia Ave., Silver Spring, Md 20910, 301-427-7194. |

*General function of the Committee.* The Committee reviews proposed regulations for good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations on the feasibility and reasonableness of the proposed regulations.

*Agenda—Open public hearing.* Interested persons are encouraged to present information pertinent to sterile device good manufacturing practices. Those desiring to make formal presentations should notify Lincoln I. Gluscevitch by October 26, 1979, and submit a brief statement of the general nature of the evidence or agruments they wish to present, the names and addresses of proposed partipants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

*Open committee discussion.* The Committee will discuss sterilization of medical devices and additions to the critical device list.

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| 2. Radiopharmaceutical Drugs Advisory Committee | November 8 and 9, 9 a.m., Conference room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.. | Open public hearing, November 8, 9 a.m. to 10 a.m.; open committee discussion November 8, 10 a.m. to 4:30 p.m.; November 9, Ermona McGoodwin (HFD-150), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4250. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

*Open committee discussion.* The Committee will discuss manufacturing controls information on radiological products; update on pediatric labeling of radiopharmaceutical drugs; pending investigational new drugs (IND's), new drug applications (NDA's), and Radioactive Drug Research Committee status; and commercialization of drugs under IND's.

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| 3. Miscellaneous Internal Drug Products Panel | November 10 and 11, 9 a.m., Holiday Inn, Bethesda, Md.. | Open public hearing November 10, 9 a.m. to 10 a.m.; open committee discussion November 10, 10 a.m. to 4:30 p.m., November 11, 8:30 a.m. to 3:30 p.m., John Short (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-6156. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before November 6, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

*Open committee discussion.* The Committee will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| 4. Blood and Blood Derivatives Panel | November 15 and 16, 8:30 a.m., Rm. 115, Bldg. 29, 8800 Rockville Pike, Bethesda, Md. | Open public hearing November 15, 8:30 a.m. to 9:30 a.m.; open committee discussion November 15, 9:30 a.m. to 5 p.m.; November 16, 8:30 a.m. to 5 p.m.; Clay Sisk (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455. |

*General function of the Committee.* The committee reviews and evaluates available data on the safety and effectiveness of biological products.

*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

*Open committee discussion.* The Committee will review the research programs of the Bureau of Biologics' Division of Blood and Blood Products, including coagulation products, urokinase, hepatitis, infectivity detection and reduction, albumin and globulin stability, enzyme studies, standardization studies, immune responses to polysaccharide antigens, blood group reagent, platelet and granulocyte testing.

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| 5. Antimicrobial Panel | November 16 and 17, 9 a.m., Conference Rm. K, Parklawn Bldg., Rockville, Md. (November 16); Holiday Inn, Bethesda, MD (November 17). | Open public hearing, November 16, 9 a.m. to 10 a.m.; open committee discussion November 16, 10 a.m. to 4:30 p.m.; November 17, 9 a.m. to 4:30 p.m.; Lee Geismar (HFD-512), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4250. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such presentation should notify the contact person before November 13, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

*Open committee discussion.* The Committee will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| 6. Cardiovascular and Renal Drugs Advisory Committee | November 19, 20, and 21, 9 a.m. Conference Rm. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. | Open public hearing November 19, 9 a.m. to 10 a.m.; open committee discussion November 19, 10 a.m. to 5 p.m.; November 20, 9 a.m. to 5 p.m.; November 21, 9 a.m. to 1 p.m.; Joan Standaert (HFD-110), 5600 Fishers Lane, Rockville, MD 20857 301-443-4730. |

*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

*Open committee discussion.* The Committee will discuss Anturane (sulfinpyrazone USP, NDA 18-111, Ciba-Geigy Corp.) for treatment of postmyocardial infarction; Tenormin (atenolol, NDA 18-240, ICI Industries) for hypertension; and Midimore-Moduretic (amiloride HCl, NDA 18-200, NDA 198-201, Merck Sharp & Dohme) for use as diuretic and antihypertensive.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1-hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer

period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is a practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: October 10, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-31955 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

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[Docket No. 79N-0010; DESI 1626]

## Certain Single-Entity Aminophylline Preparations; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces that certain single-entity oral and parenteral dosage forms of aminophylline are new drugs and that an approved abbreviated new drug application (ANDA) is required for marketing.

**DATES:** Notice effective October 19, 1979.

ANDA's for single-ingredient products being marketed commercially on October 19, 1979, must be submitted by January 17, 1980.

Submissions in support of a claimed exemption from the new drug provisions of the Federal Food, Drug, and Cosmetic Act must be submitted by December 18, 1979.

**ADDRESSES:** Communications pursuant to this notice should be identified with the reference number DESI 1626 and FDA Docket number 79N-0010 and directed to the attention of the appropriate office named below.

Original abbreviated new drug applications and supplements thereto: Division of Generic Drug Monographs (HFD-530), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for labeling guidelines: Director, Division of Generic Drug Monographs (HFD-530), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Submissions concerning exemption from new drug provisions of the act: Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Catchings, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

**SUPPLEMENTARY INFORMATION:** In a notice (DESI 1626) published in the Federal Register of July 26, 1972 (37 FR 14895) as amended on September 26, 1974 (39 FR 34593) (Docket No. FDC-678 (now Docket No. 79N-0010)), the Food and Drug Administration announced its conclusions that certain aminophylline preparations in oral form are regarded as new drugs, that they are effective for the relief of acute bronchial asthma and for reversible bronchospasm associated with chronic bronchitis and emphysema, and that bioavailability data will be required for marketing. The September 26, 1974 notice stated that it applied to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named in the notice, as defined in 21 CFR 310.6. It did not include the oral solution or injectable forms of aminophylline. This notice amends the September 26, 1974 notice to include these two additional dosage forms. Although they were not included in the Drug Efficacy Study, they are regarded as related drugs requiring an approved new drug application for marketing.

The legal status and conditions for approval and marketing of aminophylline injection and oral solution are discussed below.

I. *Legal status.* Single-entity aminophylline injection and oral solution are regarded as new drugs as defined in section 201(p) of the act (21 U.S.C. 321(p)) and therefore subject to the requirements of section 505 of the act (21 U.S.C. 355) for the following reasons:

1. The Food and Drug Administration is not aware of a past finding by qualified experts that any such products are generally recognized as safe and effective.

2. The September 26, 1974 notice cited 21 CFR 310.6 concerning drug products which may be identical, related, or similar to aminophylline tablets. The last sentence quoted from 21 CFR 310.6(a) emphasizes that the scope of the phrase "identical, related, or similar" depends on the extent to which conclusions that a reviewed drug is effective or ineffective may be applied to other nonreviewed drugs. Paragraph (b) expands on this to say:

> Where experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs would conclude that the findings in a drug efficacy notice or notice of opportunity for hearing concerning effectiveness are applicable to an identical, related, or similar drug product, such product is affected by the notice.

The Director of the Bureau of Drugs believes that qualified experts would conclude that the finding of effectiveness for aminophylline oral tablets is also applicable to aminophylline oral solution and aminophylline injection. Accordingly, the September 26, 1974 notice concerning aminophylline tablets is amended to include aminophylline injection and oral solution, as follows:

A. *Effectiveness classification.* The Food and Drug Administration has considered all information available and concludes that aminophylline injection and oral solution are effective for indications in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications under the conditions described herein.

1. *Form of drug.* The drug is in sterile aqueous solution form suitable for parenteral administration or in solution form suitable for oral administration.

2 *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

*Aminophylline oral solution.* For relief and/or prevention of symptoms from asthma and reversible bronchospasm associated with chronic bronchitis and emphysema.

*Aminophylline injection.* For relief of acute bronchial asthma and for reversible bronchospasm associated with chronic bronchitis and emphysema.

Labeling guidelines are available from the Director, Division of Generic Drug Monographs (HFD–530), (address given above).

3. *Marketing status.* For drug products of the oral solution and injectable dosage forms of aminophylline that were not marketed commercially on October 19, 1979, approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such products. Inasmuch as aminophylline oral solution and aminophylline injection have not been identified by the Food and Drug Administration as drugs with an actual or potential bioequivalence problem, bioavailability data are not required for these dosage forms.

Because FDA has not previously formally declared these products to be new drugs, and because aminophylline is medically necessary for the treatment of asthma, the oral solution and injectable dosage forms of aminophylline that were marketed commercially on October 19, 1979 may continue to be marketed without an approved new drug application until July 16, 1980, provided that (1) on or before January 17, 1980 the sponsor submits an abbreviated new drug application to FDA for the product, and (2) FDA does not issue a nonapprovable letter regarding the application. After July 16, 1980 an approved abbreviated new drug application is required for marketing such products. The Food and Drug Administration believes that this allows a manufacturer adequate time to prepare and submit the required application, and allows FDA sufficient time to review and evaluate the applications as well. This special provision for continuation of marketing, which applies only to products marketed on or before the publication of this notice, is consistent with the District Court's order in *Hoffman-LaRoche, Inc.*, v. *Weinberger*, 425 F. Supp. 890 (D.D.C., 1975), reprinted in the Federal Register of September 22, 1975 (40 FR 43531) and March 2, 1976 (41 FR 9001).

II. *"Grandfather status."* The Food and Drug Administration is not aware of any aminophylline products on the market that qualify either for the "grandfather" exemption from the new drug requirements of section 505 of the act contained in section 201(p) of the act for products marketed prior to June 25, 1938, or for the "grandfather" exemption from the effectiveness standards otherwise applicable to new drugs contained in section 107(c) of the Drug Amendments of 1962. Any manufacturer who believes its product is entitled to an exemption from the new drug provisions of the act may file on or before December 18, 1979 documentation in support of the contention. The requirements governing such a submission are contained in 21 CFR 314.200(e)(2). Failure to submit the documentation will constitute a waiver of all claims to "grandfather" status. Submissions must be filed in quintuplicate, and directed to the Hearing Clerk (address given above).

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: October 4, 1979.

Jerome A. Halperin,

*Acting Director, Bureau of Drugs.*

[FR Doc. 79-31956 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

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[Docket No. 79N-0113; DESI 2847]

## Parenteral Multivitamin Products Human Use; Drug Efficacy Study Implementation; Permission for Drugs To Remain on the Market; Amendment

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration announces a 90-day postponement of the date by which manufacturers of parenteral multivitamin products must submit a new drug application or supplemental new drug application.

**DATE:** New drug applications (or supplemental new drug applications) must be submitted by Janauary 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Gloria Troendle, Bureau of Drugs (HFD–130), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

**SUPPLEMENTARY INFORMATION:** A notice published in the Federal Register of July 13, 1979 (44 FR 40933), set forth the conditions under which parenteral multivitamin products may remain on the market pending further study. The notice required that on or before October 11, 1979, the manufacturer of any such product submit a new drug application (or supplemental new drug application) outlining plans to fulfill the requirements of the notice.

Since publication of the July 13, 1979 notice, significant technical questions concerning reformulations and bioavailability studies have arisen that are sufficient to justify postponement of the date by which new drug applications and supplements are required. Accordingly, that date is hereby postponed to January 9, 1980. All other conditions described in the notice are unchanged.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052–1053, as amended, 1055–1056, as amended (21 U.S.C. 355, 371)), and the Administrative Procedure Act (5 U.S.C. 553, 554), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: October 11, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-31967 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

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## Clinical Chemistry and Hematology Devices Panel, Hematology Devices Section; Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

| Committee name | Date, time, and place | Type of meeting and contact person |
|---|---|---|
| Hematology Devices Section of the Clinical Chemistry and Hematology Devices Panel. | November 19, 9 a.m., Room 1813, 200 C St. SW., Washington, DC. | Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; Kaiser Aziz (HFK-440), 8757 Georgia Ave., Silver Spring, MD 20910 (301–417–7550). |

*General function of the Panel.* The Panel reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Panel. Those desiring to make formal presentations should notify Kaiser Aziz by November 1, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

*Open committee discussion.* The Hematology Section of the Panel will discuss general comments received with respect to classification of hematology devices as published in the Federal Register of September 11, 1979 (44 FR 52950–53063).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

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Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the appropriate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: October 15, 1979.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 79-32220 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-03-M

## Health Care Financing Administration

## Medicare Program; Schedule of Target Reimbursement Rates for Institutions Furnishing Home Dialysis Supplies, Equipment, and Support Services

**AGENCY:** Health Care Financing Administration, HCFA, HEW.

**ACTION:** Final notice of schedule of target reimbursement rates per treatment for home dialysis.

**SUMMARY:** This notice sets forth a schedule of rates for Medicare program reimbursement to approved providers and renal dialysis facilities for the cost of home dialysis supplies, equipment and home dialysis support services furnished to self-care home dialysis patients under the direct supervision of the provider or facility. Regionally adjusted target reimbursement rates per treatment are established in this schedule for home hemodialysis and home peritoneal dialysis. This notice is necessary to implement section 1881(b)(6) of the Social Security Act, established by the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292).

**EFFECTIVE DATE:** The schedule of rates is applicable to home dialysis services furnished on or after April 1, 1979, through December 31, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley Weintraub, (301) 594–6535.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 1881(b)(6) of the Social Security Act, established by the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292), requires HCFA to establish for each calendar year commencing with the current year, 1979, a target reimbursement rate, adjusted for regional variations, for the payment of the cost of dialysis services of patients dialyzing at home under the direct supervision of a provider or renal dialysis facility. It is an optional reimbursement method for providers and renal dialysis facilities that execute an agreement with HCFA to furnish all necessary home dialysis medical supplies, equipment, and supportive services (including the services of qualified home dialysis aides) that are medically necessary to enable patients to continue dialyzing in the home setting.

Section 1881(b)(6) further requires that the maximum target rate permitted shall not exceed 70 percent of the national average payment, adjusted for regional variations and before application of the coinsurance requirement, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Also, any rate established under this section shall be utilized without recomputation, throughout the calendar year for which it is established. Accordingly, there is no appeal available to a provider or renal dialysis facility if the actual costs for covered services exceed the target reimbursement rate payments. The requirements of the statute are implemented under regulations at 42 CFR 405.440.

Because of insufficeint cost information regarding new services required under this optional method (e.g., the cost of providing home dialysis aides) as well as the urgency required in publishing the target rates, the target reimbursement rate per treatment established for the initial calendar year (1979) is equal to the maximum rate permitted under the statute.

### Calculation of Target Rates—1979

1. Development of average maintenance dialysis payment data. As indicated above, the 1979 target rates equal 70 percent of the national average payment before application of the coinsurance requirement, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year.

Output from the Renal Disease Program Cost Analysis System

maintained by the Office of End-Stage Renal Disease, Office of Special Programs, HCFA, was used as the basis for the determination of the target rates. Average maintenance dialysis payments for providers and nonprovider facilities for hemodialysis were developed from Facility Cost Report Profiles maintained by the Office of ESRD for each HEW regional area for the latest available year, which was for accounting periods ending in the calendar year 1977.

The Facility Cost Report Profile is a computerized summarization of the average maintenance dialysis cost per treatment, broken down into the various components of cost per treatment (i.e., supplies, salaries, etc.) for providers and nonprovider facilities on a regional and national basis. The costs and other statistical information (e.g., number of treatments) is derived from the renal dialysis facility cost and statistical questionnaire (form SSA–9734) which is submitted annually based on cost data from a provider's or facility's most recently completed fiscal year.

While the costs as reported by providers would be representative of the program remimbursement received, the same would not be true for the nonprovider facilities since they were reimbursed on a reasonable charge basis. Information developed by the Office of ESRD established that the average reasonable charge payment per dialysis was equivalent to the screen amount; therefore, in developing the average payments for nonprovider facilities, the Medicare payment screen of $150 per treatment (including routine lab services) less $12 for the physician's supervisory services during dialysis, or $138, was used as the average maintenance dialysis payment for nonprovider facilities in all regions.

In developing the average payments, we excluded the portion of the payment applicable to physicians' professional services and any other cost components not covered for home dialysis services specified under this method of reimbursement.

One of the requirements for providers or facilities electing this method of reimbursement is the provision of medically necessary dialysis equipment, including equipment maintenance and repair services. In fulfilling this requirement, it is possible that the equipment could be provided in several ways.

For example, the provider or facility could own the equipment and arrange to furnish it to patients whose self-care home dialysis is it is supervising. Or, the provider or facility could could arrange for the purchase of the equipment for its home dialysis patients under the provision for 100 percent reimbursement for installation and maintenance of home dialysis equipment established under the End-State Renal Disease Program Amendments of 1978 and implemented under regulations 42 CFR 405.438.

Accordingly, it was necessary to determine two average payment amounts for hemodialysis. One amount includes an amount for equipment depreciation and equipment maintenance and repair services and its applicable only when the dialysis equipment provided the home patient is owned by the provider or facility. The other amount excludes such costs, and applies when dialysis equipment either already owned (or leased) by the home patient or being purchased new for the home patient is being procured under the provision for 100 percent reimbnursement for installation and maintenance of equipment (42 CFR 405.438).

The average payment data developed by the Office of ESRD was then used by the Office of Financial and Actuarial Analysis, HCFA, for calculating the fiscal year 1978 average maintenance dialysis payments for providers and nonprovider facilities.

Since the ESRD reporting system could be used only to develop data for accounting periods ending in calendar year 1977, it was difficult to ascertain the precise base period involved. Therefore, in the absence of any other data, a calendar year 1977 base period was assumed.

A. The fiscal year 1978 average maintenance dialysis payments for providers were derived by increasing the average dialysis payments for the 1977 base period by a weighted increase factor adjusted for regional variations. These factors were derived as follows:

i. We calculated the full year national increase (1978 over 1977) for each of the tree major components of the average payment (i.e., salaries, supplies, and overhead). Data were used as appropriate from the Bureau of Labor Statistics' "Employment and Earnings Series" as well as data from the Bureau of Labor Statistics' "Consumer Price Index-Urban Wage Earners and Clerical Workers-Revised."

ii. We multiplied the component increase factors by the corresponding national weights to produce a weighted full year national increase (1978 over 1977).

iii. We adjusted the weighted full year national increase for three fourths of the increase (compounded) to obtain the final adjusted weighted national increase factor.

iv. We multiplied this final national factor by the regional adjustment factors to obtain the regional increase factors. The regional adjustment factors were derived from the ratios of regional "per capita" ESRD reimbursement to the national "per capita" ESRD reimbursement for the most recent years where data were available.

These regional increase factors were then multiplied by the appropriate 1977 base period values for providers to obtain the fiscal year 1978 average maintenance dialysis payment for providers by region.

B. In determining the fiscal year 1978 average dialysis payments for nonprovider facilities, it was not necessary to apply the regional increase factors derived above for providers since the average payment rate to nonprovider facilities (i.e., Medicare payment screen) remained the same over the period in question for each region.

2. *Establishing target reimbursement rates for home hemodialysis.* The following procedure was used to establish the target reimbursement rates per treatment for each region for home hemodialysis for the current year, 1979:

A. We multiplied each regional fiscal year 1978 average dialysis payment for providers calculated in 1A above, by the corresponding number of treatments provided in the 1977 base period by providers only for each region.

B. We added to each value calculated in 2A above the appropriate fiscal year 1978 average dialysis payment rate for nonprovider facilities times the number of treatments provided in the 1977 base period for nonprovider facilities only for each region.

C. We divided each resulting value from 2B above by the total number of treatments provided in the 1977 base period by both providers and nonprovider facilities. The resulting values are the fiscal year 1978 average maintenance dialysis payments weighted between providers and nonprovider facilities by region.

D. The regional average payments calculated in 2C above were then multiplied by 70 percent to derive the target reimbursement rates per treatment for the current year, 1979, which also equal the maximum rates permitted under the statute.

3. *Schedule of target reimbursement rates for home hemodialysis.* Shown below is the schedule of regionally adjusted target reimbursement rates per treatment for home hemodialysis established for the calendar year 1979. Two sets of rates are shown. One set of rates includes an adjustment for costs of equipment depreciation and equipment

maintenance and repair services and applies to patients utilizing dialysis equipment owned by the provider or renal dialysis facility (but not under the provision for 100 per cent reimbursement for installation and maintenance of equipment). The other set excludes such costs and applies to patients utilizing dialysis equipment that is not owned by their supervising provider or renal dialysis facility or which is being procured under the provision for 100 percent reimbursement for installation and maintenance of equipment.

**Schedule of Target Reimbursement Rates Per Treatment for Home Hemodialysis.—Calendar Year 1979**

[Effective for Services Furnished on or after April 1, 1979 through December 31, 1979]

| HEW Region | Including equip. costs* | Excluding equip. costs* |
|---|---|---|
| Boston—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont | $100 | $99 |
| New York—New Jersey, New York, Puerto Rico, Virgin Islands | 102 | 100 |
| Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia | 97 | 95 |
| Atlanta—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee | 96 | 93 |
| Chicago—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin | 108 | 105 |
| Dallas—Arkansas, Louisiana, New Mexico, Oklahoma, Texas | 95 | 93 |
| Kansas City—Iowa, Kansas, Missouri, Nebraska | 105 | 103 |
| Denver—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming | 96 | 93 |
| San Francisco—American Samoa, Arizona, California, Guam, Hawaii, Nevada | 111 | 109 |
| Seattle—Alaska, Idaho, Oregon, Washington | 116 | 113 |

*Costs for equipment depreciation and equipment maintenance and repair services.

4. *Establishing target reimbursement rates for home peritoneal dialysis.* In view of the limited data available on the cost of peritoneal dialysis, a separate target rate has not been computed for that mode of home dialysis. Rather, the hemodialysis rates as determined above will also be used for reimbursing those providers and facilities whose home patients are on peritoneal dialysis. As more complete cost data for peritoneal dialysis becomes available, specific peritoneal target rates will be developed.

While home peritoneal dialysis is usually accomplished in sessions of 10–12 hours duration, furnished three times per week, it is sometimes accomplished in fewer sessions of longer duration. Accordingly, reimbursement to the provider or facility for home patients on peritoneal dialysis will depend on the length of the dialysis session and the number of sessions furnished per week as described below.

A. *Peritoneal dialysis sessions of less than 20 hours duration.* Where a home peritoneal patient dialyzes once a week for 12 hours, for example, the provider or facility will be reimbursed for one home dialysis treatment. If a home patient dialyzes in two or three 12-hour dialysis sessions in a week, the provider or facility will be reimbursed for two or three home dialysis treatments respectively.

B. *Peritoneal dialysis sessions of less than 30 hours, but 20 hours or more duration.* Where a home peritoneal patient dialyzes for one 20–29 hour session in a week, the provider or facility will be reimbursed an amount equivalent to one and a half home dialysis treatments. If a home patient has two 20–29 hour dialysis sessions in a week, the provider or facility will be reimbursed for three home dialysis treatments.

C. *Peritoneal dialysis sessions of 30 hours or more duration.* Where a home peritoneal patient dialyzes once a week for 30 hours or more, the provider or facility will be reimbursed for three home dialysis treatments.

5. *Reimbursement for additional dialysis.* If additional dialysis beyond the usual weekly maintenance dialysis (i.e., generally not more than three times per week) is required because of special circumstances, the provider's or facility's claim for these extra services must be accompanied by a medical justification. Under these circumstances reimbursement for additional home dialysis treatments may be made.

(Sections 1102, 1814(b), 1833, 1861(v)(1), 1871 and 1881 of the Social Security Act 42 U.S.C. 1302; 1395(f), 1395, 1395(v)(1), 1395hh and 1395rr)

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 4, 1979.

Leonard D. Schaeffer,

*Administrator, Health Care Financing Administration.*

Approved: October 5, 1979

Patricia Roberts Harris,

*Secretary.*

[FR Doc. 79-31995 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-35-M

## National Professional Standards Review Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following Council meeting:

Name: National Professional Standards Review Council.

Date and Time: November 5, 1979 (10:00 a.m. to 5:00 p.m.) November 6, 1979 (9:00 a.m. to 1:00 p.m.).

Place: Auditorium (first floor), HEW North Building, 330 Independence Avenue, S.W., Washington, D.C.

Purpose of Meeting: The Council was established to advise the Secretary of Health, Education, and Welfare on the administration of Professional Standards Review (Title XI), Part B, Social Security Act). Professional Standards Review is the procedure to assure that the services for which payment may be made under the Social Security Act are medically necessary and conforms to appropriate professional standards for the provision of quality health care. The Council's agenda will include discussion of a variety of issues relevant to the implementation of the PSRO program. On October 22, 1979 a tentative agenda will be available to the public.

Meeting of the Council is open to the public. Public attendance is limited to space available. Any member of the public may file a written statment with the Council before, during, or after the meeting. To the extent that time permits, the Council Chairman will allow public presentation of oral statements at the meeting.

All communications regarding this Council should be addressed to Cleo E. Hancock, Staff Director, National Professional Standards Review Council, Health Standards and Quality Bureau, Room 5329-S, Switzer Building, 330 "C" Street, S.W., Washington, D.C. 20201, (202) 245-0665.

Dated: October 10, 1979.

Cleo E. Hancock,

*Staff Director, National Professional Standards Review Council.*

[FR Doc. 79-32332 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-35-M

## Assistant Secretary for Education

## Federal Education Data Acquisition Council

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Office of the Assistant Secretary for Education announces the following meeting of the Federal Education Data Acquisition Council (FEDAC):

**NAME:** Federal Education Data Acquistion Council.

**DATE:** Thursday, November 8, and Friday, November 9, 1979.

**TIME AND PLACE:** 8:30 a.m. to 5:00 p.m. each day, Room 3000 (Education Division Conference Room), Federal Office Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C.

**CONTACT PERSON:** Dr. Francis V. Corrigan, Room 3159, Federal Office Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-1022.

**PURPOSE:** This is the second meeting of FEDAC, which advises the Secretary of Health, Education, and Welfare on the improvement, development and coordination of Federal education data acquisition activities. The authority for FEDAC is Section 400A of the General Education Provisions Act, as added by the Education Amendments of 1978 (Pub. L. 95-561; 20 U.S.C. 1221-3).

**AGENDA:** The agenda will focus on public and agency comments received concerning the interim procedures published in the Federal Register on August 8, 1979 and consideration of revised or final operating procedures for adoption by the Council. On Friday, November 9, time permitting, FEDAC will review policy issues related to paperwork burden reduction, such as the review function performed by FEDAC staff, the use of standard terminology for reporting certain categories of information and other means or reducing respondent burden.

A roster of members and other pertinent information regarding the meeting may be obtained from Dr. Francis V. Corrigan at the address/telephone number given above. This meeting will be open to the public.

Dated: October 15, 1979.

Mary F. Berry,

*Assistant Secretary for Education.*

[FR Doc. 79-32307 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-89-M

## Office of the Secretary

### White House Conference on Families; National Hearings

The White House Conference on Families was called by President Carter to "examine the strengths of American families, the difficulties they face, and the ways in which family life is affected by public policies."

The Conference is guided by a 41-person National Advisory Committee, which has adopted an innovative conference process to take the White House Conference on Families to the people. This process includes hearings, state activities, national organization activities, and issue work groups which will lead up to three White House Conferences across the country in the summer of 1980.

The purpose of the hearings is to give families an opportunity to discuss their concerns, ideas, successes and problems relating to contemporary family life. The hearings will help to identify key issues and concerns for the White House Conference on Families. Testimony should identify the most pressing concerns facing American families today and into the 1980's, together with any recommended policies, programs, and strategies for meeting these concerns. Information from the hearings will be available to all the states and will be used as background material for delegates to the National Conferences.

The third of the national hearings will be held in Colorado: October 26—Denver, Colorado, Heritage Center, 1300 Broadway; October 27—West Denver, Colorado, Baker Junior High School, 574 West Sixth Avenue.

Other hearing sites and dates are tentatively scheduled for: Hartford, Connecticut, November 16-17; Washington, D.C., November 30-December 1; Detroit, Michigan, December 7-8; and Seattle, Washington, January 11-12.

The hearings are open to the public. Members of the National Advisory Committee on the White House Conference on Families will serve as the hearing panel and are hoping to hear testimony from family members themselves, as well as from representatives of organizations and agencies that are concerned about families, members of the academic community, leaders in the religious community, public officials, employers, and program administrators.

Requests to testify must be received by the White House Conference on Families, 330 Independence Avenue, S.W., Washington, D.C. 20201, no later than October 24, 1979, for the Colorado hearings. It is anticipated that more requests to testify will be received than time will permit. Advance registration is, therefore, strongly encouraged to accommodate as many prople as possible. Persons wishing to testify should submit a written request which includes the following information: name; home address; telephone numbers at both home and office; whether or not testimony is on behalf of an agency or organization and, if so, the name of the group and individuals' position title; topic of proposed testimony; preferences of location and day or evening testimony and whether an English translator or other special arrangements will be needed.

Time limits will be strictly enforced on all persons giving testimony. Whenever feasible, participants will be grouped together when dealing with similar topics. Members of the National Advisory Committee will be given an opportunity to question individuals and group members after their presentations.

Each hearing will also have a limited time set aside for individuals who have not signed up in advance. Individuals not wishing to testify at the hearings are welcome to attend.

Written testimony is also strongly encouraged and will be included as part of the record of the hearing. It should be typed and not exceed 1,000 words.

**FOR FURTHER INFORMATION CONTACT:** HEW Regional Office, (303) 837-2751; WHCF Colorado Coordinator, (303) 491-5889; or White House Conference on Families, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4395.

John L. Carr,

*Executive Director, White House Conference on Families.*

[FR Doc. 79-32304 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-12-M

## Public Health Service

### Application Announcement for Grants; Dental Team Practice Grants

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1980 Grants for Dental Team Practice are now being accepted under the authority of section 783(a)(3) of the Public Health Service Act.

Section 783(a)(3) authorizes the Secretary to make grants to meet the costs of projects to plan, develop, and operate or maintain programs to train dental students in the organization and management of multiple auxiliary dental team practice.

Any public or nonprofit private school of dentistry or other public or nonprofit private entity located in a State is eligible to apply.

Support for projects under this program may be approved for an initial project period of up to two years. Additional support of up to three years may be obtained by submission of a competing extension application which must present evidence of satisfactory program development and operation as observed during the program evaluations which are conducted annually by regional office and/or central office staff.

Grantee institutions should consider Dental Team Practice grant support as capacity building in nature and should plan eventually to assume the expense of the program's operation. If Federal funds are desired to support the project beyond a total of five years, a competing extension application for three additional years of support may be submitted. Support for these last three years may not exceed a maximum of

two-thirds, one-half, and one-third, respectively, of that received during the fifth year. Further, the institution must provide assurance that during this period the program will be operated on at least the same level as during the fifth year; i.e., assurance must be given that there will be no reduction in the number of students trained and that program quality will be maintained.

A funding order will be followed in making grant awards in fiscal year 1980. Approved applications will be funded in the following order: (1) continuation applications, (2) competing extension applications for the second to fifth years, (3) competing extension applications for the sixth to eighth years, (4) supplemental applications for the second to fifth years, and (5) new applications for the first to second years.

Based on the proposed appropriation for the Dental Team Practice program and projected requirements for continuation grants, it is anticipated that grants will be awarded only for the first three categories of the funding order. Approximately $500,000 is expected to be available in fiscal year 1980 for competitive awards.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-11), Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, phone: 301/436-6058.

To be considered for fiscal year 1980 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than November 15, 1979.

Should additional program information be required, please contact: Education Development Branch, Division of Dentistry, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Rm. 3-22, Hyattsville, Maryland 20782, phone: 301/436-6514.

Dated: October 16, 1979.

Henry A. Foley, Ph. D.,

*Administrator, Health Resources Administration.*

[FR Doc. 79-32301 Filed 10-18-79; 8:45 am]

BILLING CODE 4110-83-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Outer Continental Shelf; List of Restricted Joint Bidders

This notice supercedes the List of Restricted Joint Bidders published Friday, October 5, 1979, at 44 FR 57504. Pursuant to the authority vested in the Director of the Bureau of Land Management by the Joint Bidding provisions of 43 CFR 3316.3, the following companies shall be restricted from bidding jointly with any other company on this same list at Outer Continental Shelf oil and gas lease sales held during the bidding period of November 1, 1979, through April 30, 1980. BP Alaska Exploration Inc., and Sohio Natural Resources Company are listed together as one Restricted Joint Bidder; they may bid with each other, but not with any other company on this list:

Amoco Production Company
BP Alaska Exploration Inc., and Sohio Natural Resources Company
Chevron U.S.A. Inc.
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Corporation
Mobil Oil Corporation & Producing Southeast Inc.
Shell Oil Company
Standard Oil Company of California
Texaco Inc.

Ed Hastey,

*Associate Director, Bureau of Land Management.*

October 15, 1979.

[FR Doc. 79-32201 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

### Outer Continental Shelf-North Atlantic Oil and Gas Lease Sale No. 42; Correction

In connection with the Notice of Sale appearing in 44 FR Doc. 79-30838 at page 57514 in the issue of Friday, October 5, 1979, this notice calls attention to Table I, Hypothetical Quarterly Royalty Calculations, which contained a typing error. In column (C), Inflation Factor, the bottom 5 items in the column should be 5/3 instead of 4/3.

This example of hypothetical quarterly royalty calculations does not affect the terms and conditions of the sale.

Ed Hastey,

*Associate Director, Bureau of Land Management.*

October 16, 1979.

[FR Doc. 79-32200 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

[AA-16669]

### Alaska Native Claims Selection

*Correction*

In FR Doc. 79-30181, published at page 56029, on Friday, September 28, 1979 the following corrections should be made:

On page 56030, in the first column, under Seward Meridian, Alaska (Unsurveyed), under T. 8 N., R. 9 W.:

a. "Sec. 32, N½, SW¼, NW¼SE¼;" should be corrected to read "Sec. 32, N½, SW¼, NW¼SE¼;";

b. "Secs. 35 and 16, all." should be corrected to read "Secs. 35 and 36, all.".

BILLING CODE 1505-01-M

[Colorado 25122Z]

### Northwest Pipeline Corp.; R/W Applications for Pipeline

October 9, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for a right-of-way additions 78218, 87868, 79088, for the Foundation Creek Gathering Systems of approximately 1.177 miles of pipeline on the following Public Land:

Sixth Principal Meridian, Rio Blanco County, Colorado

T. 3 S., R. 103 W.
Sec. 10: SE¼SW¼, S½SE¼;
Sec. 11: SW¼SW¼;
Sec. 14: W½SW¼, SE¼NW¼.

The above-named gathering systems will enable the applicant to collect natural gas and to convey it to its customers. The purposes for this notice are: (1) to inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions; (2) to give all interested parties the opportunity to comment on the application; (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land

management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Andrew W. Heard, Jr.,

*Leader, Craig Team, Branch of Adjudication.*

[FR Doc. 79-32254 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

## Oregon, South Coast-Curry Timber Management Plan; Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meeting

The Department of the Interior, Bureau of Land Management, Oregon State Office, will prepare an Environmental Impact Statement (EIS) on proposed timber management for the South Coast-Curry sustained yield unit (SYU) in the Coos Bay District in western Oregon. The final statement is to be completed by December 31, 1980.

This statement will analyze the proposed timber management plan for 326,371 acres of public land and alternatives to the proposal. Portions of the SYU are within Coos, Curry, Douglas and Lane Counties. The proposed timber management plan has been developed using the Bureau's land use planning system. A proposed sustained yield timber harvest level for the next decade has been identified along with management practices required to achieve this level of harvest. Harvest would be predominately by clearcutting. Single tree selection could be used in salvage situations. Additional management practices to be employed include: slash disposal, artificial reforestation (some with genetically improved stock), animal damage control, road construction, thinning, fertilization, and vegetation control (both to release conifers from competing vegetation and to convert some brush and hardwood stands to conifers) with herbicides and manual and mechanical methods.

Discussion of an alternative which is no change from present harvest level and practices is required and will be included in the EIS. Additional alternatives to the proposal which might be discussed in the statement include:

1. Variations in land use allocation in which more or less land is designated for intensive timber production.

2. Different acreages, cycles or types of intensive timber management practices.

3. Change in minimum harvest age which would affect the short-term availability of timber for harvest and the time needed to achieve a regulated forest.

Each alternative included in the statement is likely to have a different annual harvest level.

The EIS will identify the impacts that can be expected from implementation of either the proposed timber management plan or any of the alternatives discussed. The statement will be an analytical tool used to assist in making final decisions for managing timber resources in the SYU. The final decisions are expected to guide the operations in the SYU for a 10-year period beginning in October 1981.

Public scoping meetings to identify significant issues and to obtain public comments on the formulation of specific alternatives will be held. Significant environmental issues are those considered to be of particular importance for in-depth analysis in the EIS. The principal meeting will take place at Coos Bay Public Library Auditorium in Coos Bay, Oregon, on November 13, 1979, at 7:30 p.m. Informal meetings as requested by groups or agencies may take place prior to November 30, 1979, on an arranged basis.

Further information may be obtained from the following individuals:

Paul Sanger, District Manager, Bureau of Land Management, P.O. Box 1139, Coos Bay, Oregon 97420, Telephone: (503) 269-5880.

Roland D. Smith, EIS Team Manager, Bureau of Land Management (911.1), P.O. Box 2965, Portland, Oregon 97208, Telephone: (503) 231-6950.

Dated: October 12, 1979.

Murl W. Storms,

*State Director.*

[FR Doc. 79-32255 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

## Salmon District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Salmon District Grazing Advisory Board will be held on November 29, 1979.

The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office on south Highway 93, Salmon, Idaho.

The agenda for the meeting will include: (1) Consideration and recommendations concerning allotment management plans; (2) consideration and recommendations concerning the expenditure of range betterment and advisory board funds; and (3) discussion of rechartering of the board and election of new board members for the next charter period.

The meeting is open to the public. Anyone may make oral statements to the board or file written statements for the board's consideration. Oral statements may be made beginning at 3 p.m. on November 29, 1979. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho, 83467, by November 23, 1979.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection within 30 days following the meeting.

Harry R. Finlayson,

*District Manager.*

[FR Doc. 79-32253 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

[U-44043]

## Utah; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for a 4½-inch natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 19 S., R. 23 E.,
Secs. 34 and 35.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

Dell T. Waddoups,

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-32251 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

[U-4404]

## Utah; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for a 4½-inch natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 18 S., R. 24 E.,
Secs. 4 and 9.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

Dell T. Waddoups,

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-32252 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

## Announcement of Utah Paria Canyon Instant Study Area Wilderness Inventory Decision in Effect

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the wilderness inventory decision for contiguous lands to the Paria Canyon Instant Study Area in Utah as announced in the August 31, 1979 Federal Register, became effective October 1, 1979. The decision was that 21,470 acres of contiguous public land have wilderness characteristics and 23,668 acres of public land did not have wilderness characteristics. The lands lacking wilderness characteristics are released from the constraints of interim protection as set forth in 603(c) of the Federal Land Policy and Management Act of 1976.

The land which has wilderness characteristics will be included in the ongoing suitability study of the entire Paria Canyon Instant Study Area conducted by the BLM Arizona Strip District.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Royer, Cedar City BLM Distict office, 801-586-2401.

Dated: October 10, 1979.

Gary J. Wicks,

*State Director.*

[FR Doc. 79-32250 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

[W-69278]

## Wyoming; Application

October 9, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct two 4½ inch O. D. buried pipelines and related facilities consisting of a 4' x 6' meter house and dehydrator for the purpose of transporting natural gas across the following described public lands;

Sixth Principal Meridian, Wyoming

T. 18 N., R. 93 W.,
Sec. 4, SW¼;
Sec. 10, W½SW¼.

The proposed pipelines will transport natural gas from the #4-4 Standard Draw Well in the SW¼ of Section 4 and the Champlin 222 Amoco H#1 Well in the SW¼ of Section 5 to a point of connection with Colorado Interstate Gas Company's proposed Wamsutter F80 pipeline at a point located in the SW¼SW¼ of Section 10, all within T. 18 N., R. 93 W., Carbon County, Wyoming. The proposed related facilities to be constructed entirely within a 50' right-of-way width will be located in the SW¼ of Section 4, T. 18 N., R. 93 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-32249 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-84-M

## Geological Survey

## Known Recoverable Coal Resource Area; Custer Creek, Mont.

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1976 (Pub. L. 94-377, August 4, 1976, as amended by Pub. L. 95-554, October 30, 1978), Federal lands within the State of Montana have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(26) Montana

Custer Creek (Montana) Known Recoverable Coal Resource Area (KRCRA); March 19, 1979; 19,215 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: October 9, 1979.

J. R. Balsley,

*Acting Director.*

[FR Doc. 79-32302 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-31-M

## Known Recoverable Coal Resource Area; Kolob, Utah

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1976 (Pub. L. 94-377, August 4, 1976, as amended by Pub. L. 95-554, October 30, 1978), Federal lands within the State of Utah have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(44) Utah

Kolob (Utah) Known Recoverable Coal Resource Area (KRCRA); March 15, 1979; 167,658 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: October 9, 1979.

J. R. Balsley,

*Acting Director.*

[FR Doc. 79-32303 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-31-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Olympic National Park

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Olympic National Forest; Transfer of Certain Lands

*Correction*

In FR Doc. 79-27804, published at page 52046, on Thursday, September 6, 1979, the following changes should be made:

1. In the first column, under the section in heading Jefferson County, Wash.—Willamette Meridian, T. 24½N., R. 9W. (unsurveyed), Sec. 34, delete "of the N½";

2. In the second column, under the section in heading Jefferson County, Wash.—Willamette Meridian, T. 24½N., R. 10W. (unsurveyed), in the second line of Sec. 34, the word "southerly" should be corrected to read "northerly";

3. In the second column, under the section in heading Jefferson County, Wash.—Willamette Meridian, T. 25N., R. 10W., in the second line of Sec. 36, the word "northerly" should be corrected to read "southerly".

BILLING CODE 1505-01-M

## DEPARTMENT OF INTERIOR

### National Park Service

### Delta Region Preservation Commission; Meeting; Correction

In FR Doc. 79-31735 appearing on page 59297 in the issue of Monday, October 15, 1979, under: "The members of the Delta Region Preservation Commission are:" add John Eckerle, West Wago, Louisiana; Frank Ehert, Marrero, Louisiana; Ms Celestine S. Cook, New Orleans, Louisiana.

Date: October 12, 1979.

Lorraine Mintzmyer,

*Regional Director, Southwest Region, National Park Service.*

[FR Doc. 79-32207 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-70-M

### Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, November 15, 1979 at Fort Mason Visitor Center, Golden Gate National Recreation Area Headquarters, San Francisco, CA.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service system in Marin and San Francisco counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman, Ms. Amy Meyer, Secretary, Mr. Ernest Ayala, Mr. Richard Bartke, Mr. Fred Blumberg, Ms. Daphne Greene, Mr. Peter Haas, Sr., Mr. Burr Heneman, Mr. John Jacobs, Ms. Gimmy Park Li, Mr. Joseph Mendoza, Mr. John Mitchell, Mr. Merritt Robinson, Mr. Jack Spring, Dr. Edgar Wayburn, Mr. Joseph Williams.

The major agenda items will be the review of public testimony on the General Management Plan for Golden Gate National Recreation Area and Point Reyes National Seashore, and an update from the Education/Recreation Committee.

This meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Lynn H. Thompson, General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123, telephone (415) 556-2920.

Minutes of the meeting will be available for public inspection by December 15, 1979 in the office of the General Superintendent, Golden Gate National Recration Area, Fort Mason, San Francisco, CA 94123.

Dated: October 11, 1979.

Howard H. Chapman,

*Regional Director, Western Region.*

[FR Doc. 79-32206 Filed 10-18-79; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[Docket No. M-79-147-C]**

### Kentucky Carbon Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Carbon Corporation, Box 596, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations) to its Kencar No. 1 Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. Recent roof falls have made the air intake entry for a specified section of the petitioner's mine unsafe to travel and examine for hazardous conditions on a weekly basis as required by the standard.

2. Mining in the affected section will end in about three months, at which time the intake will be bratticed off from the active workings of the mine. A new section to be opened at that time will be ventilated by another intake.

3. The present intake will insure more than adequate ventilation for the remaining three months of mining in the affected section. Maintenance of adequate ventilation will be further insured by regular air velocity tests at each working face and at the last open crosscut of the section.

4. Methane in measurable amounts has never been detected at the mine.

5. The petitioner believes that its alternative method will achieve the same measure of protection as the standard, and further that the application of the standard to the affected section would result in a diminution of safety.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 5, 1979.

Robert B. Lagather,

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 79-32368 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-149-C]

## Kentucky Carbon Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Carbon Corporation, Box 596, Phelps Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.312 (ventilation) to its Kencar No. 1 Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The standard states in part that air passing through an abandoned area which is inaccessible or unsafe for inspection may not be used to ventilate working places in a mine.

2. Several roof falls have occurred in the airway for a working section in the petitioner's mine, making part of the airway inaccessible.

3. Ventilation of the section by the other intake in the area could result in a diminution of safety. Air from this second intake would have to travel a significant distance to reach the section thereby reducing air velocity, would be exposed to numerous possible interruptions along its course, and would have to pass a bleeder system carrying return air.

4. The petitioner has experienced has experienced no difficulty with its current ventilation system using the present intake airway. To further insure adequate ventilation, the petitioner proposes to conduct regular air velocity tests at each working face and at the last open crosscut of the section.

5. Measureable amounts of methane have never been detected in the petitioner's mine.

6. Use of the affected intake airway to ventilate active working areas will cease in about three months.

7. The petitioner believes that its alternative will achieve no less protection than that provided by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments on or before November 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 5, 1979.

Robert B. Lagather,

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 79-32369 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-27-M]

## Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, Post Office Box 1080, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 57.19-71 (hoisting procedures) to its Sunshine Mine located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The standard prohibits miners from riding in skips or buckets with materials, supplies or tools.

2. During shaft sinking operations and shaft repair work at the petitioner's mine, it is often necessary to manually guide the sinking bucket onto the shaft guides because of the distance between the timber and shaft guides and the bottom of the shaft.

3. Should an unattended bucket fail to properly mate with the guides, material could spill onto workers below, injuring them. In addition, the conveyance which provides the normal means out of the shaft would be damaged.

4. To avoid such occurrences, workers must ride with a loaded muck bucket up to the timbered section to assure proper alignment of the bucket in the shaft guides.

5. The petitioner has made provisions for the restraining of materials in the bucket and the hoisting of materials at reduced speeds. A removable man deck allows workers to safely ride with materials, tools or supplies.

6. For these reasons, the petitioner requests modification of the application of the standard at its mine to avoid a diminution of safety.

### Request for Comments

Persons interested in this petition may furnish written comments on or before November 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 5, 1979.

Robert B. Lagather,

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 79-32367 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-43-M

## Occupational Safety and Health Administration

### Alaska State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the Federal Register (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated September 27, 1977, from Edmund N. Orbeck, Commissioner, to James W. Lake, Regional Administrator, a request for an exemption from adopting of State standards comparable to 29 CFR 1910.1044, 1, 2-Dibromo-3-Chloropropane (DBCP), published in the Federal Register (42 FR 45536) dated September 9, 1977, as emergency temporary standard. Since it was determined that no employees in Alaska were exposed to DBCP, the Regional Administrator accepted the State's proposal and certificate of intent to adopt the permanent DBCP standards within six months of the effective date of those standards. The State has submitted a letter dated April 10, 1979 from Naomi Kipp, Director of the Division of Occupational Safety and Health, to John A. Granchi, Assistant

Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1910.1044, 1, 2-Dibromo-3-Chloropropane, as published in the Federal Register (43 FR 7063) dated March 17, 1978, as permanent standards.

These standards, which are contained in Subchapter 4 Alaska Occupational Safety and Health Code, were promulgated after public notice under authority vested by AS 18.60.020 by Edmund Orbeck, Commissioner on June 8, 1978.

2. *Decision.* Having reviewed the State submission in the comparison with the Federal standards, it has been determined that the State's standards are identical to the Federal standards and accordingly are approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washsington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99801; and the Technical Data Center, Room N2349R, 3rd and Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Section 1953.2(c) of this chapter provides that where State standards are identical to or "at least as effective as" comparable Federal standards and have been promulgated in accordance wth State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are identical to the Federal standards and have been promulgated in accordance with State law including an opportunity for public comment and/or a public hearing, they are approved without an opportunity for further public comment.

This decision is effective October 19, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington this thirteenth day of September, 1979.

James W. Lake,

*Regional Administrator.*

[FR Doc. 79-32365 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-26-M

## Alaska State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the Federal Register (38 FR 21628) of the approval of the Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated April 27, 1979 from Edmund N. Orbeck, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1910.1018, Occupational Exposure to Inorganic Arsenic, as published in the Federal Register on May 5, 1978, with corrections on June 30, 1978.

These State standards which are contained in Article 3, Subchapter 4, Occupational Health and Environmental Control Code, Alaska Occupational Safety and Health Standards, were promulgated after public notice under authority vested by AS 18.60.020 to Edmund N. Orbeck, Commissioner, on May 2, 1979.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the Federal standards and accordingly are approved. There are no technical differences. The only discernable difference is that the State has omitted the phrase, "the employer shall" in various places in the standard. Under Alaska law, the employer is responsible for assuring compliance with occupational safety and health standards. In addition, the startup dates are approximately six months later than those in the Federal standard.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99801; and the Technical Data Center, Occupational Safety and Health Administration, New Department of Labor Building, Room N2349R, 3rd and Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective October 19, 1979.

(Sec. 18. Pub. L. 91-596, 84 Stat 1606 (29 U.S.C. 667))

Signed at Seattle, Washington, this 21st day of May 1979.

John A. Granchi,

*Acting Regional Administrator, Occupational Safety and Health Administration.*

[FR Doc. 79-32366 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-26-M

## Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 4(a) of Executive Order 11807 of September 28, 1974 (39 FR 35559), Occupational Safety and Health Programs for Federal Employees, will meet on November 6 starting at 10:00 a.m. in Room S4215 ABC, New Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

I. Call to order—Kenneth Blaylock, Vice Chairperson
II. Announcements—Clinton M. Wright
III. Election of Vice Chairperson—Kenneth Blaylock

IV. Summation of comments concerning FARS—Robert J. Broderick
V. Relationship between Accident Investigation Methodology and Development of Safety Standards—Dr. Jerry Purswell
VI. Reports:
A. Standing Committee on Federal Safety and Health Conferences—John E. Albertson
B. Standing Committee on Field Councils—Leven Gray
C. Interagency Task Group on Federal Medical Records—Annie W. Asensio
VII. New Business

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business November 2, 1979, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business November 2, 1979. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to Ms. Annie Asensio, Executive Secretary, FACOSH, Department of Labor, OSHA, Room N3423, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523-8677.

Signed at Washington, D.C., this 15th day of October, 1979.

Eula Bingham,

*Assistant Secretary of Labor.*

[FR Doc. 79-32364 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-26-M

## Office of the Secretary

[TA-W-5801]

### Barnes & Tucker Co., Mine #24D; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on July 31, 1979 in response to a worker petition received on July 30, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at mine #24D of the Barnes and Tucker Company, Barnesboro, Pennsylvania. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Barnes and Tucker mined metallurgical coal from mine #24D under contract for another company. The investigation revealed that the company does not purchase any imported coal. While the company does purchase imported coke, which may be considered competitive with metallurgical coal, there was no significant change in the company's dependence on imported coke while the company did increase its dependence on domestic coke.

The investigation revealed that no significant declines in employment occurred in 1978 or in the first quarter of 1979.

*Conclusion*

After careful review, I determine that all workers of mine #24D of the Barnes and Tucker Company, Barnesboro, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 16th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32334 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5900]

### Brewer Dry Dock Co.; Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Brewer Dry Dock Company, Staten Island, New York, engaged in conversion, repair, overhaul, and maintenance of marine vessels.

Brewer Dry Dock Company was engaged in providing the service of repairing ships.

Thus, workers of Brewer Dry Dock Company did not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Brewer Dry Dock Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Brewer Dry Dock Company and its customers had no controlling interest in one another. The subject firm was not corporately affiliated with any other company.

All workers engaged in repairing ships at Brewer Dry Dock Company were employed by that firm. All personnel actions and payroll transactions were controlled by Brewer Dry Dock Company. All employee benefits were provided and maintained by Brewer Dry Dock Company. Workers were not, at any time, under employment or supervision by customers of Brewer Dry Dock Company. Thus, Brewer Dry Dock Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Brewer Dry Dock Company, Staten Island, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32336 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5933]

## Capricorn Iron Works Co., Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 30, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers and former workers of Capricorn Ironworks, Incorporated, Bronx, New York, a welding contractor for shipbuilding. The investigation revealed that the legal title of the firm is Capricorn Iron Works Company, Incorporated and that the proper location, for identification of the petitioners, is Brooklyn Navy Yard, New York.

Capricorn Iron Works Company, Incorporated is engaged in providing the service of welding ships.

Thus, workers of Capricorn Iron Works Company, Incorporated do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Capricorn Iron Works Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Capricorn Iron Works Company, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in welding ships at Capricorn Iron Works Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Capricorn Iron Works Company, Incorporated. All employee benefits are provided and maintained by Capricorn Iron Works Company, Incorporated. Workers are not, at any time, under employment of customers of Capricorn Iron Works Company, Incorporated. Thus, Capricorn Iron Works Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Capricorn Iron Works Company, Incorporated, Bronx, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32337 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5849]

## Carter Leather Goods Co., Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 13, 1979 in response to a worker petition received on August 6, 1979 which was filed by the International Leather Goods, Plastic, and Novelty Workers on behalf of workers and former workers producing men's and ladies' wallets, check secretaries, billfolds, clutches, french purses, and key cases at Carter Leather Goods Company, Inc., New York, New York. The investigation revealed that Carter Leather also produced desk pads. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that carter had a primary customer for its small personal leather good sales and another primary customer for its desk pad sales. Neither of these customers imported in 1977, 1978, or in the first seven months of 1979.

Conclusion

After careful review, I determine that all workers of Carter Leather Goods Company, Inc., New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32333 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5854]

## Celia's Sportswear Manufacturing Corp.; Peg Sportswear, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 13, 1979, in response to a worker petition received on August 8, 1979, which was filed on behalf of workers formerly producing ladies' sportswear at Celia's Sportswear Manufacturing Corporation in New York City, New York, and on behalf of workers formerly purchasing raw materials, making samples, and shipping finished product to customers for Celia's Sportswear Manufacturing Corporation at Peg Sportswear, Incorporated, in New York City, New York. The investigation revealed that sportswear consisted of blouses, suits, skirts, jackets and slacks. The investigation also revealed that Celia's Sportswear Manufacturing was a contractor that worked exclusively for its parent firm, Peg Sportswear. It is

concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's blouses and shirts; women's, misses' and children's suits; women's, misses' and children's skirts; women's, misses; and children's coats and jackets; and women's misses' and children's slacks and shorts increased both absolutely and relative to domestic production from 1977 to 1978 and then decreased absolutely in the January through June 1979 period compared to the like period in 1978.

The Department conducted a survey of the customers of Peg Sportswear, Incorporated. The survey revealed that some customers decreased purchases from the subject firm from 1977 to 1978 and in the first seven months of 1979 compared with the first seven months of 1978 and increased their purchases of imported ladies' sportswear either absolutely or relative to total purchases. Furthermore, aggregate demand for imports by survey respondents increased as a percentage of total demand from 1977 to 1978 and in the first seven months of 1979 compared with the first seven months of 1978. Increased imports of ladies' sportswear forced Peg Sportswear to lower their prices and assume losses in order to compete.

### Conclusion

After careful review of the facts obtained in the investigation, I concluded that increases of imports of articles like or diectly competive with ladies' blouses, skirts, jackets, suits and slacks produced at Celia's Sportswear Manufacturing Corporation and Peg Sportswear, Incorporated, both of New York City, New York, contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Celia's Sportswear Manufacturing Corporation, New York City, New York, and Peg Sportswear, Incorporated, New York City, New York, who became totally or partially separated from employment on or after July 30, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

Hary J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-323339 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W- 5950 and 5951]

## Cedar Coal Co.; Coal Fork Mine No. 1—TA-W-5950, Coal Fork Mine No. 2—TA-W-5951; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 4, 1979, in response to a worker petition received on August 29, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at Cabin Creek Coal Company, Cabin Creek, West Virginia. The investigation revealed that the correct name of the firm is Cedar Coal Company. The investigation further revealed that the plant produces steam coal, exclusively. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Cedar Coal Company, a wholly-owned subsidiary of Appalachian Electric Power, operates a complex of surface and underground coal mines. The United Mine Workers of America filed this petition on behalf of miners at Coal Fork Mines No. 1 and No. 2. All coal extracted from these mines was steam coal used by Appalachian Electric Power to generate electricity in its commercial power plants. All coal consumed by Appalachian Electric Power is produced domestically.

U.S imports of bituminous coal are negligible, being less than one percent of domestic production.

### Conclusion

After careful review, I determine that all workers of Cedar Coal Company, Cabin Creek, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 16th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32340 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5937]

## Indian Creek Coal Co., Inc., d.b.a. M & B Coal Co.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 30, 1979, in response to a worker petition received on August 20, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at Indian Creek Coal Company d.b.a. M & B Coal Company, Welch, West Virginia. The investigation revealed that the correct name of the firm is Indian Creek Coal Company, Incorporated, d.b.a. M & B Coal Company, and that it is located in Wyoming County, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The coal produced at the two mines of M & B Coal Company is sent to a larger, affiliated firm which cleans it, blends it with other coal and then sells the blended coal. Virtually all of the coal sold by that firm in 1978 was exported. Exports continued to account for a preponderance of its sales in the first eight months of 1979. Domestic sales of coal by that firm, although small, have increased from 1977 to 1978 and were higher in the first 8 months of 1979 than in all of 1978.

An analysis of the industry indicated that U.S. exports of metallurgical coal declined from 1975 to 1978 primarily due to the depressed state of the steel industries in developed countries. Major importers of U.S. metallurgical coal have

been changing to lower quality, cheaper coal from Australia, Western Canada and Soviet Union. These factors, and not the domestic market for metallurgical coal, have affected production and employment at M & B Coal Company.

Conclusion

After careful review, I determine that all workers of Indian Creek Coal Company, Incorporated, d.b.a. M & B Coal Company, Wyoming County, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 16th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32344 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5852]

## International Shoe Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 13, 1979, in response to a worker petition received on August 6, 1979, which was filed by the United Shoe Workers of America on behalf of workers and former workers producing women's dress shoes at the Salem, Missouri, plant of International Shoe Company. The workers of the Salem, Missouri, plant of International Shoe Company, were previously certified eligible to apply for trade adjustment assistance (TA-W-2047). The certification expired on August 31, 1979, two years from its date of issuance. It is concluded that all of the requirements have been met.

U.S. imports of women's non-rubber footwear, except athletic increased both absolutely and relative to domestic production and consumption from 1977 to 1978 and continued to increase during the first half of 1979 compared to the first half of 1978.

A survey of customers of International Shoe Company revealed that many customers reduced purchases of women's shoes from International Shoe while increasing purchases of women's shoes from foreign sources. The percentage of imported women's shoes to total demand for women's shoes by the respondents increased from 1977 to 1978 and continued to increase during the first half of 1979 compared to the first half of 1978. This finding is consistent with industry data which shows that the ratios of imported women's shoes to total domestic production and consumption of women's non-rubber footwear have also increased.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shoes produced at the Salem, Missouri plant of International Shoe Company, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Salem, Missouri plant of International Shoe Company, who became totally or partially separated from employment on or after August 31, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

James F. Taylor,

*Director, Office of Management, Administration and Planning.*

[FR Doc. 79-32345 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the worker's firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of October 1979.

Harold A. Bratt,

*Acting Director, Office of Trade Adjustment Assistance.*

Appendix

| Petitioner: Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Botany 500 (workers) | Philadelphia, Pa | Oct. 10, 1979 | Sept. 25, 1979 | TA-W-6,190 | Men's suits and sportcoats. |
| Cedar Coal Co. (UMWA) | Cabin Creek, W. Va. | Oct. 10, 1979 | Sept. 29, 1979 | TA-W-6,191 | Steam coal. |
| Fairchild, Inc. (workers) | Beckley, W. Va. | Oct. 10, 1979 | Oct. 1, 1979 | TA-W-6,192 | Mining equipment. |
| Fairmont Coke Works (workers) | Fairmont, W. Va. | Oct. 10, 1979 | Sept. 29, 1979 | TA-W-6,193 | Coke. |
| Ilex Optical Co., Inc. (IUE) | Rochester, N.Y. | Oct. 10, 1979 | Oct. 4, 1979 | TA-W-6,194 | Electro-optical, optical mechanical components (lenses). |
| Imagi-Knitting Mills (Knitgoods Workers Union, ILGWU). | Hauppauge, N.Y. | Oct. 10, 1979 | Oct. 8, 1979 | TA-W-6,195 | Knitted fabrics. |

Appendix —Continued

| Petitioner: Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Northeast Shoe Company (workers). | Pittsfield, Maine | Oct. 10, 1979 | Oct. 2, 1979 | TA-W-6,196 | Ladies' casual shoes. |
| Standard Pyroxoloid Corp (Retail, Wholesale Department Store Union). | Fitchburg, Mass | Oct. 10, 1979 | Oct. 4, 1979 | TA-W-6,197 | Hair brushes, and brush and mirror sets, also combs. |
| Teledyne Surface Chemicals (USWA). | Forbes Road, Pa | Oct. 10, 1979 | Oct. 1, 1979 | TA-W-6,198 | Stainless steel wire. |
| U.S. Steel Corp., Joliet-Waukegan Works (USWA). | Joliet, Ill | Oct. 10, 1979 | Oct. 1, 1979 | TA-W-6,199 | Carbon steel products. |

[FR Doc. 79-32335 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of October 1979.

Marvin M. Fooks,
*Director, Office of Trade Adjustment Assistance.*

Appendix

| Petitioner: Union/workers or former workers of.— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Cohen Brothers Specialties, Inc. (ACTWU). | New York, N.Y. | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,177 | Men's formal wear. |
| Eastern Knitting Mills (ILGWU) | Bleinheim, N.J. | Oct. 9, 1979 | Oct. 2, 1979 | TA-W-6,178 | Men's knitted sweaters and shirts. |
| Farmington Manufacturing Company (ACTWU). | Farmington, Mo | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,179 | Men's pants and sportcoats. |
| Manhattan Coat Corporation (ACTWU). | New York, N.Y. | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,180 | Men's suitcoats, sportcoats and vests. |
| Magerman Trousers, Inc. (ACTWU). | Philadelphia, Pa | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,181 | Contractor of men's trousers. |
| Mark Mining, Inc. (UMWA) | Somerset, Pa | Oct. 3, 1979 | Sept. 27, 1979 | TA-W-6,182 | Metallurgical coal. |
| New Haven Brass Mill (International Assoc. of Machinists & Aerospace Workers). | New Haven, Conn | Oct. 9, 1979 | Oct. 2, 1979 | TA-W-6,183 | Brass alloy (sheet and strip). |
| RCA Corp., Solid State Division (I.E.W.). | Mountaintop, Pa | Oct. 9, 1979 | Oct. 1, 1979 | TA-W-6,184 | Power solid state devices (transistors rectifiers) also hybrid circuits (heart pacemaker). |
| Roma Fashions, Inc. (ACTWU) | New York, N.Y. | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,185 | Contractor of men's pants and vests. |
| Saint Laurie, Ltd. (ACTWU) | New York, N.Y. | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,186 | Men's and women's clothing. |
| Santa Rosa Shoe Corporation (workers). | Santa Rosa, Calif. | Oct. 10, 1979 | Oct. 5, 1979 | TA-W-6,187 | Men's and women's work boots, safety boots and men's casual shoes. |
| Vincent Formal & Leisure Wear, Inc. (ACTWU). | New York, N.Y. | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,188 | Contractor of men's suitcoats and overcoats and formal jackets. |
| E. Weinshel & Brother Company (ACTWU). | Milwaukee, Wis. | Oct. 9, 1979 | Oct. 3, 1979 | TA-W-6,189 | Vests, raincoats and outerwear for men and women. |

[FR Doc. 79-32341 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute of relative increases of imports or articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of Interational Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed as Washington, D.C., this 30th day of August 1979.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

Appendix

| Petitioner: Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Capricorn Ironworks, Inc. (I.U.W.S.W.A.). | Bronx, N.Y. | Aug. 21, 1979 | Aug. 9, 1979 | TA-W-5,933 | Welding contractor for shipbuilding. |
| Commerical Carriers, Inc., Nashville Terminal (Teamsters). | Nashville, Tenn. | Aug. 27, 1979 | Aug. 21, 1979 | TA-W-5,934 | Transport of automobiles. |
| Congress Textile Printers, Inc. (ACTWU). | Hawthorne, N.J. | Aug. 27, 1979 | Aug. 16, 1979 | TA-W-5,935 | Lacquer duco and flo paint for fabrics |
| Dexter Buick GMC Truck Co., Inc. (workers). | Providence, R. I. | Aug. 15, 1979 | Aug. 4, 1979 | TA-W-5,936 | Auto dealership. |
| Indian Creek Coal Co. D.B.A. M & B Coal Co. (U.M.W.A.). | Welch, W. Va. | Aug. 20, 1979 | Aug. 12, 1979 | TA-W-5,937 | Mining of coal. |
| Key Chrysler Plymouth (workers) | Madison Tenn. | Aug. 27, 1979 | Aug. 20, 1979 | TA-W-5,938 | Auto dealership. |
| Lexington Metal Products Co. (workers). | Lexington, Tenn. | Aug. 27, 1979 | Aug. 20, 1979 | TA-W-5,939 | Auto parts, chrysler locks, AMC regulators, chrysler seat recliners. |
| Philtron Corp. (workers) | Whitman, Mass. | Aug. 27, 1979 | Aug. 15, 1979 | TA-W-5,940 | Light fixtures, wood products. |
| Robinson Phillips Coal Co., Ace Mine (UMWA). | Pineville, W. Va. | Aug. 27, 1979 | Aug. 23, 1979 | TA-W-5,941 | Mining of coal. |
| Robinson Phillips Coal Co., Carol Mine (UMWA). | Pineville, W. Va. | Aug. 27, 1979 | Aug. 23, 1979 | TA-W-5,942 | Mining of coal. |
| Robinson Phillips Coal Co., Elk Lick Mine #64 (UMWA). | Pineville W. Va. | Aug. 27, 1979 | Aug. 23, 1979 | TA-W-5,943 | Mining of coal. |
| Sarkes Tarzian, Inc., Tuner Div. (workers). | Bloomington, Ind. | Aug. 27, 1979 | Aug. 23, 1979 | TA-W-5,944 | T.V. tuners. |
| Simron Fuel Co., Twin Branch Mine (UMWA). | McDowell County, W. Va. | Aug. 27, 1979 | Aug. 23, 1979 | TA-W-5,945 | Mining of coal. |
| Simron Fuel Co., Lobo Mine #1 (UMWA). | McDowell County W. Va. | Aug. 27, 1979 | Aug. 23, 1979 | TA-W-5,946 | Mining of coal. |
| Steven Ranson, Inc. (I.U.M.S.W.A.). | Newark, N.J. | Aug. 21, 1979 | Aug. 9, 1979 | TA-W-5,947 | Conversion, repair, overhaul and maintenance of marine vessels. |
| Winn Branch Coal Company (workers). | Winn Branch, Ky. | Aug. 21, 1979 | Aug. 13, 1979 | TA-W-5,948 | Mining of coal. |
| York Leather Fashion, Inc. (workers). | New York, N.Y. | Aug. 27, 1979 | Aug. 20, 1979 | TA-W-5,949 | Ladies' and men's garments. |

[FR Doc. 79-32342 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible

to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director; Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 12th day of September 1979.

Harold A. Bratt,

*Acting Director, Office of Trade Adjustment Assistance.*

**Appendix**

| Petitioner: Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Dell Knitwear, Inc. (workers) | Bronx, N.Y. | September 6, 1979. | August 29, 1979. | TA-W-6,015 | Children's sweaters. |
| International Shoe Company (United Shoe Workers of America). | Searcy, Ark. | September 6, 1979. | September 4, 1979. | TA-W-6,016 | Women's shoes. |
| Oliver Tire & Rubber Company (URCLPWA). | Flemington, N.J. | September 6, 1979. | September 1, 1979. | TA-W-6,017 | Recapping materials used for recapping tires. |
| Russell, Burdsall & Ward Corp. (USWA). | Corapolis, Pa. | September 10, 1979. | August 20, 1979. | TA-W-6,018 | Industrial fastener. |
| Salant & Salant (United Garment Workers of America). | Paris, Tenn. | September 6, 1979. | August 30, 1979. | TA-W-6,019 | Men's western shirts and misses and juniors blouses. |
| Santini Corporation (workers) | Woodbury, Tenn. | September 6, 1979. | August 29, 1979. | TA-W-6,020 | Ladies' pants and skirts. |
| Wellman Company (company) | Medford, Mass. | September 10, 1979. | September 4, 1979. | TA-W-6,021 | Outsole cutting machines, forms, leaders, and parts for machines, aluminum footwear lasts. |

[FR Doc. 79-32343 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5875]

## Keene Wood Heel Co., Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 20, 1979 in response to a worker petition received on August 16, 1979 which was filed by Company officials on behalf of workers and former workers producing wooden heels and wedges for shoes at Keene Wood Heel Company, Incorporated, Keene, New Hampshire. The investigation revealed that workers also produce clogs for use as shoes and cut lumber for sale to other firms. It is concluded that all of the requirements have been met.

U.S. imports of non-leather bottom stock materials for footwear in terms of quantity increased both absolutely and relative to domestic production in 1978 from 1977 and in January-June 1979 compared to the same period in 1978.

A customer survey revealed a major customer reduced purchases from Keene Wood Heel and increased purchases of imported wooden heels, wedges, and clogs in 1978 compared to 1977 and in January-August 1979 compared to the same period in 1978.

### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the wooden heels, wedges, and clogs produced at Keene Wood Heel Company, Incorporated, Keene, New Hampshire contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Keene Wood Heel Company, Incorporated, Keene, New Hampshire who became totally or partially separated from employment on or after August 9, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 16th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32340 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5870]

## Manes Organization, Inc., Manes Group; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 17, 1979 in response to a worker petition received on August 15, 1979 which was filed on behalf of workers and former workers engaged in the

"conversion of textiles" at Manes Organization, Incorporated, New York, New York. The investigation revealed that the petitioners represented workers in the Manes Group of the Manes Organization. In the following determinations, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of finished fabric declined in absolute terms in the first six months of 1979 compared with the like period in 1978. Moreover, imports of finished fabric supply only a small percentage of the domestic market. The ratio of imports to domestic production of finished fabric did not exceed two percent in the period between 1974 and 1978.

Sales of finished fabric by the Manes Group of the Manes Organization, Incorporated increased in value in 1978 compared with 1977 and increased in the first quarter of 1979 compared with the like period in 1978. The decline in sales which occurred in the period April–June 1979 compared with April–June 1978 reflects the fact that the textile industry was one of the first industries to be affected by the general economic recession in the United States. In addition, average employment of workers of the Manes Group of the Manes Organization increased in each of the first two quarters of 1979 compared with the same respective quarter of 1978.

Conclusion

After careful review, I determine that all workers of the Manes Group of the Manes Organization, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32347 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5853]

## Mountaineer Coal Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 1979, in response to a worker petition received on August 8, 1979, which was filed on behalf of workers and former workers mining coal at the Clear Creek, West Virginia mine of the Mountaineer Coal Company, Charleston, West Virginia.

The Mountaineer Coal Company was in operation for less than three months at the time of the investigation. Due to the short term of operation of the Mountaineer Coal Company, it is not possible to determine trends of sales and production and to statistically measure the impact of imports. In addition, worker qualifying requirements in section 231 of the Act may not be met by any employees of the Mountaineer Coal Company. Consequently the investigation has been terminated.

Signed at Washington, D.C., this 11th day of October, 1979.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 79-33349 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5836]

## National Sugar Refining Co.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 8, 1979 in response to a worker petition received on August 1, 1979 which was filed on behalf of workers and former workers producing refined sugar at the National Sugar Refining Company, Philadelphia, Pennsylvania, and New York, New York. It is concluded that all of the requirements have been met.

U.S. imports of refined sugar increased during the first half of 1979 compared to the first half of 1978.

Surveyed customers of National Sugar Refining Company decreased purchases from National Sugar and increased purchases of imported refined sugar in 1978 compared to 1977 and during January–July 1979 compared to same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with refined sugar produced at National Sugar Refining Company, Philadelphia, Pennsylvania, and New York, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of National Sugar Refining Company, Philadelphia, Pennsylvania and New York, New York who became totally or partially separated from employment on or after July 25, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 16th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32243 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5880]

## Perkins Diesel Corp.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 21, 1979 in response to a worker petition received on August 17, 1979 which was filed on behalf of workers and former workers producing 4 and 6 cylinder diesel engines at Perkins Diesel Corporation, Canton, Ohio. The investigation revealed that the plant produces diesel engines for industrial and commercial use. It is concluded that all of the requirements have been met.

U.S. imports of diesel engines for industrial and commercial use increased in quantity and value in the January–July period of 1979 compared with the same period in 1978.

Imports of diesel engines by Perkins Diesel Corporation increased in quantity from 1977 to 1978 and in the January–October period of 1979, compared with the same period in 1978. After October 31, 1979, the diesel engine models which

the Canton plant had been producing will be supplied from the Perkins plants in Peterborough, England.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with diesel engines produced at Perkins Diesel Corporation, Canton, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Perkins Diesel Corporation, Canton, Ohio who became totally or partially separated from employment on or after October 26, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32350 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5881]

## Perry Knit, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibilty to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 21, 1979, in response to a worker petition received on August 20, 1979, which was filed on behalf of workers and former workers producing knitted outerwear for men, women, and children at Perry Knit, Incorporated, Union City, New Jersey. The investigation revealed that Perry Knit produces sweaters for men, women, and children. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's, misses', and children's sweaters declined both absolutely and relative to domestic production from 1976 to 1977. Imports continued to decline in absolute terms from 1977 to 1978 and in the January through June period of 1979 when compared to the same period in 1978.

U.S. imports of men's and boys' sweaters, knit cardigans, and pullovers declined absolutely in the January through June period of 1979 when compared to the same period in 1978.

A Department of Labor investigation revealed that Perry Knit, Incorporated contracts for the production of women's, misses', girls', men's and boys' sweaters.

The Department conducted a survey of the sweater manufacturers from whom Perry receives contract work. This survey revealed that the manufacturers neither utilized foreign contractors for the production of sweaters nor imported any sweaters in 1977, 1978 or in the first seven months of 1979.

In addition, the Department surveyed the retail customers of manufacturers whose sales are declining. The retail customers which decreased purchases of sweaters from the domestic manufacturers, in the first seven months of 1979 compared to the first seven months of 1978, did not increase their purchases of imported sweaters.

Conclusion

After careful review, I determine that all workers of Perry Knit, Incorporated, Union City, New Jersey, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32351 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W- 5941-5943, 6142-4; TA-W- 5945 and 5946]

## Robinson Phillips Coal Co. and Simron Fuel Co.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of investigations regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigations were initiated on August 30, 1979, and October 2, 1979, in response to a worker petition received on August 27, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers producing metallurgical coal at the Ace (TA-W-5941), Carol (TA-W-5942), Elk Lick #64 (TA-W-5943), Alpine #1 (TA-W-6142), Alpine #2 (TA-W-6143) mines and the Preparation Plant (TA-W-6144) of the Robinson Phillips Coal Company, Pineville, West Virginia, and the Twin Branch (TA-W-5945) and Lobo (TA-W-5946) mines of the Simron Fuel Company, Pineville, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat therof, and to the absolute decline in sales or production.

Domestic customers purchasing metallurgical coal from Robinson Phillips indicated they have not purchased any imported coal or coke in 1979. Several of the customers indicated that the depressed automobile and steel industries have adversely affected their production and thus their need for metallurgical coal.

In 1978 virtually all of the coal produced by the Robinson Phillips Coal Company and the Simron Fuel Company was exported. Exports remained a significant proportion of total company sales in the first eight months of 1979. An analysis of the industry indicated that U.S. exports of metallurgical coal declined from 1975 to 1978 primarily due to the depressed state of the steel industries in developed countries. Major importers of U.S. metallurgical coal have been changing to lower quality, cheaper coal from Australia, Western Canada and the Soviet Union. The Robinson Phillips Coal Company and the Simron Fuel Company closed four mines on July 31, 1979.

Conclusion

After careful review, I determine that all workers of the Robinson Phillips Coal Company, Pineville, West Virginia, and the Simron Fuel Company, Pineville, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32352 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5909]

## Rodermond Industries, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Rodermond Industries, Jersey City, New Jersey, engaged in conversion, repair, overhaul, and maintenance of marine vessels. The investigation revealed that the legal title of the firm is Rodermond Industries, Incorporated.

Rodermond Industries, Incorporated is engaged in providing the service of repairing and altering ships.

Thus, workers of Rodermond Industries, Incorporated do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Rodermond Industries, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Rodermond Industries, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in repairing and altering ships at Rodermond Industries, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Rodermond Industries, Incorporated. All employee benefits are provided and maintained by Rodermond Industries, Incorporated. Workers are not, at any time, under employment or supervision by customers of Rodermond Industries, Incorporated. Thus, Rodermond Industries, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

### Conclusion

After careful review, I determine that all workers of Rodermond Industries, Incorporated, Jersey City, New Jersey, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32353 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5944]

## Sarkes Tarzian, Inc., Tuner Division; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 30, 1979, in response to a worker petition received on August 27, 1979, which was filed on behalf of workers and former workers producing T.V. tuners at Sarkes Tarzian, Incorporated, Tuner Division, Bloomington, Indiana. It is concluded that all of the requirements have been met.

U.S. imports of television tuners increased relative to domestic production in 1978 compared to 1977.

Workers at Sarkes Tarzian, Inc., Tuner Division, Bloomington, Indiana, were certified eligible to apply for adjustment assistance benefits on April 20, 1976 (TA-W-573). During 1978, production of television tuner subassemblies—traps and channel sticks—was transferred from Bloomington to a company facility at Zaragosa, Mexico. Discontinuation of trap and channel stick production at the Bloomington plant represented a further transfer of tuner production to Mexico.

### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the T.V. tuners produced at Sarkes Tarzian, Incorporated, Tuner Division, Bloomington, Indiana, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at Sarkes Tarzian, Incorporated, Tuner Division, Bloomington, Indiana, who became totally or partially separated from employment on or after August 23, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32354 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5911]

## Seaare Marine, Inc., Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Seaare Marine, Incorporated, Brooklyn, New York, engaged in fabricating parts for repairing vessels, conversion, repair, overhaul, and maintenance of marine vessels.

Seaare Marine, Incorporated, is engaged in providing the service of repairing ships and refitting parts for ships.

Thus, workers of Seaare Marine, Incorporated, do not produce an article within the meaning of section 222(3) of

the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Seaare Marine, Incorporated, by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Seaare Marine, Incorporated, and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in repairing ships and refitting parts for ships at Seaare Marine, Incorporated, are employed by that firm. All personnel actions and payroll transactions are controlled by Seaare Marine, Incorporated. All employee benefits are provided and maintained by Seaare Marine, Incorporated. Workers are not, at any time, under employment or supervision by customers of Seaare Marine, Incorporated. Thus, Seaare Marine, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

### Conclusion

After careful review, I determine that all workers of Seaare Marine, Incorporated, Brooklyn, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32355 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5882]

## Shortway Products, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 21, 1979, in response to a worker petition received on August 20, 1979, which was filed on behalf of workers and former workers producting electron receiving tube mounts at Shortway Products, Incorporated, Clearfield, Pennsylvania. It is concluded that all of the requirements have been met.

Electron receiving tubes and electron receiving tube mounts are classified under the same import category, but separate import data for the two products is not available. Industry analysts indicate that during the 1977–79 period tube mounts accounted for an increasing share of the total import category. The dollar value of U.S. imports of electron receiving tubes and tube mounts increased relative to the dollar value of U.S. shipments. The ratio of imports to shipments increased from 33.7 percent in 1977 to 36.0 percent in 1978.

Shortway Products assembles tube mounts on a contract basis exclusively for another manufacturing company. This manufacturer uses domestic and imported tube mounts to produce electron receiving tubes. The manufacturer reduced its tube mount orders with Shortway Products and increased its reliance on imported tube mounts in 1978 from 1977 and in January–July 1979 compared to January–July 1978.

### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with electron receiving tube mounts produced at Shortway Products, Incorporated, Clearfield, Pennsylvania, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Shortway Products, Incorporated, Clearfield, Pennsylvania, who became totally or partially separated from employment on or after August 2, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32356 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5864]

## Stucar Manufacturing Corp.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 14, 1979, in response to a worker petition received on August 8, 1979, which was filed on behalf of workers and former workers producing men's suits and women's coats at Stucar Manufacturing Corporation, New York, New York. The investigation revealed that the plant produces men's suit coats, pants, and vests and women's jackets, slacks and skirts.

Evidence developed in the course of the investigation revealed that workers producing men's pants at Stucar Manufacturing are covered by the existing certification for EAR Pants Manufacturing Corporation (TA-W-2243), which is a predecessor to Stucar Manufacturing with respect to workers producing pants. On November 25, 1977, the Department certified all workers of EAR Pants Manufacturing Corporation, eligible to apply for adjustment assistance. The certification expires November 25, 1979. EAR Pants Manufacturing shared common ownership with Enzel-Arthur Richards until late 1977 when the operations of the two companies were merged. The surviving company, Enzel-Arthur Richards, changed its name to Stucar Manufacturing on October 1, 1978.

Without regard to whether any of the other criteria have been met for workers producing women's jackets, slacks and skirts, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Stucar began producing women's jackets and slacks in May 1978. Sales and production of these garments are seasonal. Due to the short period of production of these products at Stucar it is not possible to discount the seasonal influence on sales, production and

employment or to measure the impact of imports except for the May–July 1979 period. Production of these garments at Stucar increased in the May through July 1979 period compared with the like period of the previous year.

Production of skirts at Stucar increased in 1978 compared with 1977 and increased in the first seven months of 1979 compared with the like period of 1978. The production declines that did occur were due to normal business fluctuations.

For workers producing men's suit coats, pants and vests, all of the criteria have been met.

U.S. imports of men's and boys' tailored dress coats and sportcoats and U.S. imports of men's and boys' dress trousers and shorts increased absolutely and relatively from 1977 to 1978. The 1978 levels of U.S. imports of men's and boys' tailored suits, which includes vests, were higher than 1976 levels.

Stucar performs contract work for several garment manufacturers. The Department surveyed major customers of the manufacturers who accounted for most of Stucar's decline in contract work for men's garments. The survey indicated that customers who contributed to the decrease in the sales of these manufacturers increased imports of men's suit coats, pants and vest in 1978 compared with 1977 and in the first half of 1979 compared with the like period of 1978.

### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the men's, suit coats, pants and vests produced at Stucar Manufacturing Corporation, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Stucar Manufacturing Corporation, New York, New York, formerly Enzel-Arthur Richards Manufacturing Corporation, engaged in employment related to the production of men's suit coats and vests who became totally or partially separated from employment on or after July 30, 1978 and all workers of Stucar Manufacturing Corporation, engaged in employment related to the production of men's pants (formerly of E.A.R. Pants Manufacturing Corporation) who became totally or partially separated from employment on or after November 25, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1975.

Signed at Washington, D.C., this 12th day of October 1979.

James F. Taylor,

*Director, Office of Management, Administration and Planning.*

[FR Doc. 79-32357 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5876]

## Terry Jane Coal Co., Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 20, 1979, in response to a worker petition received on August 10, 1979, which was filed by the United Mine Workers of America on behalf of workers formerly mining metallurgical coal for the Terry Jane Coal Company, Incorporated, of Mingo County, West Virginia. The investigation revealed that the company was based in Logan, West Virginia.

Due to the short term of operation of Terry Jane Coal Company, Incorporated, there is not sufficient information in the case upon which to base a determination. In addition, workers qualifying requirements in section 231 of the Act may not be met at this time. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 12th day of October 1979.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 79-32358 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5913]

## Turbine Enterprises, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Turbine Enterprises, Incorporated, Elizabeth, New Jersey, engaged in conversion, repair, overhaul, and maintenance of marine vessels.

Turbine Enterprises, Incorporated, is engaged in providing the service of repairing ships.

Thus, workers of Turbine Enterprises, Incorporated, do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Turbine Enterprises, Incorporated, by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Turbine Enterprises, Incorporated, and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company. Neither the subject firm nor any company with which it shares common ownership produces an article.

All workers engaged in repairing ships at Turbine Enterprises, Incorporated, are employed by that firm. All personnel actions and payroll transactions are controlled by Turbine Enterprises, Incorporated. All employee benefits are provided and maintained by Turbine Enterprises, Incorporated. Workers are not, at any time, under employment or supervision by customers of Turbine Enterprises, Incorporated. Thus, Turbine Enterprises, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

### Conclusion

After careful review, I determine that all workers of Turbine Enterprises, Incorporated, Elizabeth, New Jersey, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32359 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5914]

## Union Dry Dock & Repair Co., Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding

certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Union Dry Dock & Repair Company, Incorporated, Weehawken, New Jersey, engaged in conversion, repair, overhaul, and maintenance of marine vessels.

Union Dry dock & Repair Company, Incorporated, is engaged in providing the service of repairing ships.

Thus, workers of Union Dry Dock & Repair Company, Incorporated, do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Union Dry Dock & Repair Company, Incorporated, by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Union Dry Dock & Repair Company, Incorporated, and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in repairing ships at Union Dry Dock & Repair Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Union Dry Dock & Repair Company, Incorporated. All employee benefits are provided and maintained by Union Dry Dock & Repair Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of Union Dry Dock & Repair Company, Incorporated. Thus, Union Dry Dock & Repair Company, Incorporated, and not any of its customers, must be considered to be the "Workers' firm".

### Conclusion

After careful review, I determine that all workers of Union Dry Dock & Repair Company, Incorporated, Weehawken, New Jersey, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32360 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5915]

## Union Maintenance Corp.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers and former workers of Union Maintenance Corporation, Hoboken, New Jersey, engaged in sandblasting and painting ships.

Union Maintenance Corporation, is engaged in providing the service of cleaning and painting ships.

Thus, workers of Union Maintenance Corporation, do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Union Maintenance Corporation, by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Union Maintenance Corporation, and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in cleaning and painting ships at Union Maintenance Corporation, are employed by that firm. All personnel actions and payroll transactions are controlled by Union Maintenance Corporation. All employee benefits are provided and maintained by Union Maintenance Corporation. Workers are not, at any time, under employment or supervision by customers of Union Maintenance Corporation. Thus, Union Maintenance Corporation, and not any of its customers, must be considered to be the "workers' firm".

### Conclusion

After careful review, I determine that all workers of Union Maintenance Corporation, Hoboken, New Jersey, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of October 1979.

C. Michael Aho,

*Director, Office of Foreign Economic Research.*

[FR Doc. 79-32361 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-5865]

## Union Sugar Co.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 14, 1979 in response to a worker petition received on August 10, 1979 which was filed the United Sugar Workers' Council of California, of the Distillery, Wine and Allied International Union of America on behalf of workers and former workers refining sugar at the Santa Maria, California plant of the Union Sugar Company. The investigation revealed that the plant is located at Betteravia, California (a suburb of Santa Maria). The investigation was expanded to include the additional locations listed in the Appendix to this Notice. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increased imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have

contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation indicated that the declines in business and employment at Union Sugar in late 1978 and 1979 were the result of seasonal fluctuations.

The processing of refined beet sugar follows a seasonal pattern. The operating year consists of a fall campaign (Northern California) and a spring campaign (Southern California). A campaign is the period of time in which sugar beets are harvested by growers, shipped to the processing plant and processed into refined beet sugar. Union Sugar hires additional workers during these campaign periods. When a campaign is over, and production declines, the additional workers are laid off. Since the earliest possible certification date, there have been no significant declines in sales, production or employment other than those attributable to seasonablity.

Sales and production of refined sugar at Union Sugar increased in the fourth quarter of 1978 compared to the previous quarter, and in the first half of 1979 compared to the same period in 1978.

Average employment of production workers at the Betteravia plant increased in the fourth quarter of 1978 compared to the previous quarter, and in the first half of 1979 compared to the same period in 1978.

Average employment of workers at the receiving locations increased in the fourth quarter of 1978 compared to the previous quarter, and in the first half of 1979 compared to the same period in 1978.

### Conclusion

After careful review, I determine that all workers of the Union Sugar Company at the locations listed in the Appendix are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

Appendix

Locations of Union Sugar (All locations are in California):

1. Headquarters—San Francisco
2. Factory—Betteravia
3. Agricultural Field Offices—(a) El Centro & (b) Salinas
4. Receiving Locations:
   (a) Somis
   (b) Paso Robles
   (c) San Ardo
   (d) King City
   (e) Camphora
   (f) Cooper
   (g) Rosamand
   (h) Meloland
   (i) Seeley
   (j) Calipatria
   (k) Imperial (Pare Laboratory)
   (l) Sergeant
   (m) Los Banos

[FR Doc. 79-32362 Filed 10-18-79; 8:45 am]
BILLING CODE 4510-28-M

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[TA-W-6060]

## Waterville Auto Mart, Inc.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on September 19, 1979, in response to a worker petition received on September 17, 1979, which was filed on behalf of workers and former workers of Waterville Auto Mart, Incorporated, Waterville, Maine, engaged in the sales and service of passenger cars.

Waterville Auto Mart, Incorporated is engaged in providing the service of selling and servicing passenger cars.

Thus, workers of Waterville Auto Mart, Incorporated do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Waterville Auto Mart, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Waterville Auto Mart, Incorporated is not corporately affiliated with any other company.

All workers engaged in selling and servicing passenger cars at Waterville Auto Mart, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Waterville Auto Mart, Incorporated. All employee benefits are provided and maintained by Waterville Auto Mart, Incorporated. Workers are not, at any time, under employment or supervision by any firm other than Waterville Auto Mart, Incorporated. Thus, Waterville Auto Mart, Incorporated, and not any other firm, must be considered to be the "workers' firm".

### Conclusion

After careful review, I determine that all workers of Waterville Auto Mart, Incorporated, Waterville, Maine are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of October 1979.

Harry J. Gilman,

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 79-32363 Filed 10-18-79; 8:45 am]
BILLING CODE 4510-28-M

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## Pension and Welfare Benefit Programs

[Application No. D-1521]

## Proposed Exemption for Certain Transactions Involving the Carey Defined Contribution Trust

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale by the Carey Defined Contribution Trust (the Plan) of a parcel of real property in Danbury, Connecticut to Carey Industries, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, and other persons participating in the transactions.

**DATES:** Written comments and requests for a public hearing must be received by the Department of Labor on or before November 16, 1979.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1521. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and

Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Richard Small, of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Raymond J. Carey, Jr. and Raymond J. Carey, III (the Trustees), the Trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

### Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined contribution pension plan with 12 participants. As of May 31, 1979 the Plan had total assets of $359,286. Raymond J. Carey, Jr. is the owner of 77.2% of the stock of the Employer and is President of the Employer. Raymond J. Carey, III is the owner of 17.6% of the stock of the Employer, and is Vice-President and Secretary of the Employer.

2. On January 6, 1971 the Plan purchased 3.099 acres of land on Triangle Street in Danbury, Connecticut (the Triangle Property) for $90,000 from a party unrelated to the Plan. The Triangle Property is located next to the plant of the Employer. The Triangle Property produces no income for the Plan. The Trustees of the Plan have obtained an independent appraisal of the Triangle Property which represents the value of the property to be $100,000.

3. The Trustees are requesting an exemption to permit the Plan to sell the Triangle Property to the Employer without a sales commission for cash of $105,000. The Trustees represent that the criteria of section 408(a) of the Act will be satisfied by the proposed sale because: (1) it will be a one time transaction for cash: (2) it will allow the Plan to sell the property at a profit at a price in excess of the value determined by an independent appraisal; (3) it will not require the Plan to pay any real estate sales commissions; and (4) it will allow the Plan to eliminate an asset which represents a large percentage of Plan assets and which produces no income.

### Notice to Interested Persons

Notice of this request for an exemption shall be given to all present participants of the Plan and persons who will become eligible to participate in the Plan as of December 31, 1979 by placing in the mail, within 10 days of its publication the Notice of Pendency published in the Federal Register.

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply into the cash sale by the Plan of 3.099 acres of land on Triangle Street in Danbury, Connecticut for $105,000 to the Employer provided that this amount is not less than the fair market value of the land.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of October 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 79-32289 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1032]

## Proposed Exemption for Certain Transactions Involving Evans Products Co. General Pension Plan

**AGENCY:** Department of Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of mortgages by the Evans Products Company General Pension Plan (the Plan) to the Evans Products Company (the Employer). The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

**DATES:** Written comments and requests for a public hearing must be received by the Department on or before November 16, 1979.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective on the date granted.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-1032. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Ronald D. Allen of the Department, (202) 523-7901. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 [40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

### Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. In April 1969, the Employer acquired L. Grossman Sons, Inc. (Grossman), a Massachusetts corporation. Subsequently, pursuant to a resolution adopted by the Board of Directors of the Employer on July 16, 1969, the Plan was amended to include participation in the Plan by certain of the employees of Grossman and its subsidiaries. Concurrently, certain assets of Grossman's pension plan trust fund were transferred to the Plan. Included in these assets were $397,721.78 of real estate mortgages which had been generated by Grossman in the course of its business and subsequently sold to the Grossman pension plan trust fund. On December 15, 1976, the Employer appointed the Bank of America, National Trust and Savings Association (Bank of America) as successor trustee to M. A. Orloff, L. L. Wygal and D. O. Nellis, officers of the Employer. All of the Plan's assets were subsequently transferred to Bank of America with the exception of eleven real estate mortage loans, totaling $397,721.78, which Bank of America did not want to manage.

2. Two of the eleven mortgage loans have been paid in full. The nine remaining mortgage loans, all of which are in default, have balances totaling $57,940 and interest rates varying from 6% to 7%. No foreclosure action was taken on these mortgage loans because of technical problems in qualifying the named mortgagee to do business in the State of New York. These problems have now been resolved and foreclosure action has been instituted or threatened.

3. The Employer proposes to purchase the mortgages still outstanding for cash in an amount equal to the outstanding principal balance plus accrued unpaid interest to the date of purchase. Except for one property, the employers servicing the mortgages believe that sales of foreclosed properties will not produce proceeds in excess of the outstanding balances on such mortgages plus expenses. In the event of a foreclosure where the proceeds from the sale exceeds the loan balance, the Employer will return the excess to the Plan.

4. The applicants represent that this transaction meets the statutory criteria of section 408(a) of the Act for the following reasons: (1) This is a one time sale for cash; (2) the sale would enable the Plan to dispose of mortgages currently in default and recover full value plus accrued unpaid enterest on these mortgages; and (3) the sale will enable the Plan to dispose of non-income producing assets.

### Notice to Interested Parties

Notice of the pending exemption will be given to all interested parties including the Trustee of the Plan and all active and retired participants or their beneficiaries, within 10 days of the publication of this notice in the Federal Register, by delivery in person or by first class mail.

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan in a prudent fashion in accordance with section 404(a)(1)(B) of the Act, nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of employer maintaining the plan and their beneficiaries;

(2) The prosposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan, of its participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

### Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of secured real estate loans which were not transferred to the Bank of America on December 15, 1976, to the Employer for an amount equal to the sum of the outstanding principal balances plus accrued unpaid interest to the date of sale. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 13th day of October, 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 79-32287 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1198]

## Proposed Exemption for Certain Transactions Involving the Iowa Realty Co. Profit Sharing Plan and Trust

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, retroactively and prospectively, the purchase of land by the Iowa Realty Company, Inc. (the Employer) from the Iowa Realty Company Profit Sharing Plan and Trust (the Plan). The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer, and any other persons participating in the transactions described herein.

**DATES:** Written comments and requests for a public hearing must be received by the Department on or before November 16, 1979.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1198. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216

**FOR FURTHER INFORMATION CONTACT:** C. E. Beaver, of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(a)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

### Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Employer is an Iowa corporation engaged in the land development business with its principal place of business located at 3521 Beaver Avenue, Des Moines, Iowa. As of November 30, 1978, the assets of the Employer were $48,613,204 and its gross receipts for the year ended November 30, 1978, were $15,677,468. Its chief executive and controlling shareholder, William C. Knapp, has been involved in all phases of real estate operations for more than thirty years.

2. The Plan became effective in November 1959 and was last amended during 1978. The Internal Revenue Service issued a determination letter on June 27, 1978, which stated that the Plan was qualified and exempt from income taxes under the provisions of sections 401(a) and 501(a) of the Code, respectively. As of November 30, 1978, the Plan has 125 participants; its assets totaled $3,810,318, and its liabilities totaled $1,316,839 of which $1,010,634 consisted of mortgage notes and contracts on real estate. The pledged collateral underlying these mortgage notes and contracts was real estate with a current value of $2,147,027 and with a cost value of $1,775,529. Payments are due the holders of the mortgage notes and contracts in varying amounts until 1994, including annual interest charges of 4 percent to 9 percent. Interest and principal payments totaling $203,416 become due during the year ending November 30, 1979.

3. The investment decisions of the Plan are made by the trustees/administrative committee (the Trustees). The Trustees of the Plan are composed of the following individuals: William C. Knapp who is president of the Employer and who owns 61.9 percent of the Employer; Paul R. Knapp, Vice President and Secretary/Treasurer and 9.5 percent owner of the Employer; Daryl Neumann, Vice President and non-shareholder of the Employer; and Joseph C. Clay, an

employee and non-shareholder of the Employer. The Trustees are all participants of the Plan. They are represented to have considerable experience and knowledge in real estate acquisition, development, and management and to have much less sophistication in investments of other types.

4. Desiring to establish a method by which the Plan could benefit from acquiring property located by the Employer and from selling the same property at a guaranteed profit, the Employer and the Plan entered into a written agreement (the Agreement) on October 15, 1971, which is to expire on October 30, 1986. The Agreement provides that the Plan has the right to sell to the Employer and the Employer has the first right to purchase from the Plan, at any time during the term of the Agreement, all real property acquired by the Plan upon the advice and recommendation of the Employer. The purchase price the Employer is to pay for such property is to be the higher of the following: (a) Acquisition cost of the Plan plus 6 percent per year, or (b) the fair market value, to be established by appraisal by an MAI appraiser to be selected by the Plan. If the Employer does not approve of the appraiser so selected, the Plan and the Employer will ask the Des Moines Savings and Loan Association to choose the appraiser, which choice will be binding upon the parties.

5. Relying upon the Agreement and the above-mentioned expertise of the Trustees in real estate matters, the Plan acquired five parcels of land upon the advice and recommendation of the Employer. Two of these parcels were purchased prior to 1974 and three parcels were purchased by the Plan during 1974. All of the parcels were acquired from persons who would not be designated under the Act as parties-in-interest. These acquisitions of the five parcels of land by the Plan involved a total of 425 acres for a total purchase price of $1,675,700. The Plan has incurred additional costs in the sum of $220,994 for the installation of waterlines and sanitary sewers on two of the parcels. The Trustees selected for purchase these five parcels with the belief that a substantial appreciation in their value would occur because of their proximity with land development projects of the Employer. An exemption from the prohibited transaction provisions of the Act, affecting the five parcels of land described below, is sought by the Employer to permit the sales, consummated during 1976, of portions of two of the remaining portions of the two parcels of land as well as the other three parcels of land by the Plan to the Employer.

6. On August 18, 1970, the Plan purchased approximately 94 acres of land (the Oleson Farm or Bondurant Land) for the sum of $140,700. This parcel was acquired from Clarence Oleson under a land contract having a term of 10 years and bearing a 7 percent annual interest charge. On February 12, 1979, Arthur J. Fraham & Associates, qualified and independent appraisers, determined that the Oleson Farm had a market value of $320,000, as of November 30, 1978.

7. On March 26, 1973, the Plan purchased approximately 61 acres of land (the Staples Farm) for the sum of $150,000. There is no outstanding obligation owing on the purchase of this parcel. Additional expenses were incurred by the Plan in the sum of $110,012 for the installation of waterlines and sanitary sewers upon this parcel. On February 7, 1979, Arthur J. Fraham & Associates determined the market value of the Staples Farm to be $241,000, as of November 30, 1978. This appraisal did not include the installation of sanitary sewers which cost $59,500 because the installation had not taken place as of the date of the appraisal.

8. On September 10, 1974, the Plan purchased approximately 57 acres of land (the Life Investors Farm) for the sum of $171,000. This parcel was acquired from Life Investors Development Co. under a land contract having a term of 5 years and bearing a 9 percent annual interest charge. Also, additional expenses were incurred by the Plan in the sum of $110,982 for the installation of waterlines and sanitary sewers upon this parcel. On February 2, 1979, Arthur J. Fraham & Associates determined the market value of the Life Investors Farm to be $272,000, as of November 30, 1978. This appraisal did not include the installation of sanitary sewers which cost $59,500 because the installation had not taken place as of the date of the appraisal.

9. On October 16, 1974, the Plan purchased another parcel of land upon the recommendation of the Employer, containing approximately 69 acres (the Hopkins Farm) for the sum of $550,000. This purchase was made with a loan from the Des Moines Saving and Loan Association under a note and mortgage having a 20-year term and bearing an 8.5 percent annual interest charge. On November 1, 1976, in accordance with the Agreement, the Plan sold 13.65 acres of the Hopkins Farm to the Employer for cash in the sum of $210,000. No commissions were charged the Plan. From this sale, the Plan realized on its original cost for the 13.65 acres a gain of $24,816, or a 13.4 percent return. All additional costs incurred by the Plan on this 13.65 acres of the Hopkins Farm were paid by the Employer at the time of the sale. On August 31, 1979, Harry S. Winegar, MAI, of Winegar Appraisal Company, Inc., Des Moines, Iowa, a qualified and independent appraiser, determined that the 13.65 acres portion of the Hopkins Farm, as of November 30, 1976, had a fair market value of $207,000. On January 30, 1979, Arthur J. Fraham & Associates determined that the remaining 54.35 acres of the Hopkins Farm had a market value of $545, 000 as of November 30, 1978.

10. On November 16, 1974, the Plan acquired approximately 145 acres of land (the Meredith Farm) for the sum of $664,000. This parcel was purchased from the Iowa Des Moines National Bank, Trustee, under a land contract having a 5-year term and a 4 percent annual interest charge. On April 1, 1976, in accordance with the Agreement, the Plan sold 63 acres of the Meredith Farm to the Employer for cash in the sum of $407,745. No commissions were charged the Plan. From this sale, the Plan realized on its original cost for the 63 acres a gain of $105,228, or a 34.78 percent return. All additional costs to the Plan of $2,773.12 which were expended on this 63 acres of the Meredith Farm were reimbursed on August 21, 1979, by the Employer. On June 9, 1976, this 63-acre portion of the Meredith Farm was determined to have a market value of $407,000 by Harry A. Winegar, MAI, of Winegar Appraisal Company, Inc. The Plan has sold another 8 acres of the Meredith Farm to the Zion Lutheran Church, an unrelated party to the Plan or the Employer. The portion of the original cost to the Plan for this 8 acres was $41,084. On February 8, 1979, Arthur Fraham & Associates determined that the remaining 74 acres of the Meredith Farm had a market value of $655,000, as of November 30, 1978.

11. For the remaining 340 acres of the five parcels of land, the Employer will pay the Plan in cash a purchase price which will be the highest sum as determined by one of the following alternatives:

(a) The original cost of each parcel, plus an appreciation of 6 percent per year from the date of acquisition to the date of sale. Added to this amount will be any costs or improvements paid or contracted for by the Plan; or

(b) The appraised value, as of November 30, 1978, as determined by Arthur J. Fraham & Associates without any adjustments for commissions, error factor or other items; or

(c) The higher of two appraised current fair market values for each parcel of land, as determined individually and separately, at or near the date of sale to the Employer, by two qualified and independent appraisers, plus any cost incurred by the Plan which was not included in the appraisals.

12. In summary, the applicant represents that these purchases of land described herein by the Employer from the Plan meet the statutory criteria for an exemption under section 408(a) of the Act because (1) the Trustees believe that these five parcels of land should be developed and sold now to realize the optimum value, (2) listing the parcels of land for sale to an unrelated party would cause delay in finding a buyer, (3) such a listing would result in less proceeds to the Plan because of sales commissions and other selling expenses which could be avoided if the proposed sales to the Employer are permitted, and (4) all sales would be and have been subjected to appraisals by a qualified and independent appraiser.

### Notice to Interested Persons

Notice of the pending exemption and a copy of the notice of pendency as published in the Federal Register will be given all participants and beneficiaries of the Plan. Such notice will be provided by first class mail or personal delivery. The notice will be postmarked or hand delivered no later than October 29, 1979. All recipients of the notice will be advised of their repective right to submit written comments or request a hearing within thirty days after the expiration of the ten day period following the date of publication of the notice of pendency in the Federal Register.

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualifed person from certain other provisions of the Act and the Code, including any prohibited transaction provision to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, be reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, retroactively and prospectively, to the purchase during 1976 of portions of two parcels of land (the Hopkins Farm and the Meredith Farm, respectively) and, within 120 days after the grant of this exemption, to the proposed purchase of five parcels of land (the Oleson Farm or Bondurant Land, the Staples Farm, the Life Investors Farm, and the remainder of the Hopkins Farm and Meredith Farm) by the Employer from the Plan in transactions as described herein.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of October, 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 79-32282 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-29-M

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[Application No. D-200]

## Proposed Exemption for a Transaction Involving the A. J. Tuck Co. Profit Sharing Trust

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan of $24,000 from the A. J. Tuck Company Profit Sharing Trust (the Trust) to the A. J. Tuck Company (the Employer), which was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Trust.

**DATES:** Written comments and requests for a public hearing must be received by the Department of Labor on or before November 16, 1979.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective January 1, 1975.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-200. The application for exemption and the comments received will be

available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz, of the Department of Labor, telephone (202) 357-0040. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer and the Administrative Committee of the Trust, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

## Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. Under the terms of the Trust agreement, the A. J. Tuck Company Profit Sharing Committee (the Committee) is entrusted with complete control over the administration of the Trust, with the duties of the bank trustee being confined to the implementation of the Committee's decisions and directives.

2. Being displeased with the Trust's performance for the period March 31, 1973 to March 31, 1974, both as to principal and income, the Committee decided that the trustee should invest $24,000 of the Trust's assets in 3 year notes of the Employer. Accordingly, by letter dated June 7, 1974, the Committee authorized and directed the trustee to invest $24,000 of the Trust's assets in 3 year notes of the Employer, bearing interest at 12 percent per annum payable quarterly. On June 10, 1974, the Employer deposited with the trustee $24,000, the Employer's contribution for the fiscal year ending March 31, 1974. The trustee then invested that sum in short term government notes pending the preparation of the legal documents connected with the investment in the Employer notes. On July 23, 1974, the $24,000 Employer note, together with a loan and security agreement, was executed. The loan amounted to approximately 24 percent of the Trust's total assets.

3. For the year ending March 31, 1975, during which time the Trust held the Employer nearly one percentage point to 4.7 percent. The note was responsible for nearly 27 percent of the Trust's total income.

4. The note was secured by a chattel mortgage on certain Employer machinery and equipment with a salvage value in excess of the face amount of the note. A financing statement was filed with the Secretary of State of Connecticut recording the Trust's security interest in the collateral.

5. The Employer had available financing sources other than the Trust at the time of the transaction. The applicants represent that the Employer could have obtained a similar loan from a local bank at an interest rate below that which it agreed to pay to the Trust.

6. The primary reason for the Employer borrowing from the Trust, as opposed to its bank or another third party, was to attempt to improve the poor investment performance of the Trust and, at the same time, not to impair or risk the stability and safety of the Trust's investments.

7. All interest payments as required under the note were made in accordance with the schedule therein, and the $24,000 loan was paid in full on June 9, 1977, somewhat before its due date.

8. In summary, the applicants represent that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) The interest rate paid to the Trust was higher than that which a local bank would have charged the Employer for a similar loan, (2) the loan was adequately secured at all times by collateral with a higher salvage value than the principal amount of the loan, and (3) all payments on the loan were made on schedule, and the loan has been repaid in full to the Trust.

Finally, the applicants represent that the loan was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicants realized that the loan had become a prohibited transaction, the applicants submitted a good faith request for an exemption instead of terminating the loan transaction.

## Notice to Interested Persons

Within 10 days from the date of publication of this notice of proposed exemption, the applicants will send a copy of the notice by certified mail to all interested persons.

## General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

## Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time

period se forth above. All comments will be made a part of the record. Comments and rquests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective January 1, 1975, to the transaction entered into on July 23, 1974, in which the Trust loaned $24,000 to the Employer.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which is the subject of this proposed exemption.

Signed at Washington, D.C., this 13th day of October 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 79–32284 Filed 10–18–79; 8:45 am]
BILLING CODE 4510–29–M

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[Application No. D–1279]

## Proposed Exemption for Certain Transactions Involving Samaritan Medical Clinic, Inc.; Profit Sharing Plan and Samaritan Medical Clinic, Inc., Pension Plan

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of limited partnership units owned by the Samaritan Medical Clinic, Inc. Profit Sharing Plan and the Samaritan Medical Clinic, Inc. Pension Plan (the Plans) to SRMC Rentals, a party in interest. The proposed exemption, if granted, could affect participants and beneficiaries of the Plans and other persons participating in the transaction.

**DATES:** Written comments and requests for a public hearing must be received by the Department of Labor on or before November 16, 1979.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–1279. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Alan H. Levitas, of the Department of Labor, telephone (202) 523–8884. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plans' trustees, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. On August 8, 1975, the Plans' trustees purchased 20 limited partnership units in the Century Properties Fund X (issued by Fox & Carskadon, a real estate syndicator) at $500 each for a total of $10,000. The trustees were led to believe by their investment adviser that they were purchasing promissory notes issued by Fox & Carskadon rather than the partnership interest they in act purchased. Upon realizing their error, attempts were made, to no avail, to have the investment adviser rescind the purchase. In August 1977, legal counsel for the Plans filed a complaint with the Securities and Exchange Commission, however, litigation efforts were subsequently dropped due to the excessive costs involved in such a course of action.

2. When legal counsel for the Plans contacted Fox & Carskadon regarding sale of the Plans' partnership units and the fair market value of such units, representatives of Fox & Carskadon provided the following information:

(a) No active market exists for the sale of shares of existing real estate syndicates due to the nature of the investment and requirements of regulatory agencies;

(b) Fox & Carskadon cannot determine a fair market value of an interest in a partnership prior to the liquidation of all properties held by the partnership; and

(c) The only valuation Fox & Carskadon can provide for the partnership units is a "resale value." The last resale of Century Properties Fund X limited partnership units occurred on February 28, 1979, at which time the buyer and seller agreed upon a value of $250 per unit and an eight percent commission.

In addition, a broker contacted by legal counsel indicated that, if a buyer could be found, the probable sales price for the Plans' partnership units would be approximately $5,000.

3. The partnership units represent approximately 4.5% of the Plans' assets. Since the date of purchase, the partnership shares have generated a taxable loss every year.

4. The Plans wish to sell their limited partnership interests in Century Properties Fund X to SRMC Rentals, a party in interest, for the sum of $16,500, payable in cash, with no sales commission to be paid. SRMC Rentals is a partnership composed of three individuals, Messrs. James Radcliff, Peter Sabatino and Jeffrey Brown, who are also the trustees of the Plans and stockholders in Samaritan Medical Clinic, Inc.

5. The method of determining the $16,500 purchase price for the shares

was arbitrary since there is no reasonable method of determining the fair market value at this time. Century Properties Fund X has a portfolio property mix of two apartment buildings, six shopping centers and two office buildings. Accordingly, the costs involved in obtaining independent appraisals on the underlying assets of Century Properties Fund X would be prohibitive for the Plans. The Plans, however, will receive a reasonable profit on the sale and the price offered by SRMC Rentals is far in excess of the price paid in the February 28, 1979 transaction referred to by Fox & Carskadon.

6. In summary, the applicants represent that the proposed sale of the partnership units meets the statutory criteria for an exemption under section 408(a) of the Act, because (1) it is a one time transaction for cash, (2) it will benefit the Plans because they will be able to dispose of a poor investment, (3) the selling price will provide the Plans with a substantial profit instead of a loss and (4) the shares, if sold to unrelated parties, can only be sold at a loss.

Notice to Interested Parties

Within ten days following publication in the Federal Register, notice of the proposed exemption will be hand delivered to all Plan participants, beneficiaries and other interested persons with a statement advising them of their right to comment and request a public hearing within the period set forth in the notice of proposed exemption. Interested parties who are not available for hand delivery will have the notice mailed to them within the same ten-day period of time.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

3. Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

4. The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of the Plans' limited partnership units in the Century Properties Fund X to SRMC Rentals for the sum of $16,500, provided this price is not less than the fair market value at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 13th day of October, 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 79-32286 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-29-M

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[Application No. D-966]

## Proposed Exemption for Certain Transactions Involving the W. L. Gordon Co., Inc., Profit Sharing and Thrift Plan

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the donation to the W. L. Gordon Company, Inc. Profit Sharing and Thrift Plan (the Plan) and the lease-back until June 30, 1984, from the Plan of certain real property by the W. L. Gordon Company, Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Plan, the Employer and its principal shareholders (the Plan Committee), and the National Bank of Commerce of Dallas (the Trustee).

**DATES:** Written comments and requests for a public hearing must be received by the Department on or before November 16, 1979.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-966. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** C. E. Beaver, of the Department of Labor, telephone (202) 523-8882. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

### Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The fiduciaries of the Plan consist of the following: The Employer, the Trustee, and the Plan Committee. The Trustee is sole trustee of the Plan and possesses sole investment responsibility for the current and future assets of the Plan. The Trustee has authority to sell or exchange real property under its control and to enter into lease agreements on terms which are appropriate for and in the best interests of the participants and beneficiaries of the Plan. The Plan Committee is composed of four individuals of whom three are controlling persons of the Employer. The Chairman of the Plan Committee is Mr. Fred L. Arnold, who is President of the Employer and owner of 51 percent of its outstanding shares of stock. The other three members are Mr. John W. Green, Executive Vice President of the Employer and owner of 16.6 percent of its outstanding shares of stock; Mr. Carl B. Moore, Vice President of the Employer and owner of 13.3 percent of its outstanding shares of stock; and Ms. Rosemarie C. Benish, Secretary of the Employer and a non-owner of its stock. The balance of the outstanding shares of stock of the Employer is owned by other employees. The members of the Plan Committee have credited to their respective accounts in the Plan 33.1 percent of the Plan's total account balance.

2. The Employer is a food brokerage company which was incorporated in December 1959 in the State of Texas. It represents national food and consumer product companies in Texas and New Mexico. As of November 30, 1978, the Employer had total assets of $842,586, current liabilities of $131,994, and long term debt of $186,089 of which $30,661 was due within one year. Retained earnings were $491,788 and stockholders' equity was $63,385. For the year ended November 30, 1978, brokerage commissions amounted to $1,754,714 with net earnings of $148,701. This was an increase over the year ended November 30, 1977, when brokerage commissions were $1,659,049 with net earnings of $74,974. An explanation given for higher profits in 1978 was that no customary year-end supplementary contribution was made to the Plan in anticipation of the expenses which would result from the transactions for which the exemption is requested.

3. In 1978, it was estimated that the Plan had fifty participants. As of December 30, 1977, total assets of the Plan were evaluated at cost to be $899,891 and to have a market value of $908,060. As of September 25, 1978, the total assets of the Plan, evaluated at cost, had risen in value to $1,021,119, and had increased in market value to $1,025,957.

4. The Employer's principal place of business is an office site consisting of 5,000 square feet of building, constructed during 1966 upon a 13,808 square foot parcel of land. This real property is owned by the Plan and is leased to the Employer under the aegis of the transitional provisions of section 414(c)(2) of the Act. The Plan indicates that 31.6 percent of its total assets were invested in this real property in 1978. The Plan anticipates that the investment of its total assets in real property will decline in 1979 to 27.1 percent and continue to decline until 1988 when its real property investment will represent 9.1 percent of its total assets.

5. The transactions for which an exemption is requested involves a proposed donation of debt-free land with improvements, from the Employer to the Plan, and a lease-back, until June 30, 1984, of the same real property from the Plan by the Employer. The proposed donation would consist of 17,065 square feet of land with 4,764 square feet of new building constructed thereon. This new building and land would be contiguous to and an addition to the Employer's principal place of business at 4135 Office Parkway, Dallas, Texas.

6. The 17,065 square feet of land, which is proposed to be donated by the Employer to the Plan, has been determined, by an independent and qualified appraiser to have a value of $3.50 per square foot or a total value of $59,727.50. The new construction, which is proposed to be erected thereon, has been evaluated at total cost of $160,000 or $33.585 per square foot. The total value of the donation by the Employer to the Plan is $219,727.50.

7. The term of the proposed lease, from the Plan to the Employer, would run from the date of the grant of the proposed exemption until June 30, 1984, with an initial annual rent of $34,000. It was confirmed on September 7, 1979, by an independent and qualified realtor that this annual rent of $34,000 conforms with the rental market for such a facility. The proposed lease would provide that all taxes, assessments, insurance, maintenance, repairs, rebuilding, and utility expenses would be paid by the Employer. Rental adjustments would be made every 2½ years and such adjustments would be determined by the Trustee after an area analysis of rental rates.

8. In summary, the applicant represents that the proposed transactions of donating certain real property valued at $219,727 to the Plan and leasing-back the same real property by the Employer at a 12.47 percent annual return to the Plan meets the statutory criteria for an exemption under section 408(a) of the Act because (1) the independent Trustee would manage the real property and the leasing of the same to the Employer, (2) the Trustee has determined the proposed lease terms to be in the best interests of the participants and envisions no downward rental adjustments with the demand for office space in this rapidly growing area exerting upward pressures on rental and property values, (3) the Trustee would make future rental adjustments periodically by an area analysis of rental rates from information gained from its real estate staff and other real estate consultants, and (4) the fair market and rental values of the subject real property has been determined by independent and qualified appraisers.

### Notice to Interested Persons

On or before October 29, 1979, a copy of the notice and a statement that interested persons have a right to comment or request a hearing on the proposed exemption within the thirty

day period set forth in the notice will be provided interested parties. The interested parties to whom notice will be provided include all participants in the Plan, including retired participants, terminated participants who have nonforfeitable interests in the Plan, and beneficiaries of deceased participants, the Trustee, the Plan Committee; and the Employer. The notice to interested parties will be posted in all locations customarily used for employee communications and will be mailed to all other interested parties who are not currently employed by the Employer.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fudiciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fudiciary responsibility provisions of section 404 of the Act, which among other things require a fudiciary to discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and Section 4975(c)(1)(F) of the Code;

3. Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

4. The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the donation of certain real property, consisting of 17,065 square feet of land and 4,764 square feet of new building, located at 4135 Office Parkway, Dallas, Texas by the Employer to the Plan and the lease-back, until June 30, 1984, of the same real property by the Employer from the Plan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of October 1979.

Ian D. Lanoff,

*Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 79-32283 Filed 10-18-79; 8:45 am]
BILLING CODE 4510-29-M

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[Application No. D-1359]

## Proposed Exemption for a Certain Transaction Involving the Pension Plan for the Employees of Pilot Freight Carriers, Inc.

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan made from the Pension Plan for the Employees of Pilot Freight Carriers, Inc. (the Plan) to Terminal Warehouse Corporation (Terminal Warehouse), a party in interest with respect to the Plan, which was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect Terminal Warehouse and participants and beneficiaries of the Plan.

**DATES:** Written comments and requests for a public hearing must be received by the Department of Labor on or before November 16, 1979.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective January 1, 1975.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-1359. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department of Labor, telephone (202) 357-0040. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Terminal Warehouse, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue

Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

**Summary of Facts and Representations**

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Mr. R. Y. Sharpe of Winston-Salem, North Carolina, owns over 50 percent of the stock in Terminal Warehouse. He also owns over 50 percent of the stock in Pilot Freight Carriers, Inc. (the Employer) and is a participant in the Plan. The Plan has approximately 609 participants.

2. On August 1, 1974, the Plan loaned to Terminal Warehouse $500,000. The loan was secured by a duly recorded first lien deed of trust on real property located in Duval County, Florida, with an appraised value upon the date of the transaction of $707,500. The loan was for a period of 15 years, and the interest rate was 10.5 percent per annum. Long-term loans on commercial properties from other loan institutions were requiring interest rates of 10 percent to 10.5 percent at the time the subject loan was instituted.

3. On May 31, 1979, the balance outstanding on the loan was paid in full by Terminal Warehouse. All payments due under the obligation were made on time and in accordance with the terms of the obligation until the balance outstanding was paid.

4. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) The loan was adequately secured at all times by a duly recorded first lien on a parcel of real property appraised at a value far greater than the amount borrowed, (2) the interest rate of 10.5 percent on the loan was equal to or greater than the rates being charged at the time of the loan for similar loans by commercial institutions, and (3) all payments on the loan were made in a timely fashion pursuant to the loan agreement, and the loan has now been repaid in full.

Finally, the applicant represents that the loan was entered into prior to the effective date of the Act without knowledge that the loan would become prohibited on January 1, 1975. As soon as the applicant realized that the loan was a prohibited transaction, the applicant submitted a good faith request for an exemption instead of terminating the loan transaction.

**Notice to Interested Persons**

Notice of this proposal will be forwarded by the United States mail to the Plan Administrator and Trustee, and notice to all Plan participants will be made by posting on their employee bulletin boards within ten days of the publishing of the pendency of this proposed exemption.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1975, to the loan agreement entered into on August 1, 1974, in which the Plan loaned $500,000 to Terminal Warehouse.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 15th day of October 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 79-32285 Filed 10-18-79; 8:45 am]
BILLING CODE 4510-29-M

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[Application No. D-1459]

## Proposed Exemption for Certain Transactions Involving the Eagle Metals Co. Profit Sharing Plan

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of certain real property in Portland, Oregon by the Eagle Metals Company Profit Sharing Plan (the Plan) to Mr. William Anderson a party in interest with respect to the Plan. The proposed exemption, if granted, would affect participants and benficiaries of the Plan and other persons participating in the transaction.

**DATES:** Written comments and requests for a public hearing must be received by the Department of Labor on or before November 16, 1979.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1459. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**FOR FURTHER INFORMATION CONTACT:** Richard Small, of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by J. B. Hissong, P. C. Holden, and J. P. Martin (the Trustees), the Trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

## Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined contribution profit sharing plan with 33 participants. Eagle Metals Company (Eagle), the employer which established the Plan, was acquired by Alcan Aluminum Corporation (Alcan) on May 17, 1978. The Plan was terminated by Eagle immediately prior to such acquisition. By reason of this termination, it has become necessary to liquidate promptly all of the assets of the Plan in order to permit the distribution of Plan accounts to the former plan participants. The Trustees, who are designated by Alcan, are responsible for managing the liquidation.

2. Included in the assets of the Plan is certain real property located at 1211 North Loring Street in Portland, Oregon (the Property). Most of the Property was acquired in 1966, with a small additional parcel acquired in 1975. All of the Property was acquired from a party who was unrelated to the Plan. The Property is carried on the books of the Plan at a cost value of $152,476. The Property is located in the industrial zone of Portland, Oregon and the immediate neighborhood is a mixture of heavy industrial and general industrial businesses. By lease dated November 2, 1965 the Plan leased the Property to the Eagle Metals Company, Inc. of Oregon (Eagle Oregon) for a term of 10 years commencing April 1, 1966 and ending March 31, 1976. By agreement of said parties dated November 28, 1975 the lease was extended to March 31, 1981 under the original terms and conditions thereof, adding however the additional parcel acquired in 1975, and increasing the rental thereunder, effective January 1, 1976. The Trustees represent that while the Property was leased to Eagle Oregon, which was related to Eagle by certain common stock ownership, the ownership does not appear to give rise to a party in interest relationship.

3. The Trustees of the Plan are proposing to sell the Property without paying a real estate commission for $380,000 cash to Mr. William Anderson. Mr. William Anderson is the son of Mr. Charles Anderson, who formally was the largest individual shareholder of Eagle (approximately 23%), and who was a fiduciary to the Plan at the time the proposed transaction was negotiated. The sales price for the Property was determined by an independent appraisal.

4. The Trustees represent that the proposed sale of the Property will satisfy section 408(a) of the Act as follows: (1) It will be a one-time transaction for cash; (2) it will allow the plan to sell the Property at a substantial profit based upon a price which was established by an independent appraisal; and (3) it will allow the Plan to sell the Property without paying a real estate sales commission.

## Notice to Interested Persons

Notice to interested persons will be provided on or before October 29, 1979. Notification of interested persons will include a copy of the Notice of Pendency and will be delivered by certified mail. Interested persons to whom notice will be provided will be all Plan participants on the termination date of the Plan, all former Plan participants for whom an account balance was maintained under the Plan on the termination date of the Plan and the individuals who previously comprised the Trustee and Administrator of the Plan as identified in the application.

## General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other

provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in the ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) the Code shall not apply to the cash sale by the Plan of certain real property located at 1211 North Loring Street in Portland, Oregon for $380,000 to Mr. William Anderson provided that this amount is at least the fair market value of the property.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of October 1979.

Ian D. Lanoff,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 79-32286 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL COMMISSION ON AIR QUALITY

### Meeting Scheduled for November 13

The National Commission on Air Quality hereby gives notice of a meeting scheduled for November 13. The meeting will be held in Room 4200 of the Dirksen Senate Office Building, located at First Street, N.E., and Constitution Avenue, N.E., Washington, D.C., and will begin at 1:00 p.m.

The agenda for the meeting will include the following items:

1. Approval of the minutes of the October 5, 1979 Commission meeting.
2. Discussion of activities of the Commission's Research Committee.
3. Consideration and selection of alternative air pollution control policies to be applied in the Commission's regional studies.

Questions about the meeting should be directed to Mr. Morris A. Ward at (202) 245-6355.

National Commission on Air Quality.

William H. Lewis, Jr.,

*Director.*

[FR Doc. 79-32405 Filed 10-18-79; 8:45 am]

BILLING CODE 6820-98-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Ad Hoc Subcommittee on the Three Mile Island, Unit 2 Accident Implications Re Nuclear Powerplant Design; Meeting

The November 7, 1979 meeting of the ACRS Ad Hoc Subcommittee on the Three Mile Island, Unit 2 Accident—Implications Re Nuclear Power Plant Design has been rescheduled to be held on November 5, 1979 in Room 1046, 1717 H St., NW, Washington, DC 20555. Notice of this meeting was published October 18, 1979.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Monday, November 5, 1979, 8:30 a.m. until the conclusion of business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendation to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the nuclear industry, various utilities, and their consultants, and other interested persons, regarding the implications of the TMI-2 Accident.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard K. Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT before, and EST after, October 28, 1979.

Background information concerning items to be discussed at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, PA 17126.

Dated: October 15, 1979.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 79-32113 Filed 10-18-79; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards, Subcommittee on Metal Components; Joint Meeting

The ACRS Subcommittee on Metal Components will hold an open meeting

on November 5, 1979, in Room 1167, 1717 H St., NW., Washington, DC 20555.

In accordance with the procedures outlined in the Federal Register on October 1, 1979 (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Monday, November 5, 1979, 8:30 a.m. until the conclusion of business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommitee will hear presentations by and hold discussions with representatives of the NRC Staff, the Boiling-Water Reactors (BWR) Owners Group, and their consultants, regarding the matter of BWR pipe cracks. ACRS generic items pertinent to the purview of this Subcommittee such as stress corrosion cracking in BWR piping, and inservice inspection of reactor coolant pressure boundary will also be addressed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Elpidio G. Igne, (telephone 202/634-3314) between 8:15 a.m. and 5:00 p.m., EDT before, and EST after, October 28, 1979.

Dated: October 15, 1979.

John C. Hoyle

*Advisory Committee Management Officer.*

[FR Doc. 79-32112 Filed 10-18-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8745]

## Availability of Environmental Report and Intent to Prepare a Draft Environmental Impact Statement Concerning Issuance of a Source Material License for the Bison Basin Project To Be Located in Fremont County, Wyo.; Ogle Petroleum, Inc.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent to Prepare a Draft Envrionmental Impact Statement.

SUMMARY: 1. Description of the Proposed Action—Ogle Petroleum, Inc., proposes to construct and operate an in-situ uranium extraction facility at the Bison Basin Project site. This project is located in southwestern Wyoming approximately 50 miles south of Riverton, and 30 miles southwest of Jeffrey City. The 400,000 pounds of uranium per year capacity in-situ extraction facility will be located in Sweetwater River Drainage Basin, Section 25, T27N, R97W, Fremont County, Wyoming.

2. The principal alternatives currently planned to be considered include alternatives of siting, waste management methods, energy sources, and the alternative of no licensing action.

3. The scoping process will include a meeting to be held in the Lodge Room of the Elks, 207 E. Main Street, Riverton, Wyoming, on November 1, 1979, at 10 a.m. This meeting will provide for a briefing of interested parties concerning the proposed action and alternatives and opportunity for comment on the scope of the proposed statement. The participation of the public and all interested government agencies is invited. Copies of this notice will be mailed to all affected federal, state, and local agencies, and other interested persons. Written comments concerning the scope of the proposed statement will be accepted until November 9, 1979.

4. The DEIS is expected to be available to the public for review and comment in February, 1980.

5. The applicant's Environmental Report and Appendix and any subsequent documents will be available for inspection and copying at the Public Document Room (PDR), 1717 H Street, N.W., Washington, D.C. 20555. Copies of the Environmental Report and Appendix are also being provided to the State Planning Coordinator, Office of the Governor, 2320 Capitol Avenue, Cheyenne, Wyoming 82002.

Questions about the proposed action, DEIS, or scoping meeting and any written comments should be directed to R. S. Kaufmann, U.S. Nuclear Regulatory Commission, Division of Waste Management, 483-SS, Washington, D.C. 20555, Phone (301) 427-4103.

Dated at Silver Spring, Maryland, this 9th day of October, 1979.

For the U.S. Nuclear Regulatory Commission.

Ross A. Scarano,

*Chief, Uranium Recovery Licensing Branch, Division of Waste Management.*

[FR Doc. 79-32219 Filed 10-18-79; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards, Subcommittee on the Sequoyah Nuclear Power Station; Meeting

The ACRS Subcommittee on the Sequoyah Nuclear Power Station will hold a meeting on November 5, 1979, in Room 1046, 1717 H Street, N.W., Washington, DC 20555 to review the application of the Tennessee Valley Authority (TVA) for a permit to operate Units 1 and 2 of this station.

In accordance with the procedures outlined in the Federal Register on October 1, 1979 (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: Monday, November 5, 1979, 8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, TVA, and their consultants, pertinent to this review.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to

close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT (EST after October 28, 1979).

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated: October 16, 1979.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 79-32570 Filed 10-18-79; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974; Adoption of Systems of Records

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice; Adoption of Systems of Records.

**SUMMARY:** The Office of Personnel Management (OPM) has previously published a notice of several proposed Privacy Act systems of records. The purposes of this notice are to: (1) Identify certain of those proposed systems of records, where no comments were received, as being adopted; (2) identify some non-substantive changes to those adopted; and (3) serve in part to meet the Privacy Act requirement for annual publication of notices of systems of records. This action is required by the creation of OPM by the President's Reorganization Plan No. 2 of 1978, and to implement the Privacy Act, and has the effect of establishing systems of records for use by OPM and agencies.

**EFFECTIVE DATE:** October 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** William H. Lynch, Work Force Records Management Branch, Agency Compliance and Evaluation (202) 254-9778.

**SUPPLEMENTARY INFORMATION:** When the Office of Personnel Management proposed its systems of records (44 FR 30836, May 29, 1979) identified as OPM/INTERNAL-1 through OPM/INTERNAL-22, OPM/CENTRAL-1 through OPM/CENTRAL-14, and OPM/GOVT-1 through OPM/GOVT-5, a Report on New Systems was also filed with OMB and Congress. The required 60-day advance notice period ended on July 30, 1979. Comments were received concerning only some of the proposed systems, which are not being adopted by this notice, and are still under consideration. Adoption of those systems will be announced at a later date. While there were no comments received pertaining to the systems adopted at this time, three notices do require non-substantive text changes based on intra-agency coordination and several systems have received new numerical designations. Where no changes to the text of the notice are required, only the title, new numerical designation, and specific Federal Register page number are cited. Where text changes occur, the title and Federal Register page number will be cited and the text of the changed portion of the notice will be shown. Where the adopted system completely replaces an existing Civil Service Commission system (in some cases the CSC system must remain in effect to cover records maintained by the Merit Systems Protection Board) this is so noted. The systems adopted appear below.

Office of Personnel Management.

Roderick S. Speer,

*Assistant Issuance System Manager.*

The following systems are adopted as published, with, in some cases, new numerical designations as the only change:

OPM/INTERNAL-1 Defense Mobilization Emergency Cadre Records (44 FR 30836).

OPM/INTERNAL-2 Negotiated Grievance Procedure Records (44 FR 30839, formerly OPM/INTERNAL-3).

OPM/INTERNAL-3 Security Office Control Cards (44 FR 30840, formerly OPM/INTERNAL-4).

OPM/INTERNAL-4 Employee Occupational Health Program Records (44 FR 30841, formerly OPM/INTERNAL-5).

OPM/INTERNAL-5 Pay, Leave, and Travel Records (44 FR 30842, formerly OPM/INTERNAL-6).

OPM/INTERNAL-7 Complaints and Inquiries Records (44 FR 30845, formerly OPM/INTERNAL-8).

OPM/INTERNAL-8 Employee Assistance Program Records (44 FR 30851, formerly OPM/INTERNAL-13).

OPM/INTERNAL-9 Employee Locator Card File (44 FR 30853, formerly OPM/INTERNAL-15).

OPM/INTERNAL-10 Employee Production Records (44 FR 30854, formerly OPM/INTERNAL-16).

OPM/INTERNAL-11 Investigator Performance Records (44 FR 30855, formerly OPM/INTERNAL-17).

OPM/INTERNAL-12 Speaker Resume and Clearance Records (44 FR 30856, formerly OPM/INTERNAL-18).

OPM/INTERNAL-13 Motor Vehicle Operator and Accident Report Records (44 FR 30857, formerly OPM/INTERNAL-19).

OPM/CENTRAL-1 Civil Service Retirement and Insurance Records (44 FR 30865, formerly OPM/CENTRAL-4). The former CSC-4 Civil Service Retirement Records system is completely replaced by this system.

OPM/CENTRAL-5 Intergovernmental Personnel Act Assignment Records (44 FR 30869, formerly OPM/CENTRAL-7).

OPM/CENTRAL-6 Administrative Law Judge Application Records (44 FR 30871, formerly OPM/CENTRAL-8).

OPM/CENTRAL-7 Litigation and Claims Records (44 FR 30872, formerly OPM/CENTRAL-9).

OPM/CENTRAL-8 Privacy Act/Freedom of Information Act (PA/FOIA) Case Records (44 FR 30874, formerly OPM/CENTRAL-10).

OPM/CENTRAL-9 Personnel Investigations Records (44 FR 30876, formerly OPM/CENTRAL-11). The former CSC/GOVT-4 Personnel Investigations Records system is completely replaced by this system.

OPM/CENTRAL-10 Directory of Federal Executive Institute Alumni (44 FR 30878, formerly OPM/CENTRAL-12).

OPM/CENTRAL-11 Presidential Management Intern Program Records (44 FR 30879, formerly OPM/CENTRAL-13). The former CSC-9 Presidential Management Intern Program Records system is completely replaced by this system.

OPM/CENTRAL-12 Federal Automated Career System (FACS) Records (44 FR 30880, formerly OPM/CENTRAL-14).

**OPM/INTERNAL—6**

*System name:*

Appeal and Administrative Review Records (44 FR 30844, formerly OPM/INTERNAL—7).

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**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains records relating to various appeal or administrative review procedures available to OPM employees. These appeals or

administrative review procedures include adverse action appeals initiated prior to September 9, 1974 which were processed under the Office's internal appeals system; reconsiderations of acceptable level of competence determinations for within-grade increases; impartial reviews of performance ratings; and internal appeals of position classification decisions. The system also contains records and documentation of the action upon which the appeal or review procedure was based (e.g. 90-day notices of warning of unsatisfactory performance rating).

Note.—This system does not include:

a. Appeal records covered by the Merit Systems Protection Board's system of Appeals Records; or

b. Records for grievances processed under the grievance system negotiated by the Office and a recognized labor organizaton, which are covered under OPM/INTERNAL—3 Negotiated Grievance Procedure Records system; or

c. Position classification review and retained rate of pay appeal records, which are covered under the OPM/GOVT—9 Position Classification Review and Retained Rate of Pay Appeal Records.[1]

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**OPM/CENTRAL—3**

*System name:*

Federal Executive Development Progam Records (44 FR 30867, formerly OPM/CENTRAL—5). The former CSC–4 Federal Executive Development Program Records system is completely replaced by this system.

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**SYSTEM MANAGER(S) AND ADDRESS:**

Associate Director for Executive Personnel and Management Development, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C., 20415.

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**OPM/CENTRAL—4**

*System name:*

Executive Assignment System and Executive Inventory Records (44 FR 30868, formerly OPM/CENTRAL—6). The former CSC–3 Executive Assignment and Inventory Records system is completely replaced by this system.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

a. Current and former incumbents of positons at grades GS–16 through GS–18 under the Executive Assignment System or current and former incumbents of positions at equivalent levels over which the OPM exercise at least partial approval authority.

b. Current and former incumbents of positions compensated under the Executive Schedule.

c. Current and former incumbents of positions at grades GS–16 through GS–18, or equivalent levels, when the individual noncompetitively acquires status under Civil Service Rule III.

d. In addition to the individuals indicated in "a" above, other current and former employees in the executive branch currently or formerly in grades 15 through 18 under the General Schedule, or at equivalent pay levels under other salary systems who are not specifically excepted from inventory coverage.

Note.—The principal groups of employees who are excepted from inventory coverage, and thus are not covered by this system, include:

(1) employees in commissioned services systems;

(2) Administrative Law Judges at grade GS–15;

(3) employees of the Panama Canal Company, the Canal Zone Government, the Soldiers' Home, the Federal Reserve Board, TVA, and the White House Office;

(4) employees involved in intelligence matters where the release of personnel information would be detrimental to national security;

(5) Foreign nationals employed outside the United States;

(6) employees hired on a consultant, part-time, or intermittent basis;

(7) Employees of the United States Postal Service; and,

(8) employees in the Department of Medicine and Surgery, Veterans Administration, appointed under title 38 of the United States Code as physicians, dentists, nurses, podiatrists, and optometrists.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records include:

a. Demographic information including minority data and background data on experience, education, publications, awards and career interests of employees in the inventory.

b. A record of referral indicating individuals referred and the position and agencies to which the individuals were referred.

c. Information about the qualifications of appointees.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 1302, 3104, 3301, 3302, 3309, 3313, 3318, 3324, 3325, 3326, 5114, 5311, 5333, 5532, 5723; 10 U.S.C. 1581; P.L. 81–691 and P.L. 85–726; and E.O. 11315 and 9397.

**PURPOSE:**

These records are used to assist the Office in carrying out its responsibilities under title 5, United States Code, and the Office Rules and Regulations promulgated thereunder, with regard to the establishment and filling of positions at grades 16 through 18 under the General Schedule, positions under the Excutive Schedule, or equivalent levels under the other salary systems; and to provide data used in policy formulation, program planning, research studies, and statistical reports. The Office may use these records to locate individuals for personnel research.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To identify and refer qualified current and former Federal employees to Federal agencies for vacancies at grades GS–16 through GS–18, or equivalent levels.

b. To refer qualified current or former Federal employees or retirees to State and local governments and international organizations for employment considerations.

c. To provide an employing agency with extracts from the records of that agency's employees in the inventory.

d. To provide information required in the annual reports to Congress mandated by 5 U.S.C. 5114 regarding positions at GS–16, GS–17, and GS–18 levels, and the incumbents of these positions and by 5 U.S.C. 3104 regarding incumbents of scientific or professional positions.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual indentifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually indentifiable by inference.

[1] OPM/GOVT—9 will be published at a later date.

g. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

h. To the National Archives and Records Service (General Services Administration) for records managment inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders, and on magnetic disks and tapes, punched cards, and microfiche.

* * * * *

**SAFEGUARDS:**

Records are maintained in lockable metal filing cabinets or in a secured room with access limited to those whose official duties requires access and access to the computerized records is limited to those whose official duties requires access. Access to minority data is restricted to specially designated OPM personnel.

**RETENTION AND DISPOSAL:**

Records are retained so long as the individual continues to occupy a covered position and are destroyed 5 years after the employee leaves a covered position. Manual records are shredded or burned while magnetic disks and tapes are erased.

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[FR Doc. 79-32046 Filed 10-18-79 8:45 am]
BILLING CODE 6325-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 16276; SR-Amex-79-13; October 12, 1979]**

### American Stock Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is herby given that on October 3, 1979, the American Stock Exchange, Inc. (the "Amex") filed with the Commission copies of a proposed rule change (SR-Amex-79-13) which would amend Amex Rule 114 governing Registered Equity Market Makers ("REMMs") to incorporate certain changes requested by the Commission at the time the Commission approved a nine-month extension of the effectiveness of Rule 114 until April 30, 1980.[1] The proposed changes would add the following paragraphs to the commentary accompanying Amex Rule 114:

..09 No registered Equity Market Maker shall effect proprietary trades on the Floor of the Exchange in his registered securities in any capacity other than as a Registered Equity Market Maker.

.10 All orders of a Registered Equity Market Maker acting in his capacity as such which are given to another member for execution shall be clearly marked by the Registered Equity Market Maker, in a manner prescribed by the Exchange, (i) to indicate that such orders are subject to the provisions of Rule 114, and (ii) to reflect by appropriate notations whether the Registered Equity Market Maker is acquiring or liquidating a position (and, in the latter case, whether the liquidation is at a loss).

.11 The executing floor broker or specialist who is given a properly marked order by a Registered Equity Market Maker shall have the responsibility to ensure, to the extent practicable, that such order is executed in the appropriate manner.

.12 An exchange member holding an order for a Registered Equity Market Maker may not be held to the market at a particular price if the execution of the order at that price would contravene Rule 114.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-79-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of finding thereof, in that the proposed modifications are designed to correct certain deficiencies in Amex Rule 114 as currently written and to enhance the ability of the Amex to monitor the REMM pilot program which is scheduled to expire on April 30, 1980, if the Commission does not approve Rule 107 on a permanent basis. These modifications were specifically requested of the Amex by the Commission at the time it approved a nine-month extension of Amex Rule 114.

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.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32377 Filed 10-18-79; 8:45 am]
BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 16049 (July 27, 1979). This release also approved a nine-month extension of Rule 107 of the New York Stock Exchange governing Registered Competitive Market Makers.

**[Rel. No. 21246; 70-6363; October 12, 1979]**

### Appalachian Power Co.; Proposed Short-Term Borrowing

In the matter of Appalachian Power Company, 40 Franklin Road, Roanoke, Virginia 24009.

Notice is hereby given that Appalachian Power Company ("Appalachian"), a subsidiary electric utility company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed

with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete description of the proposed transaction.

Appalachian requests that from the date of the granting of this application to January 1, 1981, the exemption from the provisions of Section 6(a) of the Act, afforded by the first sentence of Section 6(b), be increased to the extent necessary to cover the sale of notes to banks and commercial paper to a dealer in commerical paper in an aggregate amount not to exceed $200,000,000, provided that none of such notes to banks and commercial paper shall mature later than June 30, 1981.

Appalachian has credit arrangements with 95 banks which total $352,490,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable by Appalachian at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed, generally not in excess of 10% of the line of credit and 10% of the amount borrowed. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commerical rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable by Appalachian at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances of 5% of the line of credit and to pay to a fee for the availability of the line of credit, which is equal to 4% of the bank's prime commercial rate then in effect times the size of the line. The combination of a 5% compensating balance and a fee is generally equivalent to a compensating balance not in excess of 10% of the line of credit made available. In addition, Appalachian must pay interest on the borrowing at the rate of up to 108.5% of the bank's prime commercial rate then in effect. The total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. It is stated that if the balanced maintained and the fees paid by Appalachian with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Appalachian, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 16.6% on the basis of a prime commercial rate of 13¼%.

With respect to Class III banks, Appalachian has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Appalachian, but represent merely the ability of Appalachian to request unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance; any such borrowings will be prepayable by Appalachian at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case by case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rates, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

Appalachian also proposes to issue commercial paper, in the form of promissory notes, in denominations of not less than $50,000 nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after the date of issue; such notes will not be prepayable prior to maturity. The commercial paper notes will be sold directly by Appalachian to Lehman Commercial Paper, Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper will be issued having a maturity of more than 90 days if such commercial paper would have an effective interest cost which exceeds the effective interest cost at which Appalachian could borrow from commercial banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the dealer in advance, at a discount rate of ⅛ of 1% less than the discount rate at which such notes were purchased from Appalachian. It is expected that such customers will hold such commercial paper notes to maturity, but if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its nonpublic list.

The proceeds of the short-term debt incurred by Appalachian will be used to pay the general obligations of Appalachian, including expenses incurred in its various construction projects. The estimated cost of its construction program for 1980 is approximately $340,048,000.

Appalachian claims exemption from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof, and requests exemption from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(11) therefor.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $12,000. It is stated that the State Corporation Commission of Virginia has jurisdiction over the proposed transactions and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 6, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request than he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personnally or by mail upon the applicant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed, with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act,

or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32374 Filed 10-18-79; 8:45 am]

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[Rel. No. 21248; 70-6361]

## Appalachian Power Co., et al.; Proposed Issuance and Sale of Notes to Banks by Holding Company and Capital Contributions by Holding Company to Subsidiaries

October 12, 1979.

In the matter of Appalachian Power Company, 40 Franklin Road, Roanoke, Virginia 24009; Indiana & Michigan Electric Company, 2101 Spy Run Avenue, Fort Wayne, Indiana 46801; Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101; Kingsport Power Company, 40 Franklin Road, Roanoke, Virginia 24009; Ohio Power Company, 301 Cleveland Avenue, SW., Canton, Ohio 44701; Wheeling Electric Company, 51 Sixteenth St., Wheeling, West Virginia 26003; American Electric Power Company, Inc., 2 Broadway, New York, New York 10004.

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Indiana and Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling Electric"), AEP's subsidiary public utility companies, have filed a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) and 12 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

AEP requests that it be permitted to issue and sell from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper, respectively, in an aggregate amount not to exceed $165,000,000 outstanding at any one time. None of such notes or commercial paper shall mature later than June 30, 1981. The notes to be sold to banks will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance and will be prepayable at any time without premium or penalty. AEP proposes to issue and sell such short-term notes to 10 banks with lines of credit in an aggregate amount of $208,000,000. The banks and the line of credit which AEP has established at each such bank is as follows:

| Name | Amount |
|---|---|
| Chemical Bank, New York, N.Y | $50,000,000 |
| The Chase Manhattan Bank (National Association), New York, N.Y | 50,000,000 |
| Manufacturers Hanover Trust Company, New York, N.Y | 25,000,000 |
| Morgan Guaranty Trust Company of New York, New York, N.Y | 18,000,000 |
| Bankers Trust Company, New York, N.Y | 9,000,000 |
| The Bank of New York, New York, N.Y | 6,000,000 |
| The Cleveland Trust Company, Cleveland, Ohio | 7,000,000 |
| First Pennsylvania Bank and Trust Company, Philadelphia, Pa | 9,000,000 |
| Mellon Bank, N.A., Pittsburgh, Pa | 9,000,000 |
| Credit Lyonnais, New York, N.Y | 25,000,000 |
| Total | 208,000,000 |

AEP will be required to either (1) maintain compensating balances of 10% of the bank lines made available and additional compensating balances of 10% of the amount of any borrowings, or (2) maintain compensating balances and pay an annual fee for the availability of the line of credit, equivalent generally, in combination, to compensating balances not in excess of 10% of the line of credit made available. Where only compensating balances are required, borrowings under such lines will bear interest at an annual rate not greater than the bank's prime commercial rate in effect at the time of issuance. Where a combination of compensating balances and fees are required, borrowings under such lines would bear interest at a specified rate in excess of the bank's prime commercial rate in effect at time of issuance, but such specified rate would not be greater than the equivalent rate of borrowings bearing interest at the prime rate with compensating balance equal to 10% of the amount borrowed. If the full amount were borrowed from the banks, the effective interest cost to AEP would be 16.6%, based on a prime commercial rate of 13¼%.

AEP also has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to AEP but represent merely the ability of AEP to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable by AEP at any time without premium or penalty. No compensating balances are required. The interest rate, which is currently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from those banks listed above including the effect of any compensating balances and fees paid.

The commercial paper will be in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after the date of issue; none will be prepayable prior to maturity. The commercial paper notes will be sold directly to Lehman Commercial Paper Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which AEP could borrow from banks.

The Dealer will reoffer the commercial paper notes to not more than 200 of such Dealer's customers identified and designated in a non-public list prepared by such Dealer in advance, at a discount rate of ⅛ of 1% per annum less than the discount rate at which such commercial paper notes were purchased from AEP. It is expected that the customers of the Dealer will hold such commercial paper notes to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on the non-public list.

AEP also requests authority to make cash capital contributions from time to

time prior to January 1, 1981, to its public utility subsidiary companies in the following aggregate amounts: Appalachian, $100,000,000, I&M, $50,000,000, KPCO, $30,000,000, Kingsport, $1,000,000, Ohio Power, $30,000,000 and Wheeling Electric, $1,000,000.

The proceeds from the sale of the notes to banks and the commercial paper, together with other funds available to AEP, will be invested by AEP in its public utility subsidiaries to assist them in financing the costs of their respective construction programs and to retire their short-term debt. The construction programs of AEP's public utility subsidiary companies for 1980 are estimated as follows: Appalachian, $340,048,000, I&M $199,607,000, KPCO, $134,483,000, Kingsport, $4,824,000, Ohio Power, $231,521,000 and Wheeling Electric, $3,917,000.

AEP claims exemption from the competitive bidding requirements of Rule 50 for the proposed issuance of notes pursuant to paragraph (a)(2) thereof, and requests exemption from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(ii) thereof.

The fees and expenses to be incurred in connection with this proceeding are estimated at $12,000. It is stated that the State Corporation Commission of Virginia and the Public Service Commission of West Virginia have jurisdiction over the proposed capital contribution by AEP to Appalachian, that the Public Service Commission of West Virginia has jurisdiction over the proposed capital contribution by AEP to Wheeling Electric and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 6, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32225 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 10901; 812-4522]

## Daily Cash Accumulation Fund, Inc.; Application

October 12, 1979.

Notice is hereby given that Daily Cash Accumulation Fund, Inc. ("Applicant"), 3600 S. Yosemite Street, Denver, Colorado 80237, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on August 20, 1979, and an amendment thereto on October 9, 1979, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment objective is seeking the maximum current income that is consistent with low capital risk and the maintenance of liquidity. Applicant, as a matter of fundamental policy, invests only in bank or corporate debt obligations, commercial paper, U.S. Treasury bills and other short-term debt instruments issued by the U.S. Government or its agencies, maturing in or called for redemption in one year or less.

Applicant states that it values its portfolio in accordance with the views set forth in IC-9786, in that it will value debt securities with greater than 60 days remaining to maturity based upon current market quotations if readily available in such a manner as to take into account any unrealized appreciation or depreciation due to changes in interest rates and other factors which would influence the current fair value of such securities. For debt securities originally purchased with remaining maturities of 60 days or less, or debt securities originally purchased with maturities of in excess of 60 days but which currently have maturities of 60 days or less, the Applicant will use amortized cost valuation for the 60 days prior to maturity. Such amortization will be based upon the market or fair value of the securities on the 61st day prior to maturity, provided that such valuation is determined to be appropriate by the Board of Directors of the Applicant.

Applicant asserts that because of the short maturities of its portfolio, its net asset value per share has remained constant at $1.00 per share. Applicant states that it expects as a result of rounding the net asset value per share to the nearest $0.01 on a $1.00 price, the Applicant's price per share for the purpose of sales and redemption should remain at $1.00 but that this might not be the case in the absence of such rounding (i.e. if the Applicant is required to value its shares at 1/10 of 1% accuracy under IC-9786) if future investment considerations should dictate an increase in the average life of the Applicant's portfolio.

Applicant represents that its shareholders use its shares for investment of cash reserves or temporary cash balances and that the maintenance of a constant net asset value per share is a crucial factor in their purchase and holding of the Applicant's shares. Applicant asserts that by meeting the conditions set forth below and rounding its shares to the nearest one cent on a share value of one dollar, it can maintain a constant value for its shareholders along with full liquidity and a satisfactory yield. In addition, Applicant states that its adherence to the conditions set forth below will substantially reduce the likelihood of significant variation from a constant share price and the likelihood of any dilution of the assets and returns of incoming and outgoing shareholders.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or

repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant represents that its shareholders who purchased shares with the expectation of realizing Applicant's objective of seeking the maximum current income that is consistent with the stability of principal would be unfairly treated if the net asset value of their shares were to deviate from $1.00 per share. Further, the Applicant contends that a deviation which would cause an increase in the net asset value per share is unlikely, in view of the Applicant's practice of including realized and unrealized capital gains in dividends paid; however, should there be a deviation to below $1.00 per share, redeeming shareholders could lose not only all or part of the dividend income which they have earned but even part of their principal; particularly if a redemption takes place relatively soon after a purchase.

Applicant submits that to maintain the stability of its net asset value per share at $1.00, its Board of Directors, to the extent necessary, will consider the advisability of temporarily suspending the payment of dividends or making a capital gains distribution (if and to the extent that capital gains have not been reflected in prior dividends) to maintain a $1.00 price per share if the net asset value per share declines to a value below $0.997 or rises to a value of above $1.003 respectively. In addition, Applicant states that to maintain the stability of its price per share Applicant will adhere to the following conditions:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to assure to the extent reasonably practicable, taking into account current market conditions and Applicant's investment objectives, that the Applicant's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00.

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and the Applicant will not (i) purchase a portfolio security unless it (a) matures in one year or less; or (b) has been called for redemption in one year or less, provided that the Applicant's investment adviser shall have determined that the risk that such redemption will not take place is minimal; or (c) is subject to a repurchase agreement, the delivery under which does not exceed one year, provided that any such repurchase agreement shall be with a financial institution believed by the Applicant's investment adviser to present minimal credit risks; or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

Notice is further given that any interested person may, not later than November 6, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32224 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 21247; 70-6362]

## Indiana & Michigan Electric Co.; Proposed Short-Term Borrowing

October 12, 1979.

Notice is hereby given that Indiana & Michigan Electric Company ("I&M"), 2101 Spy Run Avenue, Fort Wayne, Indiana 46801, an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete description of the proposed transaction.

I&M requests that from the date of the granting of this application to January 1, 1981 the exemption from the provisions of Section 6(a) of the Act, afforded by

the first sentence of Section 6(b) of the Act, be increased to the extent necessary to cover the sale of notes to banks and commercial paper to a dealer in commercial paper in an aggregate amount not to exceed $150,000,000, provided that none of such notes to banks and commercial paper shall mature later than June 30, 1981.

I&M has credit arrangements with 42 banks which total $308,655,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. I&M's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed, generally not in excess of 10% of the line of credit and 10% of the amount borrowed. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable by I&M at any time without premium or penalty. I&M's credit arrangements with these banks require it to maintain compensating balances of 5% of the line of credit and to pay a fee, which is equal to 4% of the bank's prime commercial rate then in effect times the size of the line. The combination of 5% compensating balances and the fee is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. In addition, I&M must pay interest on the borrowings at the rate of up to 108.5% of the bank's prime commercial rate then in effect. The total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. It is stated that if the balances maintained and the fees paid by I&M with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by I&M, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 16.6% on the basis of a prime commercial rate of 13¼%.

With respect to the Class III banks, I&M has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to I&M, but represent merely the ability of I&M to request unsecured borrowings in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable by I&M at any time without premium or penalty. No compensating balances are required. The interest rate which is presently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

I&M also proposes to issue commercial paper, in the form of promissory notes, in denominations of not less than $50,000 nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after the date of issue; such notes will not be prepayable prior to maturity. The commercial paper notes will be sold directly by I&M to Lehman Commercial Paper Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper will be issued having a maturity of more than 90 days if such commercial paper would have an effective interest cost which exceeds the effective interest cost at which I&M could borrow from commercial banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance, at a discount rate of ⅛ of 1% less than the discount rate at which such notes were purchased from I&M. It is expected that such customers will hold such commercial paper notes to maturity, but if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its nonpublic list.

The proceeds of the short-term debt incurred by I&M will be used to pay the general obligations of I&M, including expenses incurred in its various construction projects. The estimated cost of I&M's net construction program (adjusted to reflect the proposed acquisition, subject to regulatory approvals, of a portion of the Rockport Plant by an affiliated company) for 1980 is approximately $199,607,000. This figure does not include estimated construction expenditures of approximately $15,000,000 to be incurred in 1980 by I&M's wholly owned subsidiary, Indiana & Michigan Power Company.

I&M claims exemption from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof and requests exemption from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(ii) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $12,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 6, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32226 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-16275; File No. SR-DTC-79-5]

## Depository Trust Co.; Proposed Rule Change; Self-Regulatory Organizations

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 October 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 a full interface between The Depository Trust Company (DTC) and Philadelphia Depository Trust Company (PHILADEP). This matter requires a determination pursuant to Rules 8c-1(g) and 15c2-1(g) under the Securities Exchange Act of 1934. The proposed rule change consists of the description of the operational procedures and the agreements attached as Exhibits 2(A), 2(B) and 2(C) to DTC's filing on Form 19b-4A, File No. SR-DTC-79-5.

### Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to establish an interface between DTC and PHILADEP through which a participant in either or both depositories may deliver securities eligible in both depositories by book-entry to any participant in the other depository, or to its own account in the other depository. Such book-entry deliveries may be free (without settlement) or for value. The interface will be similar to interfaces currently existing between DTC and Midwest Securities Trust Company, between DTC and Pacific Securities Depository Trust Company, and between DTC and New England Securities Depository Trust Company.

The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 (the Act) by increasing DTC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions in that the proposed rule change will allow participants with security positions in DTC or PHILADEP to deliver securities from DTC to PHILADEP or from PHILADEP to DTC by book-entry instead of by more expensive and less efficient physical delivery.

Comments on the proposed rule change have not been solicited or received.

DTC perceives no burden on competition by reason of the proposed rule change.

On or before November 23, 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 the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

October 12, 1979.

[FR Doc. 79-32380 Filed 10-18-79; 8:45 am]

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[Rel. No. 21252; 70-6364; October 15, 1979]

## Eastern Utilities Associates; Proposed Issuance and Sale of Common Shares Pursuant to Dividend Reinvestment Plan and Request for Exemption From Competitive Bidding

In the matter of Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107.

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, has filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

EUA presently has in effect an Automatic Dividend Reinvestment Service ("Dividend Service"), pursuant to which sharesholders may have cash dividends used to purchase EUA common shares and may make limited additional cash payments for the purchase of such shares, in either case through Citibank, N.A., as agent. EUA also presently has in effect a Payroll Investment Program ("Payroll Program"), pursuant to which eligible employees of EUA and its subsidiaries may authorize payroll deductions to be used for the purchase of EUA common shares through Advest Company as agent. Purchases of shares under both the Dividend Service and the Payroll Program are made by the agent in the open market at 100% of the market price, and all charges, including brokerage commissions, for such purchases are paid by EUA.

EUA proposes to modify and combine the Dividend Service and Payroll Program into a Dividend Reinvestment and Common Share Purchase Plan ("Plan"), in which holders of EUA's common shares and eligible employees of EUA and its subsidiaries may participate. The Plan will be completely separate from EUA's Employee Stock Ownership Plan which was authorized by order dated October 12, 1977 (HCAR No. 20208). Participants in the existing Dividend Service and Payroll Program will automatically become participants in the Plan, and shares held by Citibank, N.A., and Advest Company will be transferred to the Plan. EUA requests authorization to issue and sell from time to time through March 31, 1982, up to 200,000 of its authorized but unissued common shares pursuant to the Plan.

Participants in the Plan may (a) have cash dividends on all of their common shares automatically reinvested at a 5% discount; (b) have cash dividends on a portion of their common shares automatically reinvested at a 5% discount; (c) continue to receive cash dividends on their shares and make optional cash payments as often as monthly for investment (with no

discount); or (d) reinvest all or a portion of their cash dividends and make optional cash payments for investment (with no discount). EUA reserves the right to refuse optional cash payments by any participant in excess of $5,000 in any calendar quarter. While it is contemplated that shares purchased under the Plan will generally be original-issue shares, EUA reserves the right to direct the Plan's agent to apply dividends and optional cash payments to the purchase of common shares in the open market. All permanent, full time employees of EUA and its subsidiaries are eligible to join the Plan, and may arrange to make optional cash payments through regular payroll deductions (not to exceed $50 per week or $200 per month).

The price of common shares purchased through the reinvestment of dividends wil be 95% of the average of the closing sales price of EUA's common shares for the five trading days preceding the Investment Date as reported by *The Wall Street Journal* as composite transactions, and the price of shares purchased with optional cash payments will be 100% of said average price. The Investment Date will be the dividend payment date in months in which a dividend is payable, and the 15th of the month (or the next business day if the 15th is a Saturday, Sunday or holiday) in all other months.

A participant may change his option at any time, and may withdraw from the Plan at any time by written notice. Shares credited to a participant's account will be voted in accordance with his instructions.

The Plan will be administered by The First National Bank of Boston, or such successor bank or trust company as EUA shall from time to time designate, as agent. All costs of administration of the Plan will be paid by EUA. There will be no brokerage commissions or service charges to participants in connection with purchases under the Plan; a participant who requests that his shares be sold will be charged a brokerage commission and any transfer tax in connection with such sale.

The proceeds from the sale of common shares issued under the Plan will be used by EUA for investments in its subsidiaries, for the payment of its indebtedness or for other general purposes.

EUA requests an exemption from the competitive bidding requirements of Rule 50 for the proposed issuance and sale of common shares to the Plan pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may not later than November 9, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact for law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rule 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32378 Filed 10-18-79; 8:45 am]

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[Release No. 10899; 812-4507; October 11, 1979]

## Fidelity Trend Fund, Inc., et al.; Applications for Exemption

In the matter of Fidelity Trend fund, Inc., Fidelity Capital Fund, Inc., and Fidelity Management & Research Company, 82 Devonshire Street, Boston, Massachusetts 02109.

Notice of filing of application for an order pursuant to Section 17(B) of the Act exempting proposed transaction from the provisions of Section 17(a) of the Act and for an order pursuant to Section 17(d) of the act and Rule 17d-1 thereunder.

Notice is hereby given that Fidelity Trend Fund, Inc. ("Trend") and Fidelity Capital Fund, Inc. ("Capital") (hereinafter referred to as the "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Fidelity Management & Research Company ("FMR"), the investment adviser to the Funds (all of which are hereinafter referred to as the "Applicants"), have filed an application on July 18, 1979, and amendments thereto on September 20, 1979, and October 3, 1979, for an order of the Commission exempting from the provisions of Section 17(a) of the Act the proposed merger of Capital into Trend through the exchange of shares of Trend at net asset value, for the assets of Capital, and for an order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder permitting FMR and affiliated persons of FMR to participate in the proposed merger transaction. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Both Funds were organized on December 18, 1957, as Massachusetts corporations and both employ FMR, a Massachusetts corporation, which is a wholly-owned subsidiary of FMR Corporation, as their investment adviser. As of June 30, 1979, Trend had net assets of $426,008,300 and Capital had net assets of $184,131,561. FMR Corporation and its affiliated companies own 9546 shares of Trend and 25,355 shares of Capital. In addition, various retirement plans for employees of FMR Corporation and its affiliated companies own 41,655 shares of Trend and 31,552 shares of Capital. The Boards of Directors of the Funds are identical, and their officers are substantially identical. Accordingly, Applicants state that each Fund may be deemed to be under common control, and thus each Fund may be deemed to be affiliated persons of each within the meaning of Section 2(a)(3) of the Act. The Applicants also state that FMR is an affiliated person of each Fund within the meaning of Section 2(a)(3), and that FMR Corporation may be deemed to be an affiliated person of FMR within the meaning of that section.

Pursuant to approvals granted by their Board of Directors, the funds have entered into an Agreement of Merger ("merger") under which Capital is to be merged into Trend. In accordance with Massachusetts law, Trend shall be the surviving corporation, and the separate existence of Capital shall cease. The proposed merger is contingent, in part, upon (1) the approval of not less than a majority of the outstanding shares of

each Fund; (2) the receipt of a ruling of the Internal Revenue Service or an opinion of counsel to the effect that the merger will constitute a tax-free reorganization; (3) the granting of the order of the Commission requested by the application, and (4) approval of an amendment of the Trend Advisory and Service Contract with FMR by the shareholders of each Fund.

The number of shares to be issued to the shareholders of Capital will be determined by dividing the aggregate net asset value of Capital by the per share net asset value of Trend, all to be determined as of the close of the New York Stock Exchange on the effective date of the merger. On the effective date of the merger, all of the property and assets of Capital will be transferred to Trend and their outstanding shares will be converted into shares of Trend. Trend will also succeed to all of the liabilities and obligations of Capital. The valuation procedures to be used in determining the net assets of each Fund are the same. Each Fund will pay its respective expenses of consummating the merger, which are estimated to be approximately $100,000 in excess of the normal expenses of holding both Funds' annual meetings. Expenses common to both Funds will be allocated on the basis of respective net assets. Shortly prior to the effective date of the merger, Capital will distribute to its shareholders a dividend taxable to them consisting of substantially all of its then undistributed net taxable income. Such dividends will be paid in additional shares of Capital or, at the election of each shareholder, in cash.

As of May 31, 1979, Trend and Capital had capital loss carryovers of $18,579,000 and $118,875,000 respectively, and unrealized losses of $8,760,000 and $15,666,000, respectively. The Funds have determined that the merger should be consummated on the basis of the relative net asset values of the Funds, and that use of a tax adjustment formula is not appropriate. Applicants state that there is no assurance that the surviving Fund (Trend) will be able to fully utilize any capital loss carryovers of Capital before they expire. In addition, Applicants state that any adjustment would reflect only the potential value of a deferral of tax liability to shareholders of Trend and would be likely to have an uneven impact on individual Fund shareholders in view of their different holding periods and tax bases for Fund shares and the various tax rates to which they are subject.

Applicants state that Capital will retain any net taxable gains it may realize prior to the effective date of the proposed merger to the extent that such gains may be offset by its capital loss carryovers. Trend will retain only net taxable capital gains realized between January 1, 1979, up to the effective date of the merger. The application states that to the extent of such retained net capital gains, and to the extent that additional net capital gains are realized by the surviving Fund (Trend) during the period from the effective date of the merger throuth December 31, 1979, the close of its fiscal year, such gains will be offset by the surviving Fund's capital loss carryovers and will not be distributed. Former shareholders of Capital who will have became shareholders of Trend will therefore not incur any tax consequences with respect to any realized net capital gains which exist on December 31, 1979.

Trend's investment objective is to seek possible growth of capital through interpretation of all factors believed to influence securities prices and fundamental values. Capital's investment objective is to seek growth of capital. While neither Fund places any restrictions on the type of security which may be purchased, both Trend and Capital have historically invested primarily in common stocks. Both Funds consider income return incidental to their capital growth objective. Both Funds also have substantially identical investment restrictions. If the effective date of the proposed merger had been August 31, 1979, each share of Capital's outstanding common stock would have been exchanged for .345 shares of Trend common stock, and Trend would have issued a total of 6,865,890 shares for Capital's net assets. In the opinion of the officers of the Funds the combination of the securities portfolios of Trend and Capital as a result of the proposed merger will not require the sale of any material amount of acquired portofolio securities. At present, the officers of the Funds do not expect that the sale of any acquired portfolio securities will be required. However, such sales may be made in the ordinary course of portfolio management.

The shares of each Fund are the underlying investment for two unit investment trusts registered under the Act, Fidelity Capital Investment Plans and Fidelity Trend Investment Plans. Effective June 18, 1979, the sales charge on purchases of shares of Trend and Capital was eliminated, with investors being able to purchase shares on a no load basis. Since that date, holders of Trend and Capital Plans have been able to make investments under their plans without deduction of sales charges, but with deduction of custodian charges and service fees as provided under the Plans. These policies will remain unchanged with respect to Capital Plans and Trend Plans after the effective date of the merger, with holders of Capital Plans purchasing shares of Trend.

The form of Advisory and Service Contract between each Fund and FMR is identical. Both Contracts were adopted effective January 1, 1979, pursuant to shareholder approval and provide for a fee composed of three elements: a "Group" fee rate based on the assets of all registered investment companies advised by FMR; and individual Fund fee rate; and a performance adjustment based on the comparative investment performance of the Fund and the Standard & Poor's Daily Stock Price Index of 500 Common Stocks ("Index"). Based on the assets of the Funds in the Fidelity Group for the month of June, 1979, the annualized Group fee rate for both Funds was .4774%. The annual individual Fund fee rate for both Funds is .12%. These two elements constitute the basic fee. The Contracts provide that the basic fee rate is to be adjusted by .02% for each percentage point of difference between the performance of the Fund and the record of the Index, up to an annualized maximum of plus or minus .2%

The period for comparing the performance and determining the Fund's average net assets, against which the fee rate is applied, is the prior 36 months. Until the Contracts have been in effect for 36 months, certain interim provisions are made. Under these provisions, (i) for each of the first 11 months the basic fee rate is applied to the Fund's average net assets for that month, (ii) commencing with the twelfth month the Fund's assets are averaged from January 1, 1979, through the month in question, and (iii) no performance adjustment will be made until December, 1979, at which point the performance period will be January 1, 1979, through the end of the month in question. After the Contract has been in effect for 36 months a "rolling 36-month period" will be used.

If the effective date of the proposed merger is November 30, 1979, the first month of the surviving Fund's performance adjustment and "average net assets" would include 11 months of Trend's sole performance and "average net assets" and one month of the combined Fund's performance and "average net assets". In order to generally equalize the performance adjustment of the combined Fund with the performance adjustments which would have been made for the two

Funds separately, the Directors of the Funds have approved for submission to shareholders a proposed amendment to the Trend Advisory and Service Contract. Under this amendment a merger of Trend with another investment company advised by FMR which utilizes a performance adjustment would be treated as follows:

(a) The average net assets of Trend, for purposes of calculating the basic fee, shall include the average net assets of the acquired Fund on the date of the merger transaction (measured over the acquired Fund's performance period through the date of the transaction) as if they had been included in Trend from the first day of Trend's performance period existing on the date of the transaction through the date of the merger transaction, and

(b) For purposes of determining the performance adjustment in any month, the net asset value of Trend on the first day of the applicable performance period shall be adjusted based on the dollar-weighted investment performance of Trend and Capital for the period from the first day of such performance period through the date of the merger transaction.

In addition, under the proposed amendment a merger of Trend with an entity not previously advised by FMR, or if advised by FMR, not utilizing a performance adjustment will be treated as follows:

(a) For purposes of determining the basic fee, the average net assets of Trend shall include the aggregate net asset value of such other entity on the date of the merger transaction as if such value had been included in Trend from the first day of Trend's performance period existing on the date of the transaction through the date of the merger transaction. One-twelfth of the basic fee rate is then applied to this amount of average net assets; and

(b) For purposes of determining the amount of the performance adjustment, Trend shall compute its average net assets as currently provided under its advisory contract (i.e., without the adjustment provided in item (a) above). One-twelfth of the performance fee rate is then applied to such average net assets and the resulting amount is added to or subtracted from the amount of the basic fee.

The Applicants state that the result of the proposed amendment will be to produce a performance adjustment which approximates that which would have resulted if the parties to a merger transaction had not merged.

The Directors also considered the impact of calculating average net assets under the Advisory and Service Contract over the performance period in order to determine a Fund's average net assets against which its fee rate is applied. This averaging of assets provision will result in the average net assets of Trend (the surviving Fund) after the merger being substantially less than the aggregate net assets of the two Funds if they had remained separate. The Applicants state that, assuming the effective date of the proposed merger is November 30, 1979, and the net assets of Trend remained at their approximate level for the month of May, 1979, throughout the 36-month period commencing with December, 1979, the reduction in the advisory fee paid by the combined Funds from that which would have been paid had the Funds not merged (ignoring potential differences in performance) would be $723,000 in the first twelve months, $418,000 in the second twelve months, and $167,000 in the final twelve months. The application states that the disinterested Directors of the Funds have determined as a general matter that the reduction in fee resulting solely from this method of calculating "average net assets" is inconsistent with this type of fee structure in a merger situation and that it would be inequitable in a merger transaction of the type herein contemplated to calculate an advisory fee against an artificially reduced level of average net assets rather than against the level of net assets actually being managed. Accordingly, the Directors have approved submission of the above proposed amendment of the Advisory and Service Contract of Trend to shareholders of each Fund in order to provide a more equitable method for the calculation of average net assets and the performance adjustment in the event of a merger or other business combination.

The Applicants state that the Board of Directors of each Fund, a majority of whom are not interested persons of the Funds or FMR, concluded that the proposed amendment of the Trend Advisory and Service Contract was appropriate and unanimously voted to approve the amendment at a meeting held on September 14, 1979. The application also states that the disinterested Directors are of the opinion that the proposed amendment, as it relates both to the transaction contemplated herein and to business combinations involving Trend in general, does not involve overreaching on the part of any person concerned, does not result in participation by either Fund on a basis different from or less advantageous than that of any other participant, and is in the best interests of each Fund and its shareholders. The application further states that the proposed amendment relating to average net assets merely restores the *status quo* in a merger situation, in that it continues the "average net asset" level of the merged or combined companies at approximately the same level as it would have been had the companies not merged (where both are advised by FMR) or at a level comparable to that which would result if the Trend Advisory and Service Contract looked solely to the current month's average net assets in calculating the advisory fee. With respect to the averaging of performance where both entities are advised by FMR and the acquired entity utilizes a performance adjustment, the Applicants argue that the proposed amendment will produce a performance adjustment which reflects the performance of both entities prior to the merger or combination. Finally, the application states that the proposed amendment will tend to produce compensation to FMR equal to that which it would have received if it served as adviser to the two entities separately.

Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to knowingly sell to or purchase from such registered investment company any security or other property except securities of which the investment company is the issuer. Section 17(b) of the Act provides that the Commission, upon application, may exempt a proposed transaction from the provisions of Section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Rule 17d-1, adopted by the Commission pursuant to Section 17(d) of the Act, provides, in part, that no affiliated person of any registered investment company and no affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with any joint enterprise or other joint arrangement in which such registered company is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by an order. A joint enterprise or other joint arrangement as used in this Rule is any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment

company and any affiliated person of such registered investment company, or any affiliated person of such a person, have a joint and several participation, or share in the profits of such enterprise or undertaking. In passing upon such application, the Commission will consider whether the participation of such registered investment company in such joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. As noted above, FMR is an "affiliated person" of both Trend and Capital within the meaning of Section 2(a)(3) of the Act. Thus, FMR in receiving shares of Trend as a result of the proposed merger transaction, which its officers and employees in their capacity as Fund officers developed and proposed to the Directors of each Fund and on which it will have voted, might be deemed to have a joint participation with Trend and/or Capital and therefore be engaged in a joint enterprise or arrangement prohibited by Section 17(d) of the Act and Rule 17d-1 thereunder without Commission approval.

The Applicants assert that the terms of the proposed transaction are fair and reasonable to all parties, do not involve overreaching and are consistent with the investment objectives of each of the Funds and with the policies of the Act. The Applicants further represent that although FMR's participation in the proposed merger transaction will be on a basis different from the Funds, FMR will be treated no differently than any other shareholder of Trend or Capital and thus the Funds' participation will not be on a basis less advantageous than FMR. The Applicants also note that FMR as an entity has not actively participated in the negotiation of and the preliminary activity with respect to the proposed merger transaction, although FMR's officers and employees in their capacity as officers of each Fund have done so. The Funds assert that the proposed merger is advantageous to the Funds primarily because certain expenses, such as accounting, legal, Directors' and custodian fees, shareholder meetings, preparation of shareholder reports, portfolio accounting and bookkeeping fees, and filing fees will be reduced by reason of the combination of portfolio assets into a single entity. The Applicants state that it is estimated that first year operating expenses of the combined Funds will be approximately $150,000 lower than their anticipated level if the two Funds remained separate.

Notice is further given that any interested person may, not later than November 5, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32381 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

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[File No. 1-5325]

## Huffy Corp.; Application To Withdraw From Listing and Registration

In the matter of Huffy Corporation, Common Stock, Par Value $1; Securities Exchange Act of 1934 Section 12(d).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. (Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Huffy Corporation's (the "Company's") common stock was listed and registered for trading on the Amex on January 1, 1967.

2. The subject issue became listed and registered for trading on the New York Stock Exchange, Inc. ("NYSE") on June 14, 1979. Simultaneously, Amex suspended trading in the issue pursuant to Rule 12d2-1 of the Act.

3. The Company determined that the direct and indirect costs as well as the possibility of market fragmentation did not justify maintaining its common stock listing on both the NYSE and Amex.

This application relates solely to withdrawal of the Company's common stock listing and registration on the Amex and shall have no effect upon the continued listing of such common stock on the NYSE. The Amex has posted no objection in this matter.

Any interested person may, on or before November 15, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished by the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

October 15, 1979.

[FR Doc. 79-32382 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 21251; 70-6366; October 15, 1979]

## Kentucky Power Co.; Proposed Issuance and Sale of First Mortgage Bonds

In the matter of Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101.

Notice is hereby given that Kentucky Power Company ("Kentucky Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12 of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-

declaration, which is summarized below, for a complete statement of the proposed transactions.

Kentucky Power proposes to issue and sell two new series of its first mortgage bonds, one such series in a private placement with Metropolitan Life Insurance Company ("Metropolitan") in an aggregate principal amount of $50,000,000 (the "Seventh Series"), and the second such series at competitive bidding in an aggregate principal amount of up to $30,000,000 (the "Sixth Series"). The sale of one series will not be dependent upon the sale of the other.

The Seventh Series will mature December 1, 1989, will bear interest at a rate of 10⅝% per annum, will be sold to Metropolitan at 100% of principal amount, and will be subject to a sinking fund requiring the annual redemption of $2,500,000 principal amount commencing January 1, 1984. The Seventh Series will not be redeemable prior to a date five years from the first day of the month in which they are first authenticated and delivered, if such redemption is for the purpose of refunding them, directly or indirectly, through the use of borrowed funds having an effective interest cost less than the effective interest cost of the Seventh Series. Kentucky Power claims exemption from the competitive bidding requirements of Rule 50 for its sale of the Seventh Series pursuant to Rule 50(a)(2), stating that the bonds will have a maturity of less than 10 years, will be issued to an institutional investor and will not involve the payment of any finder's or other fee to a third person in connection with their sale. Kentucky Power further claims that the terms of the Seventh Series compare favorably with the terms of similarly rated bonds of other electric utilities which have been recently issued and sold.

It is planned that the issuance and sale of the Seventh Series will be completed prior to the end of January 1980, and that as an intermediate step to carry out the refunding described below, Metropolitan will lend Kentucky Power, in December 1979, purusant to an unsecured promissory note bearing interest at 10⅝% per annum and having a maturity of less than one year, at least $20,000,000 (but not more than $50,000,000) such note to be repaid from the proceeds from the sale of the Seventh Series.

Kentucky Power proposes to issue and sell the Sixth Series at competitive bidding, such bonds to have a maturity of not less than five years and not more than thirty years. The interest rate (which will be expressed in a multiple of ⅛ of 1%) and the price to be paid to Kentucky Power for the bonds (which shall not be less than 99% nor more than 102¾%) will be determined by competitive bidding. None of the bonds of the Sixth Series may be redeemed prior to a date five years from the first day of the month in which they are first authenticated and delivered, if such redemption is for the purpose of refunding them, directly or indirectly, through the use, directly or indirectly, through the use of borrowed funds having an effective interest cost less than the effective interest cost of the Sixth Series.

Each new series of bonds will be issued under and secured by Kentucky Power's mortgage and deed of trust, dated as of May 1, 1949, as supplemented and amended and as to be further supplemented by a supplemental indenture.

The proceeds from the sales of the Sixth and Seventh Series will be used to pay at maturity, or to reimburse Kentucky Power's treasury for the payment at maturity of, its $50,000,000 principal amount of first mortgage bonds, 7⅛% Series due January 1, 1980, and to repay its unsecured short-term debt, which was approximately $26,500,000 at August 31, 1979, and is expected to be approximately $30,000,000 at the time of sale of the Sixth Series.

It is stated that authority for the issuance and sale of the Sixth Series is requested due to uncertainties concerning Kentucky Power's ability to borrow under a proposed $100,000,000 bank loan agreement involved with Kentucky Power's proposed acquisition of a 15% undivided interest in the Rockport Plant currently under construction by Indiana & Michigan Electric Company, an affiliate. Said loan agreement and proposed acquisition are the subject of a separate proceeding before this Commission (File No. 70-6198), but the requested authorization from the applicable state regulatory authority for the transactions was denied by the Public Service Commission of Kentucky. Kentucky Power appealed such denial to the state circuit court and obtained an order, on August 7, 1979, authorizing the acquisition and bank loan. On September 4, 1979, the Energy Regulatory Commission of Kentucky (the successor agency to the former Public Service Commission) filed a notice of appeal of the circuit court's order to the Kentucky Court of Appeals. Since the proceedings remain unsettled, Kentucky Power cannot predict when it will obtain the approvals necessary for the bank loan agreement and needs authority to issue up to $30,000,000 principal amount of bonds of the Sixth Series in order to provide an alternative means of repaying outstanding short-term debt.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may not later than November 9, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32379 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-16279; File No. SR-NYSE-79-43]

## New York Stock Exchange, Inc.; Proposed Rule Change; Self-Regulatory Organization

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 October 4, 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, if adopted, would increase from $25,000 to $35,000 per year the dues payable to the Exchange by "annual members" who are entitled to maintain a physical presence on the trading Floor of the Exchange.

**Statement of Basis and Purpose**

The basis and purpose of the proposed rule change is as follows:

**Purpose of Proposed Rule Change**

The purpose of the proposed rule change is to increase from $25,000 to $35,000 annually the dues payable to the Exchange by members who are entitled to enter physically upon the trading Floor of the Exchange and to have facilities thereon for the execution of orders, pursuant to the provisions of Article IX, Section 1(b) of the Exchange's Constitution (hereafter referred to as "annual members").

The $35,000 dues will apply to annual members who become such after the effectiveness of this rule change; but, will not be applied to existing annual members except upon renewal of such memberships.

Article X of the Exchange's Constitution provides, in Section 1(b) thereof, that:

"The dues payable by [such annual members], exclusive of fines and of such other charges as may be imposed pursuant to the Constitution, shall be fixed by the Board of Directors [of the Exchange] from time to time, and shall be *not less than* $25,000 annually. * * *" [emphasis added]

In August, 1977 when the Exchange first proposed to amend its Constitution to provide for such annual members (as well as other types of members—see File No. SR–NYSE–77–21 for complete details) the Board of Directors of the Exchange determined to fix the annual dues of such members, initially, at the minimum amount of $25,000. And, the dues of such members have been maintained by the Exchange at the minimum level since that time.

However, the Exchange believes that there is economic justification for increasing, at this time, the dues of annual members (who have physical access to the Floor) to at least $35,000 per year.

The Exchange notes that in its original approval Order relating to annual members of the Exchange (Securities Exchange Act of 1934, Release No. 14535/March 7, 1978), the Commission stated that:

"* * * the dues to be assessed upon annual members [$25,000, at that time] appear, on their face, to be reasonable and equitably allocated in accordance with Section 6(b)(4) of the Act. The Commission believes that the ultimate test of 'reasonableness', however, will be provided by response of the market. Because alternative means of membership in, and access to, the NYSE exist * * * the Commission does not believe it necessary to subject these annual membership dues to a more rigorous *a prior* determination of reasonabless as might otherwise be called for."

The Exchange agrees with these conclusions, and feels that they are equally applicable to the increase in the dues proposed herein.

Nevertheless, the Exchange believes it is appropriate to mention, briefly, the methodology used in arriving at the proposed dues for annual members entitled to physical access to the Floor.

The dues for such members were computed in a manner to achieve an equitable allocation of dues among all members. The dues for such members were determined by linking them to the current replacement value of an Exchange membership. This was done by applying member firms' median 1974–1978 pre-tax rate of return on equity capital (20.4%) to a $154,600 NYSE replacement value per membership. Adding the current membership dues of $1,500 and the additional $1,800 fee paid for each member on the trading Floor (which permanent members will continue to pay) to the return on member equity yielding a total of $34,800. It was determined to round this to an even $35,000.

It is important to note that the methodology used to arrive at the proposed annual dues of $35,000 is the same as that which was used in 1977 to arrive at the original amount of $25,000. The proposed increase in dues is primarily attributable to an increase in member firms' median pre-tax rate of return on equity capital and an increase in NYSE replacement value per membership.

Finally, as a point of information, the Exchange has also reviewed the dues of annual members who are entitled to only "electronic access" to the Exchange, and the Exchange has determined not to change the present level of dues—$13,500 annually—at this time. The rationale for the dues imposed on annual members entitled only to electronic access to the Exchange is unrelated to that of the dues imposed on annual members entitled to maintain a physical presence on the Floor of the Exchange.

**Basis Under the Act for Proposed Rule Change**

The proposed rule change relates to Section 6(b)(4) of the Act which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members using its facilities.

**Comments Received From Members, Participants, or Others on Proposed Rule Change**

The Exchange has not solicited comments regarding the proposed rule change and has received none.

**Burden on Competition**

The Exchange does not believe that the proposed rule change imposes any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 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 November 9, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons

*Secretary.*

October 15, 1979.

[FR Doc. 79-32375 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16277; SR-NYSE-79-42; October 12, 1979]

## New York Stock Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on October 1, 1979, the New York Stock Exchange, Inc. (the "NYSE") filed with the Commission copies of a proposed rule change (SR-NYSE-79-42) which would amend NYSE Rule 107 governing Registered Competitive Market Makers ("RCMMs") to incorporate certain changes requested by the Commission at the time the Commission approved a nine-month extension of the effectiveness of Rule 107 until April 30, 1979.[1]

The proposed changes would: (1) Require floor brokers and floor officials to report instances where RCMMs refused to answer a request to participate in a particular security; (2) Require RCMMs to report to the exchange the contra party to each transaction effected under Rule 107; (3) Clarify that an individual registered as both an RCMM and a competitive trader may not refuse to answer a request to participate as a market maker in a particular security by virtue of having placed a limit order on the specialist's book in that security as a competitive trader; (4) Require an individual registered as both an RCMM and a competitive trader to announce the capacity in which he is trading in a particular security immediately before effecting a transaction; (5) Prohibit RCMMs from effecting off-floor market maker transactions; (6) Require RCMMs to mark orders, given to another member for execution, to indicate that Rule 107 applies to such order and whether the transaction involves a liquidation at a loss; (7) Provide that the appropriate execution of a properly marked RCMM order is the responsibility of the executing member; and, (8) Clarify that a member holding an RCMM order cannot be held to the market at a particular price if execution of such order at that price would contravene Rule 107.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before November 9, 1979. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-79-42.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed modifications are designed to correct certain deficiencies in NYSE Rule 107 as currently written and to enhance the ability of the NYSE to monitor the RCMM pilot program which is scheduled to expire on April 30, 1980, if the Commission does not approve Rule 107 on a permanent basis. These modifications were specifically requested of the NYSE by the Commission at the time it approved a nine-month extension of the rule.

*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.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-32378 Filed 10-18-79; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 16049 (July 27, 1979). This release also approved a nine-month extension of Rule 114 of the American Stock Exchange governing Registered Equity Market Makers.

## INTERSTATE COMMERCE COMMISSION

### Motor Carrier Temporary Authority Applications

*Correction*

In FR Doc. 79-30332, appearing at page 56436 in the issue for Monday, October 1, 1979, make the following corrections:

(1) On page 56438, in the first column, immediately above "MC 1628 (Sub-2TA)", insert: "Notice No. 169".

(2) On page 56447, in the third column, immediately above "MC 24583 (Sub-25TA)", insert: Notice No. 171".

BILLING CODE 1505-01-M

### Motor Carrier Temporary Authority Applications

*Correction*

In FR Doc. 79-30332 appearing at page 56436, in the issue for Monday, October 1, 1979, on page 56443, in the second column, "MC 144468 (Sub-20TA)" should have read "MC 145468 (Sub-20TA)"

BILLING CODE 1505-01-M

[Decision Volume No. 24]

### Permanent Authority Decisions; Decision-Notice

*Correction*

In FR Doc. 79-9505 appearing at page 18797, in the issue for Thursday, March 29, 1979, on page 18798, in the third column, in the paragraph for "MC 25798 (Sub-359F)", in the 13th line, "NS" should have read "MS".

BILLING CODE: 1505-01-M

### Fourth Section Application for Relief

October 16, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before November 5, 1979.

FSA No. 43755, Southwestern Freight Bureau, Agent No. B-24, ashes cotton boll, burr or seed hull, in carloads, from stations in Southwestern Territory to stations in Eastern, Southern, Southwestern, and Western Territories in supp. 171 to its Tariff ICC SWFB 2004-J and two other tariffs, effective November 10, 1979. Grounds for relief—rate relationship, short-line distance formula and grouping.

By the Commission.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 79-32275 Filed 10-17-79; 8:45 am]

BILLING CODE 7035-01-M

### Fourth Section Application for Relief

October 15, 1979.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before November 5, 1979.

FSA No. 43754, South African Marine Corporation (NY) No. 2, rates on general commodities in containers, from Ports in South, Southwest and East Africa, to Railroad terminals at U.S. Pacific Coast

Ports, via New York, N.Y., Philadelphia, Pa., Baltimore, Md. and Norfolk, Va., in its Tariff ICC SAMU 301, to become effective November 3, 1979. Grounds for relief-water competition.

FSA No. 43756, Southwestern Freight Bureau, Agent's No. B-29, rates on sheet steel, in coils, carload, from stations in Eastern Territory, to Ft. Smith, Ark., in its Tariff ICC SWFB 4850, to become effective November 9, 1979. Grounds for relief-market competition.

By the Commission.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 79-32277 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

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[Directed Service Order No. 1398; Authorization Order No. 1]

## Kansas City Terminal Railway Co. Directed To Operate Over Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

Decided: October 12, 1979.

The Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI") has acquired numerous freight cars and locomotives under lease arrangements from the owners of such equipment. Most, if not all, such arrangements require quarterly payments, in some cases in advance of the designated time periods and, in other cases, at the end of such time periods. These time periods do not coincide with the period of directed service as determined in Directed Service Order No. 1398 (decided and served September 26, 1979; published in the Federal Register on October 1, 1979 at 44 FR 56343). The failure to make timely payments on these lease agreements will result in the recall of the equipment by the owners and the impairment of directed service.

Even in the event that the directed rail carrier (DRC) were able to negotiate new leases for the same equipment, the default of existing lease agreements would present a serious problem for the continuation of directed service operations. We understand that current leasing contracts carry much higher lease payment levels, and almost none are entered into for periods of less than five years.

It is essential to the continued provision of directed service that this equipment be available to the DRC (Kansas City Terminal Railway Company (KCT)). Moreover, the use of such equipment in directed service operations is required both by the public interest and by the necessities of interstate commerce. Accordingly, we are taking the following actions to avoid what could be serious problems in the provision of directed service.

The Commission authorizes KCT, as the directed rail carrier, to make payments on freight car and locomotive leases as they become due during the directed service period. This authorization extends to all payments falling due during the period of directed service, including payments on leases covering the use of equipment for a period not to exceed 30 days beyond the duration of the Directed Service Order. Such payments shall be made directly to the lessors of the involved equipment. The cost of those payments made during the directed service period shall be treated as a reimbursable cost of directed service. This action is necessary to make vital equipment available to the directed service operations.

KCT is also authorized to make payments on freight car and locomotive leases which fell due during the period between the service date and effective date of Directed Service Order No. 1398. These payments shall be made by KCT directly to the lessors of the involved equipment upon the terms and conditions established by the Commission in Supplemental Order No. 2 (decided and served October 3, 1979).

*It is ordered*—1. KCT is authorized to make lease payments on RI freight cars and locomotives upon the terms and conditions set forth above.

2. The costs of such lease payments shall be treated as a reimbursable cost of directed service, to the extent indicated above.

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

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 79-32278 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

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[Released Rates Application No. FF-450]

## Movers' & Warehousemen's Association of America, Inc.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice. Released Rates Application No. FF-450.

**SUMMARY:** The Movers' & Warehousemen's Association of America, Inc., seeks to further amend Released Rates Order No. FF-249 which applies on used household goods, used automobiles and unaccompanied baggage. This order authorizes specific freight forwarders, party to Movers' & Warehousemen's Tariffs No. 65 and 66, MF-ICC Nos. 92 and 93, as amended, to establish and maintain released value commodity rates on the above named commodities. The applicant now seeks the same authority on behalf of all freight forwarders which are now or may become party to those tariffs insofar as they are authorized to perform the considered transportation.

**ADDRESSES:** Anyone seeking copies of this application should contact: Mr. Carroll F. Genovese, Executive Director, Movers' & Warehousemen's Association of America, Inc., 1001 North Highland St., Arlington, VA 22201.

**FOR FURTHER INFORMATION CONTACT:** Mr. Howard Rooney, Unit Supervisor, Bureau of Traffic, Interstate Commerce Commission, Washington, DC 20423: Telephone (202) 275-7390.

**SUPPLEMENTARY INFORMATION:** Relief is sought from 49 U.S.C. 10730, formerly sections 20(11) and 413 of the Interstate Commerce Act for and on behalf of carriers party to Movers' & Warehousemen's tariffs based on released valuation.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 79-32276 Filed 10-18-79; 8:45 am]

BILLING CODE 7035-01-M

# Sunshine Act Meetings

Federal Register
Vol. 44, No. 204
Friday, October 19, 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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[M-252, Amdt. 5; Oct. 16, 1979]

**CIVIL AERONAUTICS BOARD.**

Addition of items to the October 16, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., October 16, 1979.

**PLACE:** Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:**

1a. Motion of the Department of Transportation to terminate the IATA Proceeding, Docket 32851.

1b. Request for Pre-Hearing Conference on IATA Rate Proceeding to consider proposed order scheduling hearing for conference, Docket 32851.

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** Items 1a and 1b are being added to the October 16, 1979 agenda because the IATA hearings are next week and the Board will like to discuss these items before the hearings. Accordingly, the following Members have voted that Item 1a and 1b be added to the October 16, 1979 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2048-79 Filed 10-17-79; 3:37 pm]
BILLING CODE 6320-01-M

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**FEDERAL RESERVE SYSTEM.**

**TIME AND DATE:** 10 a.m., Wednesday, October 24, 1979.

**PLACE:** 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed purchase of computer equipment by the Federal Reserve Bank of Kansas City.

2. Proposed changes to the Board's rules relating to supervision of foreign banking organizations and Edge Corporations.

Discussion Agenda

1. Proposals regarding an Annual Report for Foreign Bank Holding Companies, Foreign Banks, and Foreign Parent Companies (F.R. Y-7).

2. Proposed Report of Intercompany Transactions for Foreign Bank Holding Companies and Their U.S. Bank Subsidiaries (F.R. Y-8f).

3. Proposed regulations to implement section 5 of the International Banking Act of 1978 relating to interstate banking restrictions.

4. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 17, 1979.

Griffith L. Garwood,
*Deputy Secretary of the Board.*

[S-2047-79 Filed 10-17-79; 11:20 am]
BILLING CODE 6210-01-M

3

**FEDERAL TRADE COMMISSION.**

**TIME AND DATE:** 10 a.m., Tuesday, October 23, 1979.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Consideration of issuance of proposed policy statement with respect to Corrective Advertising, File No. R 711003.

**CONTACT PERSON FOR MORE INFORMATION:** Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-2044-79 Filed 10-17-79; 10:19 am]
BILLING CODE 6750-01-M

4

**FEDERAL TRADE COMMISSION.**

**TIME AND DATE:** 10 a.m., Wednesday, October 24, 1979.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Consideration of Trade Regulation Rule for the Hearing Aid Industry.

**CONTACT PERSON FOR MORE INFORMATION:** Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-2045-79 Filed 10-17-79; 10:19 am]
BILLING CODE 6750-01-M

5

**FEDERAL TRADE COMMISSION.**

**TIME AND DATE:** 2 p.m., Thursday, October 25, 1979.

**PLACE:** Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

**MATTERS TO BE CONSIDERED:**

Portions Open to Public

(1) Oral Argument in Household Finance Co., Docket 9111.

Portions Closed to the Public

(2) Executive Session to discuss Oral Argument in Household Finance Co., Docket 9111.

**CONTACT PERSON FOR MORE INFORMATION:** Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-2046-79 Filed 10-17-79; 10:19 am]
BILLING CODE 6750-01-M

6

**NATIONAL LABOR RELATIONS BOARD.**

**TIME AND DATE:** 10 a.m., Friday, October 19, 1979.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b (c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

**MATTERS TO BE CONSIDERED:** Personnel matters.

**CONTACT PERSON FOR MORE INFORMATION:** William A. Lubbers, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254–9430.

Dated, Washington, D.C., October 16, 1979.

By direction of the Board.

George A. Leet,

*Associate Executive Secretary, National Labor Relations Board.*

[S–2042–M Filed 10–16–79; 4:30 pm]

BILLING CODE 7545–01–M

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7

**SECURITIES AND EXCHANGE COMMISSION.**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 22, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Open meetings will be held on Tuesday, October 23, 1979, at 10 a.m. and on Wednesday, October 24, 1979, at 10 a.m.

A closed meeting will be held on Tuesday, October 23, 1979, immediately following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, October 23, 1979, at 10 a.m., will be:

Consideration of whether to amend Regulation S–X to delete Rule 3–17 (disclosure of current replacement cost information) once the disclosure requirements of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," are effective. That Statement requires certain large public enterprises to report constant dollar information in 1979 annual reports and current cost information in 1980 reports. For further information, please contact James L. Russell at (202) 272–2133.

The subject matter of the closed meeting scheduled for Tuesday, October 23, 1979, immediately following the 10:00 a.m. open meeting, will be:

Formal orders of investigation.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Report of investigation.
Litigation matter.

The subject matter of the open meeting scheduled for Wednesday, October 24, 1979, at 10 a.m., will be:

1. Consideration of whether to grant a request for a waiver of certain provisions of the Commission's Conduct Regulation in connection with the temporary employment of Edward V. O'Gara, Jr. For further information, please contact Myrna Siegel at (202) 272–2430.

2. Consideration of whether to adopt Rule 156, as revised, concerning the use of false and misleading investment company sales literature. For further information, please contact Anthony A. Vertuna at (202) 272–2105 or Sarah B. Ackerson at (202) 272–2057.

3. Consideration of whether to issue an order granting the registration of the Philadelphia Depository Trust Company as a clearing agency. For further information, please contact C. Eston Singletary at (202) 272–2902.

4. Consideration of whether to grant the application of the Variable Annuity Marketing Company for an exemption from the confirmation delivery requirements of Securities Exchange Act Rule 10b–10 in connection with certain transactions in variable annuities. For further information, please contact H. Steven Holtzman at (202) 272–2842.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 272–2091.

October 16, 1979.

[S–2043–79 Filed 10–16–79; 4:48 pm]

BILLING CODE 8010–01–M

# Reader Aids

Federal Register

Vol. 44, No. 204

Friday, October 19, 1979

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230 ..... 59911
611 ..... 57101
652 ..... 56941, 60103
653 ..... 56700, 56701
810 ..... 59086
Proposed Rules:
17 ..... 56618
285 ..... 57140
611 ..... 59257, 59582
652 ..... 60129

## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

| Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---|---|---|---|
| DOT/SECRETARY* | USDA/ASCS | | DOT/SECRETARY* | USDA/ASCS |
| DOT/COAST GUARD | USDA/APHIS | | DOT/COAST GUARD | USDA/APHIS |
| DOT/FAA | USDA/FNS | | DOT/FAA | USDA/FNS |
| DOT/FHWA | USDA/FSQS | | DOT/FHWA | USDA/FSQS |
| DOT/FRA | USDA/REA | | DOT/FRA | USDA/REA |
| DOT/NHTSA | MSPB/OPM | | DOT/NHTSA | MSPB/OPM |
| DOT/RSPA | LABOR | | DOT/RSPA | LABOR |
| DOT/SLSDC | HEW/FDA | | DOT/SLSDC | HEW/FDA |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

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

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

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

## REMINDERS

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

### Rules Going Into Effect Today

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Community Planning and Development, Office of Assistant Secretary—

54432 9–19–79 / Comprehensive Planning Assistance Program; reorientation

**TRANSPORTATION DEPARTMENT**

Federal Aviation Administration—

54467 9–20–79 / Domestic, flag and supplemental air carriers and commercial operators of large aircraft and operations of foreign air carriers radiation surveys of airport X-ray inspection cabinets

### Rules Going Into Effect October 21, 1979

**FEDERAL TRADE COMMISSION**

49966 8–24–79 / Disclosure requirements and prohibitions concerning franchising and business opportunity ventures; promulgation of final interpretive guides

**INTERIOR DEPARTMENT**

Fish and Wildlife Service—

54922 9–21–79 / Sarrancenia oreophila, determination as an endangered species

### List of Public Laws

Last Listing October 17, 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. 210 / Pub. L. 96–88 "Department of Education Organization Act". (Oct. 17, 1979; 93 Stat. 668) Price $1.50.

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

### WASHINGTON, D.C.

**WHEN:** Nov. 2, 16,* and 30; Dec. 14; at 9 a.m. (identical sessions)

**WHERE:** Office of the Federal Register, Room 9409, 1100 L Street N.W., Washington, D.C.

**RESERVATIONS:** Call Mike Smith, Workshop Coordinator, 202–523–5235 or Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

*Note: The November 16 briefing will feature an interpreter for hearing impaired persons. The TTY number at the Office of the Federal Register is 202–523–5239.

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PAGES
60501-60700

# Federal Register

Book 2 of 2 Books
Friday, October 19, 1979

60504 **Part II—Labor:**
Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

60532 **Part III—FCC:**
Domestic Public Fixed Radio Services and Public Mobile Radio Services

60634 **Part IV—HEW:**
Telecommunications Demonstration Program; Solicitation for Grants

60638 **Part V—ERA:**
Petroleum Allocation Regulations; Revision for Propane and Other Natural Gas Liquids

60658 **Part VI—Energy Department:**
Proposed Guideline for Termination of Electric Service and Gas Service Standard Under the Public Utility Regulatory Policies Act of 1978

60664 **Part VII—Energy Department:**
Solar in Federal Buildings Demonstration Program Rules

60676 **Part VIII—CWPS:**
Data Requests

60690 **Part IX—Energy Department:**
Powerplant and Industrial Fuel Use Act of 1978; Transitional Facilities

Friday
October 19, 1979

# Part II

# Department of Labor

## Employment Standards Administration

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

## DEPARTMENT OF LABOR
## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

### Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

### New General Wage Determination Decisions

Mississippi.—MS79–1136.

### Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

| | |
|---|---|
| Arizona: | |
| AZ79–5110 | Mar. 16, 1979. |
| Florida: | |
| FL79–1110 | July 20, 1979. |
| Louisiana: | |
| LA79–4069 | July 20, 1979. |
| LA79–4070 | Aug. 17, 1979. |
| Michigan: | |
| MI79–2020 | June 1, 1979. |
| New Jersey: | |
| NJ77–3092 | Oct. 7, 1977. |
| Texas: | |
| TX79–4005; TX79–4009 | Jan. 5, 1979. |
| TX79–4036 | Aug. 17, 1979. |
| TX79–4037 | June 1, 1979. |
| TX79–4039 | Mar. 16, 1979. |
| TX79–4086 | Oct. 5, 1979. |

### Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

| | |
|---|---|
| Alabama: | |
| AL78–1069(AL79–1133) | Sept. 8, 1978. |
| District of Columbia: | |
| DC78–3098(DC79–3039) | Mar. 17, 1978. |
| Kentucky: | |
| KY78–1098(KY79–1138) | Dec. 1, 1979. |
| KY78–1099(KY79–1135) | |
| KY78–1100(KY79–1137) | |
| KY78–1101(KY79–1139) | |
| North Carolina: | |
| NC76–1085(NC79–1034) | Aug. 26, 1976. |

### Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 12th day of October 1979.

William G. Blackburn,

*Acting Assistant Administrator, Wage and Hour Division.*

BILLING CODE 4510-27-M

NEW DECISION

STATE: Mississippi COUNTIES: See below*
DECISION NO. MS79-1136 DATE: Date of Publication
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

*Benton, DeSoto, Marshall, Tate and Tunica Counties

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Air conditioning mechanic | 5.50 | | | | |
| Bricklayers | 5.43 | | | | |
| Carpenters | 4.50 | | | | |
| Cement masons | 4.25 | | | | |
| Drywall finishers | 4.55 | | | | |
| Drywall hangers | 4.33 | | | | |
| Electricians | 4.25 | | | | |
| Form setters | 4.25 | | | | |
| Ironworkers, structural & ornamental | 4.25 | | | | |
| Laborers: | | | | | |
| Laborers | 3.24 | | | | |
| Asphalt rakers | 4.00 | | | | |
| Painters, brush | 5.00 | | | | |
| Plumbers & pipefitters | 6.00 | | | | |
| Roofers | 5.00 | | | | |
| Sheet metal workers | 4.51 | | | | |
| Soft floor layers | 5.75 | | | | |
| Truck drivers | 4.25 | | | | |
| Welders - rate for craft. | | | | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Backhoe | 4.63 | | | | |
| Bulldozer | 6.00 | | | | |
| Scraper | 4.80 | | | | |
| Roller | 5.83 | | | | |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)

MODIFICATIONS P. 1

DECISION #AZ79-5110 - Mod. #1
(44 FR 16306 - March 16, 1979)
Maricopa County, Arizona

Change:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Asbestos Workers: | | | | | |
| Zone 1 | $14.19 | .82 | $1.30 | | .03 |
| Zone 2 | 14.89 | .82 | 1.30 | | .03 |
| Zone 3 | 15.09 | .82 | 1.30 | | .03 |
| Zone 4 | 15.54 | .82 | 1.30 | | .03 |
| Zone 5 | 17.69 | .82 | 1.30 | | .03 |
| Boilermakers | 14.36 | 1.175 | 1.00 | $1.00 | .03 |
| Bricklayers; Stonemasons | | | | | |
| Zone A | 12.52 | .65 | 1.10 | | .09 |
| Zone B | 13.54 | .65 | 1.10 | | .09 |
| Zone C | 14.17 | .65 | 1.10 | | .09 |
| Zone D | 14.81 | .65 | 1.10 | | .09 |
| Zone E | 15.32 | .65 | 1.10 | | .09 |
| Zone F | 16.34 | .65 | 1.10 | | .09 |
| Carpenters: | | | | | |
| Carpenters; Drywall Applicator | 11.435 | 1.075 | 1.085 | | .05 |
| Piledrivermen; Floor-layers (finish) | 11.74 | 1.075 | 1.085 | | .05 |
| Millwrights | 11.88 | 1.075 | 1.085 | | .05 |
| Cement Masons: | | | | | |
| Northern portion | 13.085 | .95 | 1.30 | | .05 |
| Southern portion | 11.44 | .95 | 1.30 | | .05 |
| Electricians: | | | | | |
| Zone A | 13.86 | .96 | 3%+.88 | | 3/4% |
| Zone B | 15.86 | .96 | 3%+.88 | | 3/4% |
| Zone C | 16.86 | .96 | 3%+.88 | | 3/4% |
| Laborers: | | | | | |
| Group 1 | 9.06 | .92 | 1.10 | | .10 |
| Group 2 | 9.20 | .92 | 1.10 | | .10 |
| Group 3 | 9.35 | .92 | 1.10 | | .10 |
| Group 4 | 9.47 | .92 | 1.10 | | .10 |
| Group 5 | 9.65 | .92 | 1.10 | | .10 |
| Group 6 | 10.055 | .92 | 1.10 | | .10 |
| Group 7 | 10.745 | .92 | 1.10 | | .10 |
| Marble Workers | 10.91 | .65 | 1.10 | | .19 |
| Plasterers' Tenders | 10.30 | .92 | 1.10 | | .10 |

DECISION NO. AZ79-5110 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Power Equipment Operators: (Except Piledriving and Steel Erection): | | | | | |
| Group 1 | $ 9.66 | $1.10 | $1.10 | | .08 |
| Group 2 | 10.06 | 1.10 | 1.10 | | .08 |
| Group 3 | 10.55 | 1.10 | 1.10 | | .08 |
| Group 4 | 11.13 | 1.10 | 1.10 | | .08 |
| Group 5 | 11.70 | 1.10 | 1.10 | | .08 |
| Group 5-A | 12.03 | 1.10 | 1.10 | | .08 |
| Group 6 | 12.39 | 1.10 | 1.10 | | .08 |
| Group 7 | 13.04 | 1.10 | 1.10 | | .08 |
| Truck Drivers: | | | | | |
| Group 1 | 9.23 | .92 | 1.10 | | .08 |
| Group 2 | 9.37 | .92 | 1.10 | | .08 |
| Group 3 | 9.61 | .92 | 1.10 | | .08 |
| Group 4 | 9.99 | .92 | 1.10 | | .08 |
| Group 5 | 10.16 | .92 | 1.10 | | .08 |
| Group 5-A | 10.36 | .92 | 1.10 | | .08 |
| Group 6 | 10.51 | .92 | 1.10 | | .08 |
| Group 7 | 10.91 | .92 | 1.10 | | .08 |
| Group 8 | 11.505 | .92 | 1.10 | | .08 |
| Group 8-A | 12.21 | .92 | 1.10 | | .08 |
| Group 8-B | 9.84 | .92 | 1.10 | | .08 |
| Group 8-C | 11.88 | .92 | 1.10 | | .08 |
| Omit: | | | | | |
| Drywall: | | | | | |
| From Courthouse in Phoenix, Mesa, including Williams AFB and Luke AFB: | | | | | |
| Zone A: 0-40 miles | 10.21 | .59 | .50 | | .07 |
| Zone B: 41-60 miles | 11.21 | .59 | .50 | | .07 |
| Zone C: 61 miles and over | 12.46 | .59 | .50 | | .07 |
| Texture Spraymen: | | | | | |
| Zone A: 0-40 miles | 9.81 | .59 | .50 | | .07 |
| Zone B: 41-60 miles | 10.81 | .59 | .50 | | .07 |
| Zone C: 61 miles and over | 12.06 | .59 | .50 | | .07 |



DECISION NO. AZ79-5100 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Painters: | | | | | |
| Zone A: 0-40 miles from Court House in Phoenix, Mesa and including Luke and Williams Air Force Bases: | | | | | |
| Brush; Roller; Taper; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | $10.19 | .60 | .40 | | .08 |
| Spray; Paperhanger | 10.44 | .60 | .40 | | .08 |
| Creosote Applier | 10.52 | .60 | .40 | | .08 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 10.59 | .60 | .40 | | .08 |
| Spray | 10.84 | .60 | .40 | | .08 |
| Zone B: 41-60 miles from Court House in Phoenix: | | | | | |
| Brush; Roller; Taper; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 11.19 | .60 | .40 | | .08 |
| Spray; Paperhangers | 11.44 | .60 | .40 | | .08 |
| Creosote Applier | 11.52 | .60 | .40 | | .08 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 11.59 | .60 | .40 | | .08 |
| Spray | 11.84 | .60 | .40 | | .08 |
| Zone C: 61 miles and over from Court House in Phoenix: | | | | | |
| Brush; Roller; Taper; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 12.44 | .60 | .40 | | .08 |
| Spray; Paperhangers | 12.69 | .60 | .40 | | .08 |
| Creosote Applier | 12.77 | .60 | .40 | | .08 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 12.84 | .60 | .40 | | .08 |
| Spray | 13.09 | .60 | .40 | | .08 |

DECISION NO. AZ79-5110 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Sheet Metal Workers: | | | | | |
| Zone 1: 0 to 25 radius miles, excluding Luke and Williams Air Force Bases, from the following base points: the intersection of 56th St. and Indian School Road in Phoenix, and the City Hall in Flagstaff, Kingman, Prescott and Yuma | $13.23 | $1.00 | $1.40 | | .12 |
| Zone 2: 25 to 50 radius miles from the base points listed in Zone 1; also Luke and Williams Air Force Bases | 13.88 | 1.00 | 1.40 | | .12 |
| Zone 3: 50 radius miles and over from the base points listed in Zone 1 | 15.73 | 1.00 | 1.40 | | .12 |
| Soft Floor Layers | 10.87 | .69 | .12 | | .12 |



DECISION NO. AZ79-5110 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Add: | | | | | |
| Lathers: | | | | | |
| Maricopa County north of a line crossing the State drawn thru Ajo, Randolph and Springerville | $12.49 | .75 | | | .06 |
| Maricopa County south of a line crossing the State drawn thru Ajo, Randolph and Springerville | 14.03 | .50 | | | |
| Painters: | | | | | |
| North of a line drawn east and west thru the Town of Winkelman, Arizona: | | | | | |
| Zone A: 0-40 road miles from Court House in Phoenix, Mesa and including Luke and Williams Air Force Bases: | | | | | |
| Brush; Roller; Taper; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 10.69 | .60 | .40 | | .08 |
| Spray; Paperhangers | 10.94 | .60 | .40 | | .08 |
| Creosote Applier | 11.02 | .60 | .40 | | .08 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 11.09 | .60 | .40 | | .08 |
| Spray | 11.34 | .60 | .40 | | .08 |
| Zone B: 41-60 road miles from Court House in Phoenix: | | | | | |
| Brush; Roller; Taper; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 11.69 | .60 | .40 | | .08 |
| Spray; Paperhangers | 11.94 | .60 | .40 | | .08 |
| Creosote Applier | 12.02 | .60 | .40 | | .08 |

DECISION NO. AZ79-5110 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Swing Stage: | | | | | |
| Brush; Sandblaster | $12.09 | .60 | .40 | | .08 |
| Spray | 12.34 | .60 | .40 | | .08 |
| Zone C: 61 road miles and over from Court House in Phoenix: | | | | | |
| Brush; Roller; Taper; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 12.94 | .60 | .40 | | .08 |
| Spray; Paperhangers | 13.19 | .60 | .40 | | .08 |
| Creosote Applier | 13.27 | .60 | .40 | | .08 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 13.34 | .60 | .40 | | .08 |
| Spray | 13.59 | .60 | .40 | | .08 |
| South of a line drawn east and west thru the Town of Winkelman, Arizona: | | | | | |
| Brush | 11.96 | .77 | .45 | | .06 |
| Spray; Sandblasters | 12.46 | .77 | .45 | | .06 |
| Paperhangers | 12.06 | .77 | .45 | | .06 |
| Swing Stage (under 40 ft.): | | | | | |
| Brush | 12.26 | .77 | .45 | | .06 |
| Spray | 12.76 | .77 | .45 | | .06 |
| Swing Stage (over 40 ft.): | | | | | |
| Brush | 12.71 | .77 | .45 | | .06 |
| Spray | 13.21 | .77 | .45 | | .06 |



DECISION NO. AZ79-5110 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Sheet Metal Workers: | | | | | |
| Zone 1: 0-25 miles excluding Luke and Williams Air Force Bases | $11.70 | .90 | $1.30 | | .10 |
| Zone 2: 25-50 miles including Luke and Williams Air Force Bases | 12.35 | .90 | 1.30 | | .10 |
| Zone 3: 50 miles and over | 14.20 | .90 | 1.30 | | .10 |
| Soft Floor Layers: | | | | | |
| Zone A: 0-40 miles from Court House in Phoenix and including Luke and Williams Air Force Bases | 9.21 | .59 | .12 | | .12 |
| Zone B: 41-60 miles from Court House in Phoenix | 10.21 | .59 | .12 | | .12 |
| Zone C: 61 miles and over | 10.71 | .59 | .12 | | .12 |

| Decision # FL79-1110-Mod.#1 (44 FR-42858-July 20,1979) Dade County, Florida | Basic Hourly Rates | Fringe Benefits Payments: H & W | Pensions | Vacation | Education and/or Appr. Tr. |
|---|---|---|---|---|---|
| Omit: | | | | | |
| Laborers: | | | | | |
| Air tool operator; Mason tenders; Mortar mixers; and Pipelayers | 6.70 | 1.10 | .37 | | |
| Plasterers tenders | 6.88 | 1.10 | .37 | | |
| Unskilled | 6.60 | 1.10 | .37 | | |
| Permit value up to $350.000: | | | | | |
| Air tool operators; Mason tenders; Mortar mixers; and Pipelayers | 5.025 | 1.10 | .37 | | |
| Plasterers tenders | 5.16 | 1.10 | .37 | | |
| Unskilled | 4.95 | 1.10 | .37 | | |
| Add: | | | | | |
| Laborers (Permit value $500,000 and over): | | | | | |
| Air tool operators; Mason tenders; Mortar mixers; and Pipelayers | 7.50 | 1.02 | .40 | | |
| Plasterers tenders | 7.68 | 1.02 | .40 | | |
| Unskilled | 7.40 | 1.02 | .40 | | |
| Laborers (Permit value up to $500,000): | | | | | |
| Air tool operators; Mason tenders; Mortar mixers; Pipelayers | 5.80 | 1.02 | .40 | | |
| Plasterers tenders | 5.98 | 1.02 | .40 | | |
| Unskilled | 5.70 | 1.02 | .40 | | |
| Change: | | | | | |
| Bricklayers: | | | | | |
| Bricklayers, Cement masons; Marble setters; Plasterers Stonemasons; Tile & Terrazzo workers | 10.90 | .70 | .62 | | .07 |
| Millwrights | 9.70 | .80 | .55 | | .06 |
| Painters: | | | | | |
| Brush | 9.80 | .55 | .60 | | .07 |
| Tapers; Paperhangers | 10.05 | .55 | .60 | | .07 |
| Spray; Sandblasters | 10.30 | .55 | .60 | | .07 |
| Roofers: | | | | | |
| Slate; tile; composition; damp & waterproofers | 10.88 | .83 | .35 | | .02 |
| Kettlemen | 7.68 | .83 | .35 | | .02 |
| Sheet metal workers | 12.41 | .75 | .74 | | .11 |
| Power Equipment Operators: | | | | | |
| GROUP A | 11.50 | .50 | .45 | | .05 |
| GROUP B | 10.76 | .50 | .45 | | .05 |
| GROUP C | 9.77 | .50 | .45 | | .05 |
| GROUP D | 8.96 | .50 | .45 | | .05 |
| GROUP E | 7.87 | .50 | .45 | | .05 |



| DECISION NO. LA79-4069 - MOD. #3 (44 FR 42860 - July 20,1979) Statewide Louisiana | Basic Hourly Rates | Fringe Benefits Payments: H & W | Pensions | Vacation | Education and/or Appr. Tr. |
|---|---|---|---|---|---|
| CHANGE: | | | | | |
| Asbestos workers - Zone 4 | $11.29 | .45 | .50 | | |
| Marble, tile & terrazzo workers & finishers: | | | | | |
| Zone 6 - Marble, tile & terrazzo workers | 12.75 | | | | |
| Plumbers & pipefitters: | | | | | |
| Zone 5 | 12.48 | .67 | .72 | | .08 |
| Roofers: | | | | | |
| Zone 2 - Roofers | 8.86 | .75 | .85 | .28 | .70 |
| Zone 3 - Roofers | 9.51 | .35 | .65 | | .04 |
| Sprinkler fitters | 11.94 | .75 | 1.05 | | .08 |
| DECISION NO. LA79-4070 - MOD. #1 (44 FR 48564 - August 17, 1979) Bossier, Caddo & Calcasieu Parishes, Louisiana | | | | | |
| CHANGE: | | | | | |
| Plumbers & pipefitters: | | | | | |
| Calcasieu Parish | 12.48 | .67 | .72 | | .08 |
| Sprinkler fitters | 11.94 | .75 | 1.05 | | .08 |

| DECISION #MI79-2020 - MOD. #4 (44 FR 31842 - June 1, 1979) Statewide, Michigan | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| CARPENTERS: | | | | | |
| ZONE 2E | $11.88 | .60 | .80 | | .05 |
| ZONE 2W | 11.75 | .60 | .80 | | .05 |
| ZONE 3 LP | 11.64 | .60 | .80 | | .05 |
| ZONE 3 UP | 11.59 | .60 | .80 | | .05 |
| IRONWORKERS: ZONE 2 | | | | | |
| Emmet, Charlevoix, Antrim, Leelanau, Benzie, Grand Traverse, Kalkaska, Mason, Manistee, Wexford, Missaukee, Lake, Osceola, Oceana, Newaygo, Muskegon, Kent, Montcalm, Ottawa, Ionia, Allegan, Barry, Eaton, Van Buren, Kalamazoo, Calhoun, St. Joseph, Branch & Hillsdale Counties | 13.08 | 6% | 8% | | .10 |
| ZONE 3 | | | | | |
| Remainder of State | | | | | |
| Structural | 12.59 | 9% | 17% | 18% | .09 |
| Reinforcing | 11.94 | 1.33 | 15% | .16% | .07 |
| PAINTERS: | | | | | |
| Kent, Montcalm, Mecosta & the west ½ of Ionia Counties only: | | | | | |
| Brush | 9.55 | .50 | .25 | | .02 |
| Bridges over Highway or Railroads | 9.80 | .50 | .25 | | .02 |
| Bridge work over Rivers & Lakes | 10.05 | .50 | .25 | | .02 |
| Steamcleaning/Sandblasting Spray & Pressure Roller | 10.30 | .50 | .25 | | .02 |



| DECISION NO. NJ77-3092 - MOD. #9 (42 FR 54726 - October 7, 1977) Bergen, Essex, Hudson & Passaic Counties, New Jersey | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| BOILERMAKERS | 12.76 | 8% | 20%+.25 | 10% | .02 |
| BOILERMAKER'S HELPERS | 12.23 | 8% | 20%+.25 | 10% | .02 |
| BRICKLAYERS, STONEMASONS, CEMENT MASONS & PLASTERERS: | | | | | |
| Area 4 | | | | | |
| Bricklayers and Stonemasons | 12.96 | .87 | .75 | | |
| Area 5 | 11.80 | .95 | 1.00 | | .02 |
| ELECTRICIANS & CABLE SPLICERS: | | | | | |
| Other residential construction: | | | | | |
| Bergen and Hudson COUNTIES | 13.78 | 10% | 9%+.58 | | 1.5% |
| LABORERS: | | | | | |
| Area 2 | | | | | |
| Group 1 | 8.25 | 1.10 | .75 | | .07 |
| Area 5 | | | | | |
| Unskilled Laborers | 8.50 | .75 | .85 | | .07 |
| Area 6 | | | | | |
| Group 1 | 8.10 | .90 | 1.10 | | .07 |
| Area 7 | | | | | |
| Unskilled Laborers | 8.15 | .80 | 1.20 | | .07 |
| LINE CONSTRUCTION: | | | | | |
| Essex County: | | | | | |
| Linemen, Cable Splicers, Line Equipment Operator, Line Truck Operators and Groundmen | 13.75 | 9% | 12% | | 3/4% |
| Passaic County: | | | | | |
| Linemen and Equipment Operators | 14.25 | 7% | 10% | | 3/4% |
| Cable Splicers | 15.32 | 7% | 10% | | 3/4% |
| Groundmen | 9.975 | 7% | 10% | | 3/4% |

| DECISION NO. NJ77-3092 (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LINE CONSTRUCTION: (CONT'D) | | | | | |
| Bergen & Hudson Counties: | | | | | |
| Linemen, Cable Splicers, Equipment Operators, & Groundmen | 13.78 | 108 | 90+.58 | | 3/48 |
| PAINTERS: | | | | | |
| Bergen & Passaic Counties: | | | | | |
| New & Old construction of one & two family houses: | | | | | |
| Painters & Tapers | 9.30 | 1.05 | 2.15 | | .06 |
| Other residential construction: | | | | | |
| Painters & Tapers | 11.10 | 1.05 | 2.15 | | .06 |
| Steel Outside | 12.10 | 1.05 | 2.15 | | .06 |
| Spray | 12.65 | 1.05 | 2.15 | | .06 |
| Essex & Hudson (West half ofCounty) Counties: | | | | | |
| Painters on New Construction and Major Alterations | 10.75 | .70 | .60 | .35 | .05 |
| Painters on Repaint Work | 9.80 | .70 | .60 | .35 | .05 |
| Spraying or application of hazardous or dangerous materials on repaint work | 10.40 | .70 | .60 | .35 | .05 |
| Exterior work exceeding 3 stories in height for painting of open structural steel and on interior work which requires painting higher than 20' above the ground or floor | 10.90 | .70 | .60 | .35 | .05 |
| Repaint work as described above | 9.95 | .70 | .60 | .35 | .05 |
| Spraying or application of hazardous or dangerous materials | 11.35 | .70 | .60 | .35 | .05 |



| DECISION NO. NJ77-3092 (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS: (CONT'D) | | | | | |
| Hudson (remainder of county) County: | | | | | |
| Painters, paperhangers, tapers, coverers, spacklers, preparatory and cleaning work | 10.30 | .90 | 1.75 | .50 | |
| Extension ladder work (36 feet or over), scaffold work (except one or two family homes), and boatswain chair | 11.45 | .90 | 1.75 | .50 | |
| Spraying and sandblasting | 12.00 | .90 | 1.75 | .50 | |
| SPRINKLER FITTERS | 14.08 | .75 | 1.55 | | .07 |
| Omit: | | | | | |
| All classifications and wage rates for plumbers, pipefitters, steamfitters, and gasfitters | | | | | |
| Add: | | | | | |
| PIPEFITTERS: | | | | | |
| Bergen County | 12.00 | 1.00 | 1.90 | 1.00 | .25 |
| Essex County | 12.05 | .84 | 1.08 | 1.21 | .06 |
| Hudson County | 12.00 | 1.00 | 1.90 | 1.00 | .25 |
| Passaic County | 12.00 | 1.00 | 1.90 | 1.00 | .25 |
| PLUMBERS: | | | | | |
| Bergen County | 13.60 | 1.00 | 1.35 | | .25 |
| Essex County | 13.905 | 1.10 | 1.17 | | .25 |
| Hudson (East Newark, Harrison, and Kearney only) County | 13.905 | 1.10 | 1.17 | | .25 |
| Hudson (Remainder of County) County | 13.60 | 1.00 | 1.35 | | .25 |
| Passaic County | 13.60 | 1.00 | 1.35 | | .25 |

MODIFICATIONS P. 14

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. TX79-4005 - MOD. #6 (44FR 1675 - January 5, 1979) | | | | | |
| Bee, Kleberg & Nueces Cos., Texas | | | | | |
| CHANGE: | | | | | |
| Asbestos workers | $11.44 | .55 | .65 | | |
| DECISION NO. TX79-4009-MOD. #4 (44 FR 1681 - January 5, 1979) | | | | | |
| Cameron, Hidalgo, Starr & Willacy Cos., Texas | | | | | |
| CHANGE: | | | | | |
| Asbestos workers | 11.44 | .55 | .65 | | |
| Plumbers & pipefitters | 9.00 | .55 | .25 | | .05 |
| DECISION NO. TX79-4036 - MOD. #3 (44 FR 48594 - August 17, 1979) | | | | | |
| Galveston & Harris Cos., Texas | | | | | |
| CHANGE: | | | | | |
| Sheet metal workers: | | | | | |
| Galveston County | 12.86 | 3%+.45 | .74 | .42 | .10 |
| DECISION NO. TX79-4037 - MOD. #3 (44 FR 31856 - June 1, 1979) | | | | | |
| Lubbock County, Texas | | | | | |
| CHANGE: | | | | | |
| Painters: | | | | | |
| Brush | 8.89 | | | | |
| Spray; sandblasters | 9.64 | | | | |

MODIFICATIONS P. 15

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. TX79-4039 - MOD. #3 (44 FR 16329 - March 16, 1979) | | | | | |
| Ector & Midland Cos., Texas | | | | | |
| CHANGE: | | | | | |
| Electricians - Zone 1 | $11.00 | .60 | 3% | | 1/10% |
| Zone 2 | 11.30 | .60 | 3% | | 1/10% |
| Zone 3 | 11.50 | .60 | 3% | | 1/10% |
| Painters: | | | | | |
| Brush | 8.35 | | .35 | | |
| Spray & sandblasters | 9.225 | | .35 | | |
| DECISION NO. TX79-4086 - MOD. #1 (44 FR 57632 - October 5, 1979) | | | | | |
| Bexar County, Texas | | | | | |
| CHANGE: | | | | | |
| Power equipment operators: | | | | | |
| Group 1 | 10.27 | .45 | 1.00 | | |
| Group 2 | 9.15 | .45 | 1.00 | | |
| Group 3 | 7.70 | .45 | 1.00 | | |
| Group 4 | 7.40 | .45 | 1.00 | | |

SUPERSEDEAS DECISION

STATE: Alabama COUNTY: Tuscaloosa
DECISION NO.: AL79-1133 DATE: Date of Publication
Supersedeas Decision No.: AL78-1069 dated September 8, 1978 in 43 FR-40172
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Bricklayers | 9.35 | | .40 | | .05 |
| Carpenters | 8.26 | | | | |
| Cement masons | 6.50 | | | | |
| Electricians | 12.05 | .55 | 3%+.40 | | ½ of 1% |
| Glaziers | 9.53 | .50 | .50 | | |
| Ironworkers: | | | | | |
| Structural & Ornamental | 10.75 | .60 | .815 | | .06 |
| Reinforcing | 10.75 | .60 | .815 | | .06 |
| Laborers: | | | | | |
| Laborers | 3.85 | | | | |
| Air tool operators | 4.45 | .25 | .15 | | |
| Mason tenders | 4.35 | .25 | .15 | | |
| Lathers | 9.50 | | | | |
| Painters, brush | 8.00 | | | | |
| Plumbers & pipefitters | 11.70 | .37 | .35 | | .08 |
| Roofers | 8.90 | | .20 | | .10 |
| Sheet metal workers | 10.80 | .79 | 1.07 | | .09 |
| Tile setters | 9.60 | | .40 | | .05 |
| Welders - rate for craft | | | | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Backhoe | 6.51 | | | | |
| Crane | 8.81 | | | | |
| Front end loader | 5.50 | | | | |
| Roller | 4.60 | | | | |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)

SUPERSEDEAS DECISION

STATE: DISTRICT OF COLUMBIA, COUNTIES: DISTRICT OF COLUMBIA; MARYLAND-MONTGOMERY AND PRINCE GEORGES; AND D.C. TRAINING SCHOOL; VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA, ARLINGTON AND FAIRFAX COUNTIES
DECISION NO.: DC79-3039 DATE: DATE OF PUBLICATION
Supersedes Decision No. DC78-3098, dated March 17, 1978, in 43 FR 11464.
DESCRIPTION OF WORK: Building Construction (Does not include single family homes and garden type apartments up to and including 4 stories) and also excluding the Independent City of Alexandria, Heavy Construction (excluding Water and Sewer Lines), Highway Construction (District of Columbia Only), Water and Sewer Lines (District of Columbia, and Montgomery County, Maryland only)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: All Counties | | | | | |
| BUILDING CONSTRUCTION: Excluding Alexandria, Virginia | | | | | |
| ASBESTOS WORKERS | 12.20 | .75 | 1.39 | | .03 |
| BOILERMAKERS - BLACKSMITHS | 12.875 | 1.07 | 1.00 | | .04 |
| BRICKLAYERS | 12.50 | 1.10 | .85 | | .10 |
| CARPENTERS | 11.28 | .80 | .65 | | .05 |
| CARPET LAYERS | 7.83 | .30 | | | .05 |
| CEMENT MASONS: | | | | | |
| Cement Masons | 11.04 | 1.055 | .70 | | .11 |
| Grinding Machine | 11.29 | 1.055 | .70 | | .11 |
| DIVERS | 21.79 | .80 | .65 | | .05 |
| DIVER TENDER | 21.43 | .80 | .65 | | .05 |
| ELECTRICIANS | 12.20 | .70 | 3%+.80 | | .13 |
| ELEVATOR CONSTRUCTORS | 11.72 | .895 | .69 | a+b | .025 |
| ELEVATOR CONSTRUCTORS' HELPERS | 70%JR | .895 | .69 | a+b | .025 |
| ELEVATOR CONSTRUCTORS' HELPERS (PROBATIONARY) | 50%JR | | | | |
| GLAZIERS | 11.78 | .71 | .60 | | .05 |
| IRONWORKERS: | | | | | |
| Structural, ornamental and chain link fence | 11.63 | .90 | .96 | | .08 |
| Reinforcing | 11.53 | .82 | 1.15 | | .07 |
| LABORERS (EXCLUDING, HEAVY CONSTRUCTION) | | | | | |
| Common laborers, landscapers | 8.96 | .75 | .52 | | .05 |
| Acetylene burners used on wrecking | 9.50 | .75 | .52 | | .05 |
| Air tool op., scaffold builders, paving breakers, towmasters, buggy mobiles, spaders, mortar men and scootretes | 9.12 | .75 | .52 | | .05 |

| DECISION NO. DC79-3039 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS (EXCLUDING, HEAVY CONSTRUCTION) CONT'D: | | | | | |
| Pipelayers | 9.12 | .75 | .52 | | .05 |
| Plasterers' tenders | 9.50 | .75 | .52 | | .05 |
| Plumbers' laborers | 8.31 | .65 | .45 | | .05 |
| Powdermen | 10.215 | .75 | .52 | | .05 |
| Powersaw, well point | 9.23 | .75 | .52 | | .05 |
| LATHERS | 10.66 | .65 | .50 | | .025 |
| LEADBURNERS | 10.75 | .40 | .25 | c | .01 |
| LINE CONSTRUCTION: | | | | | |
| Linemen, cable splicers, equipment operators | 13.16 | .60 | 3% | | ½ of 1% |
| Truck with winch, truck pole or steel handling | 7.78 | .60 | 3% | | ½ of 1% |
| MARBLE SETTERS | 12.35 | 1.02 | .65 | | .06 |
| MARBLE SETTERS' HELPERS | 7.35 | | | | |
| MILLWRIGHTS | 11.81 | .80 | .65 | | .05 |
| MOTOR REPAIRMAN (Removal and reinstalling of electrical motors) | 9.87 | .70 | 3%+.80 | h | |
| PAINTERS (EXCLUDING FAIRFAX CO.) | | | | | |
| Brush, spray, paperhangers, tapers | 11.50 | .91 | 1.10 | | .08 |
| Steel, sandblasting, swing stage, power brushing | 12.00 | .91 | 1.10 | | .08 |
| PAINTERS (FAIRFAX CO.) | 7.13 | | | | |
| PILEDRIVERMEN | 11.53 | .80 | .65 | | .05 |
| PLASTERERS | 11.23 | .65 | .75 | | .06 |
| PLUMBERS | 12.22 | 1.05 | 1.10 | | .27 |
| ROOFERS: | | | | | |
| Composition | 11.49 | .74 | .40 | | .10 |
| Slate, tile mopmen, waterproofer, sprayers; sprandrel and ironite | 12.05 | .74 | .40 | | .10 |
| SHEET METAL WORKER | 11.99 | g | 1.29 | | .14 |
| SOFT FLOOR LAYERS (EXCLUDING FAIRFAX CO.) | 11.28 | .80 | .65 | | .05 |
| SOFT FLOOR LAYERS (FAIRFAX CO.) | 6.81 | | | | |
| SPRINKLER FITTERS | 13.13 | .75 | 1.05 | | .08 |
| STEAMFITTERS, REFRIGERATION AND AIR CONDITION MECHANIC | 12.48 | .95 | 1.00 | | .16 |



| DECISION NO. DC79-3039 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| STONE MASONS | 12.35 | 1.02 | .65 | | .06 |
| STONE CUTTERS: | | | | | |
| Fitters and trimmers | 11.65 | .18 | .40 | | |
| Ornamental cravers | 10.38 | .18 | .40 | d | |
| Figure carvers | 11.00 | .18 | .40 | d | |
| TERRAZZO AND MOSAIC WORKERS | 12.25 | .70 | .95 | | .04 |
| TERRAZZO WORKER' HELPERS | 9.95 | .70 | .70 | | |
| TILE SETTERS | 11.59 | .70 | .70 | | .04 |
| TILE SETTERS' HELPERS | 9.95 | .70 | .70 | | |
| TRUCK DRIVERS: | | | | | |
| Boom trucks | 8.45 | .415 | .425 | e+f | |
| Small dump, water sprinkler, grease and oil | 8.20 | .415 | .425 | e+f | |
| Flat, pick-up hauling materials, small Euclids, dump over 8 wheels | 8.30 | .415 | .425 | e+f | |
| Trailers, low boys, tractor pulls | 8.50 | .415 | .425 | e+f | |
| Helpers | 8.05 | .415 | .425 | e+f | |
| Carryalls, large Euclids, Euclid water sprinkler, tunnel work under ground | 8.60 | .415 | .425 | e+f | |
| Mechanics | 8.35 | .415 | .425 | e+f | |
| RIGGERS AND WELDERS - Receive rates prescribed for crafts performing and welding are incidental. | | | | | |

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

DECISION NO. DC79-3039

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F, plus the Friday after Thanksgiving Day.

b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

c. Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve (provided an employee has worked at least 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday).

d. Holidays: A-D-E-F and Veteran's Day.

e. Holidays: A-D-E and F (provided the employee works the regularly scheduled work days immediately preceeding and following the holiday.

f. One weeks paid vacation providing the employee has worked 3 years and and a minimum of 1450 hours during any calendar year.

g. Employer contributes to Health & Welfare $1.09, in District of Columbia, and $1.19, in all other areas.

h. Employer contributes to employee who have worked six (6) months or more, shall be given two and one-half days vacation or equivalent thereof. All men in the employ of the employer three (3) years or more shall be given two (2) week's vacation with pay or the equivalent thereof. All men in the employ of the employer ten (10) years or more shall be given three (3) weeks vacation with pay or the equivalent thereof.



DECISION NO. DC79-3039

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS (HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES): | | | | | |
| GROUP I | 9.06 | .65 | .52 | | .05 |
| GROUP II | 9.22 | .65 | .52 | | .05 |
| GROUP III | 9.28 | .65 | .52 | | .05 |
| GROUP IV | 9.33 | .65 | .52 | | .05 |
| GROUP V | 9.54 | .65 | .52 | | .05 |
| GROUP VI | 9.76 | .65 | .52 | | .05 |
| GROUP VII | 9.895 | .65 | .52 | | .05 |
| GROUP VIII | 10.315 | .65 | .52 | | .05 |

CLASSIFICATIONS

LABORERS:

GROUP I - Carloader, choker setter, concrete crewman, crushed feeder, demolition laborer (including salvaging all material, loading and cleaning up), wrecking, driller tenders, dumpman, flagman, fence erector and installer (including installation and erection of fence, guard rails, median rails, reference posts, guide posts and right-of-way markers), form stripper, general laborers, railroad track laborer, riprap man, scale man, stake jumper, structure mover (includes foundation, separation, preparation, cribbing, shoring, jacking and unloading of structures), water nozzleman, timber bucker and faller, truck loader, water boys

GROUP II - Combined air and water nozzlemen, cement handler, dope pot fireman (nonmechanical), form cleaning machine, mechanical railroad equipment (includes spiker, puller, tie cleaner, tamper pipe wrapper, power driven wheelbarrow, operators of hand derricks, towmasters, scootcretes, buggymobiles and similar equipment), tamper or rammer operator, trestle scaffold builders over one tier high, power tool operator (gas, electric or pneumatic), sandblast or gunnite tailhose man, scaffold erector (steel or wood), vibrator operator (up to 4'), asphalt cutter, mortar men, shorer and lagger, creosote material handler, corrosice enamel or equal, paving breaker and jackhammer operators

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CLASSIFICATION - CONT'D

GROUP III - Multi-section pipe layer, non-mentallic clay and concrete pipe layer (including caulker, collarman, jointer, rigger and jacker) thermite welder and corrugated metal culvert pipe layer

GROUP IV - Asphalt block pneumatic cutter, asphalt roller, walking chain-saw with attachment, concrete saw (walking), high scalers, jackhammer (using over 6' of steel), vibrator (4' and over), well point installers, air-trac operator

GROUP V - Asphalt screeder, big drills, cut of the hole drills (1½ piston or larger) down the hole drills (3½" piston or larger), gunnite or sandblaster nozzleman, asphalt raker, asphalt tamper, for setter, demolition torch operator, shotcrete nozzlemen and potman

GROUP VI - Powderman, master for setters

GROUP VII - Brick paver (asphalt block paver, asphalt block saw man, asphalt block grinder; hasting block or similar type)

GROUP VIII - Miners



DECISION NO. DC79-3039

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS (HEAVY CONSTRUCTION): | | | | | |
| GROUP I | 9.355 | .65 | .52 | | .05 |
| GROUP II | 9.675 | .65 | .52 | | .05 |
| GROUP III | 10.375 | .65 | .52 | | .05 |
| GROUP IV | 10.645 | .65 | .52 | | .05 |

CLASSIFICATIONS

TUNNELS, RAISES AND SHAFTS — FREE AIR

GROUP I
Brakeman, bull gang, dumper, trackman, concrete man

GROUP II
Chuck tender, powdermen in prime house, form setters and movers, nippers, cableman, hosemen, groutman, bell or signalman, top or bottom vibrator operator, caulkers' tenders

GROUP III
Miners, rodmen, re-bar underground, concrete or gunnite nozzlemen, powderman, timberman and re-timberman, wood steel including liner plate or any other support material, motorman, caulkers, diamond drill operators, riggers, cement finishers - underground, welders and burners, shield driver, air trac operator, shotcrete nozzleman and potman

GROUP IV
Mucking machine operator (air)

| LABORERS - COMPRESSED AIR RATES (EXCLUDING SEWER AND WATER LINES) Gauge Pressure Pounds | Work Period Hours | | | | |
|---|---|---|---|---|---|
| 1-14 | 7 | 91.26 | .65 | .45 | .05 |
| 14-18 | 6 | 94.60 | .65 | .45 | .05 |
| 18-22 | 5-1/2 | 97.89 | .65 | .45 | .05 |
| 22-26 | 5 | 101.28 | .65 | .45 | .05 |
| 26-32 | 4 | 104.61 | .65 | .45 | .05 |
| 32-38 | 3 | 107.91 | .65 | .45 | .05 |
| 38-44 | 2-1/2 | 119.29 | .65 | .45 | .05 |

DECISION NO. DC79-3039

| HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: BUILDING CONSTRUCTION: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS: | | | | | |
| GROUP I | 12.46 | .70 | .65 | | .12 |
| GROUP II | 12.19 | .70 | .65 | | .12 |
| GROUP III | 12.03 | .70 | .65 | | .12 |
| GROUP IV | 11.84 | .70 | .65 | | .12 |
| GROUP V | 11.79 | .70 | .65 | | .12 |
| GROUP VI | 11.77 | .70 | .65 | | .12 |
| GROUP VII | 11.76 | .70 | .65 | | .12 |
| GROUP VIII | 11.57 | .70 | .65 | | .12 |
| GROUP IX | 11.55 | .70 | .65 | | .12 |
| GROUP X | 11.34 | .70 | .65 | | .12 |
| GROUP XI | 10.82 | .70 | .65 | | .12 |
| GROUP XII | 10.63 | .70 | .65 | | .12 |
| GROUP XIII | 8.85 | .70 | .65 | | .12 |

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP I - 35 ton cranes and above, tower and climbing cranes

GROUP II - Back hoes, boom-cat, cableways, cranes or derrickr, draglines, elevating graders, hoists, multiple concrete conveyors, elevators (permanent), paving mixers, pile driving engines, power shovels, tunnel shovels, mucking machines, batch plant, concrete pumps, locomotives (standards, narrow guage), power driven wheel scoops and scrapers (50 cu. yd. struck capacity or above), front end loader above 3½ cu. yd., boom trucks, moles, shields, tunnel mining machines, loaders used as muckers in tunnel mining, gradalls, shotcrete machines and grout pumps with discharge of two inches I.D. pr more, drill rigs

GROUP III - Hydraulic back hoes of less than ½ yd. capacity, mounted on tractors, front end loader above 2-3/4 to 3½ cu. yd.

GROUP IV - Air compressor on steel

GROUP V - Mechanic, mechanic-welder, welder

GROUP VI - Front end loader, highlift, fork lift

GROUP VII - Boilers (skeleton), trenching machines, tug boat, well drilling machines



DECISION NO. DC79-3039

POWER EQUIPMENT OPERATORS CLASSIFICATION (CONT'D)

GROUP VIII - Concrete mixer, tunnel motorman

GROUP IX - Power driven wheel scoops and scrapers (below 50 cu. yd. struck capacity), blade graders, motor graders, bulldozers

GROUP X - Rollers, asphalt spreaders, bullfloat finishing machines, concrete finishing machines, concrete spreaders, fine graders

GROUP XI - Air compressors (except steel), welding machines, pumps, generators, space heaters, wellpoints, deepwells, hydraulic pumps

GROUP XII - Firemen

GROUP XIII - Oilers

DECISION NO. DC79-3039

| (DISTRICT OF COLUMBIA ONLY) PAVING AND INCIDENTAL | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GRADING | | | | | |
| ASPHALT SHOVELER | 7.55 | .32 | .35 | | |
| ASPHALT RAKER | 7.75 | .32 | .35 | | |
| ASPHALT TAMPER | 7.65 | .32 | .35 | | |
| BRICKLAYERS | 12.50 | 1.10 | .85 | | .10 |
| CARPENTERS | 11.28 | .80 | .65 | | .05 |
| CEMENT MASONS | 8.00 | .32 | .35 | | |
| CONCRETE SAW OPERATORS | 7.75 | .32 | .35 | | |
| CONCRETE SHOVELER | 7.65 | .32 | .35 | | |
| FORM SETTER | 8.00 | .32 | .35 | | |
| LABORERS: | | | | | |
| Laborers | 7.50 | .32 | .35 | | |
| Jackhammer | 7.70 | .32 | .35 | | |
| Hand Burner Operator | 7.65 | .32 | .35 | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Concrete Spreader Operator, Finishing Machine, Roller (rough), Compressor Rubbertired Loader (1-½ cu. yds., or less), Asphalt Plant Mixer | 7.75 | .27 | .35 | | |
| Loader Operator Tracks (2-½ cu. yds. or less), Burner Planer, Bulldozer, Mechanic or Welder, Rubber Tired Loader (over 1-½ cu. yds.) | 7.95 | .27 | .45 | | |
| Asphalt Spreader, Hydraulic Backhoe (½ cu. yd., or less), Asphalt Plant Engineer, Asphalt Roller Operator, Concrete Breaker (machine) | 8.00 | .27 | .35 | | |
| Crane Operator, Concrete Paving Operator | 8.15 | .27 | .35 | | |
| Shovel Operator | 8.25 | .27 | .35 | | |
| Gradall Operator (1-½ cu. yds. or less), Motor Grader, Operator Tracks over 2-½ cu. yds. | 8.90 | .27 | .35 | | |



DECISION NO. DC79-3039

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS: (CONT'D) | | | | | |
| G-1000 Gradall Operator (over 1½ cu. yds.) | 9.15 | .27 | .35 | | |
| Power Broom, Oiler | 7.65 | .27 | .35 | | |
| Sand Setter | 8.00 | .27 | .35 | | |
| TRUCK DRIVERS: | | | | | |
| Truck Drivers (standard) | 7.50 | .27 | .35 | | |
| Tandem | 7.62 | .27 | .35 | | |
| Tractor trailer (capable of moving heavy equipment | 8.00 | .27 | .35 | | |

| DECISION NO. DC79-3039 (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY, MARYLAND ONLY) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SEWER AND WATER LINES | | | | | |
| BRICKLAYERS | 12.50 | 1.10 | .85 | | .10 |
| CARPENTERS | 11.28 | .80 | .65 | | .05 |
| CEMENT MASONS | 11.04 | 1.055 | .70 | | .11 |
| IRONWORKERS: REINFORCING | 11.55 | .82 | 1.15 | | .07 |
| LABORERS: | | | | | |
| Open Cut: | | | | | |
| Laborers, jackhammer, rammers and spaders | 5.78 | .33 | .25 | | .03 |
| Timberman, sheeting-men, shoring-men, caulkers pipelayers helpers | 5.93 | .33 | .25 | | .03 |
| Bottom man | 5.83 | .33 | .25 | | .03 |
| Wagon drillers, air track drillers | 6.13 | .33 | .25 | | .03 |
| Pipelayers | 6.13 | .33 | .25 | | .03 |
| Rock drillers | 5.88 | .33 | .25 | | .03 |
| Tunnel: | | | | | |
| Brakeman, bull gang, dumper, trackmen, concrete man | 6.415 | .33 | .25 | | .03 |
| Chuck tender, powder in prime house, form setters and movers, nippers, cablemen, hosemen, grout men, bell or signal men, top or bottom, vibrator operator, caulkers' tenders | 6.715 | .33 | .25 | | .03 |
| Miners, rodmen, re-bar underground, concrete or gunite nozzlemen, powermen, timbermen and retimberman wood or steel including liner plate or any other support material, motorman, caulkers, diamond drill riggers, cement finishers (underground), welders and burners, shield driver | 7.365 | .33 | .25 | | .03 |
| Mucking machine operator (air | 7.615 | .33 | .25 | | .03 |



| DECISION NO. DC79-3039 (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY, MARYLAND ONLY) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SEWER AND WATER LINES CONT'D | | | | | |
| COMPRESSED AIR: (All rates per day) | | | | | |
| Gauge Pressure Pounds / Work Period | | | | | |
| From 1 to 14 / 7 hours | 72.74 | .33 | .25 | | .03 |
| From 14 to 18 / 6 hours | 76.08 | .33 | .25 | | .03 |
| From 18 to 22 / 5½ hours | 79.41 | .33 | .25 | | .03 |
| From 22 to 26 / 5 hours | 82.76 | .33 | .25 | | .03 |
| From 26 to 32 / 4 hours | 86.09 | .33 | .25 | | .03 |
| From 32 to 38 / 3 hours | 89.44 | .33 | .25 | | .03 |
| From 38 to 44 / 2½ hours | 92.77 | .33 | .25 | | .03 |
| PILEDRIVERMEN | 10.68 | .85 | .60 | | .05 |
| PLUMBERS | 12.22 | 1.05 | 1.10 | | .27 |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Backhoes, cable ways, cranes, draglines power shovels, tunnel shovels, tunnel mucking machines, derricks, 1 cu. yd. and over | 9.39 | .35 | .45 | | .05 |
| Backhoes, cableways, cranes derricks, dragline, tunnel shovels, tunnel mucking machines up to 1 cu. yd., boom cats, elevating graders, hoists, paving mixers, piledriving engines, batch plants concrete pumps | 9.14 | .35 | .45 | | .05 |
| Trenching machines (above 8' 3") | 8.94 | .35 | .45 | | .05 |
| Backhoes (hydraulic, under ½ c.y.) | 9.02 | .35 | .45 | | .05 |
| Trenching machines (up to 8' 3"), boilers skeleton, well drilling machines | 8.84 | .35 | .45 | | .05 |
| Air compress, tunnel | 8.81 | .35 | .45 | | .05 |
| Front end loaders (high lift), bulldozers | 8.79 | .35 | .45 | | .05 |

DECISION NO. DC79-3039

| (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY, MARYLAND MARYLAND ONLY) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SEWER AND WATER LINES CONT'D | | | | | |
| POWER EQUIPMENT OPERATORS CONT'D | | | | | |
| Concrete mixers, power wheel scoops and scrapers, motorgraders, tunnel motor men, blade graders, tunnel mechanics | 8.69 | .35 | .45 | | .05 |
| Mechanics | 9.02 | .35 | .45 | | .05 |
| Bulldozer, hydraulic tampers | 8.59 | .35 | .45 | | .05 |
| Roller | 8.49 | .35 | .45 | | .05 |
| Air compressors, pump, welding machine well points | 8.415 | .35 | .45 | | .05 |
| TRUCK DRIVERS: | | | | | |
| Dump trucks | 6.10 | .415 | a | | |
| Dump trucks over 8 wheels | 6.20 | .415 | a | | |
| Flat trucks | 6.20 | .415 | a | | |
| Trailers | 6.45 | .415 | a | | |
| Fuel and oil trucks | 6.10 | .415 | a | | |
| Euclids | 6.60 | .415 | a | | |

FOOTNOTE:

a. $10.00 per week when employee has worked 90 days and work three days in any work week.

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: ALLEN, BALLARD, BUTLER, CALDWELL, CALLOWAY, CARLISLE, CHRISTIAN, CRITTENDEN, DAVIESS, HENDERSON, FULTON, GRAVES, HANCOCK, HENDERSON, HICKMAN, HOPKINS, LIVINGSTON, LOGAN, LYON, MCCRACKEN, MCLEAN, MARSHALL, MUHLENBERG, OHIO, SIMPSON, TODD, TRIGG, UNION, WARREN, AND WEBSTER.

DECISION NUMBER: KY79-1135 DATE: DATE OF PUBLICATION

Supersedes Decision Number KY78-1099, dated December 1, 1978, in 43 FR 56395.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| BRICKLAYERS | $ 9.70 | .45 | .35 | | |
| CARPENTERS: | | | | | |
| Heavy Rate of Pay | 10.30 | .45 | .30 | | .05 |
| Highway Rate of Pay | 9.30 | .35 | .35 | .25 | |
| CEMENT MASONS | *9.20 | .90 | .40 | | .05 |
| *Cement masons working on a swinging scaffold shall receive an additional 25¢ per hour when working up to 50 ft., and an additional 25¢ per hour for each additional 50 ft. or portion thereof. | | | | | |
| ELECTRICIANS (OUTSIDE): | | | | | |
| Linemen | 11.45 | .60 | 13% | | ½ of 1% |
| Cable splicers | 11.70 | .60 | 13% | | ½ of 1% |
| Groundmen | 8.36 | .60 | 13% | | ½ of 1% |
| IRONWORKERS | 11.60 | .55 | .85 | | .05 |
| MILLWRIGHTS: | | | | | |
| Heavy Rate of Pay | 11.05 | .45 | .30 | | .05 |
| Highway Rate of Pay | 10.75 | .45 | .30 | | .05 |
| PAINTERS: | | | | | |
| Brush & Roller | 10.05 | .50 | | | |
| Sandblast & Power tools | 10.50 | .50 | | | |
| BRIDGE WORK - Brush, Roller, Spray, & Sandblast | 11.05 | .50 | | | |
| When there is a FREE FALL beginning at the point of: | | | | | |
| 40' to 80' + 50¢ per hour over the base rate of work classification; | | | | | |
| 80' to 120' + 75¢ per hour over the base rate of work classification; | | | | | |
| Over 120' + $1.00 per hour over the base rate of work classification. | | | | | |
| PILEDRIVERMEN: | | | | | |
| Heavy Rate of Pay | 10.55 | .45 | .30 | | .05 |
| Highway Rate of Pay | 10.25 | .45 | .30 | | .05 |
| PLUMBER & PIPEFITTERS | 13.28 | .80 | 1.24 | | .15 |

DECISION NO. KY79-1135

| LABORERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP 1 | $ 8.62 | .35 | .60 | | |
| GROUP 2 | 8.87 | .35 | .60 | | |
| GROUP 3 | 8.92 | .35 | .60 | | |
| GROUP 4 | 9.52 | .35 | .60 | | |

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping and seeding, planters & tree-trimmers, sign guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, flagmen, rip-rap & groutors, dredging laborers, right of way laborers, wrecking & demolition laborers, drill tender, & all hand digging and hand back filling.

GROUP 2 - Wagon drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheel barrow, sand blaster & concrete chippers, green concrete cutting, brickmason tenders & mortar mixers, pipe layers, joint maker, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, surface grinderman, hand operated grouter & grinder machine, operator & deckhand scow man, burner & welder.

GROUP 3 - Powderman and blasters, side rail setters - including rail paved ditches, tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt luteman & rakeman, air tool driller (all types), grout pump operator.

GROUP 4 - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air), Caisson workers (free air).



DECISION NO. KY79-1136

| POWER EQUIPMENT OPERATORS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| HEAVY CONSTRUCTION | | | | | |
| CLASS A | $11.42 | .50 | .80 | | .08 |
| CLASS B | 8.77 | .50 | .80 | | .08 |
| CLASS C | 8.02 | .50 | .80 | | .08 |
| CLASS D | 11.67 | .50 | .80 | | .08 |

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade all, hoist (two or more drums), hynter, pumperete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KoCal loader, tower cranes (French, German & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic tender, Whirley oiler, tract-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill tender (truck mounted).

CLASS C - Bituminous distributor, cement gun conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand, steerman, hydraulic post driver, core drill and caisson drill tender (truck or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') and over (including jib).

DECISION NO. KY79-1135

| POWER EQUIPMENT OPERATORS: HIGHWAY CONSTRUCTION | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | $10.07 | .50 | .80 | | .08 |
| CLASS B | 7.82 | .50 | .80 | | .08 |
| CLASS C | 8.17 | .50 | .80 | | .08 |
| CLASS D | 7.58 | .50 | .80 | | .08 |

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KoCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic tender, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.



DECISION NO. KY79-1135

| TRUCK DRIVERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck tender | $ 8.55 | .35 | .35 | .25 | |
| Driver - 3 tons & under, tire changer & truck mechanic tender, & greaser on greasing facilities | 8.60 | .35 | .35 | .25 | |
| Truck mechanic | 8.83 | .35 | .35 | .25 | |
| Driver - over 3 tons, semi - trailer or pole trailer, dump truck, tandem axle, distributor, and mixer trucks (all types) | 8.90 | .35 | .35 | .25 | |
| Driver - Euclid and other earth moving equipment, low-boy, winch truck and A-frame truck when used in transporting material, and pavement breakers | 8.91 | .35 | .35 | .25 | |
| WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental. | | | | | |
| Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)). | | | | | |

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ADAIR, BARREN, BELL, BREATHITT, CASEY, CLAY, CLINTON, CUMBERLAND, ESTILL, FLOYD, GARRARD, GREEN, HARLAN, HART, JACKSON, JOHNSON, KNOTT, KNOX, LAWRENCE, LAUREL, LEE, LESLIE, LETCHER, LINCOLN, MCCREARY, MAGOFFIN, MARTIN, MENIFEE, METCALFE, MONROE, MORGAN, OWSLEY, PERRY, PIKE, POWELL, PULASKI, ROCKCASTLE, RUSSELL, TAYLOR, WAYNE, WHITLEY, AND WOLFE.
DECISION NUMBER: KY79-1137 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY78-1100, dated December 1, 1978, in 43 FR 56398.
DESCRIPTION OF WORK:

HEAVY & HIGHWAY PROJECTS:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| BRICKLAYERS | $10.60 | .35 | .35 | .25 | |
| CARPENTERS | 9.10 | .35 | .35 | .25 | |
| CEMENT MASONS | 8.95 | .35 | .35 | .25 | |
| ELECTRICIANS: | | | | | |
| Linemen | 13.10 | .50 | 3% | | ½ of 1% |
| Cable splicers | 13.35 | .50 | 3% | | ½ of 1% |
| Groundmen | 9.825 | .50 | 3% | | ½ of 1% |
| IRONWORKERS: | | | | | |
| Reinforcing | 9.00 | .35 | .35 | .25 | |
| Structural | 9.20 | .35 | .35 | .25 | |
| LABORERS: | | | | | |
| General laborers & flagmen | 7.15 | .35 | .35 | .25 | |
| Hand blade operator, batch truck dumper, & deck hand or scow man | 7.40 | .35 | .35 | .25 | |
| Power driven tool operator: wagon drill, chain saw, jack hammer, concrete saw, sand blaster, concrete chipper, pavement breaker, vibrator, power wheel barrow, power buggy, sewer pipe layer, bottom man, dry cement handler, concrete rubber, & mason tender | 7.50 | .35 | .35 | .25 | |
| Asphalt lute and raker, & side rail setter | 7.55 | .35 | .35 | .25 | |
| Gunnite nozzle man; gunnite operator | 7.65 | .35 | .35 | .25 | |
| Tunnel laborers (free air) | 7.70 | .35 | .35 | .25 | |
| Tunnel mucker (free air) | 7.75 | .35 | .35 | .25 | |
| Tunnel miner, blaster, & driller (free air) | 8.10 | .35 | .35 | .25 | |
| Drill operator (of percussion type drills which are both powered & propelled by an independent air supply) | 8.45 | .35 | .35 | .25 | |
| Caisson workers | 8.65 | .35 | .35 | .25 | |
| Powderman | 8.75 | .35 | .35 | .25 | |

DECISION NO. KY79-1137

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| MILLWRIGHTS | $ 9.91 | .55 | .30 | | .05 |
| PAINTERS | 10.80 | .35 | .35 | .25 | |
| PILEDRIVERMEN | 8.75 | .35 | .35 | .25 | |
| PLUMBERS & PIPEFITTERS | 12.77 | .35 | .35 | .25 | |
| SHEET METAL WORKERS | 10.65 | .35 | .35 | .25 | |
| TRUCK DRIVERS: | | | | | |
| Truck tender | 7.40 | .35 | .35 | .25 | |
| Driver - winch truck and A-frame truck when used in transporting materials | 7.50 | .35 | .35 | .25 | |
| Driver - distributor, dump truck tandem axle, semi-trailer or pole trailer | 7.60 | .35 | .35 | .25 | |
| Driver - mixer trucks (all types) | 7.65 | .35 | .35 | .25 | |
| Truck mechanic | 7.70 | .35 | .35 | .25 | |
| Driver - 3 tons & under, tire changer & mechanic tender | 7.73 | .35 | .35 | .25 | |
| Driver - pavement breakers | 7.75 | .35 | .35 | .25 | |
| Driver - over 3 tons | 7.94 | .35 | .35 | .25 | |
| Driver - Euclid and other earth moving equipment, & low boy | 8.51 | .35 | .35 | .25 | |
| Greaser on grease facilities | 8.55 | .35 | .35 | .25 | |
| WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental. | | | | | |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NO. KY79-1137

| POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | $11.42 | .50 | .80 | | .08 |
| CLASS B | 8.77 | .50 | .80 | | .08 |
| CLASS C | 8.02 | .50 | .80 | | .08 |
| CLASS D | 11.67 | .50 | .80 | | .08 |

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e: navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous) scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade all, hoist (two or more drums), hyster, pumporete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, Whirley oiler, tract-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C - Bituminous distributor, cement gun coveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand, steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') and over (including jib).



DECISION NO. KY79-1137

| POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | $10.07 | .50 | .80 | | .08 |
| CLASS B | 7.82 | .50 | .80 | | .08 |
| CLASS C | 8.17 | .50 | .80 | | .08 |
| CLASS D | 7.58 | .50 | .80 | | .08 |

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumporete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HB), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ANDERSON, BATH, BOURBON, BOYD, BOYLE, BRACKEN, BRECKINRIDGE, BULLITT, CARROLL, CARTER, CLARK, ELLIOTT, FAYETTE, FLEMING, FRANKLIN, GALLATIN, GRAYSON, GRANT, GREENUP, HARDIN, HARRISON, HENRY, JEFFERSON, JESSAMINE, LARUE, LEWIS, MADISON, MARION, MASON, MEADE, MERCER, MONTGOMERY, NELSON, NICHOLAS, OLDHAM, OWEN, ROBERTSON, ROWAN, SCOTT, SHELBY, SPENCER, TRIMBLE, WASHINGTON, & WOODFORD.
DECISION NUMBER: KY79-1138 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY78-1098, dated December 1, 1978, in 43 FR 56393.
DESCRIPTION OF WORK:

| HEAVY & HIGHWAY PROJECTS | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| BRICKLAYERS | $11.44 | .50 | .40 | | .01 |
| CARPENTERS: | | | | | |
| Heavy Rate of Pay | 10.31 | .55 | .30 | | .01 |
| Highway Rate of Pay | 9.41 | .35 | .35 | .25 | |
| CEMENT MASONS | 9.78 | 1.00 | .70 | | .04 |
| ELECTRICIANS (OUTSIDE): | | | | | |
| Lineman & Cable splicers | 13.30 | .50 | 3% + .60 | | ½ of 1% |
| Groundmen | 8.25 | .50 | 3% + .60 | | ½ of 1% |
| IRONWORKERS | 12.00 | 1.00 | 1.85 | | .06 |
| MILLWRIGHTS: | | | | | |
| Heavy Rate of Pay | 11.06 | .55 | .30 | | .05 |
| Highway Rate of Pay | 10.76 | .55 | .30 | | .05 |
| PAINTERS: | | | | | |
| Brush | 9.83 | .35 | .20 | | .03 |
| Spray | 10.28 | .35 | .20 | | .03 |
| Bridge Work - work on bridges over navigable water shall carry a premium of $2.00 per hour added to the base rate. | | | | | |
| PILEDRIVERMEN: | | | | | |
| Heavy Rate of Pay | 10.56 | .55 | .30 | | .05 |
| Highway Rate of Pay | 10.26 | .55 | .30 | | .05 |
| PIPEFITTERS | 12.77 | .75 | 1.40 | | .10 |
| PLUMBERS | 13.28 | .00 | 1.24 | | .15 |
| WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental. | | | | | |

DECISION NO. KY79-1138

| LABORERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP 1 | $ 8.62 | .35 | .60 | | |
| GROUP 2 | 8.87 | .35 | .60 | | |
| GROUP 3 | 8.92 | .35 | .60 | | |
| GROUP 4 | 9.52 | .35 | .60 | | |

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping and seeding, planters & tree-trimmers, sign guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, flagmen, rip-rap & grouters, dredging laborers, right of way laborers, wrecking & demolition laborers, drill tender, & all hand digging and hand back filling.

GROUP 2 - Wagon drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheel barrow, sand blaster & concrete chippers, green concrete cutting, brickmason tenders & mortar mixers, pipe layers, joint maker, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, surface grinderman, hand operated grouter & grinder machine, operator & deckhand scow man, burner & welder.

GROUP 3 - Powderman and blasters, side rail setters - including rail paved ditches, tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt lutcman & rakeman, air tact driller (all types), grout pump operator.

GROUP 4 - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air), Caisson workers (free air).

DECISION NO. KY79-1138

POWER EQUIPMENT OPERATORS

HEAVY CONSTRUCTION:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | $11.42 | .50 | .80 | | .08 |
| CLASS B | 8.77 | .50 | .80 | | .08 |
| CLASS C | 8.02 | .50 | .80 | | .08 |
| CLASS D | 11.67 | .50 | .80 | | .08 |

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous) scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck; concrete paver, grade all, hoist (two or more drums), hyster, pumperete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, Gorman & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, Whirley oiler, tract-air and road-widening troncher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C - Bituminous distributor, cement gun coveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand, steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') and over (including jib).



DECISION NO. KY79-1138

POWER EQUIPMENT OPERATORS

HIGHWAY CONSTRUCTION:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | $10.07 | .50 | .80 | | .08 |
| CLASS B | 7.82 | .50 | .80 | | .08 |
| CLASS C | 8.17 | .50 | .80 | | .08 |
| CLASS D | 7.58 | .50 | .80 | | .08 |

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumperete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

DECISION NO. KY79-1038

| TRUCK DRIVERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck tender | $ 8.92 | *.5875 | *.525 | | |
| Mobile batch truck tender | 8.94 | *.5875 | *.525 | | |
| Greaser, tire changer, & mechanic tender | 9.03 | *.5875 | *.525 | | |
| Driver - single axle dump & flat bed trucks, semi-trailer or pole trailer (when used to pull building materials and equipment), dump truck tandem axle, distributor, & truck mechanic | 9.21 | *.5875 | *.525 | | |
| Driver - mixer truck (all types) | 9.24 | *.5875 | *.525 | | |
| Driver - Euclid & other heavy earth moving equipment, low boy, winch truck & A-frame truck (when used in transporting materials), Ross Carrier, fork lift truck (when used to transport building materials), & pavement breakers | 9.31 | *.5875 | *.525 | | |

*Fringe Benefits apply to employees who have been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: BOONE, CAMPBELL, KENTON, & PENDLETON

DECISION NUMBER: KY79-1139

DATE: DATE OF PUBLICATION

Supersedeas Decision Number KY78-1101, dated December 1, 1978, in 43 FR 56400.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CARPENTERS | $12.85 | .75 | .85 | | .075 |
| CEMENT MASONS | 12.08 | .60 | .45 | | .02 |
| ELECTRICIANS (OUTSIDE): | | | | | |
| *Linemen | 13.30 | .70 | 3% + .80 | .03 | ½ of 1% |
| *Groundmen | 9.98 | .70 | 3% + .80 | .03 | ½ of 1% |
| *Any linemen or groundmen working 50' or more above impact level performed from a scaffold, boatswain chair, swinging painter's scaffold, or rope or cable supported barrel shall receive an additional $4.00 per hour in addition to the base rate of pay. | | | | | |
| IRONWORKERS: | | | | | |
| Reinforcing | 12.18 | 1.80 | 1.45 | | .02 |
| Structural | 13.08 | 1.00 | 1.45 | | .03 |
| PAINTERS: | | | | | |
| *Brush | 13.35 | | .25 | | |
| *Spray | 13.85 | | .25 | | |
| *Sandblast | 14.10 | | .25 | | |
| *Painters on Bridges, when when highest point of clearance is 60' or more, shall receive $1.00 per hour in addition to the base rate of work classification. | | | | | |
| PILEDRIVERMEN | 12.85 | .75 | .85 | | .075 |
| PIPEFITTERS | 13.78 | 1.045 | 1.60 | | .08 |
| PLUMBERS | 13.67 | 1.10 | 1.30 | | .07 |
| WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental. | | | | | |

DECISION NO. KY79-1139

| LABORERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP 1 | $ 9.42 | .80 | .80 | | .10 |
| GROUP 2 | 9.545 | .80 | .80 | | .10 |
| GROUP 3 | 9.62 | .80 | .80 | | .10 |
| GROUP 4 | 9.77 | .80 | .80 | | .10 |
| GROUP 5 | 10.07 | .80 | .80 | | .10 |

GROUP 1 - Laborers (construction), plant laborers or yardmen, right-of-way laborers, landscape laborers, utility men or handymen, joint setter, flagmen, carpenter tender, waterproofing laborers, slurry seal, seal coating, surface treatment or road mix laborers, riprap laborers or grouter, asphalt laborers, dump man (batch trucks), guardrail and fence installer, mesh handler and placers, concrete curing applicator, scaffold erector.

GROUP 2 - Asphalt raker, concrete puddler, kettleman (pipeline), all machine driven tools (gas, electric, air), mason tenders, mortar mixer, sheeting and shoring man, surface grinder man, power buggy and wheelbarrow (power).

GROUP 3 - Form setter, bottom man, welder tender (pipeline), concrete saw man, cutting with burning torch, pipe layer, hand spiker (railroad), car pusher (without air), underground man (working in sewer and waterline, cleaning and repairing and reconditioning), tunnel laborer (without air), and caisson, cofferdam (below 25 ft. deep), air track and wagon drill.

GROUP 4 - Blaster and powder man, muckers, wrencher (mechanical joint and, utility pipeline), yarner, top lander.

GROUP 5 - Curb setter, and cutter, miner (without air), concrete crew in tunnels, utility pipeline tapper, gunnite nozzleman, waterline caulker.



DECISION NO. KY79-1139

| POWER EQUIPMENT OPERATORS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| MASTER MECHANICS | $12.84 | .96 | 1.00 | | .11 |
| CLASS A | 12.59 | .96 | 1.00 | | .11 |
| CLASS B | 12.47 | .96 | 1.00 | | .11 |
| CLASS C | 11.43 | .96 | 1.00 | | .11 |
| CLASS D | 11.00 | .96 | 1.00 | | .11 |
| CLASS E | 8.64 | .96 | 1.00 | | .11 |

CLASS A - Air compressor on steel erection, boiler operator on compressor or generator when mounted on a rig, cableways, combination concrete mixer & tower, concrete plants (over 4 yds. capacity), concrete pumps, cranes (all types, including A-frame, boom truck, cherry picker), derricks, draglines, dredge (dipper, clam or suction), elevating grader or euclid loader, floating equipment (all types), helicopter crew (operator hoist or winch), hoes (all types), hoisting engines or shaft or tunnel work, hoisting engines, industrial type tractor, jet engine dryer (D8 or D9) diesel tractor, locomotives (standard gauge); maintenance operator class A mixer, paving (single or double drum), mucking machines, multiple scraper, pilodriving machines (all types), power shovels, Quad 9 (double pusher), refrigerating machine (freezer operation), Rotary drill on caisson work, slip-form paver, survey crew party chief, tower derricks, tree shedder, trench machines (over 24" wide), truck mounted concrete pumps tug boat, tunnel machine, wheel excavator.

CLASS B - Asphalt paver, automatic subgrader machine, self-propelled (CMI type), bulldozers, endloader, kolman loader (production type - Dirt), lead grease man, maintenance operators Class B, power grader, power scoops & scrapers, push cat, trench machines (24" wide & under).

CLASS C - Air compressors on tunnel work (low pressure), asphalt plant, locomotive (narrow gauge), mixers, concrete (more than 1 bag capacity), mixers, side loader (1 bag capacity), power boilers over 15 lbs. pressure, pump operator installing and operating well points, pumps (4" and over discharge), rollers (asphalt, utility operator - small equipment), welding machines & generators.

CLASS D - Backfillers, bar, joint & mesh installing machines, batch plant, bull floats, burlap & curing machines, compressors (portable - sewer, heavy & highway), concrete plant (capacity 4 yds. & under), concrete saw (multiple), conveyors (highway), crushers, deckhand, drill (highway with integral power), farm type tractors with attachments (highway), finishing machines, fireman, floating equipment (all types), fork lift (highway), form trenches, hydro seeders, plant mixers, post driver, post hole digger (power auger), power brush burner, power form handling equipment, road widening trencher, rollers (brick, grade, macadam), self-propelled power spreaders, self-propelled subgraders, steam fireman, survey instrument man, tractor (pulling sheepfoot, roller or grader), vibratory compactors (with integral power), Boring machine operators (48" or less), hydro hammer, pavement breaker.

CLASS E - Drum fireman, asphalt plant, tenders - inboard-outboard motor boat-launch, oil heaters (asphalt plants), oilers, power driven heaters, pumps (under 4" discharge), signalmen, survey rodmen or chainmen, tire repairmen.

DECISION NO. KY79-1139

| TRUCK DRIVERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck tender | $ 8.92 | *.5875 | *.525 | | |
| Mobile batch truck tender | 8.92 | *.5875 | *.525 | | |
| Greaser, tire changer, & mechanic tender | 9.03 | *.5875 | *.525 | | |
| Driver - single axle dump & flat bed trucks, semi-trailer or pole trailer (when used to pull building materials and equipment), dump truck tandem axle, distributor, & truck mechanic | 9.21 | *.5875 | *.525 | | |
| Driver - mixer truck (all types) | 9.24 | *.5875 | *.525 | | |
| Driver - Euclid & other heavy earth moving equipment, low boy, winch truck & A-frame truck (when used in transporting materials), Ross Carrier, fork lift truck (when used to transport building materials), & pavement breakers | 9.31 | *.5875 | *.525 | | |

*Fringe Benefits apply to employees who have been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: North Carolina COUNTIES: See below*
DECISION NUMBER: NC79-1034 DATE: Date of Publication
Supersedes Decision No.: NC76-1085 dated August 26, 1976 in FR-41 35317
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories.

*Counties: Durham, Granville, Orange, Person & Wake

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Air conditioning mechanic | 6.00 | | | | |
| Bricklayers | 6.50 | | | | |
| Carpenters | 5.13 | | | | |
| Carpet layers | 5.00 | | | | |
| Cement masons | 4.82 | | | | |
| Drywall finishers | 5.00 | | | | |
| Drywall hanger | 5.00 | | | | |
| Electricians | 5.50 | | | | |
| Form setters | 5.00 | | | | |
| Ironworkers | 5.20 | | | | |
| Insulation installer | 4.44 | | | | |
| Laborers: | | | | | |
| Laborers, unskilled | 3.44 | | | | |
| Asphalt raker | 4.00 | | | | |
| Mason tenders | 3.49 | | | | |
| Pipelayers | 5.02 | | | | |
| Painters, brush | 5.00 | | | | |
| Painters, spray | 5.50 | | | | |
| Plumbers & pipefitters | 5.96 | | | | |
| Roofers | 4.50 | | | | |
| Sheet metal workers | 5.24 | | | | |
| Soft floor layers | 5.00 | | | | |
| Tile setters | 7.00 | | | | |
| Truck drivers | 3.48 | | | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Backhoe | 4.86 | | | | |
| Bulldozers | 4.93 | | | | |
| Fork lift operator | 4.50 | | | | |
| Graders | 4.72 | | | | |
| Loaders | 5.11 | | | | |
| Pans - scrapers | 4.00 | | | | |
| Paving machine | 5.00 | | | | |
| Roller | 4.10 | | | | |
| Screed | 4.08 | | | | |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)

[FR Doc. 79-32027 Filed 10-18-79; 8:45 am]

BILLING CODE 4510-27-C

Friday
October 19, 1979

Part III

# Federal Communications Commission

Domestic Public Fixed Radio Services and Public Mobile Radio Services

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 21 and 22**

**[FCC 79-595]**

## Domestic Public Fixed Radio Services and Public Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; Recodification of Part 21, Adoption of Part 22.

**SUMMARY:** The Commission is recodifying the regulations contained in Part 21 which concern the domestic public radio service (other than Maritime Mobile). Part 21 presently contained the rules for two distinct radio services, the Domestic Public Fixed Radio Service, and the Public Mobile Radio Service. The effect of this recodification is to create separate rules (Parts 21 and 22) for these two radio services. This action is being taken because ot the Commission's intention to update portions of the regulations now in Part 21. Separating the rule sections involved in the update project will avoid duplication of effort and make it more clear to the public the exact nature and extent of the update project.

**EFFECTIVE DATE:** November 16, 1979.

**FOR FURTHER INFORMATION CONTACT:** Michael Menius, Common Carrier Bureau, 202-632-6450.

**SUPPLEMENTARY INFORMATION:**

In the matter of editorial changes to Part 21 of the Commission's rules and regulations.

Adopted: September 27, 1979.

Released: October 4, 1979.

By the Commission: Chairman Ferris issuing a separate statement; Commissioner Lee absent.

1. The Commission is hereby recodifying Part 21 of its Rules and Regulations—"Domestic Public Radio Services (Other than Maritime Mobile)"—47 CFR 21.0 *et seq.*—into two separate Rules Parts, Parts 21 and 22. As a result of the recodification, the Rules structure will clearly relate to the two distinct radio services involved, which are now grouped within a single Rules Part. The recodification will also enable the public to more clearly understand the nature and scope of the Commission's action in an upcoming rule making. The recodification will also save many work-hours and will permit more efficient administrative processes in the future. We will briefly discuss this rule making now and describe it more fully when we initiate it, subsequent to the recodification announced in this Memorandum Opinion and Order.

2. The Commission is carrying out the recodification at this point because we anticipate undertaking in the near future a complete revision and updating of the rules sections which govern four radio services now found in Part 21: the Domestic Public Land Mobile Radio Service, the Public Aeronautical Mobile Radio Service, the Rural Radio Service, and the Offshore Radio Telecommunications Service. These rules sections in many cases do not, as presently worded, reflect existing technology and/or current Commission policy. The Commission is also in the process of considering the appropriateness of adding rules sections to implement newly developed communications technology.

For example, the Commission is presently examining issues relating to technical standards and new rules sections for cellular mobile radio communications.[1] The recodification announced in this Order will establish the proper framework for inclusion of rules dealing with "cellular" systems. The update project will respond to the problem of outdated language, will add definitions which will more fully explain the meaning of certain Rules sections, and will ensure that the Rules are expressed in plain language. As part of the update project the Commission will also have the opportunity to standardize data elements maintained in the data base for the Domestic Public Radio Services and to conform these data elements with those maintained by the International Frequency Registration Board (IFRB) and by the National Telecommunications and Information Administration (NTIA).

3. The Commission is recodifying Part 21 in order to make it clear to the public exactly which radio services are being revised and which radio services are not involved in the rule making. As presently structured, Part 21 includes two essentially separate radio services, one which is involved in the rule making and one which is not.[2] The recodification will place these two radio services into separate Rules Parts and thereby eliminate confusion as to the scope of the update project. The recodification will also enable the Commission staff to conduct the rule making more efficiently and in less time. Without the recodification the Common Carrier Bureau's Domestic Facilities Branch staff will be required to allocate extensive time to coordinating with the Mobile Services Division concerning a rule making which does not involve the Domestic Public Fixed Radio Services. Moreover, the rule making will be disruptive of the rules sections themselves unless the recodification is carried out. During the course of the revision project the Mobile Services Division, without the recodification, will be required to continually revise its files each time a rules change is announced which relates to the Domestic Public Fixed Radio Services. For all the considerations described above, the Commission finds the recodification to be in the public interest.

4. The recodification separates those rules sections relating to the Domestic Public Fixed Radio Services (Point-to-Point Microwave Radio Service, Local Television Transmission Service, and Multipoint Distribution Service) from the other Radio Services (Domestic Public Land Mobile Radio Service, Public Aeronautical Mobile Radio Service, Rural Radio Service, and Offshore Radio Telecommunications Service) presently included in Part 21. The Rules and Regulations pertaining to these latter Radio Services are hereby recodified into a new Part 22 (47 CFR 22.0 *et seq.*) and will be named the "Public Mobile Radio Services." The remaining Rules and Regulations, which pertain to the Domestic Public Fixed Radio Services, will be unaffected by the recodification (except for editorial changes as indicated) and will remain in Part 21, which will be named the "Domestic Public Fixed Radio Services." (47 CFR 21.0 *et seq.*)

5. After the recodification has been completed, the Commission will then commence work on the update of the new Part 22 and will issue the appropriate Public Notices inviting full public participation in the revision and update project. The recodification announced by this Order is in no way substantive, merely involving the organization and structure of certain sections of the present Part 21 without revising the language of the sections affected. The Commission finds, therefore, pursuant to 5 U.S.C. § 553, that public participation in the recodification is impractical,

[1] See "Cellular Mobile Systems," released December 6, 1978, 70 FCC 2d 1639.

[2] The Domestic Public Fixed Radio Services (commonly referred to as the Microwave Radio Services) include the Point-to-Point Microwave Radio Service, the Local Television Transmission Service, and the Multipoint Distribution Service. These radio services are not involved in the update project. The Public Mobile Radio Services include the Domestic Public Land Mobile Radio Service, the Public Aeronautical Mobile Radio Service, the Rural Radio Service, and the Offshore Radio Telecommunications Service. These latter radio services will be updated in the rule making.

unnecessary, and contrary to the public interest.

6. Pursuant to section 4 and section 303 of the Communications Act of 1934, 48 Stat. 1066, as amended, 1082, as amended (47 U.S.C. 154, 303), the Commission hereby recodifies Part 21 of its Rules and Regulations (47 CFR 21) as follows: a new Part 22 (47 CFR 22) is created to read as indicated in Appendix B. Those portions of the former Part 21 which appear in the newly created Part 22 are deleted from Part 21 so that after the recodification Part 21 reads as indicated in Appendix A. Appendix C provides a cross-reference list between the Rules sections which appeared in the former Part 21 and the Rules sections in the current Part 21 and Part 22. The recodification of Part 21, and the adoption of a new Part 22 will become effective November 16, 1979.

7. Appendix D lists Commission forms used within the Public Mobile Radio Services. The recodification does not amend these forms, which will remain in use in the same manner as before the recodification. In cases where these forms refer to the Public Mobile Radio Services as Part 21, the public is hereafter to consider these forms as referring to Part 22.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.[3]

William J. Tricarico,

*Secretary.*

**Appendix C.—Former and Current Rules Sections**

| Former | Current part 21 | Current part 22 |
|---|---|---|
| 21.0 | 21.0 | 22.0 |
| 21.1 [Reserved] | 21.1 [Reserved] | 22.1 [Reserved] |
| 21.2 | 21.2 | 22.2 |
| 21.3 | 21.3 | 22.3 |
| 21.4 | 21.4 | 22.4 |
| 21.5 | 21.5 | 22.5 |
| 21.6 | 21.6 | 22.6 |
| 21.7 | 21.7 | 22.7 [Reserved] |
| 21.8 [Reserved] | 21.8 [Reserved] | 22.8 [Reserved] |
| 21.9 | 21.9 [Reserved] | 22.9 |
| 21.10 [Reserved] | 21.10 [Reserved] | 22.10 [Reserved] |
| 21.11 | 21.11 | 22.11 |
| 21.12 [Reserved] | 21.12 [Reserved] | 22.12 [Reserved] |
| 21.13 | 21.13 | 22.13 |
| 21.14 [Reserved] | 21.14 [Reserved] | 22.14 [Reserved] |
| 21.15 | 21.15 | 22.15 |
| 21.16 [Reserved] | 21.16 [Reserved] | 22.16 [Reserved] |
| 21.17 | 21.17 | 22.17 |
| 21.18 [Reserved] | 21.18 [Reserved] | 22.18 [Reserved] |

[3] See attached Separate Statement of Chairman Ferris.

**Appendix C.—Former and Current Rules Sections—Continued**

| Former | Current part 21 | Current part 22 |
|---|---|---|
| 21.19 [Reserved] | 21.19 [Reserved] | 22.19 [Reserved] |
| 21.20 | 21.20 | 22.20 |
| 21.21 | 21.21 | 22.21 |
| 21.22 | 21.22 | 22.22 |
| 21.23 | 21.23 | 22.23 |
| 21.24 [Reserved] | 21.24 [Reserved] | 22.24 [Reserved] |
| 21.25 | 21.25 | 22.25 |
| 21.26 | 21.26 | 22.26 |
| 21.27 | 21.27 | 22.27 |
| 21.28 | 21.28 | 22.28 |
| 21.29 | 21.29 | 22.29 |
| 21.30 | 21.30 | 22.30 |
| 21.31 | 21.31 | 22.31 |
| 21.32 | 21.32 | 22.32 |
| 21.33 [Reserved] | 21.33 [Reserved] | 22.33 [Reserved] |
| 21.34 [Reserved] | 21.34 [Reserved] | 22.34 [Reserved] |
| 21.35 | 21.35 | 22.35 |
| 21.36 [Reserved] | 21.36 [Reserved] | 22.36 [Reserved] |
| 21.37 [Reserved] | 21.37 [Reserved] | 22.37 [Reserved] |
| 21.38 [Reserved] | 21.38 [Reserved] | 22.38 [Reserved] |
| 21.39 | 21.39 | 22.39 |
| 21.40 | 21.40 | 22.40 |
| 21.41 [Reserved] | 21.41 [Reserved] | 22.41 [Reserved] |
| 21.42 [Reserved] | 21.42 [Reserved] | 22.42 [Reserved] |
| 21.43 | 21.43 | 22.43 |
| 21.44 | 21.44 | 22.44 |
| 21.45 | 21.45 | 22.45 |
| 21.100 | 21.100 | 22.100 |
| 21.101 | 21.101 | 22.101 |
| 21.102 | 21.102 | 22.102 |
| 21.103 | 21.103 | 22.103 |
| 21.104 | 21.104 | 22.104 |
| 21.105 | 21.105 | 22.105 |
| 21.106 | 21.106 | 22.106 |
| 21.107 | 21.107 | 22.107 |
| 21.108 | 21.108 | 22.108 |
| 21.109 | 21.109 | 22.109 |
| 21.110 | 21.110 | 22.110 |
| 21.111 | 21.111 | 22.111 |
| 21.112 | 21.112 | 22.112 |
| 21.113 | 21.113 | 22.113 |
| 21.114 | 21.114 | 22.114 |
| 21.115 | 21.115 [Reserved] | 22.115 |
| 21.116 | 21.116 | 22.116 |
| 21.117 | 21.117 | 22.117 |
| 21.118 | 21.118 | 22.118 |
| 21.119 | 21.119 | 22.119 |
| 21.120 | 21.120 | 22.120 |
| 21.121 | 21.121 | 22.121 |
| 21.122 | 21.122 | 22.122 |
| 21.200 | 21.200 | 22.200 |
| 21.201 | 21.201 | 22.201 |
| 21.202 | 21.202 [Reserved] | 22.202 [Reserved] |
| 21.203 | 21.203 | 22.203 |
| 21.204 | 21.204 | 22.204 |
| 21.205 | 21.205 | 22.205 |
| 21.206 | 21.206 | 22.206 |
| 21.207 | 21.207 | 22.207 |
| 21.208 | 21.208 | 22.208 |
| 21.209 | 21.209 | 22.209 |
| 21.210 | 21.210 | 22.210 |
| 21.211 | 21.211 | 22.211 |
| 21.212 | 21.212 | 22.212 |
| 21.213 | 21.213 | 22.213 |
| 21.214 | 21.214 | 22.214 |
| 21.300 | 21.300 | 22.300 |
| 21.301 | 21.301 | 22.301 |
| 21.302 | 21.302 | 22.302 |
| 21.303 | 21.303 | 22.303 |
| 21.304 | 21.304 | 22.304 |

**Appendix C.—Former and Current Rules Sections—Continued**

| Former | Current part 21 | Current part 22 |
|---|---|---|
| 21.305 | 21.305 | 22.305 |
| 21.306 | 21.306 | 22.306 |
| 21.307 | 21.307 | 22.307 |
| 21.400 | 21.400 | 22.400 |
| 21.401 | 21.401 | 22.401 |
| 21.402 | 21.402 | 22.402 |
| 21.403 | 21.403 | 22.403 |
| 21.404 | 21.404 | 22.404 |
| 21.405 | 21.405 | 22.405 |
| 21.406 | 21.406 | 22.406 |
| 21.500 | [Reserved] | 22.500 |
| 21.501 | [Reserved] | 22.501 |
| 21.502 | [Reserved] | 22.502 |
| 21.503 | [Reserved] | 22.503 |
| 21.504 | [Reserved] | 22.504 |
| 21.505 | [Reserved] | 22.505 |
| 21.506 | [Reserved] | 22.506 |
| 21.507 | [Reserved] | 22.507 |
| 21.508 | [Reserved] | 22.508 |
| 21.509 | [Reserved] | 22.509 |
| 21.510 | [Reserved] | 22.510 |
| 21.511 | [Reserved] | 22.511 |
| 21.512 | [Reserved] | 22.512 |
| 21.513 | [Reserved] | 22.513 |
| 21.514 | [Reserved] | 22.514 |
| 21.515 | [Reserved] | 22.515 |
| 21.516 | [Reserved] | 22.516 |
| 21.517 | [Reserved] | 22.517 |
| 21.518 | [Reserved] | 22.518 |
| 21.519 | [Reserved] | 22.519 |
| 21.520 | [Reserved] | 22.520 |
| 21.521 | [Reserved] | 22.521 |
| 21.522 | [Reserved] | 22.522 |
| 21.523 | [Reserved] | 22.523 |
| 21.600 | [Reserved] | 22.600 |
| 21.601 | [Reserved] | 22.601 |
| 21.602 | [Reserved] | 22.602 |
| 21.603 | [Reserved] | 22.603 |
| 21.604 | [Reserved] | 22.604 |
| 21.605 | [Reserved] | 22.605 |
| 21.606 | [Reserved] | 22.606 |
| 21.607 | [Reserved] | 22.607 |
| 21.608 | [Reserved] | 22.608 |
| 21.609 | [Reserved] | 22.609 |
| 21.610 | [Reserved] | 22.610 |
| 21.611 | [Reserved] | 22.611 |
| 21.700 | 21.700 | [Reserved] |
| 21.701 | 21.701 | [Reserved] |
| 21.702 | 21.702 | [Reserved] |
| 21.703 | 21.703 | [Reserved] |
| 21.704 | 21.704 | [Reserved] |
| 21.705 | 21.705 | [Reserved] |
| 21.706 | 21.706 | [Reserved] |
| 21.707 | 21.707 | [Reserved] |
| 21.800 | 21.800 | [Reserved] |
| 21.801 | 21.801 | [Reserved] |
| 21.802 | 21.802 | [Reserved] |
| 21.803 | 21.803 | [Reserved] |
| 21.804 | 21.804 | [Reserved] |
| 21.805 | 21.805 | [Reserved] |
| 21.806 | 21.806 | [Reserved] |
| 21.807 | 21.807 | [Reserved] |
| 21.808 | 21.808 | [Reserved] |
| 21.809 | 21.809 | [Reserved] |
| 21.900 | 21.900 | [Reserved] |
| 21.901 | 21.901 | [Reserved] |
| 21.902 | 21.902 | [Reserved] |
| 21.903 | 21.903 | [Reserved] |
| 21.904 | 21.904 | [Reserved] |
| 21.905 | 21.905 | [Reserved] |
| 21.906 | 21.906 | [Reserved] |
| 21.907 | 21.907 | [Reserved] |
| 21.908 | 21.908 | [Reserved] |
| 21.1000 | [Reserved] | 22.1000 |
| 21.1001 | [Reserved] | 22.1001 |
| 21.1002 | [Reserved] | 22.1002 |
| 21.1003 | [Reserved] | 22.1003 |
| 21.1004 | [Reserved] | 22.1004 |
| 21.1005 | [Reserved] | 22.1005 |
| 21.1006 | [Reserved] | 22.1006 |
| 21.1007 | [Reserved] | 22.1007 |

APPENDIX D—FCC Forms Used Within The Domestic Public Mobile Services[1]

401—Application for New or Modified Common Carrier Radio Station Construction Permit
403—Application for Radio Station License or Modification Thereof
405—Application for Renewal of Radio Station License
409—Application for Individual Mobile Radio Telephone License in the Domestic Public Land Mobile Radio Service
409-R—Individual Mobile Radio Telephone License Renewal Notice
410—Registration of Canadian Radio Station Licensee and Application for Permit to Operate
430—Common Carrier and Satellite Radio Licensee Qualification Report
451—Radio Station Construction Permit
457-B—Continuation of Authorization
459—Radio Station License—Common Carrier
460—Application Deficiency Notification
460-B—Application Deficiency Notice—Individual Radio Station License
461-G—Modificaiton of Common Carrier Authorization
462-A—Construction Permit and Station License
487—Individual Radio Service License
701—Application for Additional Time to Construct Radio Station
702—Application for Consent to Assignment of Radio Station Construction Permit or License
704—Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License
714—Supplement to Application for New or Modified Radio Station Authorization
715—Obstruction Marking and Lighting Specifications for Antenna Structures
726-C—Consent to Assignment of Common Carrier Radio Station Construction Permit or License
727-C—Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License
Form L—Annual Report of Licensee in Domestic Public Land Mobile Radio Service

**Separate Statement of Charles D. Ferris, Chairman**

Re: Amendment of Sections of Part 21 to Deregulate Licensing of Individual Mobile Radios and Recodification of Part 21 to create a new Part 22 and a revised Part 21.

Our actions today on these two items relating to Part 21 of the Commission's Rules mark another step in our effort to make FCC regulation meaningful by making our regulations more efficient and more understandable to those members of the public that are expected to follow them.

By substantially deregulating the licensing of individuals owning mobile land radios we will eliminate a process that is unnecessarily time consuming for those seeking licenses as well as for the FCC. At the same time we will insure continuing responsibility from those common carrier radio licensees who will become responsible for those individuals with their own equipment operating under the carriers' FCC granted authority. From our perspective this is particularly important, because it will release the energies of staff assigned to these routine processing duties to meet the demands of more pressing efforts underway in our Common Carrier Bureau.

Our second action eliminates the confusion that stems from placing diverse common carrier radio service regulations within the same part of our rules. By separating these functions in the Rules, we will reflect the reality that they are separate functions in fact. Moreover, as we move toward revising and updating both areas of the Rules in the near future, we will by this action greatly simplify the task of commenting on our upcoming proposals.

Together, these two items underscore our commitment to insure that our regulatory efforts will be constantly reevaluated, and that we will change when doing things differently means doing things better.

Part 21 is recodified and revised to read as follows:

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICE

### Subpart A—General

Sec.
21.0 Scope and authority.
21.1 [Reserved]
21.2 Definitions.

### Subpart B—Applications and Licenses

General Filing Requirements

21.3 Station authorization required.
21.4 Eligibility for station license.
21.5 Formal and informal applications.
21.6 Filing of applications, fees, and number of copies
21.7 Standard application forms for point-to-point microwave radio, local television transmission and multi-point distribution services.
21.8 [Reserved]
21.9 [Reserved]
21.10 [Reserved]
21.11 Miscellaneous forms shared by all domestic public radio services.
21.12 [Reserved]
21.13 General application requirements.
21.14 [Reserved]
21.15 Technical content of applications.
21.16 [Reserved]
21.17 Demonstration of financial qualifications.
21.18 [Reserved]
21.19 [Reserved]
21.20 Defective applications.
21.21 Inconsistent or conflicting applications.
21.22 Repetitious applications.
21.23 Amendment of applications.
21.24 [Reserved]
21.25 Application for temporary authorizations.

Processing of Applications

Sec.
21.26 Receipt of application.
21.27 Public notice period.
21.28 Dismissal and return of applications.
21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.
21.30 Opposition to applications.
21.31 Mutually exclusive applications.
21.32 Consideration of applications.
21.33 [Reserved]
21.34 [Reserved]
21.35 Comparative evaluation of mutually exclusive applications.
21.36 [Reserved]
21.37 [Reserved]
21.38 [Reserved]
21.39 Transfer of control or assignment of station authorization.
21.40 Considerations involving transfer or assignment applications.
21.41 [Reserved]
21.42 [Reserved]
21.43 Period of construction.
21.44 Forfeiture of station authorizations.
21.45 License period.

### Subpart C—Technical Standards

Sec.
21.100 Frequencies.
21.101 Frequency tolerance.
21.102 Frequency measuring or calibrating apparatus.
21.103 Standards and limitations governing authorization and use of frequencies in the 72-76 MHz band.
21.104 Types of emission.
21.105 Bandwidth.
21.106 Emission limitations.
21.107 Transmitter power.
21.108 Directional antennas.
21.109 Antenna and antenna structures.
21.110 Antenna polarization.
21.111 Simultaneous use of common antenna structure.
21.112 Marking of antenna structures.
21.113 Quiet zones.
21.114 Temporary fixed antenna height restrictions.
21.115 [Reserved]
21.116 Topographical data
21.117 Transmitter location.
21.118 Transmitter construction and installation.
21.119 Limitation on use of transmitters for other services.
21.120 Type acceptance of transmitters.
21.121 Replacement of equipment.
21.122 Microwave digital modulation.

### Subpart D—Technical Operation

Sec.
21.200 Station inspection.
21.201 [Reserved]
21.202 Transmitter identification.
21.203 Posting of operator licenses.
21.204 FCC publication required for reference.
21.205 Operator requirements.
21.206 Inspection and maintenance of antenna structure marking and lighting, and associated control equipment.
21.207 Transmitter measurements.
21.208 Station records.
21.209 Communications concerning safety of life and property.

[1] In cases where these forms refer to Part 21 as the Domestic Public Mobile Radio Services, such forms will hereafter be considered to refer to Part 22. In cases where these forms refer only to Part 21 but are used by radio services covered in both Part 21 and Part 22, the forms will hereafter be considered to refer to both Part 21 and Part 22.

21.210 Operation during emergency.
21.211 Suspension of transmission.
21.212 Equipment, service and maintenance tests.
21.213 Station identification.
21.214 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.

**Subpart E—Miscellaneous**

Sec.
21.300 Business records.
21.301 National defense; free service.
21.302 Answers to notices of violation.
21.303 Discontinuance, reduction or impairment of service.
21.304 Tariffs, reports, and other material required to be submitted to the Commission.
21.305 Reports required concerning amendments to charters and partnership agreements.
21.306 Requirement that permittees and licensees respond to official communications.
21.307 Equal employment opportunities.

**Subpart F—Developmental Authorizations**

Sec.
21.400 Eligibility.
21.401 Scope of service.
21.402 Adherence to program of research and development.
21.403 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.
21.404 Terms of grant; general limitations.
21.405 Supplementary showing required.
21.406 Developmental report required.

**Subpart G—[Reserved]**

**Subpart H—[Reserved]**

**Subpart I—Point-to-Point Microwave Radio Service**

Sec.
21.700 Eligibility.
21.701 Frequencies.
21.702 Transmitter power.
21.703 Bandwidth and emission limitations.
21.704 Modulation requirements.
21.705 Permissible communications.
21.706 Supplementary showing required with applications.
21.707 Stations at temporary fixed locations.
21.708 Notification of station operation at temporary fixed locations.
21.709 Renewal of station licenses.
21.710 Limitations on path lengths and channel loading.
21.711 Special requirements for operation in the band 38.600–40.000 MHz.
21.713 Applications for authorizations involving relay of television signals to cable television systems.

**Subpart J—Local Television Transmission Service**

Sec.
21.800 Eligibility.
21.801 Frequencies.
21.802 Assignment of frequencies to mobile stations.
21.803 Transmitter power.
21.804 Bandwidth and emission limitations.
21.805 Modulation requirements.
21.806 Remote control operation of mobile television pickup stations.
21.807 Stations at temporary fixed locations.
21.808 Notification of station operation at temporary locations.
21.809 Stations affected by coordination contour procedures.

**Subpart K—Multipoint Distribution Service**

Sec.
21.900 Eligibility
21.901 Frequencies.
21.902 Frequency interference.
21.903 Purpose and permissible service.
21.904 Transmitter power.
21.905 Emissions and bandwidth.
21.906 Antennas.
21.907 Transmission standards.
21.908 Television transmitting equipment.

**Subpart L—[Reserved]**

Authority: Sections 21.0 to 21.908 issued under secs. 4, 303, 48 Stat 1066, as amended, 1082, as amended; 47 U.S.C. 154, 308.

## Subpart A—General

### § 21.0 Scope and authority.

(a) The purpose of the rules and regulations in this part is to prescribe the manner in which portions of the radio spectrum may be more available for the use of radio for domestic communication common carrier operations which require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

(b) The rules in this part are issued pursuant to the authority contained in Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications and to regulate radio transmissions and issue licenses for radio stations.

(c) Unless otherwise specified, the section numbers referenced in this part are contained in Chapter I, Title 47, of the Code of Federal Regulations.

### § 21.1 [Reserved]

### § 21.2 Definitions.

As used in this part:

*Antenna power gain.* The square of the ratio of the root-mean-square free space field intensity produced at one mile in the horizontal plane, in millivolts per meter for one kilowatt antenna input power to 137.6 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

*Antenna power input.* The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

*Antenna structures.* The term antenna structures includes the radiating system, its supporting structures, and any surmounting appurtenances.

*Assigned frequency.* The frequency coinciding with the center of the radio frequency channel in which the station is authorized to work. This frequency does not necessarily correspond to any frequency in an emission.

*Authorized bandwidth.* The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

*Authorized frequency.* The frequency assigned to a station by the Commission and specified in the instrument of authorization.

*Authorized power.* The power assigned to a radio station by the Commission and specified in the instrument of authorization. The authorized power does not necessarily correspond to the power used by the Commission for purposes of its Master Frequency Record (MFR) and notification to the International Telecommunications Union.

*Auxiliary test station.* A fixed station used for test transmissions only, operating on mobile station frequencies from a specified fixed location, for the purpose of determining the performance of fixed receiving equipment which is remotely located from the base station with which it is associated, or where the receiving equipment is located with the base station and both are remotely located from the control point of the station.

*Bandwidth occupied by an emission.* The band of frequencies comprising 99 percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

Note.—In certain cases, also communicates with fixed stations and vessels.

*Bit rate.* The rate of transmission of information in binary (two state) form in bits per unit time.

*Carrier.* In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the

side bands in a suitable detector, produces the modulating wave.

*Carrier frequency.* The frequency of the carrier.

*Central office.* A landline termination center used for switching and interconnection of public message communication circuits.

*Communication common carrier.* Any person engaged in rendering communication service for hire to the public.

*Control point.* A control point is an operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

*Control station.* A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the operation of such station.

*Coordination distance.* For the purpose of this part, the expression "coordination distance" means the distance from an earth station, within which there is a possibility of the use of a given transmitting frequency at this earth station causing harmful interference to stations in the fixed or mobile service, sharing the same band, or of the use of a given frequency for reception at this earth station receiving harmful interference from such stations in the fixed or mobile service.

*Digital modulation.* The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g. one consisting of coded pulses or states.

*Domestic fixed public service.* A fixed service, the stations of which are open to public correspondence, for radiocommunications originating and terminating solely at points all of which lie within: (a) the State of Alaska, or (b) the State of Hawaii, or (c) the contiguous 48 States and the District of Columbia, or (d) a single possession of the United States. Generally, in cases where service is afforded on frequencies above 72 MHz, radiocommunications between the contiguous 48 States (including the District of Columbia) and Canada or Mexico, or radiocommunications between the State of Alaska and Canada, are deemed to be in the domestic fixed public service.

*Domestic public radio services.* The land mobile and domestic fixed public services the stations which are open to public correspondence.

Note.—Parts 81 and 83 of this chapter are applicable to maritime services. Part 87 is applicable to aeronautical services; and Part 85 is applicable to certain Alaskan services.

*Drop point.* A term used in the point-to-point microwave radio service to designate a terminal point where service is rendered to a subscriber.

*Earth station.* A station in the space service located either on the earth's surface, including on board a ship, or on board an aircraft.

*Effective radiated power.* The product of the antenna power input and the antenna power gain. This product should be expressed in watts. (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only.)

*Exchange.* A unit of a communication company or companies for the administration of communication service in a specified area, which usually embraces a city, town, or village and its environs, and consisting of one or more central offices, together with the associated plant, used in furnishing communication service in that area.

*Exchange area.* The geographic area included within the boundaries of an exchange.

*Facsimile.* A system of telecommunication for the transmission of fixed images with a view to their reception in a permanent form.

*Fixed earth station.* An earth station intended to be used at a specified fixed point.

*Fixed microwave auxiliary station.* A fixed station used in connection with (1) the alignment of microwave transmitting and receiving antenna systems and equipment, (2) coordination of microwave radio survey operations, and (3) cue and contact control of television pickup station operations.

*Fixed station.* A service of radiocommunication between specified fixed points.

*Fixed station.* A station in the fixed service.

*Frequency tolerance.* The frequency tolerance, expressed as a percentage or in hertz, is the maximum permissible deviation, with respect to the reference frequency of the corresponding characteristic frequency of an emission.

*General communication.* Two-way voice communication, through a base station, between (1) a common carrier land mobile or airborne station and a landline telephone station connected to a public message landline telephone system, or (2) two common carrier land mobile stations, or (3) two common carrier airborne stations, or (4) a common carrier land mobile station and a common carrier airborne station.

*Harmful interference.* Any radiation or any induction which endangers the functioning of a radionavigation service or of a safety service or obstructs or repeatedly interrupts a radio service.

*Inter-office station.* A fixed station in the domestic fixed public service which is used exclusively for interconnection of telephone central offices.

*Landing area.* A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

*Local television transmission service.* A domestic public radio communication service for the transmission of television material and related communications.

*Message center.* The point at which messages from members of the public are accepted by the carrier for transmission to the addressee.

*Microwave frequencies.* As used in this part, this term refers to frequencies of 890 MHz and above.

*Miscellaneous common carriers.* Communications common carriers which are not engaged in the business of providing either a public landline message telephone service or public message telegraph service.

*Mobile earth station.* An earth station intended to be used while in motion or during halts at unspecified points.

*Mobile microwave auxiliary station.* A mobile station used in connection with (1) the alignment of microwave transmitting and receiving antenna systems and equipment, (2) coordination of microwave radio survey operations, and (3) cue and contact control of television pickup station operations.

*Mobile service.* A service of radiocommunication between mobile and land stations or between mobile stations.

*Mobile station.* A station in a mobile service intended to be used while in motion or during halts at unspecified points.

*Multipoint distribution service.* A one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points determined by the subscribers.

*Necessary bandwidth of emission.* The necessary bandwidth is the width of the frequency band which is necessary in the over-all system, including both transmitter and receiver, for the proper reproduction at the receiver of the

desired information, and does not necessarily indicate the interfering characteristics of an emission.

Note: The necessary bandwidth for an emission may be calculated using the formulas in § 2.202 of this chapter.

*Periscope antenna system.* An antenna system which involves the use of a passive reflector to deflect radiation from or to a directional transmitting or receiving antenna which is oriented vertically.

*Point-to-point microwave radio service.* A domestic public radio service rendered on microwave frequencies by fixed stations between points which lie within the United States or between points to its possessions or to points in Canada or Mexico.

*Private line service.* A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

*Public correspondence.* Any telecommunication which the offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

*Public message service.* A service whereby facilities are offered to the public for communication between all points served by a carrier or by interconnected carriers on a non-exclusive message by message basis, contemplating a separate connection for each occasion of use.

*Radio station.* A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

*Radiocommunication.* Any telecommunication by means of hertzian waves.

*Rated power output.* The term "rated power output" of a transmitter means the normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

*Record communication.* Any transmission of intelligence which is reduced to visual record form at the point of reception.

*Reference frequency.* A frequency coinciding with or having a fixed and specified relation to the assigned frequency. This frequency does not necessarily correspond to any frequency in an emission.

*Relay station.* A fixed station used for the reception and retransmission of the signals of another station or stations.

*Repeater station.* A fixed station established for the automatic retransmission of radiocommunications received from one or more mobile stations and directed to a specified location.

*Standby transmitter.* A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

*Symbol rate.* Modulation rate in bands. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

*Telegraphy.* A system of telecommunication for the transmission of written matter by the use of signal code.

*Telemetering.* Automatic radiocommunication in a fixed or mobile service intended to indicate or record a measurable variable quantity at a distance.

*Telephony.* A system of telecommunication set up for the transmission of speech, or in some cases, other sounds.

*Television.* A system of telecommunication for transmission of transient images of fixed or moving objects.

*Television non-broadcast pickup station.* A mobile, except television pickup, station used for the transmission of television program material and related communications for non-broadcast purposes.

*Television pickup station.* A land mobile station used for the transmission of television program material and related communications from the scenes of events occurring at points removed from television broadcast station studios to television broadcast stations.

*Television STL station (studio transmitter link).* A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

## Subpart B—Applications and Licenses

### General Filing Requirements

#### § 21.3 Station authorization required.

(a) No person shall use or operate in the any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with, an appropriate authorization granted by the Federal Communications Commission.

(b) Except when the Commission finds under the rules of this Part that the public interest, convenience, or necessity would be served by waiver of this requirement, no radio license shall be issued for the operation of any station unless a permit for its construction has been granted by the Commission. No construction or modification of a station may be commenced without a construction permit, a modified construction permit, or other authority issued by the Commission for the exact construction or modification to be undertaken, except as may be specifically provided for in other sections of this part.

(c) Upon the completion of construction or continued construction of any station pursuant to the terms of a construction permit and upon the filing of an application for license or modification of license, the Commission shall issue a license or modified license to the lawful holder of the permit for the operation of the station, provided that no cause or circumstance has arisen or first come to the knowledge of the Commission since the granting of the permit which would, in the judgment of the Commission, make the operation of such station against the public interest.

(d) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

#### § 21.4 Eligibility for station license.

A station license may not be granted to or held by:

(a) Any alien or the representative of any alien.

(b) Any foreign government or the representative thereof.

(c) Any corporation organized under the laws of any foreign government.

(d) Any corporation of which any officer or director is an alien.

(e) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign country.

(f) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(g) Any corporation directly or indirectly controlled by any other

corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

**§ 21.5 Formal and informal applications.**

(a) Except for an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 [47 U.S.C. 308(a)], the Commission may grant only upon written application received by it, the following authorization: construction permits; station licenses; modifications of construction permits or licenses; renewals of licenses; transfers and assignments of construction permits or station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this Part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

**§ 21.6 Filing of applications, fees, and numbers of copies.**

(a) As prescribed by §§ 21.7, 21.10, 21.11 of this Part, standard formal application forms applicable to the radio services included in this Part may be obtained from either: (1) Federal Communications Commission, Washington, D.C. 20554; or (2) any of the Commission's field operations offices, the addresses of which are listed in § 0.121.

(b) Applications for radio station authorizations shall be submitted for filing to: Federal Communications Commission, Washington, D.C. 20554.

(c) All correspondence or amendments concerning a submitted application shall clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau.

(d) Except as otherwise specified, all applications, amendments, and correspondence shall be submitted in duplicate, including exhibits and attachments thereto, and shall be signed as precribed by § 1.743.

(e) Each application shall be accompanied by the appropriate fee prescribed by, and submitted in accordance with, Subpart G of Part 1 of this chapter.

**§ 21.7 Standard application forms for point-to-point microwave radio, local television transmission, and multipoint distribution services.**

(a) *Authority to construct a new station, to modify an existing construction permit, or to modify licensed facilities.* FCC Form 435 ("Application for New or Modified Common Carrier Microwave Radio Station Construction Permit Under Part 21") shall be submitted and granted for each station involved prior to commencement of any proposed station construction or modification, except for facility changes for which FCC Form 436 is prescribed in paragraph (c) of this section.

(b) *License to cover facilities constructed in accordance with Construction Permit.* FCC Form 436 ("Application for a New or Modified Common Carrier Microwave Radio Station License Under Part 21") shall be filed:

(1) Prior to the expiration date of the construction permit (See § 21.34(a));

(2) Upon completion of construction or modification of a station in exact accordance with the terms and conditions set forth in the construction permit; and,

(3) Upon satisfactory completion of equipment tests under § 21.212(a).

(c) *Modification of license not requiring a prior construction permit.* Modification of a license may be effected without a prior construction permit by filing FCC Form 436 in the following circumstances:

(1) To request only the following modifications of license prior to the expiration of the license:

(i) The correction of erroneous information on a license which does not involve a major change (i.e., a change which would be classified as a major amendment as defined by § 21.23);

(ii) The deletion of licensed facilities; or

(iii) Changes in the terms or conditions of a license (e.g., changes in the obstruction marking and lighting requirements of an antenna supporting structure); or

(2) To license permissible changes which do not require prior authorization.

(d) *Authorization of temporary fixed stations or block assignment of radio frequencies.* FCC Forms 435 and 436 shall be submitted simultaneously for each mobile or fixed station to be installed and operated at various temporary locations within a specified area, or for block assignment or radio frequencies as set forth hereinafter in the applicable subparts of these rules.

**§ 21.8 [Reserved]**

**§ 21.9 [Reserved]**

**§ 21.10 [Reserved]**

**§ 21.11 Miscellaneous forms shared by all domestic public radio services.**

(a) *License qualifications.* FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") shall be filed in both of the following instances for each radio service and shall be kept current under § 1.65:

(1) As required by other application forms; and

(2) Annually no later than January 31 for the end of the preceding calendar year by licensees or permittees (except for individual mobile subscribers to a common carrier service), if public service was offered at any time during that calendar year.

(b) *Additional time to construct.* FCC Form 701 ("Application for Additional Time to Construct Radio Station") shall be filed in duplicate by a permittee prior to the expiration date of each construction permit to be extended. However, Form 701 need not be filed if a permittee has requested in FCC Form 401 or 435 additional time to construct incidental to a modification of construction permit.

(c) *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected.

Applicants should note also any special renewal requirements under the rules for each radio service.

(d) *Assignment of permit or license.* FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Permit or License for Stations in Services Other than Broadcasting"), shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control) the application should be filed within 10 days of the event causing the assignment (or transfer of control). In addition, FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") shall be submitted by the proposed assignee unless such assignee has a current and substantially accurate report on file with the Commission. Upon consummation of an approved assignment, the Commission shall be notified by letter of the date of consummation.

(e) *Partial assignment of license or permit.* In the microwave services, authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing construction permit or license (as distinguished from an assignment of the facilities in their entirety), may be granted upon an application: (i) by the assignee on FCC Form 435 or 436 as the situation requires; and (ii) by the assignor on FCC Form 436 for deletion of the assigned facilities, indicating concurrence in the request. Where the assigned facilities are to be incorporated into an existing licensed station, the assignee shall only file an FCC Form 436. Where a new station is to be established, FCC Form 435 and 436 shall be submitted by the assignee. The assignment shall be consummated within 60 days from the date of authorization. In the event that consummation does not occur, FCC Form 436 shall be filed to return the assignor's authorization to its original condition.

(f) *Transfer of control of corporation holding a permit or license.* FCC Form 704 ("Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License"), shall be submitted in order to voluntarily or involuntarily transfer control (*de jure* or *de facto*) of a corporation holding any construction permits or licenses. In addition, FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") shall be submitted by the proposed transferee unless said transferee has a current and substantially accurate report on file with the Commission. Upon consummation of an approved transfer, the Commission shall be notified by letter of the date thereof.

**§ 21.12 [Reserved]**

**§ 21.13 General application requirements.**

(a) Each application for a construction permit or for consent to assignment or transfer of control shall:

(1) Disclose fully the real party (or parties) in interest, including (as required) a complete disclosure of the identify and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) Demonstrate the applicant's legal, financial, technical, and other qualifications to be a permittee or licensee;

(3) Submit the information required by the Commission's Rules, requests, and application forms;

(4) State specifically the reasons why a grant of the proposal would serve the public interest, convenience, and necessity;

(5) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this Chapter; and

(6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (e.g. those required by §§ 21.100(d), 21.103, 21.700, 21.706, 21.900, etc.).

(b) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one 8½ by 11" page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The radio service and station call sign or application file number whenever the reference is to stations files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding.

However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(c) In addition to the general application requirements of §§ 21.13 through 21.17 of this Part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by the other Parts of the Commission's Rules, and the other subparts of Part 21 (particularly Subpart C and those subparts applicable to the specific radio service involved); and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(d) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(e) All applicants are required to indicate at the time their application is filed whether or not the application is a "major action" as defined by § 1.1305 of the Commission's Rules. If answered affirmatively, the requisite environmental statement as prescribed in § 1.1311 must be filed with the application.

(f)(1) Where required by applicable local law, an applicant shall include a copy of the franchise or other authorization issued by appropriate regulatory authorities. If no such local requirement exists, or if Commission authority is a prerequisite for such authorization, a statement to this effect shall be included in the application. This subparagraph (1) is not applicable to the Domestic Public Land Mobile Radio Service.

(2) In the Domestic Public Land Mobile Radio Service applicants are not required to file State certificates. Permittees and Licensees are required to abide by all State requirements of certification whether as to construction or operation. In the case of a construction permit grant, the permittee must complete construction in accordance with § 21.43 of the rules. In the case of a license grant, the licensee must have all requisite State authority, and be in operation within 240 days of the date of the license grant, or the license will automatically expire and must be submitted for cancellation.

(g) Whenever an individual applicant, or a partner (in the case of a partnership) or a full time manager (in the case of a corporation) will not actively participate in the day-to-day management and operation of proposed facilities, the applicant will submit a statement containing the reasons therefor and disclosing the details of the proposed operation, including a demonstration of how control over the radio facilities will be retained by the applicant.

**§ 21.14 [Reserved]**

**§ 21.15 Technical content of applications.**

Applications for construction permits shall contain all technical information required by the application form and any additional information necessary to fully describe the proposed construction and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, I, J and K as appropriate). The following paragraphs describe a number of general technical requirements.

(a) Applicants proposing a new station location (including receive-only stations and passive repeaters) shall indicate whether the station site is owned. If it is not owned, its availability for the proposed radio station shall be demonstrated. Under ordinary circumstances this requirement will be considered satisfied if the site is under lease or under written option to buy or lease, or in the case of land under U.S. Government control, written confirmation of site availability from the appropriate Government agency has been received. Where any lease or agreement to use land limits or conditions in any way the applicant's access or use of the site to provide public service, a copy of the lease or agreement (which clearly indicates the limitations) shall be filed with the application.

(b) [Reserved]

(c) Each application involving a new or modified antenna supporting structure or passive facility, the addition or removal of an antenna, or the repositioning of an authorized antenna for a station or receive-only facility must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above mean sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. All antennas on the structure must be clearly identified and their heights above-ground (measured to the center of radiation) clearly indicated. In addition, the height to the upper tip of the antenna shall be indicated for those operating in the Multipoint Distribution Service.

(d) Each application proposing a new or modified antenna structure for a station (including a receive-only facility or passive repeater) so as to change its overall height shall include a statement indicating whether or not notification of the Federal Aeronautics Administration (FAA) is required. If notification is required, the applicant should include with the application a copy of the FAA study regarding potential hazard to aviation. If the applicant has not received the FAA study, the application should include the name used in the FAA notification, the location of the FAA regional office involved and the date of the notification. [Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter. See also § 21.111 if the structure is used by more than one station.]

(e) An applicant proposing construction of one or more new stations or modification of existing stations where substantial changes in the operation or maintenance procedures are involved must submit a showing of the general maintenance procedures involved to insure the rendition of good public communications service. The showing should include but need not be limited to the following:

(1) A general description of the technical personnel responsible for the day-to-day operation and maintenance of the facilities.

(2) Location and telephone number (if known) of the maintenance center for a point to point microwave system. In lieu of providing the location and telephone number of the maintenance on a case by case basis, a carrier may file a complete list for all operational stations with the Commission and the Engineer-In-Charge of the appropriate radio district on an annual basis or at more frequent intervals as necessary to keep the information current.

(3) A general description of the routine maintenance procedures to be followed and a description of the procedures to be followed for non-routine repair during outages. Include a description of the test equipment available.

(4) The manner in which technical personnel are made aware of malfunction at any of the stations and the appropriate time required for them to reach any of the stations in the event of an emergency. If fault alarms are to be used, the items to be alarmed shall be specified as well as the location of the alarm center.

(5) Indicate whether maintenance personnel will be on duty for all hours of station operation. If not, submit information, specifying the method for identifying and correcting system malfunctions when maintenance personnel are not on duty.

(f) If the maintenance for one or more radio stations is to be accomplished by contractural arrangement with an entity unrelated to an applicant, permittee or licensee, the application shall contain a copy of the agreement or contract which shall demonstrate that:

(1) The maintenance is accomplished according to general instructions provided for by the applicant;

(2) The applicant retains effective control over the radio facilities and their operation; and

(3) The applicant assumes full responsibility for both the quality of service and for contractor compliance with the Commission's Rules.

(g) Each application for construction permit for a developmental authorization shall be accompanied by pertinent supplemental information as required by § 21.405 in addition to such information as may be specifically required by this section.

(h) Each application in the Point-to-Point Microwave Radio, Local Television Transmission, and Multipoint Distribution Services which proposes to establish a new permanently located, fixed communication facility (e.g. a transmitting site, receiving site, passive reflector or passive repeater), or to make changes or corrections in the location of such a facility already authorized, shall be accompanied by a topographic map (a U.S. Geological Survey Quadrangle or map of comparable detail and accuracy) with the location of the proposed facility accurately plotted and identified thereon. This map should not be cropped so as to delete pertinent border information and must be submitted in the same number of copies as the application it accompanies.

**§ 21.16 [Reserved]**

**§ 21.17 Demonstration of financial qualifications.**

(a) Each application for authority to construct a new station or substantially modify an existing station shall demonstrate the applicant's financial ability to meet the realistic and prudent:

(1) Estimated costs of proposed construction and other initial expenses; and

(2) Estimated operating expenses for a reasonable period of time, depending upon the nature of service proposed and the degree of business uncertainty of risk. (E.g., the proposal of a new or somewhat speculative service with a higher degree of business uncertainty would require a showing for a longer time period.)

(b) Except as provided in paragraph (c) of this section, each application shall demonstrate an applicant's financial ability, under paragraph (a) of this section by submitting the following financial information, the information required by paragraph (e) of this section, and whatever other information or details the Commission may require:

(1) A balance sheet current within ninety (90) days of the date of the application and copies of any financial commitments (such as, for example, loan agreements and service contracts) in support of the proposed facilities; and

(2) Whenever the submissions of paragraph (b)(1) of this section do not satisfy paragraph (a) of this section, the applicant shall submit additional information (e.g. a current income statement, and, for the period of proposed construction plus an initial year of operation, a statement of projected revenues and expenses, a statement of projected sources and application of funds, etc.) as is necessary to demonstrate financial ability.

(c) an applicant need not submit the financial information required by paragraph (b)(1) of this section, if paragraph (a) of this section can be clearly satisfied by an exhibit demonstrating that the applicant had operating revenues of $1 million or more for the previous year, has filed annual (or monthly) reports under Part 43 of this chapter and maintains as of the date of the application a credit rating equivalent to, or better than, either a Standard & Poor's Rating of "BBB" or a Moody's Bond Rating of "Baa."

(d) Each application for an assignment of a license (or permit), or for the transfer of control of a corporation holding a license (or permit), shall demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities by submitting adequate financial information under the guidelines specified in this section, as appropriate.

(e) The following additional information shall be submitted on any form of intended credit arrangement or equity placement:

(1) The details of any loan or other form of credit arrangement intended to be utilized to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), letters of commitment, terms of the transaction, and a statement that paragraph (f) of this section is complied with; and

(2) The details of any sale or placement of any equity or other form of ownership interest.

(f) In addition to the disclosures required by paragraph (d) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed radio station facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

**§ 21.18 [Reserved]**

**§ 21.19 [Reserved]**

**§ 21.20 Defective applications.**

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not properly executed;

(2) The submitted filing fee is insufficient under § 1.1113 of this chapter;

(3) The application does not demonstrate how the proposed radio facilities will serve the public need or interest;

(4) The application does not demonstrate compliance with the special requirements applicable to the radio service involved (e.g. noted in § 21.13(a)(6) of this chapter);

(5) The application does not demonstrate the availability of the proposed site of a new facility;

(6) The application does not include the environmental showing required for a "major action" under § 1.1305 of this chapter;

(7) The application does not include U.S. Forest Service or Bureau of Land Management certification of site availability under § 1.70 of this chapter whenever a proposed new or modified facility is to be located on land under the jurisdiction of these agencies;

(8) The application is filed after the "cut-off" date prescribed in § 21.30 of this part;

(9) The application proposes the use of a frequency not allocated to such use; or

(c) Applications considered defective under paragraph (a) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

**§ 21.21 Inconsistent or conflicting applications.**

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

**§ 21.22 Repetitious applications.**

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by his successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station

and for the same area, in whole or in part, filed by the same applicant or by his successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

**§ 21.23 Amendment of applications.**

(a) Any pending application may be amended as a matter of right if the application has not been designated either for hearing, or for comparative evaluation pursuant to § 21.35. *Provided however,* that amendments shall comply with the provisions of § 21.29 as appropriate.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing or comparative evaluation only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to § 21.27 and § 21.31 under any of the following circumstances:

(1) If in the Point-to-Point Microwave Radio Service and Local Television Transmission Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or an addition of, a radio frequency;

(ii) A change in polarization of the transmitted signal;

(iii) An increase in the transmitter output power of three (3) dB or more;

(iv) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(v) A change in the geographic coordinates of a station's transmitting antenna of more than ten (10) seconds of latitude or longitude, or both;

(vi) A change of more than one (1) degree in the azimuth of the center of the main lobe of radiation of a point-to-point station's transmitting antenna (including any deflections by repeating devices);

(vii) Any change which increases the antenna height by twenty (20) feet or more; or

(viii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application.

(2) If in the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or addition of, a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(iv) A change in the geographic coordinates of a station's transmitting antenna of more than ten (10) seconds of latitude or longitude, or both;

(v) Any change which increases the antenna height by ten (10) feet or more;

(vi) any technical change which would increase the effective radiated power in any direction by more than one and one-half (1.5) dB; or

(vii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application.

(3) [Reserved]

(4) If the amendment would convert a proposal into a major action under § 1.1305.

(5) If the amendment results in a substantial and material alteration of the proposed service.

(6) If the amendment specifies, a substantial change in beneficial ownership or control *(de jure or de facto)* of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under § 310(d) of the Communications Act of 1934 [47 U.S.C. § 310(d)]. *Provided however,* Such a change would not be considered major where it merely amends an application for modification of an authorized station to reflect a change in ownership or control of such station as previously approved by the Commission.

(7) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to § 309 of the Communications Act of 1934.

(d) In the Point-to-Point Microwave Radio Service and Local Television Transmission Service, a pending application may be amended by a major amendment to reflect the relocation of a proposed station site and a new application will not be required if:

(1) The geographic coordinates of the new station site are within twenty (20) miles of the coordinates of the original site; and,

(2) The relocated station would serve essentially the same purpose in the system as originally proposed.

(e) If a petition to deny (or other formal objection) has been filed, or if the Commission has published a notice that the application appears to be mutually exclusive with another application (or applications), any amendment (or other written communications) shall be served on the petitioner and on any such mutually exclusive applicant (or applicants), unless waiver of this requirement is granted pursuant to paragraph (f) of this section.

(f) The Commission may waive the service requirements of paragraph (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome. Requests for waiver shall be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and shall be served on the applicant. Replies to oppositions will not be entertained.

(g) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this Chapter.

**§ 21.24 [Reserved]**

**§ 21.25 Application for temporary authorizations.**

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 21.5 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-

day public notice requirement of § 21.27(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular application is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring emergency operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) No special temporary authorization, except as provided for in paragraph (d) of this section, will be granted for a period to exceed 90 days or be extended for more than one additional period not to exceed 90 days.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant construction permits and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

## Processing of Applications

### § 21.26 Receipt of application.

(a) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (See § 21.13 for additional information concerning filing of applications.

### § 21.27 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance; and

(4) Special environmental considerations as required by Part I of this Chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 21.23) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a construction permit or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities;

(4) For temporary authorization pursuant to § 21.25(b);

(5) For authorization of facilities for remote pickup, temporary studio links and similar facilities which service a broadcast station;

(6) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 [47 U.S.C. 308(a)];

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

### § 21.28 Dismissal and return of applications.

(a) Except as provided under § 21.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal either prior to designation for hearing, or prior to selection of the comparative evaluation procedure of § 21.35. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered either after designation for hearing, or after selection of the comparative evaluation procedure of § 21.35, only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provisions of § 21.29 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice prior to designation for hearing or selection of the comparative evaluation procedure of § 21.35, but may be made with prejudice for unsatisfactory compliance with § 21.29, or after designation for hearing or selection of the comparative evaluation procedure.

### § 21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications shall comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed change in the ownership of an applicant which would be classified as a major amendment under § 21.23, and for which an exemption under § 21.31(e) from the "cut-off" rule would be requested; or,

(ii) A proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing of an application previously in contested status.

(b) The provisions of this section shall not be applicable to any engineering agreement (or understanding) which:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section shall constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section shall comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto shall jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto shall file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission shall be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith.

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filling, and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's, in-house efforts, these costs shall exclude only directly assignable costs and shall exclude the application of general overhead expenses. [The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.] An itemized accounting shall be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars ($1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting shall clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be *prima facie* contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

### § 21.30 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), which shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contains a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) The Commission will classify as informal objections:

(1) Any petition to deny not filed in accordance with paragraph (a) of this section;

(2) Any petition to deny (or for other forms of relief) an application to which the thirty (30) day public notice period of § 21.27(b) does not apply; or

(3) Any comments on, or objections to, the grant of an application (other than the issuance of a license pursuant to a construction permit) where the comments or objections do not conform to either paragraph (a) of this section or other Commission rules and requirements.

(c) The Commission will consider informal objections, but will not necessarily discuss them specifically in a formal opinion if:

(1) The informal objection is filed at least one day before Commission action on the application; and

(2) The informal objection is signed by the submitting person (or his representative) and discloses his interest.

### § 21.31 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good

faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. [For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.]

(d) An application otherwise mutually exclusive with one of more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(e) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 21.23), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 21.35), and the Commission or the presiding officer accepts the amendment pursuant to § 21.23(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications, but does not create new or increased frequency conflicts;

(3) The amendment reflects only a change in ownership or control pursuant to an agreement (or understanding) which is found by the Commission to be in the public interest under § 21.29 and from which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 21.29 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

**§ 21.32 Consideration of applications.**

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 21.31) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 21.35 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 21.30, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(3) The application is entitled to comparative consideration (under § 21.31) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 21.31) and the applicants have choosen the comparative evaluation procedure of § 21.35 but the Commisison deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section after an appropriate hearing conducted in accordance with the provisions of § 21.35 or Part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 21.35, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing on all applications might jeopardize the rights of the United States under the provisions of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of Part 1 of this chapter.

**§§ 21.33–34 [Reserved]**

**§ 21.35 Comparative evaluation of mutally exclusive applications.**

(a) In order to expedite action on mutually exclusive applications, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlind in paragraph (b) of this section, if:

(1) The applications are entitled to comparative consideration pursuant to § 21.31;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of § 21.32.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of his right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and his attorney is so represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning his proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants shall have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision shall be considered final.

**§§ 21.36–21.38 [Reserved]**

**§ 21.39 Transfer of control or assignment of station authorizations.**

(a) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. The treatment to be accorded acquisition or disposition costs for interstate rate making purposes will be determined at such time as the question may arise in a rate proceeding.

(b) Requests for transfer of control or assignment authority shall be submitted on the application forms prescribed by § 21.11 of this chapter; shall be accompanied by the applicable showings required by §§ 21.13, 21.15, 21.17 and 21.40 of this chapter.

(c) In acting upon applications for transfer and assignment authority the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

(d) The Commission shall be notified in writing promptly of the death or legal disability of an individual permittee or licensee; a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee. Within thirty (30) days after the occurrence of such death or legal disability, and application in accordance with the provisions of paragraph (b) of this section shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.

**§ 21.40 Considerations involving transfer or assignment applications.**

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving a *pro forma* assignment or transfer of control) for consent to assignment of a common carrier construction permit or license, or for transfer of control of a corporate permitee or licensee, involve facilities which have been operated for less than two years by the proposed assignor or transferor. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee or permittee subsequent to the acquisition of the permit or license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(b) If a proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests, any showing requested under paragraph (a) of this section shall include an additional exhibit which:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(c) For the purposes of this section, the two year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the construction permit, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of construction permit or license, or transfer of control of a corporate permittee or licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (c) (1) and (2) of this section) if the transaction involves a system (such as a Point-to-Point Microwave System) of two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

**§§ 21.41-21.42 [Reserved]**

**§ 21.43 Period of construction.**

(a) Except for stations in the Point-to-Point Microwave Radio Service, and except as may be limited by § 21.35(b), each construction permit for a radio station in the radio services included in this Part will specify the date of grant as the earliest date of commencement of construction, and a maximum of 8 months from the date of grant as the time within which construction will be completed and the station ready for operation, unless otherwise determined by the Commission upon proper showing in any particular case (see §§ 21.14(d) and 21.34(a)).

(b) For stations in the Point-to-Point Microwave Radio and except as may be limited by § 21.45(b), the construction permit issued by the Commission will specify the date of grant as the earliest date of commencement of construction and a maximum of 18 months thereafter as the time within which construction shall be completed and the station be ready for operation, unless otherwise determined by the Commission upon proper showing in any particular use.

**§ 21.44 Forfeiture and termination of station authorization.**

(a) A construction permit shall be automatically forfeited if the station is not ready for operation within the term of the construction permit (as evidenced by the commencement of service tests as specified by § 21.212), or within such additional time as may be authorized by the Commission (upon receipt of an appropriate and timely filed application), unless prevented by causes not under the control of the permittee. Where so forfeited, the Commission will consider a petition for reinstatement of a construction permit only where:

(1) It is filed within 30 days of the expiration of the construction permit;

(2) It explains the failure to timely file a renewal application; and

(3) Where it is accompanied by an appropriate application for extension of time to construct or modification of construction permit.

(b) A license shall be automatically forfeited upon the expiration date specified therein unless prior thereto an application for renewal of such license has been filed with the Commission. An application for renewal filed after the expiration date of the license will be considered only if:

(1) It is filed within 30 days of such expiration date;

(2) It explains the failure to timely file a renewal application is submitted; and

(3) It describes procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization shall automatically terminate upon the expiration date stated therein or upon failure of the carrier to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only upon specific authorization by the Commission.

**§ 21.45 License period.**

(a) Licenses for stations in the Point-to-Point Microwave Radio, Local Television Transmission, Multipoint Distribution Services will be issued for a period not to exceed 5 years; in the case of common carrier Television STL and Television Pickup stations to which are assigned frequencies allocated to the broadcast services, the authorization to use such frequencies shall, in any event, terminate simultaneously with the expiration of the authorization for the broadcast station to which such service is rendered except that licenses for developmental stations will be issued for a period not to exceed one year. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the following date in the year of expiration:

| | |
|---|---|
| Point-to-Point Microwave Radio Service | Feb. 1. |
| Local Television Transmission Service | Do. |
| Multipoint Distribution Service | May 1. |

The expiration date of developmental licenses shall be one year from the date of the grant thereof. When a license is granted subsequent to the last renewal date of the class of license involved, the license shall be issued only for the unexpired period of the current license term of such class.

(b) The Commission reserves the right to grant or renew station licenses in these services for a shorter period of time than that generally prescribed for such stations if, in its judgment, public interest, convenience, or necessity would be served by such action.

(c) Upon the expiration or termination of any station license, any related construction permit, which bears a later expiration date, shall be automatically terminated concurrently with the related station license, unless it shall have been determined by the Commission that the

public interest, convenience or necessity would be served by continuing in effect said construction permit.

## Subpart C—Technical Standards

### § 21.100 Frequencies.

(a) The frequencies available for use in the services covered by this part of the rules are listed in the applicable subparts of this part. Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in these services will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in these services shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may specify a time sharing arrangement for the stations involved or may, after notice and opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

(c) Frequency diversity transmission will not be authorized in these services in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it shall be limited to one protection channel for the band 3,700–4,200 MHz, one protection channel for the band 5,925–6,425 MHz, and a ratio of one protection channel for three working channels for the band 10,700–11,700 MHz. In the bands 3,700–4,200 MHz and 5,925–6,425 MHz no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within 3 years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within 3 years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

(d) All applicants for regular authorization in the Point-to-Point Microwave Radio and Local Television Transmission Services for use of the bands 2,110–2,130 MHz and 2,160–2,180 MHz shall, before filing an application or major amendment to a pending application, coordinate proposed frequency usage with existing users in the area and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference or restricted ultimate system capacity. In coordinating frequency usage with stations in the fixed-satellite service, applicants shall also comply with the requirements of Section 21.706 (c) and (d). In engineering a system or modification thereto, the applicant shall by appropriate studies and analyses select sites, transmitters, antennas and frequencies that will avoid harmful interference to other users. All applicants, permittees and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems that are likely to need additional capacity in the foreseeable future. The applicant shall identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved or if the existing licensee, permittee or applicant does not respond to coordination efforts within 30 days after notification, an explanation shall be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of harmful interference (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof shall be contained in the application. The following guidelines are applicable to the coordination procedure:

(1) Coordination involves two separate elements: Notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The name of the carriers with which coordination was accomplished must be specified.

(2) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added or changed.
Transmitting equipment type, its stability, actual output power, and emission designator.
Transmitting antenna type and model and, if required, a typical pattern and maximum gain.
Transmitting antenna height above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type and model and, if required, a typical pattern and maximum gain.
Receiving antenna height above ground level and ground elevation above mean sea level.
Path azimuth and distance.

(3) For transmitters employing digital modulation techniques at frequencies below 15 GHz, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment shall also be furnished.

(4) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Every reasonable effort should be made by all carriers to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file his application without a response.

(5) The 30-day notification period is calculated from the date of receipt by the carrier being notified. If notification is by mail, this date may be ascertained by: (i) The return receipt on certified mail, (ii) the enclosure of a card to be dated and returned by the recipient, or (iii) a conservative estimate of the time required for the mail to reach its destination. In the latter case, the estimated date when the 30-day period would expire should be stated in the notification.

(6) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to

resolve the conflict and briefly the reason therefor.

(7) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified.

(8) Where subsequent changes are not numerous or complex, the carrier receiving the changed notification should make an effort to respond in less than 30 days. Where the notifying carrier believes a shorter response time is reasonable and appropriate, it may be helpful for him to so indicate in the notice and perhaps suggest a response date.

(9) If it is determined that a subsequent change could have no impact on some carriers receiving the original notification, it is not necessary to coordinate the change with such carrier. However, these carriers should be advised of the change and of the opinion that coordination is not required for said change.

(10) Carriers should supply to all other carriers, or known carrier applicants, within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating carriers or applicants, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation.

(11) Carriers should keep other carriers with which they are coordinating advised of deletions or changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was completed, carriers may assume, unless notified otherwise, that such frequency use is no longer desired.

(e) Where frequency conflicts arise between co-pending applications in the Point-to-Point Microwave Radio and Local Television Transmission Services, it shall be the obligation of the later filing applicant to amend his application to remove the conflict, unless he can make a showing that the conflict cannot be reasonably eliminated. Where a frequency conflict is not resolved and no showing is submitted as to why the conflict cannot be resolved, the Commission may grant the first filed application and dismiss the later filed application(s) after giving the later filing applicant(s) 30 days to respond to the proposed action.

**§ 21.101 Frequency tolerance.**

(a) The carrier frequency of each transmitter authorized in these services shall be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section (unless otherwise specified in the instrument of station authorization the reference frequency shall be deemed to be the assigned frequency):

| Frequency range (MHz) | Frequency tolerance (percent) | | |
|---|---|---|---|
| | All fixed and base stations | Mobile stations over 3 watts | Mobile stations 3 watts or less[1] |
| 25 to 50 | 0.002 | 0.002 | 0.005 |
| 50 to 450 | .0005 | .0005 | .005 |
| 450 to 512 | .00025 | .0005 | .0005 |
| 512 to 1,000[2] | .0005 | .0005 | .005 |
| 2,110 to 2,220 | .001 | | |
| 2,200 to 12,200[3] | .005 | .005 | .005 |
| 12,200 to 40,000 | .03 | .03 | .03 |

[1] Below 512 MHz transmitter plate power input to the final frequency stage, as specified in the Commission's Radio Equipment List. Above 512 MHz transmitter power output, as specified in the Commission's Radio Equipment List.

[2] Beginning Aug. 9, 1975, this tolerance will govern the marketing of equipment pursuant to §§ 2.803 and 2.805 of this chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03 percent in the frequency range 2,200 to 10,500 MHz and .05 percent in the range 10,500 MHz to 12,200 MHz, and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized in the frequency range 2,450 to 10,500 MHz prior to June 23, 1969, at a tolerance of .05 percent may continue to be used until February 1, 1976 provided it does not cause interference to the operation of any other licensee.

[3] Equipment authorized to be operated on frequencies between 890 and 940 MHz as of Oct. 15, 1956, shall be required to maintain a frequency tolerance within 0.03 percent subject to the condition that no harmful interference is caused to any other radio station.

(b) Heterodyne microwave radio systems may be authorized a somewhat less restrictive frequency tolerance (up to .01 percent) to compensate for frequency shift caused by numerous repeaters between base band signal insertion. Where such relaxation is sought, applicant must provide all calculations and indicate the desired tolerance over each path. In such instances the radio transmitters used shall individually be capable of complying with the tolerance specified in paragraph (a) above:

(c) As an additional requirement in any band where the Commission makes assignments according to a specified channel plan, provisions shall be made to prevent the emission included within the occupied bandwidth from radiating outside the assigned channel at a level greater than that specified in § 21.106.

**§ 21.102 Frequency measuring or calibrating apparatus.**

The frequency measuring or calibrating device used to determine compliance of transmitting equipment with the station authorization and the applicable rules and regulations shall be independent of the transmitter frequency control elements and shall have an accuracy within one-half of the allowed frequency tolerance of the transmitter being measured.

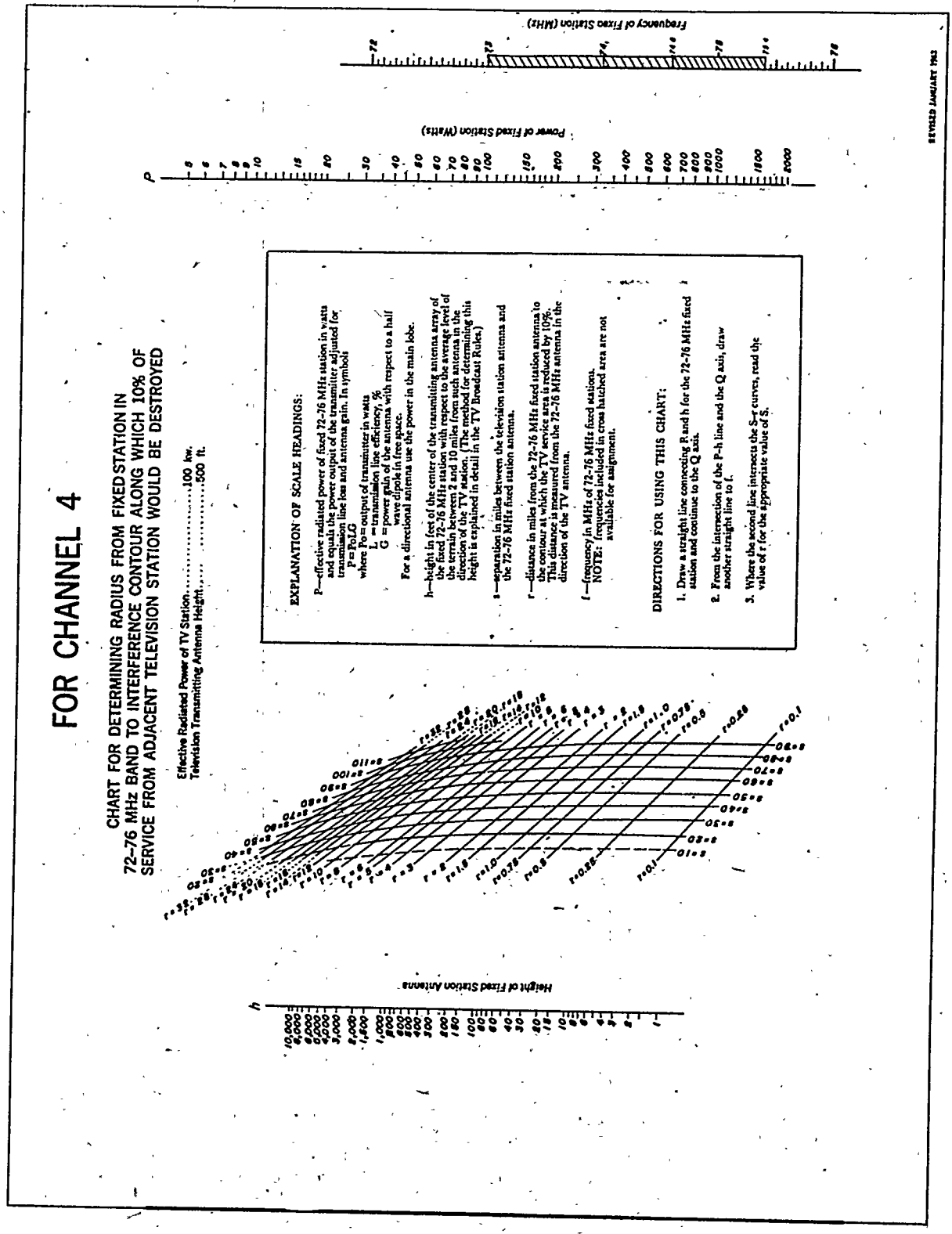
**§ 21.103 Standards and limitations governing authorization and use of frequencies in the 72–76 MHz band.**

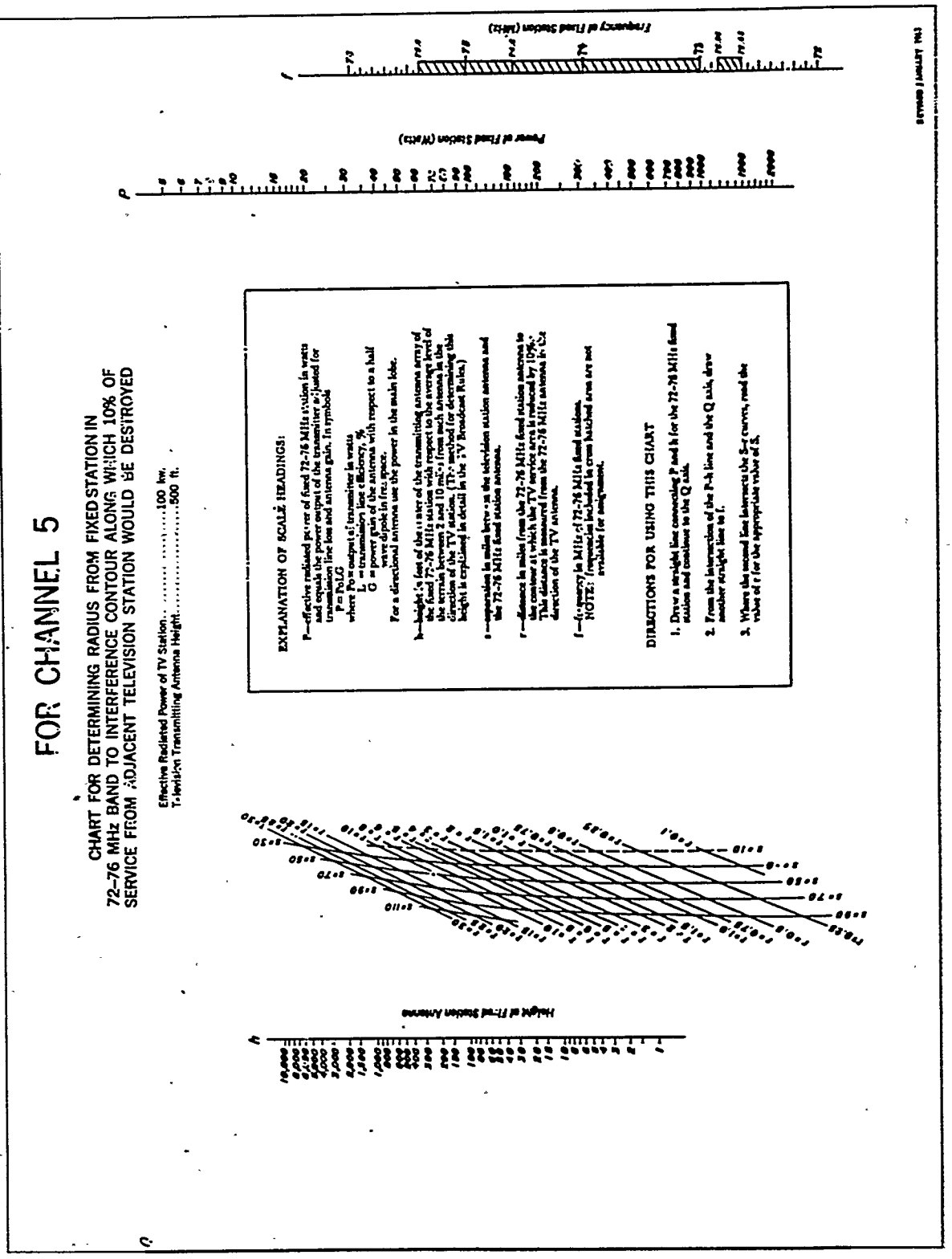
(a) Assignments on frequencies in the band 72–76 MHz will be made only to stations located 10 or more miles from a channel 4 or 5 television station (or from the post office of the city to which such television channels are allocated, in cases where a television station has not been authorized) and shall be subject to the condition that no harmful interference is caused to reception of such television stations. Applications for use of frequencies involving less than 10 miles separation from such television stations will be returned without action.

(b) Assignments on frequencies in the band 72–76 MHz will be made only upon the applicant's affirmative showing that he agrees to eliminate any harmful interference which may be caused by his operation to television reception on either channel 4 or 5 and, if said interference cannot be eliminated within 90 days of the time the matter is first brought to his attention by the Commission, operation of the interfering fixed station will be discontinued.

(c) In cases where it is proposed to locate a 72–76 MHz fixed station less than 80, but more than 10, miles from the site of a television transmitter operating on either channel 4 or 5 (or from the post office of a community to which such television channels are allocated, in cases where a television station has not been authorized), the fixed station shall be authorized only if there are fewer than 100 family dwelling units (as defined by the United States Bureau of Census) located within a circle centered at the location of the fixed station (family dwelling units 70 or more miles distant from the television station antenna site are not to be counted) the radius of which shall be determined by use of the following charts entitled "Chart For Determining Radius From Fixed Station In 72–76 MHz Band To Interference Contour Along Which 10 Percent of Service From Adjacent Channel Television Station Would Be Destroyed":

BILLING CODE 6712-01-M


FOR CHANNEL 4
CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED
Effective Radiated Power of TV Station.....100 kw.
Television Transmitting Antenna Height.....500 ft.
EXPLANATION OF SCALE HEADINGS:
P—effective radiated power of fixed 72–76 MHz station in watts and equals the power output of the transmitter adjusted (or transmission line loss and antenna gain. In symbols
P=PoLG
where Po=output of transmitter in watts
L=transmission line efficiency, %
G=power gain of the antenna with respect to a half wave dipole in free space.
For a directional antenna use the power in the main lobe.
h—height in feet of the center of the transmiting antenna array of the fixed 72–76 MHz station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.)
s—separation in miles between the television station antenna and the 72–76 MHz fixed station antenna.
r—distance in miles from the 72–76 MHz fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72–76 MHz antenna in the direction of the TV antenna.
f—frequency in MHz of 72–76 MHz fixed stations.
NOTE: Frequencies included in cross hatched area are not available for assignment.
DIRECTIONS FOR USING THIS CHART:
1. Draw a straight line connecting P and h for the 72–76 MHz fixed station and continue to the Q axis.
2. From the intersection of the P–h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S–r curves, read the value of r for the appropriate value of S.
Power of Fixed Station (Watts)
Frequency of Fixed Station (MHz)
Height of Fixed Station Antenna
REVISED JANUARY 1963


FOR CHANNEL 5
CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED
Effective Radiated Power of TV Station.....100 kw.
Television Transmitting Antenna Height.....500 ft.
EXPLANATION OF SCALE HEADINGS:
DIRECTIONS FOR USING THIS CHART
Power of Fixed Station (Watts)
Frequency of Fixed Station (MHz)
Height of Fixed Station Antenna

(d) In cases where more than 100 family dwelling units are contained within the circle (determined according to paragraph (c) of this section), the Commission may, in a particular case, authorize the location of a fixed station upon a factual showing that:

(1) The proposed site is the only suitable location.

(2) It is not feasible, technically or otherwise, to use other available frequencies.

(3) The applicant has a definite plan, which should be disclosed, to control any interference that might develop to television reception from his operations.

(4) The applicant is financially able and agrees to make such adjustments in the television receivers affected as may be necessary to eliminate interference caused by his operations.

(e) No station assignments shall be made in the frequency range 74.6–75.4 MHz.

(f) No station assignments shall be made in the frequency range 72.65–72.85 MHz within 80 miles from the site of a television transmitter operating on channel 5 (or from the post office of a community to which such television channel is allocated, in cases where a television station has not been authorized).

### § 21.104 Types of emission.

(a) The types of emission which the various stations in the radio services included in this Part may use are specified in the rules in this part governing the particular service. (See § 2.201 of this chapter for information concerning the manner of designating various classes of emission.)

(b) The use of F0 and A0 emission in the 72–76 MHz band will not be authorized, except for temporary or short periods necessary for testing incident to the construction or maintenance of a radio station.

### § 21.105 Bandwidth.

Each authorization issued pursuant to these rules will show, as the emission designator, a symbol representing the class of emission which shall be prefixed by a number specifying the necessary bandwidth in kilohertz. This figure does not necessarily indicate the bandwidth actually occupied by the emission at any instant. In those cases where Part 2 of this chapter does not provide a formula for the computation of the necessary bandwidth, the occupied bandwidth may be used in the emission designator.

### § 21.106 Emission limitations.

(a) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using transmissions other than those employing digital modulation techniques:

(i) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least $43+10\ \text{Log}_{10}$ (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques. (See § 21.122):

(i) For operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels.

$A=35+0.8(P-50)+10\ \text{Log}_{10}B$.

(Attenuation greater than 80 decibels is not required.)

where:

A=Attenuation (in decibels) below the mean output power level.

P=Percent removed from the carrier frequency.

B=Authorized bandwidth in MHz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels.

$A=11+0.4(P-50)+10\ \text{Log}_{10}B$.

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least $43+10\ \text{Log}_{10}$ (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

### § 21.107 Transmitter power.

(a) The power which a station will be permitted to use in these services will be the minimum required for satisfactory technical operation commensurate with the size of the area to be served and local conditions which affect radio transmission and reception. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of a station.

(b) The rated power of a transmitter employed in these radio services shall not exceed the values shown in the following tabulation:

| Frequency range (MHz): | *Rated power output (watts)* |
|---|---|
| Below 30 | 50 |
| 30 to 50 | 350 |
| 50 to 76 | 50 |
| 76 to 512 | [1]250 |
| 512 to 10,000 | [2]20 |
| Above 10,000 | [2]10 |

[1] Transmitter rated power output is limited to a maximum of 25 watts on frequencies in the bands 454.6625–455.000 MHz and 459.6625–460.000 MHz.

[2] In the bands, 5.925–6.425 MHz and 27,500–29,500 MHz the maximum effective isotropically radiated power of the transmitter and associated antenna of a station in the fixed service shall not exceed +55 dBW. This limitation is necessary to minimize the probability of harmful interference to reception in this band by space stations in the fixed satellite service. In the band 2.150–2.162 MHz up to 100 watts may be authorized pursuant to § 21.904.

(c) The power of each transmitter shall be maintained as near as practicable to the power input or output, as the case may be, specified in the instrument of station authorization: *Provided,* That the power of each base station transmitter shall not deviate by more than 20 percent above and 25 percent below the authorized power. In the event it becomes impossible to operate within such limits of the authorized power, the station may be operated with reduced power for a period of 10 days or less, provided that if such operation continues longer than 10 days the Commission and the Engineer in Charge of the radio district in which the station is located shall be notified in writing immediately thereafter and also upon the resumption of normal power.

### § 21.108 Directional antennas.

(a) Unless otherwise authorized upon specific request by the applicant each station authorized under the rules of this part shall employ a directional antenna adjusted with the center of the major lobe of radiation in the horizontal plane directed toward the receiving station with which it communicates: *Provided, however,* Where a station communicates with more than one point, a multi- or omni-directional antenna may be authorized if necessary. New Periscope antenna systems will not, under ordinary circumstances, be authorized.

(b) Stations operating below 2500 MHz (other than stations in the Multipoint Distribution Service) which

are required to use directional antennas shall employ antennas meeting the standards indicated below. (Maximum beamwidth is for the major lobe of radiation at the half power points. Suppression is the minimum attenuation required for any secondary lobe signal and is referenced to the maximum signal in the main lobe.)

| Frequency range | Maximum beamwidth (degrees) | Suppression (dB) |
|---|---|---|
| Below 512 MHz | 80 | 10 |
| 512 to 1000 MHz | 20 | 13 |
| 1500 to 2500 MHz | 12 | 13 |

(c) Fixed stations (other than temporary fixed) operating at 2.500 MHz or higher shall employ transmitting and receiving antennas meeting the appropriate performance Standard A indicated below except that in areas not subjected to frequency congestion, antennas meeting performance Standard B may be used subject to the liability set forth in § 21.109(c). Additionally, the main lobe of each antenna operating below 5.000 MHz shall have minimum power gain of 36 dBi over an isotropic antenna; at or above 5.000 MHz the minimum gain shall be 38 dBi. The values indicated represent the suppression required in the horizontal plane without regard for the polarization plane of intended operation.

| Angle from center line of main lobe | Minimum radiation suppression | |
|---|---|---|
| | Standard A (dB) | Standard B (dB) |
| Operation below 5,000 MHz: | | |
| 5° up to, not including 10° | 23 | 20 |
| 10° up to, not including 15° | 29 | 24 |
| 15° up to, not including 20° | 33 | 28 |
| 20° up to, not including 30° | 36 | 32 |
| 30° up to, not including 100° | 42 | 32 |
| 100° up to, including 180° | 55 | 32 |
| Operation at 5,000 MHz or above: | | |
| 5° up to, not including 10° | 25 | 20 |
| 10° up to, not including 15° | 29 | 24 |
| 15° up to, not including 20° | 33 | 28 |
| 20° up to, not including 30° | 36 | 32 |
| 30° up to, not including 100° | 42 | 35 |
| 100° up to, including 180° | 55 | 36 |

(d) In cases where passive reflectors are employed in conjunction with transmitting antenna systems, the foregoing paragraphs of this section also shall be applicable thereto. However, in such instances, the center of the major lobe of radiation from the antenna normally shall be directed at the passive reflector, and the center of the major lobe of radiation from the passive reflector directed toward the receiving station with which it communicates.

(e) No directional transmitting antenna utilized by a station operating in the band 5925–6425 MHz shall be aimed within 2° of the geostationary satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible interference to an authorized satellite system, said transmission path may be authorized on a waiver basis where the maximum value of equivalent isotropically radiated power does not exceed: (1) 47 dBW for any antenna beam directed within 0.5° of the stationary satellite orbit or (2) 47 to 55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5° and 1.5° of the stationary orbit. [Methods of calculating azimuths to be avoided may be found in: CCIR Report #393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for Controlled Interference With Geostationary Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Volume 48, No. 10, pages 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, D.C., 1972. This latter report and a card deck of the program itself are available through the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151, as report numbers PB–211–500, and PB–211–501.]

**§ 21.109 Antenna and antenna structures.**

(a) In the event harmful interference is caused to the operation of other stations, the Commission may, after notice and opportunity for hearing, order changes to be made in the height, orientation, gain and radiation pattern of the antenna system.

(b) No replacement or change of antenna or antenna structure shall be effected, except as noted below, without prior authorization from the Commission if after such replacement or change, there would be an increase in the gain of the antenna in any direction or increase in the overall structure height: *Provided, however,* That changes may be made without prior authorization from the Commission where: The power gain in any direction is not decreased by more than 1.5 dB below that specified in the application for which authorization was issued; antenna height changes or corrections do not vary more than 2 feet from the height authorized and do not increase the overall structure height; or antenna directivity changes do not vary more than 1° from the values authorized. Within 30 days after making any changes not requiring prior authorization the licensee shall report the same to the Commission and to the Engineer in Charge of its district with complete technical details including a computation of the effective radiated power and all other pertinent information together with the certification of the person responsible for preparing the information (c.f. §§ 21.15(g) and 21.121(c)).

(c) The Commission may require the replacement, at the licensee's expense, of any antenna or periscope antenna system of a permanent fixed station operating at 2500 MHz or higher which does not meet performance Standard A specified in § 21.108(c), upon a showing that said antenna causes or is likely to cause interference to (or receive interference from) any other authorized or proposed station whereas an antenna meeting performance Standard A is not likely to involve such interference.

(d) No replacement or change of antenna or antenna structure shall be effected without prior authorization from the Commission except as provided for under this section.

**§ 21.110 Antenna polarization.**

(a) Stations operating in the 72–76 MHz band shall employ an antenna which radiates a signal, the electrical component of which is vertically polarized.

(b) [Reserved]

(c) [Reserved]

(d) Stations operating in the radio services included in this Part above 890 MHz are not limited as to the type of polarization of the radiated signal: *Provided, however,* That in the event harmful interference is caused to the operation of other stations, the Commission may, after notice and opportunity for hearing, order the licensee to change the polarization of the radiated signal. No change in polarization shall be made without prior authorization from the Commission.

**§ 21.111 Simultaneous use of common antenna structure.**

The simultaneous use of common antenna structures by more than one domestic public radio station, or by one or more domestic public radio stations and one or more stations of any other class or service, may be authorized: *Provided, however,* That each permittee, licensee or user of any such structure is responsible for maintaining the structure, and for painting and illuminating the structure when obstruction marking is required by the Commission. (See § 21.15(d) and § 21.109(b).)

**§ 21.112 Marking of antenna structures.**

No permittee or licensee who has been required to paint or light an antenna structure shall discontinue the required painting or lighting without having obtained prior written authorization therefor from the Commission. (For complete regulations relative to antenna marking requirements, see Part 17 of this chapter.)

**§ 21.113 Quiet zones.**

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to radio frequency interference. The areas involved and procedures required are as follows:

(a) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia, any applicant for a station authorization other than mobile, temporary base, or temporary fixed seeking authorization for a new station or to modify an existing station in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical particulars of the proposed operation. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity (if any), proposed frequency, type of emission, and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that field strengths at 40°07′50″ N. latitude, 105°14′40″ W. longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

| | Field strength (mV/m) in authorized bandwidth of service | Power flux density[1] (dBW/m²) in authorized bandwidth of service |
|---|---|---|
| Below 540 kHz | 10 | —65.8 |
| 540 to 1600 kHz | 20 | —59.8 |
| 1.6 to 470 MHz | 10 | 2—65.8 |
| 470 to 800 MHz | 30 | 2—56.2 |
| Above 800 MHz | 1 | 2—85.8 |

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of $376.7 = 120\pi$ ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plan of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plan of polarization in the azimuthal direction of Table Mountain Radio Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plan of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder CO 80303; telephone 303–499–1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the reference point in excess of the field strength specified herein.

**§ 21.114 Temporary fixed antenna height restrictions.**

The overall antenna structure heights employed by mobile stations in the Local Television Transmission Service and by stations authorized to operate at temporary fixed locations shall not exceed the height criteria set forth in § 17.7 of this chapter, unless in each instance, authorization for use of a specific maximum antenna height (above ground and above mean sea level) for each location has been obtained from the Commission prior to erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter.)

**§ 21.115 [Reserved]**

**§ 21.116 Topographical data.**

In the preparation of the profile graphs described in § 21.115, and in determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. Ordinarily, the Commission will not require the

submission of topographical maps for areas beyond 15 miles from the antenna site, but the maps must include the principal community to be served. If it appears necessary, additional data may be requested. United States Geological Survey Topographic Quadrangle Maps may be obtained from the Department of the Interior, Geological Survey, Washington, D.C., 20242. Sectional Aeronautical Charts are available from the Department of Commerce, Coast and Geodetic Survey, Washington, D.C., 20230.

**§ 21.117 Transmitter location.**

(a) The applicant shall determine, prior to filing an application for a radio station authorization, that the antenna site specified therein is adequate to render the service proposed. In cases of questionable antenna locations, it is desirable to conduct propagation tests to indicate the field intensity which may be expected in the principal areas or at the fixed points of communication to be served, particularly where severe shadow problems may be expected. In considering applications proposing the use of such locations, the Commission may require site survey tests to be made pursuant to a developmental authorization in the particular service concerned. In such cases, propagation tests should be conducted in accordance with recognized engineering methods and should be made with a transmitting antenna simulating, as near as possible, the proposed antenna installation. Full data obtained from such surveys and its analysis, including a description of the methods used and the name, address and qualifications of the engineer making the survey, must be supplied to the Commission.

(b) Antenna structures should be so located and constructed as to avoid making them hazardous to air navigation. (See Part 17 of this chapter for provisions relating to antenna structures.) Such installation shall be maintained in good structural condition together with any required painting or lighting.

**§ 21.118 Transmitter construction and installation.**

(a) The equipment at the operating and transmitting positions shall be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee. In general, each transmitter used in the Domestic Public Radio Services shall be so constructed or installed that all controls thereon which may cause off-frequency operation or result in any unauthorized emission shall be protected from access by other than duly authorized holders of first- or second-class radio operator licenses.

(b) In any case where the maximum modulating frequency of a transmitter is prescribed by the Commission, the transmitter shall be equipped with a low-pass or band-pass modulation filter of suitable performance characteristics. In those cases where a modulation limiter is employed, the modulation filter shall be installed between the transmitter stage in which limiting is effected and the modulated stage of the transmitter. (See also §§ 21.508(e) and 21.605(d)).

(c) Each transmitter, other than a hand-carried or pack-carried transmitter, employed in these services shall be equipped with an appropriately labeled pilot lamp or meter which will provide continuous visual indication at the transmitter when its control circuits have been placed in a condition to activate the transmitter. In addition, facilities shall be provided at each transmitter to permit the transmitter to be turned on and off independently of any remote control circuits associated therewith.

(d) [Reserved]

(e) At each transmitter control point the following facilities shall be installed:

(1) A carrier operated device which will provide continuous visual indication when the transmitter is radiating, or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter control circuits have been placed in a condition to activate the transmitter: *Provided, however,* That the provisions of this subparagraph shall not apply to hand-carried or pack-carried transmitters.

(2) Facilities which will permit the operator to turn transmitter carrier on and off at will.

(f) Transmitter control circuits from any control point shall be so installed that grounding or shorting any line in the control circuit will not cause the transmitter to radiate: *Provided, however,* That this provision shall not be applicable to control circuits of stations which normally operate with continuous radiation or to control circuits which are under the effective operational control of responsible operating personnel 24 hours per day.

**§ 21.119 Limitation on use of transmitters for other services.**

Transmitters licensed for operation in services governed by this part may not be concurrently licensed or used for non-common carrier communication purposes. However, mobile units may be concurrently licensed or used for non-common carrier communication purposes provided that the transmitter is type-accepted for use in each service.

**§ 21.120 Type acceptance of transmitters.**

(a) Except for transmitters used at developmental stations, each transmitter shall be of a type which has been type accepted by the Commission for use under the applicable rules of this part.

(b) Any manufacturer of a transmitter to be produced for use under the rules of this part may request type acceptance by following the type acceptance procedure set forth in Part 2 of this chapter. Type accepted transmitters are included in the Commission's "Radio Equipment List". Copies of this list are available for inspection at the Commission's Office in Washington, D.C., and at each of its field offices.

(c) Type acceptance for an individual transmitter may also be requested by an applicant for a station authorization, pursuant to the type acceptance procedure set forth in Part 2 of this chapter. An individual transmitter will not normally be included in the Radio Equipment List, but will be enumerated on the station authorization.

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890–940 MHz band and has not been type accepted, may continue to be used by the licensee without type acceptance provided such transmitter continues otherwise to comply with the applicable rules and regulations of the Commission.

**§ 21.121 Replacement of equipment.**

(a) The licensee of a station in this service may replace a transmitter without specific authorization by notifying the Commission at Washington, D.C. 20554, and its Engineer in Charge of the radio district wherein operation is to be conducted, at the time of the installation of the transmitter, if the replacement transmitter complies with the following conditions:

(1) Appears on Commission's current type-acceptance list for use under this Part 21 (see § 21.120) and is installed without modification.

(2) Its type-accepted output power is equal to the authorized output power for the transmitter being replaced.

(3) Conforms to the frequency, class of station and emission specified in the current instrument of authorization and all other applicable rules and regulations.

(b) For all transmitter replacements made pursuant to paragraph (a) of this section, any changes in input power, make and type of transmitting

equipment must also be indicated on the next application for renewal of license or in the next application for modification of license, whichever is filed first. Requests for authority to make other changes in equipment shall be submitted to the Commission in appropriate applications and replacements which require applications may not be made until an authorization has been issued by the Commission. Notification is not required for a replacement which conforms in all respects to the authorized transmitter.

(c) The notification required by paragraph (a) of this section shall include:

(1) Radio service and station call sign.

(2) Location of replacement transmitter as shown on current license.

(3) Name of the manufacturer and type number of transmitter installed, as it appears on the current type-acceptance list.

(4) Rated output power of such transmitter.

(5) Identification of the transmitter being replaced (and where applicable, point(s) of communication) and the frequency on which such transmitter operates.

(6) Date of replacement.

(d) The permittee or licensee of a station in this service may replace or change equipment, other than that specified in §§ 21.109(a) and 21.121(a), including the transmission line and other devices between the transmitter and antenna if, after such change or addition the effective radiated power of the station in any direction is not decreased by more than 1.5 dB below that specified in the application for which authorization was issued. Prior authorization from the Commission is required if, after such changes the effective radiated power in any direction would be increased. Within 30 days after making any changes not requiring prior authorization, the permittee or licensee shall report the same to the Commission and to the Engineer in Charge of its district with complete technical details including a computation of the effective radiated power and all other pertinent information together with the certification of the person responsible for preparing the information (c.f. §§ 21.15 and 21.121(c)).

### § 21.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in hertz (e.g., to be acceptable, equipment transmitting at a 20 MB/s rate must not require a bandwidth of greater than 20 MHz).

(2) Equipment to be used for voice transmission shall be capable of satisfactory operation within the authorized bandwidth to encode at least the following number of voice channels:

| Frequency range: | *Number of encoded voice channels* |
|---|---|
| 2110 to 2130 MHz | 96 |
| 2160 to 2180 MHz | 96 |
| 3700 to 4200 MHz | 1,152 |
| 5925 to 6425 MHz | 1,152 |
| 10,700 to 11,700 MHz | 1,152 |

(3) The required minimum number of channels shown in paragraph (a)(2) of this section may be reduced by a factor 1/N provided that N transmitters may be operated satisfactorily within an authorized bandwidth less than, or equal to, to the maximum authorizable bandwidth over the same radio path (e.g. (1) the 1152 channels requirement may be reduced to 576 if two transmitters can be satisfactorily operated over the same path within a 40 MHz maximum bandwidth for the 11 GHz band or (2) reduced to 288 channels if four transmitters can be satisfactorily accommodated within this bandwidth). Applications submitted for equipment type acceptance designed to operate in this mode must include data which will demonstrate successful operation under typical transmission conditions. Where type accepted equipment is designed to operate on the same frequency in a cross-polarized configuration to meet the above capacity requirements, the Commission will require, at the time additional transmitters are authorized, that both polarizations of a frequency be used before a new frequency assignment is made, unless a single transmitter installation was found to be justified by the Commission at the time it authorized the first transmitter.

(b) For purposes of compliance with the emission limitation requirements of § 21.106(a)(2) of this part and the requirements of paragraph (a) of this section, digital modulation techniques are considered as being employed when digital modulation contributes 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation shall be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal shall be determined in accordance with § 2.202(f) of Part 2 of this chapter.

(c) Transmitters employing digital modulation techniques shall effectively eliminate carrier spikes or single frequency tones in the output signal to the degree which would be obtained without repetitive patterns occurring in the signal.

(d) Transmitters type accepted for use with digital modulation prior to November 1, 1974 may continue to be used where authorized until December 31, 1976. After the latter date, such equipment will no longer be type accepted for digital modulation unless it is type accepted for such use after November 1, 1974.

## Subpart D—Technical Operation

### § 21.200 Station inspection.

The licensee of each station authorized in the radio services included in this part shall make the station and station records available for inspection by representatives of the Commission at any reasonable hour.

### § 21.201 Posting of station authorizations.

(a) The station permit, license or other authorization shall be posted at the authorized control point of the station, or, if none, at the station location. A photocopy may be posted in lieu of the original authorization if it is certified as to authenticity by an officer or duly authorized employee of the licensee or permittee and if it is annotated with the location of the original. If not posted at the station or a control point, the original authorization shall be posted at the licensee's alarm center or maintenance facility responsible for the station. (See also § 1.62 of this chapter.)

(b) If the station is authorized for mobile operation or for operation at temporary fixed locations, the documents specified in paragraph (a) of this section shall be retained as a permanent part of the station record, but need not be posted.

### § 21.202 [Reserved]

### § 21.203 Posting of operator licenses.

(a) Whenever a licensed radio operator is required for the operation of a radio station, the license of each operator, other than an operator exclusively performing service and maintenance duties, shall be posted or kept immediately available at the place where he is on duty as an operator: *Provided, however,* That if an operator who is on duty holds a restricted radiotelephone operator permit of the

card form (as distinguished from such document of the diploma form) or holds a valid license verification card (FCC Form 758–F) attesting to the existence of any other valid commercial radio operator license, he may have such permit or verification card in his personal possession or otherwise immediately available at the place where he is on duty as an operator.

(b) The license of every station operator who performs service and maintenance duties exclusively at that station shall be posted at the transmitter involved whenever the transmitter is in actual operation while service or maintenance work is being performed by him or under his immediate supervision and responsibility: *Provided,* That in lieu of posting his license, he may have on his person his license or a valid verification card.

**§ 21.204 FCC publication required for reference.**

For reference purposes, the permittee or licensee of radio facilities in the radio services included in this Part shall maintain and have available at the principal control point, or alarm center, or at the transmitter location, or maintenance center for the station, a current copy of this Part 21 (available at the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402).

Note.—It is suggested that the following additional documents be obtained from the Government Printing Office and maintained for reference:

(1) Communications Act of 1934, as amended.

(2) Part 1 of this chapter, Practice and Procedure.

(3) Part 2 of this chapter, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

(4) Part 13 of this chapter, Commercial Radio Operators.

(5) Part 17 of this chapter, Construction, Marking, and Lighting of Antenna Structures.

(6) Part 25 of this chapter, Satellite Communications.

(7) Part 42 of this chapter, Preservation of Records of Communication Common Carriers.

(8) Part 61 of this chapter, Tariffs.

(9) Part 63 of this chapter, Extension of Lines and Discontinuance of Service by Carriers.

**§ 21.205 Operator requirements.**

(a) Any person in charge of a radio station in these services shall be competent to maintain proper radio logs and records relative to such operations where they are required.

(b) When a radio station is radiating, all adjustments or tests during or coincident with the installation and servicing or maintenance of the transmitter and its associated radio equipment which may affect the quality of transmission or possibly cause the station radiation to exceed the limits specified in its instrument of authorization or in the rules pertaining to such station shall be made by or under the immediate supervision and responsibility of a person holding a first- or second-class commercial radio operator license (either radiotelephone or radiotelegraph, or both, as may be appropriate for the type of emission being used), who shall be responsible for the proper functioning of the radio facilities.

(c) When a radio station is not radiating, any person may perform the functions set forth in paragraphs (a) and (b) of this section without direct supervision after having been authorized to do so by the station licensee. The facilities shall thereafter initially be placed in operation and be determined to be operating properly by a first- or second-class licensed commercial radio operator.

(d) In all cases, except where manual radiotelegraph keying is employed, the person responsible for the technical installation, servicing and maintenance of a radio station in these services shall hold a first- or second-class commercial radiotelephone or radiotelegraph license issued by the Commission.

(e) Where manual radiotelegraph keying is employed exclusively, the person responsible for the technical installation, servicing and maintenance of a radio station in these services shall hold a first- or second-class commercial radiotelegraph operator license issued by the Commission.

(f) In cases where manual radiotelegraph keying and other types of radio transmission are employed, the person responsible for the technical installation, servicing and maintenance of a radio station in these services shall hold a commercial radiotelegraph operator license of first- or second-class.

(g) During the course of normal rendition of service, a station employing manual radiotelegraph keying shall be operated only by a person holding a commercial radiotelegraph operator license or radiotelegraph operator permit issued by the Commission. Persons not holding such authorizations are forbidden to manipulate a manually operated telegraph key at such stations during periods of station operation.

(h) [Reserved].

(i) [Reserved]

(j) TV pickup stations, microwave auxiliary stations, and developmental stations shall be operated during the course of normal rendition of service under the effective operational control of a person holding a first- or second-class commercial radiotelephone or radiotelegraph operator license issued by the Commission.

(k) Notwithstanding any other provisions of this section, unless the transmitter and its associated equipment is so designed that none of the operations necessary to be performed during the course of normal rendition of service may cause off-frequency operation or result in any unauthorized radiation, such transmitter shall be operated by a person holding a first- or second-class commercial radio operator license, either radiotelephone or radiotelegraph, as may be appropriate for the type of emission being used.

(l) Except under the circumstances specified in paragraphs (g) through (j) of this section, during the course of normal rendition of service, no person is required to be in attendance at a station installed at a specified fixed location provided (1) licensed radio personnel responsible for the maintenance of the radio station are continuously available on call at a location which will assure expeditious performance of such technical servicing and maintenance as may be necessary, and (2) the quality of transmission over such station is subject to the supervision of the licensee's responsible operating personnel for the radio system with which the unattended station is directly associated.

(m) [Reserved]

(n) [Reserved]

(o) A licensee of radio facilities in these services is required to have available on call at all times (either as an employee or through appropriate contractual arrangement with a person holding the requisite class of radio operator license) a licensed first- or second-class commercial radio operator (either radiotelephone or radiotelegraph, as may be appropriate for the type of emission being used) to perform necessary technical servicing and maintenance of the radio facilities expeditiously.

**§ 21.206 Inspection and maintenance of antenna structure marking and lighting, and associated control equipment.**

The licensee of any radio station which has an antenna structure required to be painted and illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and Part 17 of this chapter, shall perform the inspection and maintain the tower marking and lighting and associated control equipment, in accordance with the requirements set forth in Part 17 of this chapter.

**§ 21.207 Transmitter measurements.**

(a) The licensee of each station shall employ a suitable procedure to determine that the carrier frequency of each transmitter operating in these services is maintained within the tolerance prescribed in § 21.101 or in the instrument of station authorization. The determination shall be made, and the results thereof entered in the technical log of the station, in accordance with the following:

(1) When the transmitter is initially installed.

(2) When any change is made in the transmitting equipment which may affect the carrier frequency or the stability thereof.

(3) At intervals not to exceed one year, for transmitters employing crystal-controlled oscillators, or oscillators regulated by temperature-controlled or temperature-compensated cavities.

(4) At intervals not to exceed one month, for transmitters not employing crystal-controlled oscillators, or oscillators regulated by temperature-controlled or temperature-compensated cavities.

(b) [Reserved]

(c) The permittee or licensee of each station shall employ a suitable procedure to determine that the modulation characteristics of each transmitter and the signal radiated therefrom conform to the terms of the instrument of station authorization and to the applicable rules of this part. This determination shall be made, and the results thereof entered in the technical log of the station in accordance with the following:

(1) When the transmitter is initially installed.

(2) When any change is made in the transmitter which may affect the modulation characteristics.

(3) At intervals not to exceed one year.

(d) [Reserved]

(e) The determinations required by paragraphs (a) and (c) of this section shall be made by, or under the immediate supervision of, a person holding a first- or second-class commercial radio operator license who shall authenticate the accuracy of such entries by signing his name in the technical log of the station together with the class, serial number and expiration date of his license: *Provided, however,* That the licensee of the station may optionally have the required determinations made by any qualified engineering measurement service, in which case the required record entries shall also show the name and address of the engineering measurement service.

(f) The use of a frequency monitor in lieu of frequency checks will be recorded in the station log in the same manner and at the same intervals as required in paragraph (a) (3) or (4) of this section. Where automatic frequency monitors are employed which have an accuracy of at least one-half of the required frequency tolerance of the transmitters with which they are associated, their use shall be deemed to meet the frequency checking requirements for the period during which they were so used.

**§ 21.208 Station records.**

(a) Station records shall be kept in an orderly manner, and in such detail that the data required is readily available. Key letters, abbreviations or symbols may be used if proper meaning or explanation is set forth in the record.

(b) Each entry in the records of a station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.

(c) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the person originating the entry who shall strike out the erroneous portion, initial the correction made and indicate the date of correction.

(d) The records required by this part shall be retained for a period of at least one year: *Provided,* That:

(1) Records involving communications incident to a disaster or which include communications incident to, or involved in, an investigation by the Commission and concerning which the licensee has knowledge, shall be retained by the licensee until specifically authorized in writing by the Commission to destroy them.

(2) Records incident to or involved in any claim or complaint of which the licensee has knowledge shall be retained by the licensee until such claim or complaint has been fully satisfied or until the same has been barred by statute limiting the time for the filing of suits upon such claims.

(e) For each station in these services the licensee shall maintain a technical log of the station operation showing:

(1) The results and dates of the transmitter measurements required by § 21.207, and the information concerning the identity of the person making such measurements as required by § 21.207(e).

(2) Pertinent details concerning any servicing or maintenance performed on a transmitter which may affect its proper operation, including the date thereof, as well as the class, serial number and expiration date of the license of the responsible radio operator who shall authenticate the accuracy of such log by signing his name therein.

(3) Pertinent details concerning time and nature of any failure or erratic transmitter operation, including operation of automatic alarm facilities.

(f) For each station whose antenna structure is required to be illuminated, appropriate entries shall be made in the stations's technical log in conformity with the requirements of Part 17 of this chapter.

(g) For each station which is required to maintain one or more control points, an operation log book shall be kept showing the time and signature, upon entering upon duty at the station and again upon leaving duty, of the person or persons responsible for the operation of the transmitting equipment each day. Where the person responsible for the operation of the station is required to be a licensed radio operator, the log entry shall also show, on each signing in, the class, serial number, and expiration date of his operator license.

(h) The log entries concerning the class, serial number and expiration date of the radio operator licenses of the persons responsible for the technical performance and operation of a station, as required by the rules of this part, are not required to be repeated in the case of persons who are regularly employed as operators on a full-time basis at the station. However, log entries shall be authenticated by the signature of such person.

(i) Each entry in the station log shall be legibly made: *Provided, however,* That in any case where it is impracticable to make such entries in the logs immediately, rough logs may be kept in the form of notes or memoranda which shall be transcribed into the station log as soon as possible by the person qualified to do so who has actual knowledge of such facts recorded. The person so transcribing shall authenticate the entries by signing the transcription.

**§ 21.209 Communications concerning safety of life and property.**

(a) Handling and transmission of messages concerning the safety of life or property which is in imminent danger shall be afforded priority over other messages.

(b) No person shall knowingly cause to be transmitted any false or fraudulent message concerning the safety of life or property, or refuse upon demand, immediately to relinquish the use of a radio circuit to enable the transmission of messages concerning the safety of life or property which is in imminent danger, or knowingly interfere or otherwise

obstruct the transmission of such messages.

**§ 21.210 Operation during emergency.**

The licensee of any station in these services may, during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service in a manner other than that specified in the instrument of authorization: *Provided,* (a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission at Washington, D.C., and to the Engineer in Charge of the radio district in which the station is located, stating the nature of the emergency and the use to which the station is being put, and (b) that the emergency use of the station shall be discontinued as soon as substantially normal communication facilities are again available, and (c) that the Commission at Washington, D.C., and the Engineer in Charge shall be notified immediately when such special use of the station is terminated, and (d) that, in no event, shall any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law, and (e) that the Commission may, at any time, order the discontinuance of any such emergency communication.

**§ 21.211 Suspension of transmission.**

Transmission shall be suspended immediately upon detection by the station or operator licensee or upon notification by the Commission of a deviation from the technical requirements of the station authorization and shall remain suspended until such deviation is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission shall be suspended immediately after the emergency is terminated.

**§ 21.212 Equipment, service and maintenance tests.**

(a) When construction and installation or modification of a station has been completed in accordance with the terms of a construction permit, the technical provisions of the application therefor and the applicable provisions of this part, the permittee is authorized, during the term of such construction permit, to test the equipment for a period not to exceed 10 days, except that permittees of point-to-point microwave stations may conduct such tests for a period not to extend beyond the expiration date of the applicable construction permit: *Provided,* That:

(1) The Commission's Engineer in Charge of the radio district in which the station is located is notified not less than 2 days in advance of the date on which the transmitter will first be tested in such manner as to produce radiation, giving the name of the permittee, station location, call sign, frequencies, time and date on which tests are to be conducted.

(2) The Commission reserves the right to cancel, suspend, or change the date of beginning or duration of such tests when such action is in the public interest, convenience or necessity.

(3) All necessary precautions are taken to avoid interference to any other authorized station.

(4) No service to the public may be furnished over the facilities being tested during the equipment test period.

(b) When construction and equipment tests are completed in exact accordance with the terms of the construction permit, the technical provisions of the application therefor, and the other applicable provisions of this part, and after an application for station license has been filed with the Commission showing the station to be in satisfactory operating condition, the permittee is authorized to conduct service tests in exact accordance with the terms of the construction permit until the application for station license is granted or otherwise disposed of in accordance with the Commission's rules: *Provided,* That:

(1) The Commission's Engineer in Charge of the radio district in which the station is located is notified not less than 2 days in advance of the beginning of the tests of the time and date when such tests are scheduled to begin.

(2) The Commission reserves the right to cancel, suspend, or change the date of beginning or duration of such tests when such action is in the public interest, convenience or necessity.

(3) Service tests shall not commence after the expiration date of the construction permit.

(4) Charges for service furnished during the service test period shall be made, pursuant to the provisions of legally applicable tariffs (see § 61.62 of this chapter).

(c) [Reserved]

(d) The licensees of all stations in these services are authorized to make such tests as may be necessary for the proper maintenance of the station provided, that all necessary precautions are taken to avoid interference with other authorized services. The time taken for such tests shall be held to a minimum.

(e) The authorization for tests embodied in paragraphs (a) and (b) of this section shall not be construed as constituting a license to operate but as a necessary part of the construction.

(f) Where a facility is to be constructed and operated pursuant to a temporary authorization, the Commission and the Engineer in Charge of the district in which the facility is located shall be notified upon commencement of operation.

**§ 21.213 Station identification.**

(a) Each station in these services, except as otherwise provided in this section, shall identify itself by transmitting its assigned call sign in connection with each communication or exchange of communication. In the event of a prolonged series of communications, a station shall identify itself at least every half hour. However, stations engaged in a public telephone message, telegram, radiophoto, or program transmission shall not be required to transmit identifying call signs when such identification would interrupt the continuity of the message, radiophoto, or program that is being transmitted. In any such case, the identifying call sign shall be transmitted immediately following the conclusion of the message, radiophoto or program: *Provided,* That the requirement for transmission of station identification is waived for fixed stations employing continuous radiation with multichannel or video transmission.

(b) [Reserved]

(c) [Reserved]

(d) Where transmission of station identification is required such transmission shall be capable of being received and understood at an appropriate receiver without the use of special channeling or transmission unscrambling devices: *Provided,* That:

(1) Where telephony is employed, station identification shall be by aural transmission or automatic tone signalling.

(2) Where telegraphy, radiophoto or facsimile transmission is employed, the station identification shall be transmitted at a speed not to exceed 25 words per minute at least 3 times in the International Morse Code as "QRA de" followed by the station call sign.

(3) Where television transmission is employed, station identification shall be transmitted either aurally or visually for a period of not less than 5 seconds, or via telegraphic transmission at a speed not to exceed 25 words per minute at least 3 times in the International Morse Code as "QRA de" followed by the station call sign.

**§ 21.214 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.**

Stations authorized to operate at temporary fixed locations shall not be used for transmissions between the United States and Canada, or the United States and Mexico, without prior specific notification to, and authorization from, the Commission. Notification of such intended usage of the facilities should include a detailed showing of the operation proposed, including the parties involved, the nature of the communications to be handled, the terms and conditions of such operations, the time and place of operation, such other matters as the applicant deems relevant, and a showing as to how the public interest, convenience and necessity would be served by the proposed operation. Such notification should be given sufficiently in advance of the proposed date of operation to permit any appropriate correlation with the respective foreign government involved (see §§ 21.611, 21.708, 21.806, 21,807, and 21.808).

## Subpart E—Miscellaneous

**§ 21.300 Business records.**

Each licensee of radio facilities authorized under the rules of this part and required to file FCC Form P (see § 1.785 of this chapter) shall keep complete records of all phases of operations covered by such reports distinctly separate and apart from any other business or activity conducted by the licensee.

**§ 21.301 National defense; free service.**

Any common carrier authorized under the rules of this part may render to any agency of the United States Government free service in connection with the preparation for the national defense. Every such carrier rendering any such free service shall make and file, in duplicate, with the Commission, on or before the 31st of July and on or before the 31st of January in each year, reports covering the periods of 6 months ending on the 30th of June and the 31st of December, respectively, next prior to said dates. These reports shall show the names of the agencies to which free service was rendered pursuant to this rule, the general character of the communications handled for each agency, and the charges in dollars which would have accrued to the carrier for such service rendered to each agency if charges for such communications had been collected at the published tariff rates.

**§ 21.302 Answers to notices of violation.**

Any person receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any other Federal statute or Executive Order pertaining to radio or wire communications or any international radio or wire communications treaty or convention, or regulations annexed thereto to which the United States is a party, or the rules and regulations of the Federal Communications Commission, shall, within 10 days from such receipt, send a written answer to the office of the Commission originating the official notice. If an answer cannot be sent or an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violation that may be due to the physical or electrical characteristics of transmitting apparatus, the answer shall state fully what steps have been taken to prevent future violations, and, if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given or, if a file number has not been assigned by the Commission, such identification as will permit ready reference thereto. If the notice of violation relates to inadequate maintenance resulting in improper operation of the transmitter, the name and license number of the operator performing the maintenance shall be given. If the notice of violation relates to some lack of attention to, or improper operation of, the transmitter by other employees, the reply shall set forth the steps taken to prevent a recurrence of such lack of attention or improper operation.

**§ 21.303 Discontinuance, reduction or impairment of service.**

(a) If the public communication service provided by a station in the Domestic Public Radio Services is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee shall promptly give notification thereof in writing to the Commission at Washington, D.C. 20554, and the Commission's Engineer in Charge of the radio district in which the station is located. In such cases, the licensee shall furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof shall be given in writing to the Commission at Washington, D.C. 20554, and the Commission's Engineer in Charge of the radio district in which the station is located.

(b) No station licensee subject to Title II of the Communications Act of 1934, as amended, shall voluntarily discontinue, reduce or impair public communication service to a community or part of community without obtaining prior authorization from the Commission pursuant to the procedures set forth in Part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee shall immediately give notification of the effective date thereof in writing to the Commission's Engineer in Charge of the radio district in which the station is located and shall promptly send the station license to the Commission at Washington, D.C. 20554, for cancellation.

(c) Any station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or part of a community shall give written notification to the Commission within 7 days thereof. In the event that service is permanently discontinued, the licensee shall give written notification thereof to the Commission's Engineer in Charge of the radio district in which the station is located and shall promptly send the station license to the Commission at Washington, D.C. 20554, for cancellation.

**§ 21.304 Tariffs, reports, and other material required to be submitted to the Commission.**

Part 1, of this chapter, beginning with § 1.771, contains a summary of certain material and reports, including, but not limited to schedule of charges and accounting and financial reports, which must be filed with or submitted to the Commission.

**§ 21.305 Reports required concerning amendments to charters and partnership agreements.**

Any amendments to charters, articles of incorporation or association, or partnership agreements shall promptly be filed at the Commission's main office in Washington, D.C. Such filing shall be directed to the attention of the Chief, Common Carrier Bureau.

**§ 21.306 Requirement that permittees and licensees respond to official communications.**

All permittees and licensees in these services are required to respond to official communications from the Commission with reasonable dispatch and according to the tenor of such communications. Failure to do so will be given appropriate consideration in connection with any subsequent applications which the offending party may file and may result in the designation of such applications for hearing, or in appropriate cases, the institution of proceedings looking to the modification or revocation of the pertinent authorizations.

**§ 21.307 Equal employment opportunities.**

(a) *General policy.* Equal opportunity in employment shall be afforded by all common carrier licensees or permittees to all qualified persons, and no personnel shall be discriminated against in employment because of sex, race, color, religion, or national origin.

(b) *Equal employment opportunity program.* Each licensee or permittee shall establish, maintain, and carry out, a positive continuing program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice. Under the terms of its program, a licensee or permittee shall:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to sex, race, color, religion, or national origin, and solicit their recruitment assistance on a continuing basis.

(4) Conduct a continuing campaign to exclude every form of prejudice or discrimination based upon sex, race, color, religion, or national origin, from the licensee's or permittee's personnel policies and practices and working conditions.

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed in order to insure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

(c) *Additional information to be furnished to the Commission.* (1) Equal Employment Programs to be filed by common carrier licensees or permittees.

(i) All licensees or permittees will file a statement of their equal employment opportunity program not later than December 17, 1970, indicating specific practices to be followed in order to assure equal employment opportunity on the basis of sex, race, color, religion, or national origin in such aspects of employment practices as regards recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination.

(A) Any changes or amendments to existing programs should be filed with the Commission on April 1 of each year thereafter.

(B) If a licensee or permittee has fewer than 16 full-time employees, no such statement need be filed.

(2) The program should reasonably address itself to such specific areas as set forth below, to the extent that they are appropriate in terms of licensee size, location, etc.

(i) *To assure nondiscrimination in recruiting.* (A) Posting notices in the licensee's or permittee's offices informing applicants for employment of their equal employment rights and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency. Where a substantial number of applicants are Spanish-surnamed Americans such notice should be posted in Spanish and English.

(B) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission or other appropriate agency if they believe they have been discriminated against.

(C) Placing employment advertisements in media which have significant circulation among minority-group people in the recruiting area.

(D) Recruiting through schools and colleges with significant minority group enrollments.

(E) Maintaining systematic contacts with minority and human relations organizations, leaders, and spoksmen to encourage referral of qualified minority or female applicants.

(F) Encouraging present employees to refer minority or female applicants.

(G) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members are being sought for consideration whenever the licensee hires.

(ii) *To assure nondiscrimination in selection and hiring.* (A) Instructing personally those on the staff of the licensee or permittee who make hiring decisions that all applicants for all jobs are to be considered without discrimination.

(B) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements.

(C) Avoiding use of selection techniques or tests which have the effect of discriminating against minority groups or females.

(iii) *To assure nondiscriminatory placement and promotions.* (A) Instructing personally those of the licensee's or permittee's staff who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination.

(B) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower-paid employees with respect to any of the higher-paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions.

(C) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect.

(D) Avoiding use of selection techniques or tests, which have the effect of discriminating against minority groups or females.

(iv) *To assure nondiscrimination in other areas of employment practices.* (A) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found.

(B) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority groups or female employees.

(d) *Report of complaints filed against licensees and permittees.* (1) All licensees or permittees shall submit an annual report to the FCC no later than May 31 of each year indicating whether

any complaints regarding violations by the licensee or permittee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.

(i) The report should state the parties involved, the date filing, the courts or agencies before which the matters have been heard, the appropriate file number (if any), and the respective disposition or current status of any such complaints.

(ii) Any licensee or permittee who has filed such information with the EEOC need not do so with the Commission, if such previous filing is indicated.

(e) *Complaints of violations of Equal Employment Programs.* (1) Complaints alleging employment discrimination against a common carrier licensee will be considered by the Commission in the following manner:

(i) If a complaint raising an issue of discrimination is received against a licensee or permittee who is within the jurisdiction of the EEOC, it will be submitted to that agency. The Commission will maintain a liaison with that agency which will keep the Commission informed of the disposition of complaints filed against any of the common carrier licensees.

(ii) Complaints alleging employment discrimination against a common carrier licensee or permittee who does not fall under the jurisdiction of the EEOC but is covered by appropriate enforceable State law, to which penalties apply, may be submitted by the Commission to the respective State agency.

(iii) Complaints alleging employment discrimination against a common carrier licensee or permittee who does not fall under the jurisdiction of the EEOC or an appropriate State law, will be accorded appropriate treatment by the FCC.

(iv) The Commission will consult with the EEOC on all matters relating to the evaluation and determination of compliance by the common carrier licensees or permittees with the principles of equal employment as set forth herein.

(2) Complaints indicating a general pattern of disregard of equal employment practices which are received against a licensee or permittee who is required to file an employment report to the Commission under § 1.815(a) of this chapter, will be investigated by the Commission.

(f) *Records available to public*—(1) *Commission records.* A copy of every annual employment report, equal employment opportunity program, and reports on complaints regarding violation of equal employment provisions of Federal, State, Territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(2) *Records to be maintained locally for public inspection by licensees or permitees*—(i) *Records to be maintained.* Each licensee or permittee required to file annual employment reports, equal employment opportunity programs, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, Territorial, or local law shall maintain, for public inspection, in the same manner and in the same locations as required for the keeping and posting of tariffs as set forth in § 61.72 of this chapter, a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference.

(ii) *Period of retention.* The documents specified in paragraph (f)(2)(i) of this section shall be maintained for a period of 2 years.

## Subpart F—Developmental Authorizations

### § 21.400 Eligibility.

Developmental authorizations for stations in the radio services included in this part will be issued only to existing and proposed communication common carriers who are legally, financially and otherwise qualified to conduct experimentation utilizing hertzian waves for the development of engineering or operational data, or techniques, directly related to a proposed Part 21 radio service or to a regularly established radio service regulated by the rules of this part.

### § 21.401 Scope of service.

Developmental authorizations may be issued for:

(a) Field strength surveys relative to or precedent to the filing of applications for construction permits, in connection with the selection of suitable locations for stations proposed to be established in any of the regularly established radio services regulated by the rules of this part; or

(b) In the Point-to-Point Microwave and Local Television Services, the testing of existing or authorized antennas, wave guides or transmission paths; or

(c) [Reserved]

### § 21.402 Adherence to program of research and development.

The program of research and development, as stated by an applicant in the application for construction permit or license or stated in the instrument of station authorization, shall be substantially adhered to unless the licensee is otherwise authorized by the Commission.

### § 21.403 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.

(a) An authorization for the development of a new common carrier service not in accordance with the provisions of the rules in this part may be granted for a limited time, but only after the Commission has made a preliminary determination with respect to the factors set forth in this paragraph, as each case may require. This procedure also applies to any application that involves use of a frequency which is not in accordance with the provisions of the rules in this part, although in accordance with the Table of Frequency Allocations contained in Part 2 of this chapter. (An application which involves use of a frequency which is not in accordance with the Table of Frequency Allocations in Part 2 of this chapter should be filed in accordance with the provisions of Part 5 of this chapter, Experimental Radio Services (other than Broadcast).) The factors with respect to which the Commission will make a preliminary determination before acting on an application filed under this paragraph are as follows:

(1) That the public interest, convenience or necessity warrants consideration of the establishment of the proposed service or the use of the proposed frequency;

(2) That the proposed operation appears to warrant consideration to effect a change in the provisions of the rules in this part; and/or

(3) That some operational data should be developed for consideration in any rule making proceeding which may be initiated.

(b) Applications for construction permits for stations which are intended to be used in the development of a proposed service shall be accompanied by a petition to amend the Commission's rules with respect to frequencies and such other items as may be necessary to provide for the regular establishment of the proposed service.

§ 21.404 Terms of grant; general limitations.

(a) Developmental authorizations normally shall be issued for one year, or such shorter term as the Commission may deem appropriate in any particular case, and shall be subject to cancellation without hearing by the Commission at any time upon notice to the licensee.

(b) Where some phases of the developmental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as it may deem necessary in the public interest, convenience or necessity.

(c) Frequencies allocated to the service toward which such development is directed will be assigned for developmental operation on the basis that no interference will be caused to the regular services of stations operating in accordance with the Commission's Table of Frequency Allocations (§ 2.106 of this chapter).

(d) The rendition of communication service for hire is not permitted under any developmental authorizations unless specifically authorized by the Commission.

(e) The grant of a developmental authorization carries with it no assurance that the developmental program, if successful, will be authorized on a permanent basis either as to the service involved or the use of the frequencies assigned or any other frequencies.

§ 21.405 Supplementary showing required.

(a) Authorizations for development of a proposed radio service in the radio services included in this part will be issued only upon a showing that the applicant has a definite program of research and development, the details of which shall be set forth, having reasonable promise of substantial contribution to these services within the term of such authorization. In addition to showing that the applicant is financially qualified or that adequate provision has been made to underwrite the costs of the proposed venture, a specific showing should be made as to the factors which the applicant believes qualify him technically to conduct the research and development program, including a description of the nature and extent of engineering facilities which applicant has available for such purpose.

(b) Expiring developmental authorizations may be renewed only upon the applicant's compliance with the applicable requirements of § 21.406 (a) and (b) relative to the authorization sought to be renewed and upon a factual showing that further progress in the program of research and development requires further radio transmission and that the public interest, convenience or necessity would be served by renewal of such authorization.

§ 21.406 Developmental report required.

(a) Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee shall submit, in duplicate, a comprehensive report on the following items, in the order designated:

(1) Report on the various phases of the project which were investigated.

(2) Total number of hours of operation on each frequency assigned.

(3) Copies of any publication on the project.

(4) A listing of any patents applied for, including copies of any patents issued as a consequence of the activities carried forth under the authorization.

(5) Detailed analysis of the result obtained.

(6) Any other pertinent information.

(b) In addition to the information required by paragraph (a) of this section, the developmental report of a station authorized for the development of a proposed radio service shall include comprehensive information on the following items:

(1) Probable public support and methods of its determination.

(2) Practicability of service operations.

(3) Interference encountered.

(4) Pertinent information relative to merits of the proposed service.

(5) Propagation characteristics of frequencies used, particularly with respect to the service objective.

(6) Frequencies believed to be more suitable and reasons therefor.

(7) Type of signals or communications employed in the experimental work.

(c) Normally, developmental reports will be made a part of the Commission's public records. However, an applicant may request that the Commission withhold from the public certain reports and associated material relative to the accomplishments achieved under developmental authorization, and, if it appears that such information should be withheld, the Commission will so direct.

## Subpart G—[Reserved]

## Subpart H—[Reserved]

## Subpart I—Point-to-Point Microwave Radio Service

§ 21.700 Eligibility.

Authorizations for stations in this service will be issued to existing and proposed communication common carriers. Applications will be granted only in cases where it is shown that (a) the applicant is legally, financially, technically and otherwise qualified to render the proposed service, (b) there are frequencies available to enable the applicant to render a satisfactory service, and (c) the public interest, convenience or necessity would be served by a grant thereof. In addition, applications for stations to be used to relay television signals to community antenna television systems must include a showing that at least 50 percent of the customers (on the microwave system involved), including customers of any interconnecting carrier(s), receiving applicant's service are unrelated and unaffiliated with the applicant, and that the proposed usage by such customers, in terms of hours of use and channels delivered, constitutes at least 50 percent of the usage of applicant's microwave system. Applications which do not contain the showing required by this section will be returned as unacceptable for filing.

§ 21.701 Frequencies.

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service:

| | |
|---|---|
| 2,110–2,130 MHz[1 3 7] | 17,700–19,700 MHz[5 10] |
| 2,160–2,180 MHz[1 2 5] | 21,200–22,000 MHz[4 11 12 13] |
| 3,700–4,200 MHz[5 8] | 22,000–23,600 MHz[4 11 12] |
| 5,925–6,425 MHz[5 6 8] | 27,500–29,500 MHz[5] |
| 10,700–11,700 MHz[8 9] | 31,000–31,200 MHz[4] |
| 13,200–13,250 MHz[4] | 38,600–40,000 MHz[4] |

[1] Frequencies in this band are shared with control and repeater stations in the Domestic Public Land Mobile Radio Service and with stations in the International Fixed Public Radiocommunication Services located south of 25°30' north latitude in the State of Florida and U.S. possessions in the Caribbean area. Additionally, the band 2160–2162 MHz is shared with stations in the Multipoint Distribution Service.

[2] Except upon a showing that no alternative frequencies are available, no new assignments will be made in the band 2160–2162 MHz for stations

located within fifty (50) miles of the coordinates of the cities listed in § 21.901(c) of this chapter.

[3] Television transmission in this band is not authorized and radio frequency channel widths shall not exceed 3.5 MHz.

[4] Frequencies in this band are shared with fixed and mobile stations licensed in other services.

[5] Frequencies in this band are shared with stations in the fixed-satellite service.

[6] These frequencies are not available for assignment to mobile earth stations.

[7] Frequencies in the band 2110–2120 MHz may be authorized on a case-by-case basis to Government or non-Government space research earth stations for telecommand purposes in connection with deep space research.

[8] This frequency band is shared with station(s) in the Local Television Transmission Service and, in the U.S. Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunication Services.

[9] The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

[10] The band segment 18,360–19,040 MHz is shared with operational fixed stations.

[11] Frequencies in the band are shared with Government stations.

[12] Assignments to common carriers in this band are normally made in the segments 21.2–21.8 GHz and 22.4–23.0 GHz and to operational fixed users in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Assignments may be made otherwise only upon a showing that no interference free frequencies are available in the appropriate band segments.

[13] Frequencies in this band are shared with stations in the earth exploration satellite service (space to earth).

(b) Licensees holding a valid authorization on April 16, 1958, to operate in the frequency band 890–942 MHz may continue to be authorized for such operation subject to the following conditions:

(1) Operations will not be protected against any interference received from the emission of industrial, scientific, and medical equipment operating on the frequency 915 MHz or from the emission of radiolocation stations in the 800–942 MHz band.

(2) No harmful interference shall be caused to station(s) operating in the radiolocation service in the 800–942 MHz band.

(c) Stations now authorized in the band 890–942 MHz may be authorized to operate in the band 942–952 MHz on the following conditions:

(1) That such stations can show that harmful interference is being caused by Government radiopositioning stations in the 890–942 MHz band or by ISM equipment operating on 915 MHz.

(2) That an engineering study by the Commission indicates that the proposed frequency assignment in the band 942–952 MHz is likely to eliminate the interference.

(3) That the bandwidth of emission does not exceed 1100 kHz.

(4) That the proposed frequency assignment will not cause interference to existing operations in the band 942–952 MHz.

(d) The following frequencies are allocated for assignment to control stations in this service on a shared basis with other radio services; upon a satisfactory showing that it is impracticable to use wire lines:

**72–76 MHz Band [1]**

| MHz | MHz | MHz | MHz |
|---|---|---|---|
| 72.02 | 72.42 | 72.82 | 75.62 |
| 72.04 | | 72.84 | 75.64 |
| 72.06 | 72.46 | 72.86 | 75.66 |
| 72.08 | | 72.88 | 75.68 |
| 72.10 | 72.50 | 72.90 | 75.70 |
| 72.12 | | 72.92 | 75.72 |
| 72.14 | 72.54 | 72.94 | 75.74 |
| 72.16 | | 72.96 | 75.76 |
| 72.18 | 72.58 | 72.98 | 75.78 |
| 72.20 | | 75.42 | 75.80 |
| 72.22 | 72.62 | | 75.82 |
| 72.24 | 72.64 | 75.46 | 75.84 |
| 72.26 | 72.66 | | 75.86 |
| 72.28 | 72.68 | 75.50 | 75.88 |
| 72.30 | 72.70 | | 75.90 |
| 72.32 | 72.72 | 75.54 | 75.92 |
| 72.34 | 72.74 | | 75.94 |
| 72.36 | 72.76 | 75.58 | 75.96 |
| 72.38 | 72.78 | | 75.98 |
| 72.40 | 72.80 | | |

[1] Assignments made to stations on frequencies in this band are subject to the condition that no harmful interference will be caused to operational fixed stations or reception of television stations on channel 4 or 5 (See § 21.103).

(e) Upon a satisfactory factual showing that it is impracticable to use wireline circuits for control of a specific point-to-point microwave fixed station from its control point or for automatically telemetering information relative to the operation of such station to its attended alarm center, the frequencies listed below may be assigned to a control station for such purposes: *Provided,* That:

(1) The control station and the point to which its radio transmission is directed are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(2) The use of the frequencies requested by the applicant will not cause harmful interference to another station authorized to use such frequencies in the radio services included in this Part or in Part 22.

(3) The effective radiated power of the control station does not exceed 150 watts.

(4) The use of such frequencies for control purposes shall be on a secondary basis to the provision of mobile and rural radio service by other classes of stations.

| MHz | MHz |
|---|---|
| 454.025 [1] | [1] 459.025 |
| 454.050 [1] | [1] 459.050 |
| 454.075 [1] | [1] 459.075 |
| 454.100 [1] | [1] 459.100 |
| 454.125 [1] | [1] 459.125 |
| 454.150 [1] | [1] 459.150 |
| 454.175 [1] | [1] 459.175 |
| 454.200 [1] | [1] 459.200 |
| 454.225 [1] | [1] 459.225 |
| 454.250 [1] | [1] 459.250 |
| 454.275 [1] | [1] 459.275 |
| 454.300 [1] | [1] 459.300 |
| 454.325 [1] | [1] 459.325 |
| 454.350 [1] | [1] 459.350 |
| 454.375 [2] | [2] 459.375 |
| 454.400 [2] | [2] 459.400 |
| 454.425 [2] | [2] 459.425 |
| 454.450 [2] | [2] 459.450 |
| 454.475 [2] | [2] 459.475 |
| 454.500 [2] | [2] 459.500 |
| 454.525 [2] | [2] 459.525 |
| 454.550 [2] | [2] 459.550 |
| 454.575 [2] | [2] 459.575 |
| 454.600 [2] | [2] 459.600 |
| 454.625 [2] | [2] 459.625 |
| 454.650 [2] | [2] 459.650 |

[1] This frequency is available for assignment only to stations of communication common carriers not also engaged in the business of providing a public landline message telephone service.

[2] This frequency is available for assignment only to stations of communication common carriers also engaged in the business of affording public landline message telephone service.

(f) The frequency 27.255 MHz is available for assignment to microwave auxiliary stations in this service on a shared basis with other radio services. Assignments to stations on such frequency will not be protected from such interference as may be experienced from the emissions of industrial, scientific, and medical equipment operating on the frequency 27.12 MHz.

(g) [Reserved]

(h) Fixed stations in this service in the State of Alaska, south of 56° North Latitude and east of 134° West Longitude, may be authorized to use frequencies in the 800–830 MHz band on the condition that harmful interference will not be caused to the broadcasting service of any country.

(i) Applications for new stations or frequency paths (except for power splits of existing frequency paths) in the bands 3,700–4,200 MHz and 5,925–6,425 MHz which are to be used to relay television signals to community antenna television systems will not be accepted for filing or granted: *Provided, however,* That waivers of this provision may be granted for good cause shown, including a showing that the proposed frequency usage is not likely to affect adversely the developmnent of any major communications route; and *Provided further,* That such waivers will not be granted, absent a showing of compelling and unusual circumstances, for new stations or frequency paths (except for power splits of existing frequency paths) within fifty (50) miles of the coordinates of the principal city, as set forth in the U.S. Department of Commerce publication "Air Line Distance Between Cities in the United States," of one of the top 25 standard metropolitan statistical areas, as ranked by the U.S. Census Bureau.

(j) The band 17,700–19,700 MHz is allocated for both wide band (over 100 MHz) and narrow band (100 MHz or under) users. Assignments for wide band users shall be made on the basis of

the following frequency plan consisting of eight two-way channels, each 220 MHz wide:

| Channel group A | | Channel group B | |
|---|---|---|---|
| Channel No. | Assigned frequency polarized vertically (V) or horizontally (H) | Channel No. | Assigned frequency polarized vertically (V) or horizontally (H) |
| 1-A | 17,810 V | 1-B | 19,590 V |
| 2-A | 17,810 H | 2-B | 19,590 H |
| 3-A | 18,030 V | 3-B | 19,370 V |
| 4-A | 18,030 H | 4-B | 19,370 H |
| 5-A | 18,250 V | 4-B | 19,150 V |
| 6-A | 18,250 H | 6-B | 19,150 H |
| 7-A | 18,470 V | 7-B | 18,930 V |
| 8-A | 18,470 H | 8-B | 18,930 H |

Where narrow bandwidths are required, the lowest available frequency shall be selected in the band segment 18,580–18,700 MHz and/or 18,700–18,820 MHz. If frequencies of the desired (narrow) bandwidth cannot be accommodated in these band segments, application may be made for the lowest available frequency in the spectrum assigned to wide band channels 7 or 8 (i.e. 18,360–18,580 MHz or 18,820–19,040 MHz). Channels 7 and 8 may not be assigned for wide band use if any other wide band channels are available. If channels 7 and 8 are proposed for either wide or narrow band use, applicant shall make a statement that no alternative frequencies of the desired bandwidth are available in the band. Polarizations other than those specified above for wide band channels may be assigned if such use will not inhibit full development of all channels in the band.

(k) Assignments in the band 38,600–40,000 MHz shall be according to the following frequency plan:

| Channel group A | | Channel group B | |
|---|---|---|---|
| Channel No. | Frequency band limits MHz | Channel No. | Frequency band limits MHz |
| 1-A | 38,600-38,650 | 1-B | 39,300-39,350 |
| 2-A | 38,650-38,700 | 2-B | 39,350-39,400 |
| 3-A | 38,700-38,750 | 3-B | 39,400-39,450 |
| 4-A | 38,750-38,800 | 4-B | 39,450-39,500 |
| 5-A | 38,800-38,850 | 5-B | 39,500-39,550 |
| 6-A | 38,850-38,900 | 6-B | 39,550-39,600 |
| 7-A | 38,900-38,950 | 7-B | 39,600-39,650 |
| 8-A | 38,950-39,000 | 8-B | 39,650-39,700 |
| 9-A | 39,000-39,050 | 9-B | 39,700-39,750 |
| 10-A | 39,050-39,100 | 10-B | 39,750-39,800 |
| 11-A | 39,100-39,150 | 11-B | 39,800-39,850 |
| 12-A | 39,150-39,200 | 12-B | 39,850-39,900 |
| 13-A | 39,200-39,250 | 13-B | 39,900-39,950 |
| 14-A | 39,250-39,300 | 14-B | 39,950-40,000 |

These channels are assigned for use within a rectangular service area to be described in the application by the maximum and minimum latitudes and longitudes. Such service area shall be as small as practicable consistent with the local service requirements of the carrier. These frequency plans may be subdivided as desired by the licensee and used within the service area as desired without further authorization subject to the terms and conditions set forth in § 21.711. These frequencies shall be assigned only where it is shown that the applicant will have a reasonable projected requirement for a multiplicity of service points or transmission paths within the area.

### § 21.702 Transmitter power.

Stations in this service shall not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 21.107(b) and a standby transmitter having a rated power output in excess of that of the main transmitter with which it is associated will not be authorized.

### § 21.703 Bandwidth and emission limitations.

(a) Stations in this service operating on frequencies in the 72–76 MHz band shall be authorized to employ only amplitude modulated or frequency modulated emission for radiotelegraphy, radiotelephony and facsimile.

(b) Stations in this service operating on the frequency 27.255 MHz shall be authorized to employ only amplitude modulated or frequency modulated emission for radiotelephony.

(c) Except as limited by § 21.701(f) and by paragraphs (a) and (b) of this section, stations operating in the frequency bands listed in § 21.701 may be authorized to use amplitude modulated, frequency modulated or pulse type emission for radiotelephony, facsimile and television. The use of unmodulated emission may be authorized in appropriate cases upon specific request supported by a justification of the need therefor.

(d) The authorization to employ any of the various types of modulated emission below 890 MHz in this service shall be construed to include authority to employ unmodulated emission only for temporary or short periods necessary for equipment testing incident to the construction and maintenance of a radio station.

(e) The maximum authorized bandwidth of emission and, for the cases of frequency or phase modulated emission, the maximum authorized frequency deviation shall be as follows:

| Type of emission | 50–150MHz | | 15–500MHz | |
|---|---|---|---|---|
| | Authorized bandwidth (kHz) | Frequency deviation (kHz) | Authorized bandwidth (kHz) | Frequency deviation (kHz) |
| A1 | 1 | | 1 | |
| A2 | 3 | | 3 | |
| A3 | 8 | | 8 | |
| F1 | 3 | | 3 | |
| F2 | 15 | | 15 | |
| F3 | [2]40 | [2]15 | [1]20 | [1]5 |

[1] In the frequency band 450 to 470 MHz, radio facilities using frequency modulated or phase modulated emission, authorized prior to June 1, 1968, will continue to be authorized with bandwidth of 40 kHz until November 1, 1971, provided that the frequency deviation is reduced to 5 kHz by June 1, 1968.

[2] In the frequency bands 72.0–73.0 and 75.4–76.0 MHz, radio facilities using frequency modulated or phase modulated emission will be authorized with maximum bandwidth of 20 kHz and maximum frequency deviation of 5 kHz. Radio facilities which were authorized for operation on Dec. 1, 1961, in the frequency band 73.0–74.6 MHz may continue to be authorized without change and with bandwidth of 40 kHz and frequency deviation of 15 kHz. New or modified facilities in the frequency band 73.0–74.6 MHz will not be authorized.

(f) On frequencies in the 890–940 MHz band, the bandwidth authorized shall not exceed 400 kHz for each derived communication channel and may be restricted to lesser bandwidth when appropriate to the type of operation involved in any particular case.

(g) The maximum bandwidth authorized shall not exceed that reasonably necessary to provide the proposed service but in no event shall it exceed the limits set forth below:

| Frequency band (MHz): | *Maximum authorized bandwidth (MHz)* |
|---|---|
| 2,110 to 2,160 | 3. |
| 2,160 to 2,180 | 3.5 |
| 3,700 to 4,200 | 20.0 |
| 5,925 to 6,425 | 30.0 |
| 10,700 to 11,700 | 40.0 |
| 13,200 to 13,250 | 25.0 |
| 17,700 to 19,700 | 220.0 |
| 21,200 to 22,000 | 100.0 |
| 22,000 to 23,600 | 100.0 |
| 27,500 to 29,500 | 220.0 |
| 31,000 to 31,200 | 50.0 |
| 38,600 to 40,000 | 50.0 |

(h) The bandwidths authorized on frequencies above 500 MHz shall be appropriate to the type of operation in any particular case. An application requesting such authorization shall fully describe the modulation, emission, and bandwidth desired and shall specify the bandwidth to be occupied.

### § 21.704 Modulation requirements.

(a) When amplitude modualtion is used, the modulation percentage shall be sufficient to provide efficient commuication and shall normally be maintained above 70 percent on peaks, but shall not exceed 100 percent on negative peaks.

(b) Transmitters employing type A3 or F3 emission and operating on frequencies below 500 MHz shall conform to the requirements set forth in §§ 21.507 and 21.508.

**§ 21.705 Permissible communications.**

Stations in this service are authorized to render any kind of communication service provided for in the legally applicable tariffs of the carrier, unless otherwise directed in the applicable instrument of authorization or limited by § 21.701 or § 21.703. In authorizations classed as fixed video, the services permissible are limited to the carriage of video signals and their associated audio signals unless otherwise conditioned.

**§ 21.706 Supplementary showing required with applications.**

(a) Each application for initial installation of a radio station in this service, or for installation of equipment to provide additional service, or for authority to communicate with new points, shall be accompanied by a statement showing how the proposal will serve the public interest, convenience and necessity. Such statement must include information concerning:

(1) The nature and type of services to be rendered (e.g. telephone/telegraph, private line voice/data, television transmission, etc.)

(2) The cities or communities to be served including the number of circuits to be established. Where multiple cities are to be served, specify by diagram or other appropriate means the circuit cross section between service points.

(3) Projected future circuit growth anticipated between service points and indicate the source of such projections.

(4) Where the construction of radio facilities is dependent upon the specific requirements of one or several customers of a limited class (e.g. those desiring television signals), the need for facilities should be supported by an order for service from each such customer.

(b) Where specific information required by paragraph (a) of this section has been submitted in connection with applications filed under Part 63 of this chapter, duplicate information in support of applications submitted pursuant to this part is not required provided appropriate references are made therein. The information submitted in connection with paragraph (a) of this section shall not be considered to replace any requirement to acquire authority for channelizing pursuant to Section 214 of the Communications Act.

(c) In those frequency bands shared with the communication-sattellite service and applicant for a new station, for new points of communication, for the initial frequency assignment in a shared band for which coordination has not been previously effected, or for authority to modify the emission or radiation characteristics of an existing station in a manner that may increase the likelihood of harmful interference, shall ascertain in advance whether the station(s) involved lie within the great circle coordination distance contours of an existing Earth station or one for which an application has been accepted for filing, and shall coordinate his proposal with each such Earth station operator or applicant. For each potential interference path, the applicant shall perform the computations required to determine that the expected level of interference to or from the terrestrial station does not exceed the maximum permissible interference power level in accordance with the technical standards and requirements of §§ 25.251–25.256 of this chapter. In those instances where the results of these computations indicate a safety margin of less than 5 dB, the applicant shall submit with the application to the Commission, certain additional information; the gains assumed for both the terrestrial and Earth station antennas in the direction of the other station; the calculated transmission loss; and the resulting margin above the controlling objective. The Commission may, in the course of examining any application, require the submission of additional showings, complete with pertinent data and calculations in accordance with Part 25 of this chapter, showing that harmful interference will not likely result from the proposed operation. (Technical characteristics of the Earth stations on file and coordination contour maps for those Earth stations will be kept on file for public inspection in the offices of the Commission's Common Carrier Bureau in Washington, D.C.)

(d) Each applicant filing pursuant to paragraph (c) of this section shall also ascertain in advance whether the beam of his proposed antenna(s) intersects the beam of any Earth station antenna within the rain scatter coordination distance contour of which the terrestrial antenna is located, below the altitude given in table 1 of § 25.254(b) of this chapter for the rain climate in which the Earth station is located. In general such intersections will not be permitted. For the purposes of this paragraph, the beam of an antenna is to be taken as that portion of the antenna radiation pattern inside of which the gain is within 15 dB of the maximum antenna gain. The concepts of rain climate and rain scatter coordination distance contour are as defined in § 25.254 of this chapter. In certain cases, for good cause shown, intersections may be permitted on an individual waiver basis. In such cases, the applicant shall also submit with his application a showing setting forth (1) the nature of the proposed beam intersection, (2) the Earth station operator or applicant with whom coordination was attempted and the results of the coordination, and (3) the technical basis on which it was concluded that harmful interference will not likely result from this beam intersection.

**§ 21.707 Stations at temporary fixed locations.**

(a) Authorizations may be issued upon proper application for the use of frequencies listed in § 21.701(a) by stations in the Point-to-Point Microwave Radio Service for rendition of temporary service to subscribers under the following conditions:

(1) When a fixed station is to remain at a single location for less than 6 months, the location is considered to be temporary. Services which are initially known to be of longer than 6 months' duration shall not be provided under a temporary fixed authorization but rendered pursuant to a regular license.

(2) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than six months, applications (FCC Forms 401 and 403) for a station authorization designating that single location as the permanent location shall be filed at least 30 days prior to the expiration of the six-month period.

(3) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable.

(4) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 21.114.

(b) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 401, and may be accompanied by completed FCC Form 403 for simultaneous consideration provided the equipment to be used is of "packaged" design. Blanket applications may be submitted for the required number of transmitters.

**§ 21.708 Notification of station operation at temporary fixed locations.**

(a) The licensee of stations which are authorized pursuant to the provisions of § 21.707 shall notify the Commission, and its Engineer in Charge of the radio district wherein operation is to be

conducted, at least 5 days prior to installation of the facilities, stating:

(1) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s).

(2) The maintenance location for the transmitter.

(3) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities.

(4) The exact frequency or frequencies to be used.

(5) The public interest, convenience and necessity to be served by operation of the proposed installation.

(6) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission and its Engineer in Charge.

(7) A notification of operations to be conducted within the coordination distance contours of a fixed earth station shall include compliance with the provisions of § 21.706(c).

(8) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why application should not be made for regular authorization.

(b) Less than 5 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(c) A copy of this notification shall be posted with the station license. (See § 21.214.)

**§ 21.709 Renewal of station licenses.**

(a) An application for renewal of a license of a station in the Domestic Public Point-to-Point Microwave Radio Service used to relay television signals to community antenna television systems must include a showing that at least 50 percent of the customers (on the microwave system involved), including customers of any interconnecting carrier(s), receiving applicant's service are unrelated and unaffiliated with the applicant, and that the usage by such customers, in terms of hours of use and channels delivered, constitutes at least 50 percent of the usage of applicant's microwave system. Applications which do not contain the showing required by this section will be returned as unacceptable for filing.

(b) Applicants whose licenses expired on February 1, 1961, or 1963, and who have renewal applications pending before the Commission, or presently authorized common carrier licensees whose licenses will expire on February 1, 1966, who serve affiliated or related customers may become licensees in the Community Antenna Relay Service upon application therein and be granted a waiver of the Commission's rules so that they may be authorized to continue to use common carrier frequencies under the technical standards applicable to such frequencies until February 1, 1971, if they elect to do so. Such election must be made and an application filed in the Community Antenna Relay Service within sixty (60) days after the issuance of a Report and Order on Parts II and IV of Docket No. 15586. Pending such election time, renewal applications which do not comply with the provisions of paragraph (a) of this section will be granted only for such period of time as is necessary to preserve the opportunity for election. The license issued in the Community Antenna Relay Service will not be renewable on the common carrier frequencies. Applications for renewal of such licenses shall be filed for frequencies assigned to the Community Antenna Relay Service.

(c) Any application for renewal of license, for a term commencing January 1, 1975, or after, involving facilities utilizing frequency diversity must contain a statement showing compliance with § 21.100(c) or the exceptions recognized in paragraph 141 of the "First Report and Order" in Docket No. 18920 (FCC 71-547). If not in compliance, a complete statement with the reasons therefor shall be submitted.

(d) Each applicant for renewal of license for a term commencing between January 1, 1976 and January 1, 1981 shall submit with the application all of the technical parameters of the station (as licensed) listed on page 1 of FCC Form 435. If the same information has previously been submitted for the station on a Form 435, this requirement will be waived. Applicants are urged to file this information on punched cards in accordance with the Commission publication *Punched Card Format for Common Carrier Microwave Applications.* (Copies of this publication may be obtained through the Common Carrier Bureau.)

**§ 21.710 Limitations on path lengths and channel loading.**

(a) Frequencies in the following bands may not be used on transmission paths shorter than the indicated distances.

| Frequency band (MHz): | *Minimum path distances (in kilometers)* |
|---|---|
| 2,110 to 2,130 | 5 |
| 2,160 to 2,180 | 5 |
| 3,700 to 4,200 | 17 |
| 5,925 to 6,425 | 17 |
| 10,700 to 11,700 | 5 |

(b) Exception to the limits in paragraph (a) may be made by the Commission when a showing (with supporting facts) is made that use of a frequency in conformance with the rule would entail excessive cost in construction or maintenance or would otherwise create substantial difficulties. The alternate frequency proposal must be shown to be consistent with good engineering practice under the circumstances. Stricter adherence to these limitations is expected in areas of general frequency congestion. The distance limitation does not apply to a frequency which is power split if one transmission path utilizing that frequency meets the minimum distance requirement.

(c) Except for video transmission, an application for an initial working channel over a given route will not be accepted for filing where the anticipated loading (within five years or other period subject to reasonable projection) is less than the minimum specified for the following frequency bands. Absent extraordinary circumstances, applications proposing additional frequencies over existing routes will not be granted unless it is shown that the traffic load will shortly exhaust the capacity of the existing equipment.

| Frequency band (MHz) | Minimum number voice channels (4 kHz or equivalent) | Minimum original data loading (in Mb/s) |
|---|---|---|
| 3,700 to 4,200 | 900 | 10 |
| 5,925 to 6,425 | 900 | 10 |
| 10,700 to 11,700 (20 MHz bandwidth or less) | 240 | 5 |
| 10,700 to 11,700 (bandwidth more than 20 MHz) | 900 | 10 |

Where transmitters employing digital modulation techniques are designed to be used so that two may simultaneously operate on the same frequency over the same path, the minimum number of voice channels specified above is reduced from 900 to 500 per transmitter for the bands 3,700–4,200 MHz, 5,925–6,425 MHz, and 10,700–11,700 MHz.

**§ 21.711 Special requirements for operation in the band 38,600–40,000 MHz.**

Assigned frequency channels in the band 38,600–40,000 MHz may be subdivided and used anywhere in the

authorized service area, subject to the following terms and conditions:

(a) No interference shall be caused to a previously existing station operating in another authorized service area.

(b) The Commission's Engineer in Charge of the radio district in which the intended operation is located shall be notified prior to the commencement of operation of each frequency path. Such notice shall include:

(1) The authorized call sign, transmitter station location number (assigned by the carrier in sequence of use beginning with number one) and transmitting station coordinates;

(2) Receiving station location number and coordinates;

(3) The exact frequency or frequencies to be used (which shall be considered the assigned frequency or frequencies); and

(4) Anticipated date of commencement of operation.

(c) The Engineer in Charge shall be notified within 10 days of the termination of any operation. The notice shall contain similar information to that contained in the notice of commencement of operation.

(d) Each operating station shall have posted a copy of the service area authorization and a copy of the notification provided to the Engineer in Charge.

(e) Twice each year, no later than January 31 and July 31, the Commission and the Engineer in Charge shall be provided a complete list (in tabular form) of all operations in each authorized service area (listing information as contained in the notices) current as of the previous January 1 or July 1. If no change has occurred since the previous list was filed, a statement to that effect will be sufficient.

(f) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure for each location has been obtained from the Commission prior to the erection of the antenna.

### § 21.713 Applications for authorizations involving relay of television signals to cable television systems.

An application in this service for authorization to establish new facilities or to modify existing facilities to be used to relay television signals to cable television systems shall contain a statement by the applicant that, to the best of his knowledge, each cable television system to be served has, on or before the filing date of the application, filed any necessary application for certificate of compliance, pursuant to §§ 76.11 and 76.13 of this chapter. Such statement by the applicant shall identify the application for certificate of compliance by the name of the cable television system for which the certificate is sought, the community and area served or to be served, the date on which the application was filed, and the file number (if available).

## Subpart J—Local Television Transmission Service

### § 21.800 Eligibility.

Authorizations for stations in this service will be granted to existing and proposed communication common carriers. Applications will be granted only in cases where it is shown that (a) the applicant is legally, financially, technically and otherwise qualified to render the proposed service, (b) there are frequencies available to enable the applicant to render a satisfactory service, and (c) the public interest, convenience or necessity would be served by a grant thereof.

### § 21.801 Frequencies.

(a) Frequencies in the following bands are available for assignment to television pickup and television nonbroadcast pickup stations in this service:

| | |
|---|---|
| 6,425–6,525 MHz | 21,200–22,000 MHz [1 2 4 5] |
| 11,700–12,200 MHz [3] | 22,000–23,600 MHz [1 2 5] |
| 13,200–13,250 MHz [1] | |

[1] This frequency band is shared with fixed and mobile stations licensed under Part 21 and other Parts of the Commission's Rules.

[2] This frequency band is shared with Government stations.

[3] This frequency band is shared, on a secondary basis, with stations in the broadcasting-satellite and fixed-satellite services.

[4] This frequency band is shared with stations in the earth-exploration satellite service.

[5] Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,000 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the normally assigned band segments.

(b) In the event that a television broadcast station licensee engages a communication common carrier to provide television pickup or television STL, service, the frequencies listed in § 74.602(a) of this chapter may be assigned to the communication common carrier in the Local Television Transmission Service for the sole purpose of providing such service to the television broadcast station of that licensee. Frequency availability is subject to the provisions of § 74.602(g) of this chapter and the use of the facility is limited to the permissible uses described in § 74.631 of this chapter. All operation on these channels is subject to the technical provisions of Part 74, Subpart F of this chapter.

(c) [Reserved]

(d) Frequencies in the following bands are available for assignment to television STL stations in this service:

| | |
|---|---|
| 3,700– 4,200 MHz [1 6] | 13,200–13,250 MHz [2] |
| 5,925– 6,425 MHz [1 3] | 21,200–22,000 MHz [2 4 7 8] |
| 10,700–11,700 MHz [1 6] | 22,000–23,600– MHz [2 6 8] |

[1] This frequency band is shared with stations in the Point to Point Microwave Radio Service and, in United States Possessions in the Caribbean area, with stations in the International Fixed Radiocommunications Services.

[2] This frequency band is shared with fixed and mobile stations licensed under Part 21 and other parts of the Commission's rules.

[3] This frequency band is shared with space stations (space to earth) in the fixed-satellite service.

[4] This frequency band is shared with Government stations.

[5] This frequency band is shared with earth stations (earth to space) in the fixed-satellite services.

[6] The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

[7] This frequency band is shared with space stations (space to earth) in the earth exploration satellite service.

[8] Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,000 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the appropriate band segments.

(e) [Reserved]

(f) On the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations, persons holding valid station authorizations on July 15, 1963, to provide television nonbroadcast pickup service in the 6525–6575 MHz band may be authorized to continue use of the frequencies specified in their authorization for such operations until July 15, 1968.

(g) [Reserved]

(h) The frequency 27.255 MHz in the 27.23–27.28 MHz band is allocated for assignment to microwave auxiliary stations in this service on a shared basis with other radio services. Assignments to stations on this frequency will not be protected from such interference as may be experienced from the emissions of industrial, scientific and medical equipment operating on 27.12 MHz in accordance with § 2106 of this chapter.

### § 21.802 Assignment of frequencies to mobile stations.

The assignment of frequencies to mobile stations in this service shall not be limited to a single licensee within any area. However, geographical limits within which mobile units may operate may be imposed by the Commission.

### § 21.803 Transmitter power.

Stations in this service shall not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 21.107(b) and a standby transmitter having a rated power output in excess of that of the main transmitter with which it is associated will not be authorized.

**§ 21.804 Bandwidth and emission limitations.**

(a) Stations in this service operating on frequencies in the 27.23–27.28 MHz band shall be authorized to employ only amplitude modulated or frequency modulated emission for radiotelephony. The authorization to use such emissions shall be construed to include authority to employ unmodulated emission only for temporary or short periods necessary for equipment testing incident to the construction and maintenance of the station.

(b) Stations in the service operating on frequencies above 940 MHz may be authorized to use amplitude modulated, frequency modulated or pulse type of emission for radiotelephony and television. In addition, the use of unmodulated emission may be authorized in appropriate cases.

(c) The maximum bandwidths which will normally be authorized for single channel operation on frequencies below 500 MHz in this service shall not exceed the limits set forth below:

| Type of emission: | *Authorized bandwidth kHz* |
|---|---|
| A3 | 8 |
| F3 | 40 |

(d) Maximum bandwidths in the following frequency bands shall not exceed the limits set forth below:

| Frequency band (MHz): | *Maximum authorized bandwidth MHz* |
|---|---|
| 3,700 to 4,200 | 20 |
| 5,925 to 6,575 | 30 |
| 10,700 to 12,200 | 40 |
| 13,200 to 13,250 | 25 |
| 22,000 to 23,600 | 100 |

(e) The bandwidths authorized on frequencies above 500 MHz shall be appropriate to the type of operation in any particular case. An application requesting such authorization shall fully describe the modulation, emission, and bandwidth desired and shall specify the bandwidth to be occupied.

**§ 21.805 Modulation requirements.**

(a) The use of modulating frequencies higher than 3000 hertz for single channel radiotelephony or tone signaling on frequencies below 500 MHz is not authorized.

(b) When amplitude modulation is used, the modulation percentage shall be sufficient to provide efficient communication and shall normally be maintained above 70 percent on peaks, but shall not exceed 100 percent on negative peaks.

(c) When phase or frequency modulation is used for single channel radiotelephony on frequencies below 500 MHz, the deviation arising from modulation shall not exceed plus or minus 15 kHz from the unmodulated carrier.

(d) Each unmultiplexed radiotelephone transmitter having more than 3 watts plate power input to the final radio frequency stage and initially installed at the station in this service after September 4, 1956, shall be provided with a device which will automatically prevent modulation in excess of that specified in paragraphs (b) and (c) of this section which may be caused by greater than normal audio level.

**§ 21.806 Remote control operation of mobile television pickup stations.**

(a) Mobile television pickup stations (including nonbroadcast) may be operated by remote control from fixed locations for periods not to exceed 6 months, provided the Commission's Engineer in Charge of the radio district wherein operation is to be conducted shall be notified in writing by the licensee prior to operation of the facilities by remote control. A copy of such notification shall be kept with the station license and shall contain the following information:

(1) The call sign and specific location of the transmitter.

(2) The exact frequencies to be used.

(3) The location of the transmitter control point.

(4) The commencement and termination dates of operation from the specified location.

(b) The Commission may, upon adequate showing by the licensee as to why the television pickup operations should not be conducted under a fixed station authorization, renew the authority granted under the provisions of paragraph (a) of this section.

(c) Reference should be made to § 21.114 concerning mobile station antenna height restrictions and to paragraphs (c) and (f) of § 21.118 concerning control points.

**§ 21.807 Stations at temporary fixed locations.**

(a) Authorizations may be issued upon proper application for the use of frequencies listed in § 21.801 by stations in the Local Television Transmission Service for rendition of temporary service to subscribers under the following conditions:

(1) When a fixed station is to remain at a single location for less than 6 months, the location is considered to be temporary. Services which are initially known to be of longer than 6 months' duration shall not be provided under a temporary fixed authorization but rendered pursuant to a regular license.

(2) When a fixed station authorized to operate at temporary locations is installed and it subsequently becomes necessary for the station to operate from such location for more than six months, applications (FCC Forms 401 and 403) for a station authorization to specify the permanent location shall be filed at least thirty days prior to the expiration of the six month period.

(3) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable.

(4) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 21.114.

(5) Applications for such stations shall comply with the provisions of § 21.706(c).

(b) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 401, and may be accompanied by completed FCC Form 403 for simultaneous consideration provided the equipment to be used is of "packaged" design. Blanket applications may be submitted for the required number of transmitters.

**§ 21.808 Notification of station operations at temporary locations.**

(a) The licensee of stations which are authorized pursuant to the provisions of § 21.807 shall notify the Commission, and its Engineer in Charge of the radio district wherein operation is to be conducted, of each period of operation at least 5 days prior to installation of the facilities. This notification shall include:

(1) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s).

(2) The maintenance location for the transmitter.

(3) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities.

(4) The exact frequency or frequencies to be used.

(5) The public interest, convenience and necessity to be served by operation of the proposed installation.

(6) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs

from the previous notification, written notice thereof promptly shall be given to the Commission and its Engineer in Charge.

(7) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why application should not be made for regular authorization.

(b) A copy of the foregoing notification shall be posted with the station license (see § 21.214).

### § 21.809 Stations affected by coordination contour procedures.

In frequency bands shared with the communication-satellite service, applicants shall also comply with the requirements of § 21.706 (c) and (d).

## Subpart K—Multipoint Distribution Service

### § 21.900 Eligibility.

Authorizations for stations in this service will be granted to existing and proposed communications common carriers. Applications will be granted only in cases where it can be shown that: (a) the applicant is legally, financially, technically, and otherwise qualified to render the proposed service; (b) there are frequencies available to enable the applicant to render a satisfactory service; and (c) the public interest, convenience and necessity would be served by a grant thereof. In addition, the applicant shall submit a statement indicating whether there is any affiliation or relationship to any intended or likely subscriber or program originator. An applicant will not be eligible for authorization in this service unless it can be shown with reasonable certainty that at least fifty percent of the service rendered will be to subscribers who are not affiliated or related to the applicant.

### § 21.901 Frequencies.

(a) Frequencies in the band 2150–2162 MHz are available for assignment to fixed stations in this service. Frequencies in the band 2150–2160 MHz are shared with non-broadcast omnidirectional radio systems licensed under other parts of the Commission's Rules, and frequencies in the band 2160–2162 MHz are shared with directional radio systems authorized in other common carrier services.

(b) Applicants may be assigned a channel according to one of the following frequency plans:

(1) At 2150–2156 MHz (designated as channel 1),

(2) At 2156–2162 MHz (designated as channel 2), or

(3) At 2156–2160 MHz (designated as channel 2A).

(c) Channels 2 and 2A will be assigned only where there is evidence that no harmful interference will occur either to Channel 1 operation in the same area, or (in the case of Channel 2) to any point-to-point facility in the 2160–2162 MHz band. Also, Channel 2 may be assigned only if the transmitting antenna of the station is to be located within ten (10) miles of the coordinates of the following metropolitan areas:

| Principal city | Coordinates |
|---|---|
| Akron, Ohio | Lat. 41°05'06" N., long. 81°31'06" W. |
| Albany-Schenectady-Troy, N.Y. | Lat. 42°39'00" N., long. 73°45'24" W. |
| Anaheim-Santa Ana-Garden Grove, Calif. | Lat. 33°46'30" N., long. 117°54'48" W. |
| Atlanta, Ga | Lat. 33°45'00" N., long. 84°23'12" W. |
| Baltimore, Md | Lat. 39°17'18" N., long. 76°37'00" W. |
| Birmingham, Ala | Lat. 33°30'42" N., long. 86°48'24" W. |
| Boston, Mass | Lat. 42°21'42" N., long. 71°03'30" W. |
| Buffalo, N.Y | Lat. 42°53'12" N., long. 78°52'30" W. |
| Chicago, Ill | Lat. 41°53'00" N., long. 87°37'30" W. |
| Cincinnati, Ohio | Lat. 39°06'00" N., long. 84°30'48" W. |
| Cleveland, Ohio | Lat. 41°29'48" N., long. 81°42'00" W. |
| Columbus, Ohio | Lat. 39°57'42" N., long. 83°00'06" W. |
| Dallas, Tex | Lat. 32°46'36" N., long. 96°48'42" W. |
| Dayton, Ohio | Lat. 39°45'24" N., long. 84°11'42" W. |
| Denver, Colo | Lat. 39°44'24" N., long. 104°59'18" W. |
| Detroit, Mich | Lat. 42°20'00" N., long. 83°03'00" W. |
| Fort Worth, Tex | Lat. 32°45'00" N., long. 97°17'42" W. |
| Gary, Ind | Lat. 41°36'00" N., long. 87°20'00" W. |
| Hartford, Conn | Lat. 41°46'00" N., long. 72°40'30" W. |
| Houston, Tex | Lat. 29°45'48" N., long. 95°21'42" W. |
| Indianapolis, Ind | Lat. 39°46'12" N., long. 86°09'18" W. |
| Kansas City, Mo | Lat. 39°06'00" N., long. 94°34'42" W. |
| Los Angeles-Long Beach, Calif. | Lat. 34°03'18" N., long. 118°15'00" W. |
| Louisville, Ky | Lat. 38°14'48" N., long. 85°45'42" W. |
| Memphis, Tenn | Lat. 35°07'30" N., long. 90°03'24" W. |
| Miami, Fla | Lat. 25°46'30" N., long. 80°11'24" W. |
| Milwaukee, Wis | Lat. 43°02'18" N., long. 87°54'48" W. |
| Minneapolis-St. Paul, Minn. | Lat. 44°59'00" N., long. 93°15'48" W. |
| New Orleans, La | Lat. 29°57'48" N., long. 90°03'48" W. |
| New York City, N.Y.-Newark-Jersey City-Patterson, N.J. | Lat. 40°42'30" N., long. 74°00'00" W. |
| Norfolk, Va | Lat. 36°50'42" N., long. 76°17'12" W. |
| Oklahoma City, Okla | Lat. 35°29'30" N., long. 97°30'12" W. |
| Philadelphia, Pa | Lat. 39°57'00" N., long. 75°09'48" W. |
| Phoenix, Ariz | Lat. 33°27'18" N., long. 112°04'24" W. |
| Pittsburgh, Pa | Lat. 40°26'12" N., long. 80°00'30" W. |
| Portland, Oreg | Lat. 45°32'06" N., long. 122°37'12" W. |
| Providence, R.I | Lat. 41°49'00" N., long. 71°24'24" W. |
| Rochester, N.Y | Lat. 43°09'30" N., long. 77°36'30" W. |
| Sacramento, Calif | Lat. 38°35'06" N., long. 121°29'24" W. |
| San Antonio, Tex | Lat. 29°25'24" N., long. 98°29'43" W. |
| San Bernardino-Riverside, Calif. | Lat. 34°06'30" N., long. 117°18'36" W. |
| San Diego, Calif | Lat. 32°42'48" N., long. 117°09'12" W. |
| San Francisco-Oakland, Calif. | Lat. 37°46'30" N., long. 122°25'00" W. |
| San Jose-Palo Alto-Sunnyvale, Calif. | Lat. 37°22'36" N., long. 122°02'00" W. |
| Seattle-Everett, Wash | Lat. 47°35'48" N., long. 122°19'48" W. |
| St. Louis, Mo | Lat. 38°37'00" N., long. 90°11'36" W. |
| Syracuse, N.Y | Lat. 43°03'06" N., long. 76°09'00" W. |
| Tampa-St. Petersburg, Fla. | Lat. 27°57'06" N., long. 82°27'00" W. |
| Toledo, Ohio | Lat. 41°38'48" N., long. 83°32'30" W. |
| Washington, D.C | Lat. 38°53'30" N., long. 77°02'00" W. |

(d) An application for a second channel will not be accepted from a licensee or permittee of, or applicant for, another channel in this service (or any entity related thereto) in the same metropolitan area unless the applicant:

(1) Has operated the original channel for a minimum of one year; and

(2) Can demonstrate that there exists a public demand for additional service which is not likely to be satisfied by a competing carrier.

### § 21.902 Frequency interference.

(a) All applicants, permittees, and licensees shall make exceptional efforts to avoid harmful interference to other users and to avoid blocking potential adjacent channel use in the same city and cochannel use in nearby cities. In areas where major cities are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting antenna. Licensees, permittees and applicants are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(b) As a condition for use of frequencies in this service, each carrier is required to:

(1) Engineer the system to be reasonably compatible with adjacent channel operation in the same city;

(2) Not enter into any lease or contract or otherwise take any action which would unreasonably prohibit location of a competing carrier's transmitting antenna at any given site; and

(3) Cooperate fully and in good faith to resolve whatever potential interference and transmission security problems may be present in adjacent channel operation.

(c) The following interference studies, as appropriate, shall be included with each application:

(1) An analysis of the potential for harmful interference with other stations, if the coordinates of the proposed transmitting antenna are located within fifty (50) miles of the coordinates of any authorized, or previously proposed station(s) which utilizes, or would utilize, the same frequency (*see* §§ 21.701(a) and 21.901(a) of this chapter) or an adjacent potentially interfering frequency (see § 21.901(b); and

(2) In the case of a proposal for use of Channel 2, an analysis of the potential for harmful interference with any authorized point-to-point stations located within fifty (50) miles which utilize the 2160–2162 MHz band;

(3) An analysis concerning possible adverse impact upon Canadian communications if the station's transmitting antenna is to be located within thirty-five (35) miles of the Canadian border.

**§ 21.903 Purpose and permissible service.**

(a) Multipoint Distribution Service stations are intended to provide one-way radio transmission (usually in an omnidirectional pattern) of subscriber supplied information from a stationary transmitter to multiple receiving facilities located at fixed points designated by the subscriber.

(b) Unless otherwise directed or conditioned in the applicable instrument of authorization, Multipoint Distribution Service stations may render any kind of communications service consistent with the Commission's Rules and the legally applicable tariff of the carrier, provided that:

(1) The carrier is not substantially involved in the production of, the writing of, or the influencing of the content of any information to be transmitted over the facilities;

(2) The carrier does not render service to any entity who is affiliated with or related to the carrier whenever the total hours of service rendered to related subscribers exceeds the total hours of service rendered to unrelated subscribers within any calendar month;

(3) The carrier controls the operation of all receiving facilities (including any equipment necessary to convert the signal to a standard television channel but excluding the television receiver); and

(4) The carrier's tariff allows the subscriber the option of owning the receiving equipment (except for the decoder) so long as: (i) the customer provides the type of equipment as specified in the tariff; (ii) such equipment is in suitable condition for the rendition of satisfactory service; and (iii) such equipment is installed, maintained, and operated pursuant to the carrier's instructions and control.

(c) The carrier's tariff shall fully describe the parameters of the service to be provided, including the degree of privacy of communications a subscriber can expect in ordinary service. If the ordinary service does not provide for complete security of transmission, the tariff shall make provision for service with such added protection upon request.

**§ 21.904 Transmitter power.**

(a) The output power of the transmitter shall not exceed ten (10) watts, except as provided in paragraph (b) of this section.

(b) As an exception to paragraph (a) of this section, additional transmitter output power may be authorized up to one hundred (100) watts if such higher power is justified by a special showing which contains:

(1) A demonstration that the power requested is the minimum needed to provide adequate, reliable service to a reasonable service area with receiving sites utilizing parabolic antennas having a minimum diameter of two feet;

(2) A thorough and positive demonstration that the requested power will not cause harmful interference with any authorized or previously proposed station operating on co-channel or adjacent channel frequencies;

(3) A demonstration of the reasons why the applicant believes that an authorization of increased power is in, and will directly benefit, the public interest.

(c) The transmitter output power specified in this section is the peak envelope power of the visual signal for television transmitters. For other than television transmitters, the transmitter output power is the peak envelope power of the entire emission.

(d) For television transmission where the authorized bandwidth is 4.0 MHz or more for the visual and accompanying aural signal, the peak power of the accompanying aural signal shall not be more than twenty (20) percent nor less than ten (10) percent of the peak power of the visual signal.

(e) Operating power shall not exceed the authorized power by more than ten (10) percent at any time.

**§ 21.905 Emissions and bandwidth.**

(a) A station transmitting a television signal shall not exceed a bandwidth of 6 MHz (for both visual signal and accompanying aural signal), and will normally employ vestigial sideband, amplitude modulation (A5C) for the visual signal, and frequency modulation (F3) for the accompanying aural signal.

(b) For purposes other than standard television transmission, different types of emissions may be authorized if the applicant describes fully the modulation and bandwidth desired, and demonstrates that the bandwidth desired is no wider than needed to provide the intended service. However, in no event shall the necessary or occupied bandwidth, whichever is greater, exceed 6 MHz.

**§ 21.906 Antennas.**

(a) Transmitting antennas shall be omnidirectional, except that a directive antenna with a main beam sufficiently broad to provide adequate service may be used either to avoid possible interference with other users in the frequency band, or to provide coverage more consistent with distribution of potential receiving points.

(b) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization may be used to minimize the hazard of harmful interference between systems.

(c) Transmitting antennas located within thirty-five (35) miles of the Canadian border should be directed so as to minimize, to the extent that is practical, emissions toward the border.

(d) Directive receiving antennas shall be used at all points and shall be elevated no higher than necessary to assure adequate service. Receiving antenna height shall not exceed the height criteria of Part 17 of this chapter, unless authorization for use of a specific maximum antenna height (above ground and above mean sea level) for each location has been obtained from the Commission prior to the erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (*See* Part 17 of this chapter concerning the construction, marking and lighting of antenna structures.)

**§ 21.907 Transmission standards.**

(a) A carrier assigned a 6 MHz channel must be able to provide one type of monochrome and color television service which complies with the VHF transmission standards set forth in § 73.682(a) of this chapter, except that the provision of § 21.906(b) shall replace the requirements of § 73.682(a)(14) of this chapter.

(b) A carrier assigned a 4 MHz channel must be able to provide one type of monochrome and/or color television service which complies with

VHF transmission standards set forth in § 73.682(a) of this chapter, except that:

(1) The provision of § 21.906(b) shall replace the requirements of § 73.682(a)(14) of this chapter and

(2) The requirements of § 73.682(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(9), (a)(19), and (a)(20) of this chapter shall not apply.

(c) In addition to the standard television transmission service specified in paragraphs (a) and (b), the carrier may offer a television service not meeting such standards if the tariff clearly describes the type and quality of the service and distinguishes it from the standard service, and if the transmitter is type accepted for such use.

(d) For services other than television, a carrier may provide transmissions as described in the tariff if the authorized bandwidth is not exceeded and the transmitter is type accepted for such use.

(e) In order to insure that transmitting information is not likely to be received in intelligible form by unauthorized subscribers or licensese, a carrier may vary the transmission standards specified in paragraphs (a), (b), and (c) of this section, provided that the encoded information is recoverable without perceptible degradation as compared to the same information transmitted in accordance with paragraphs (a), (b) and (c) of this section.

**§ 21.908 Television transmitting equipment.**

(a) Except as otherwise provided in this section, the requirements of paragraphs (a), (b), (c), (d), and (e) of § 73.687 of this chapter shall apply to stations in this service transmitting standard television signals.

(b) The average power of radio frequency harmonics of the visual and aural carriers, measured at the output terminals of the transmitter, shall be attenuated no less than sixty (60) decibels below the peak visual output power within the assigned channel. All other emissions appearing on frequencies more than fifty (50) percent of the authorized bandwidth above or below the upper and lower edges, respectively, of the assigned channel shall be attenuated no less than: (i) Thirty (30) decibels for transmitters rated at less than ten (10) watts visual peak power output; or (ii) forty (40) decibels for transmitters rated at ten (10) watts or more visual peak power output. However, should interference occur as the result of emissions outside the assigned channel, greater attenuation may be required.

(c) The provisions of § 21.101 shall apply with respect to the frequency tolerance for the visual carrier in lieu of § 73.687(c)(1) except for the frequency of the aural carrier which shall be maintained in accordance with § 73.687(c)(1) of this chapter.

(d) The requirements of § 73.687(c)(2) will be considered to be satisfied insofar as measurements of operating power are concerned if the transmitter is equipped with instruments for determining the combined visual and aural operating power. However, licensees are expected to maintain the operating powers within the limits specified in § 21.904. Measurements of the separate visual and aural operating powers should be made at sufficiently frequent intervals to insure compliance with the rules and in no event less than once a month.

(e) Television transmitting equipment designed for stations whose authorized bandwidth is 4 MHz or less for the visual and accompanying aural signal is subject to the provisions of § 21.101 with respect to the frequency tolerance of the visual and aural carriers in lieu of paragraph (c) above. Such equipment is also subject to paragraphs (a) and (b) of this section, except that the provisions of § 73.687(a), (b), and (c)(1) of this chapter shall not apply.

(f) As a further exception to the other requirements of this section, transmitting equipment characteristics may vary from these requirements to the extent necessary to insure that transmitted information is not likely to be received in intelligible form by unauthorized subscribers or licensees, provided such variations permit recovery of the transmitted information without perceptible degradation as compared to the same information transmitted without such variations.

## Subpart L—[Reserved]

## Appendix B

Part 22 is added to read as follows:

# PART 22—PUBLIC MOBILE RADIO SERVICES

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Sec.

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22.8 [Reserved]
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**Subpart J—[Reserved]**

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22.1007 Modification of Station Operation at Temporary Locations.

Authority: Sections 22.0 to 22.1007 issued under secs. 4, 303, 48 Stat. 1068, as amended, 1082, as amended; 47 U.S.C. 154, 303.

## Subpart A—General

### § 22.0 Scope and authority.

(a) The purpose of the rules and regulations in this part is to prescribe the manner in which portions of the radio spectrum may be more available for the use of radio for domestic communication common carrier operations which require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

(b) The rules in this part are issued pursuant to the authority contained in Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications and to regulate radio transmissions and issue licenses for radio stations.

(c) Unless otherwise specified, the section numbers referenced in this part are contained in Chapter I, Title 47, of the Code of Federal Regulations.

### § 21.1 [Reserved]

### § 21.2 Definitions.

As used in this part:

*Airborne station.* A mobile station in the Domestic Public Land Mobile Radio Service or in the Offshore Radio Telecommunications Service aboard an aircraft.

*Antenna power gain.* The square of the ratio of the root-mean-square free space field intensity produced at one mile in the horizontal plane, in millivolts per meter for one kilowatt antenna input power to 137.6 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

*Antenna power input.* The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

*Antenna structures.* The term antenna structures includes the radiating system, its supporting structures, and any surmounting appurtenances.

*Assigned frequency.* The frequency coinciding with the center of the radio frequency channel in which the station is authorized to work. This frequency does not necessarily correspond to any frequency in an emission.

*Authorized bandwidth.* The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

*Authorized frequency.* The frequency assigned to a station by the Commission and specified in the instrument of authorization.

*Authorized power.* The power assigned to a radio station by the Commission and specified in the instrument of authorization. The authorized power does not necessarily correspond to the power used by the Commission for purposes of its Master Frequency Record (MFR) and notification to the International Telecommunications Union.

*Auxiliary test station.* A fixed station used for test transmissions only, operating on mobile station frequencies from a specified fixed location, for the purpose of determining the performance of fixed receiving equipment which is remotely located from the base station with which it is associated, or where the receiving equipment is located with the base station and both are remotely located from the control point of the station.

*Bandwidth occupied by an emission.* The band of frequencies comprising 99 percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

*Base station.* A land station in the land mobile service carrying on a service with land mobile stations.

Note.—In certain cases, also communicates with fixed stations and vessels.

*Bit rate.* The rate of transmission of information in binary (two state) form in bits per unit time.

*Carrier.* In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the side bands in a suitable detector, produces the modulating wave.

*Carrier frequency.* The frequency of the carrier.

*Central office.* A landline termination center used for switching and interconnection of public message communication circuits.

*Central office station.* A fixed station used for transmitting communications to rural subscriber stations associated therewith.

*Communication common carrier.* Any person engaged in rendering communication service for hire to the public.

*Control point.* A control point is an operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

*Control station.* A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the operation of such station.

*Coordination distance.* For the purpose of this part, the expression "coordination distance" means the distance from an earth station, within which there is a possibility of the use of a given transmitting frequency at this earth station causing harmful interference to stations in the fixed or mobile service, sharing the same band, or of the use of a given frequency for reception at this earth station receiving harmful interference from such stations in the fixed or mobile service.

*Digital modulation.* The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g. one consisting of coded pulses or states.

*Dispatch communication.* Two-way voice communication, normally of not more than one minute's duration, between common carrier base and land mobile stations, or between a common carrier land mobile station and a landline telephone station not connected to a public message telephone system.

*Dispatch point.* A dispatch point is a base station operating position, operated by a subscriber, which is under the control and supervision of the base station licensee.

*Dispatch station.* A fixed station, operated by a subscriber, or a group of subscribers, which communicates, under the supervision and control of the base station licensee, through the base station, with the individual subscriber's own mobile station or stations.

*Domestic fixed public service.* A fixed service, the stations of which are open to public correspondence, for radiocommunications originating and terminating solely at points all of which lie within: (a) the State of Alaska, or (b) the State of Hawaii, or (c) the contiguous 48 States and the District of Columbia, or (d) a single possession of the United States. Generally, in cases where service is afforded on frequencies above 72 MHz, radiocommunications between the contiguous 48 States (including the District of Columbia) and Canada or Mexico, or radiocommunications between the State of Alaska and Canada, are deemed to be in the domestic fixed public service.

*Domestic public land mobile radio service.* A public communication service for hire between land mobile stations wherever located and their associated base stations which are located within the United States or its possessions, or between land mobile stations in the United States and base stations in Canada.

*Domestic public radio services.* The land mobile and domestic fixed public services the stations of which are open to public correspondence.

Note.—Parts 81 and 83 of this chapter are applicable to maritime services. Part 87 is applicable to aeronautical services; and Part 85 is applicable to certain Alaskan services.

*Drop point.* A term used in the point-to-point microwave radio service to designate a terminal point where service is rendered to a subscriber.

*Earth station.* A station in the space service located either on the earth's surface, including on board a ship, or on board an aircraft.

*Effective radiated power.* The product of the antenna power input and the antenna power gain. This product should be expressed in watts. (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only.)

*Exchange.* A unit of a communication company or companies for the administration of communication service in a specified area, which usually embraces a city, town, or village and its environs, and consisting of one or more central offices, together with the associated plant, used in furnishing communication service in that area.

*Exchange area.* The geographic area included within the boundaries of an exchange.

*Facsimile.* A system of telecommunication for the transmission of fixed images with a view to their reception in a permanent form.

*Fixed earth station.* An earth station intended to be used at a specified fixed point.

*Fixed station.* A service of radiocommunication between specified fixed points.

*Fixed station.* A station in the fixed service.

*Frequency tolerance.* The frequency tolerance, expressed as a percentage or in hertz, is the maximum permissible deviation, with respect to the reference frequency of the corresponding characteristic frequency of an emission.

*General communication.* Two-way voice communication, through a base station, between (1) a common carrier

land mobile or airborne station and a landline telephone station connected to a public message landline telephone system, or (2) two common carrier land mobile stations, or (3) two common carrier airborne stations, or (4) a common carrier land mobile station and a common carrier airborne station.

*Harmful interference.* Any radiation or any induction which endangers the functioning of a radionavigation service or of a safety service or obstructs or repeatedly interrupts a radio service.

*Inter-office station.* A fixed station in the domestic fixed public service which is used exclusively for interconnection of telephone central offices.

*Land mobile service.* A mobile service between base stations and land mobile stations, or between land mobile stations.

*Land mobile station.* A mobile station in the land mobile service capable of surface movement within the geographical limits of a country or continent.

*Land station.* A station in the mobile service not intended for operation while in motion.

*Landing area.* A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

*Local television transmission service.* A domestic public radio communication service for the transmission of television material and related communications.

*Message center.* The point at which messages from members of the public are accepted by the carrier for transmission to the addressee.

*Microwave frequencies.* As used in this part, this term refers to frequencies of 890 MHz and above.

*Miscellaneous common carriers.* Communications common carriers which are not engaged in the business of providing either a public landline message telephone service or public message telegraph service.

*Mobile earth station.* An earth station intended to be used while in motion or during halts at unspecified points.

*Mobile microwave auxiliary station.* A mobile station used in connection with (1) the alignment of microwave transmitting and receiving antenna systems and equipment, (2) coordination of microwave radio survey operations, and (3) cue and contact control of television pickup station operations.

*Mobile service.* A service of radiocommunication between mobile and land stations or between mobile stations.

*Mobile station.* A station in a mobile service intended to be used while in motion or during halts at unspecified points.

*Multipoint distribution service.* A one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points determined by the subscribers.

*Necessary bandwidth of emission.* The necessary bandwidth is the width of the frequency band which is necessary in the over-all system, including both transmitter and receiver, for the proper reproduction at the receiver of the desired information, and does not necessarily indicate the interfering characteristics of an emission.

Note.—The necessary bandwidth for an emission may be calculated using the formulas in § 2.202 of this chapter.

*Offshore central station.* A fixed station in the Offshore Radio Telecommunications Service with facilities for interconnection with public correspondence circuits.

*Offshore mobile station.* A station in the Offshore Radio Telecommunications Service intended to be used while in motion or during halts at unspecified points.

*Offshore private line service.* A service whereby facilities for communications between an offshore subscriber station and an offshore central station are set aside for exclusive use or availability for use by a particular customer or group of customers and authorized users during stated periods of time.

*Offshore radio telecommunications service.* A public communications service for hire between stations located in the offshore coastal waters of the United States or its possessions.

*Offshore repeater station.* A fixed station used for the reception and automatic retransmission of the signals of another station or stations in offshore radio telecommunications service.

*Offshore subscriber station.* A fixed, temporary fixed or mobile station in the Offshore Radio Telecommunications Service.

*Periscope antenna system.* An antenna system which involves the use of a passive reflector to deflect radiation from or to a directional transmitting or receiving antenna which is oriented vertically.

*Point-to-point microwave radio service.* A domestic public radio service rendered on microwave frequencies by fixed stations between points which lie within the United States or between points in its possessions or to points in Canada or Mexico.

*Private line service.* A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of particular customer and authorized users during stated periods of time.

*Public correspondence.* Any telecommunication which the offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

*Public message service.* A service whereby facilities are offered to the public for communication between all points served by a carrier or by interconnected carriers on a non-exclusive message by message basis, contemplating a separate connection for each occasion of use.

*Radio station.* A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

*Radiocommunication.* Any telecommunication by means of hertzian waves.

*Rated power output.* The term "rated power output" of a transmitter means the normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

*Record communication.* Any transmission of intelligence which is reduced to visual record form at the point of reception.

*Reference frequency.* A frequency coinciding with or having a fixed and specified relation to the assigned frequency. This frequency does not necessarily correspond to any frequency in an emission.

*Relay station.* A fixed station used for the reception and retransmission of the signals of another station or stations.

*Repeater station.* A fixed station established for the automatic retransmission of radiocommunications received from one or more mobile stations and directed to a specified location.

*Rural radio service.* A domestic public radio service rendered by fixed stations or frequencies below 1000 MHz used to provide (1) public message communication service between a central office and subscribers located in rural areas to which it is impracticable to extend service via landlines, or (2) public message communication service between landline central offices and

different exchange areas which it is impracticable to interconnect by means, or (3) private line telephone, telegraph, or facsimile service between 2 or more points to which it is impracticable to extend service via landline.

*Rural subscriber station.* A fixed station in the Rural Radio Service used by a subscriber for communication with a central office station.

*Service area of base station.* The limits of reliable service area of a base station are considered to be described by the field strength contour within which the reliability of communication service is 90 percent, i.e., within the area circumscribed by such contour, nine out of every ten calls initiated by the base station can be satisfactorily received by the mobile unit.

*Signaling communication.* One-way communications from a base station to a mobile receiver, or to multipoint mobile and/or fixed locations by subaudible means, for the purpose of actuating a signaling device in the mobile unit, for communicating information to the desired mobile unit or for communicating information for reception at multipoint mobile and/or fixed locations.

*Standby transmitter.* A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

*Symbol rate.* Modulation rate in bauds. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

*Telegraphy.* A system of telecommunication for the transmission of written matter by the use of signal code.

*Telemetering.* Automatic radiocommunication in a fixed or mobile service intended to indicate or record a measurable variable quantity at a distance.

*Telephony.* A system of telecommunication set up for the transmission of speech, or in some cases, other sounds.

*Television.* A system of telecommunication for transmission of transient images of fixed or moving objects.

*Television non-broadcast pickup station.* A mobile, except television pickup, station used for the transmission of television program material and related communications for non-broadcast purposes.

*Television pickup station.* A land mobile station used for the transmission of television program material and related communications from the scenes of events occurring at points removed from television broadcast station studios to television broadcast stations.

*Television STL station (studio transmitter link).* A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

*Temporary fixed offshore subscriber station.* A station in the Offshore Radio Telecommunications Service which operates from various fixed locations for periods not exceeding six months.

## Subpart B—Applications and Licenses

### General Filing Requirements

#### § 22.3 Station authorization required.

(a) No person shall use or operate in the Domestic Public Radio Services any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with, an appropriate authorization granted by the Federal Communications Commission.

(b) Except for mobile stations, and except when the Commission finds under the rules of this Part that the public interest, convenience, or necessity would be served by waiver of this requirement, no radio license shall be issued for the operation of any station unless a permit for its construction has been granted by the Commission. No construction or modification of a station may be commenced without a construction permit, a modified construction permit, or other authority issued by the Commission for the exact construction or modification to be undertaken, except as may be specifically provided for in other sections of this part.

(c) Upon the completion of construction or continued construction of any station pursuant to the terms of a construction permit and upon the filing of an application for license or modification of license, the Commission shall issue a license or modified license to the lawful holder of the permit for the operation of the station, provided that no cause or circumstance has arisen or first come to the knowledge of the Commission since the granting of the permit which would, in the judgment of the Commission, make the operation of such station against the public interest.

(d) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

#### § 22.4 Eligibility for station license.

A station license may not be granted to or held by:

(a) Any alien or the representative of any alien.

(b) Any foreign government or the representative thereof.

(c) Any corporation organized under the laws of any foreign government.

(d) Any corporation of which any officer or director is an alien.

(e) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign country.

(f) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(g) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

#### § 22.5 Formal and informal applications.

(a) Except for an authorization under any of the proviso clauses of Section 308(a) of the Communications Act of 1934 [47 U.S.C. § 308(a)], the Commission may grant only upon written application received by it, the following authorization: construction permits; station licenses; modifications of construction permits or licenses; renewals of licenses; transfers and assignments of construction permits or station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this Part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

**§ 22.6 Filing of applications, fees, and numbers of copies.**

(a) As prescribed by §§ 22.9 and 22.11 of this Part, standard formal application forms applicable to the Domestic Public Radio Services (other than Maritime Mobile and Microwave) may be obtained from either: (1) Federal Communications Commission, Washington, D.C. 20554; or (2) any of the Commission's field operations offices, the addresses of which are listed in § 0.121.

(b) Applications for radio station authorizations shall be submitted for filing to: Federal Communications Commission, Washington, D.C. 20554.

(c) All correspondence or amendments concerning a submitted application shall clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau.

(d) Except as otherwise specified, all applications, amendments, and correspondence shall be submitted in duplicate, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743.

(e) Each application shall be accompanied by the appropriate fee prescribed by, and submitted in accordance with, Subpart G of Part 1 of this chapter.

**§ 22.7 [Reserved]**

**§ 22.8 [Reserved]**

**§ 22.9 Standard application forms for Domestic Public Land Mobile Radio, Rural Radio and Offshore Radio Telecommunications Services.**

(a) *Authority to construct a new base, auxiliary test or fixed station, to modify an existing construction permit or to modify licensed facilities.* Except for facility changes for which FCC Form 403 is prescribed in paragraph (d), FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Construction Permit Under Parts 22 and 25") shall be submitted for each station in the following categories of station construction or modification:

(1) Each base station.

(2) Each auxiliary test station, unless the auxiliary test station is located at the same place as the base station, in which case only one combined application need be filed.

(3) Each fixed station. If the equipment utilized is of such design as to comprise a packaged unit which is ready for installation and use with only nominal construction, FCC Form 403 may be filed together with FCC Form 401 for the simultaneous licensing of the proposed facilities.

(b) *License to cover facilities construction in accordance with construction permit.* FCC Form 403 ("Application for Radio Station License or Modification Thereof Under Parts 22, 23, or 25") shall be filed:

(1) Prior to the expiration date of the construction permit (see also §22.34(a));

(2) Upon completion of construction or installation of a station in exact accordance with the terms and conditions set forth in the construction permit; and

(3) Upon satisfactory completion of equipment tests in accordance with § 22.212(a).

(c) *License for mobile station.* Since no construction permits are issued for mobile stations, applications shall be filed directly for license, subject to the following:

(1) Authority for a base station licensee to serve land mobile or airborne units to be licensed in the name of the carrier may be requested on the FCC Form 401 for the base station construction permit, except that additional mobile units for a licensed station may be applied for on FCC Form 403 as provided for in paragraph (d) of this section. The information should clearly specify the maximum number of mobile units to be placed in operation within the license period.

(2) Applications for a license for land mobile or airborne stations submitted by persons who propose to become subscribers to a common carrier service for public correspondence shall be filed for on FCC Form 409. This form will also be used for the modification and renewal of such licenses. Such applications shall also be accompanied by the supplemental showing set forth in §§ 22.15(i)(2) and 22.15(i)(3).

(d) *Modification of station license not requiring a construction permit.*—Prior to the expiration of a license, an FCC Form 403 may be filed to request authority to make only those categories of changes to an existing station as listed below:

(1) Increase in number of mobile units;

(2) Change of control point (beyond the boundary of the city, borough, town, or community where the control point is authorized);

(3) Additional control points;

(4) New dispatching agreement;

(5) Authority to service vessels;

(6) Certain waiver requests, namely §§ 22.118(d)(2); 22.205(h)(3); 22.208(g)(2);

(7) Change in or additional emission;

(8) Request to delete or change antenna obstruction markings;

(9) Change in points of communications (Rural Radio Service);

(10) Correction of coordinates;

(11) Change of an authorized frequency; or

(12) Addition of frequencies for mobile transmitters.

(e) *Authorization of mobile units of Canadian Registry to operate in the United States.* FCC Form 410 shall be filed. (Copies of this form may also be obtained from the Director, Telecommunications Regulation Branch, Department of Communications, Ottawa, Ontario, Canada.)

(f) *Authorization to operate U.S. mobile units in Canada.* A mobile station with a valid license issued by the Commission may obtain authority to operate in Canada upon filing an application ("Application for Registration for Radio Station Licensee of U.S.A.") with the Director, Telecommunications Regulation Branch, Department of Communications, Ottawa, Ontario, Canada.

**§ 22.10 [Reserved]**

**§ 22.11 Miscellaneous forms shared by all domestic public radio services.**

(a) *Licensee qualifications.* FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") shall be filed in both of the following instances for each radio service and shall be kept current under § 1.65:

(1) As required by other application forms; and

(2) Annually no later than January 31 for the end of the preceding calendar year by licensees or permittees (except for individual mobile subscribers to a common carrier service), if public service was offered at any time during that calendar year.

(b) *Additional time to construct.* FCC Form 701 ("Application for Additional Time to Construct Radio Station") shall be filed in duplicate by a permittee prior to the expiration date of each construction permit to be extended. However, Form 701 need not be filed if a permittee has requested in FCC Form 401 or 435 additional time to construct incidental to a modification of construction permit.

(c) *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. Applicants should note also any special renewal requirements under the rules for each radio service.

(d) *Assignment of permit or license.* FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Permit or License for Stations in Services Other than Broadcasting"), shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control) the application should be filed within 10 days of the event causing the assignment (or transfer of control). In addition, FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") shall be submitted by the proposed assignee unless such assignee has a current and substantially accurate report on file with the Commission. Upon consummation of an approved assignment, the Commission shall be notified by letter of the date of consummation.

(e) *Partial assignment of license or permit.* Authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing construction permit or license (as distinguished from an assignment of the facilities in their entirety), may be granted upon an application: (i) by the assignee on FCC Form 401 or 403 as the situation requires; and (ii) by the assignor on FCC Form 403 for deletion of the assigned facilities, indicating concurrence in the request. Where the assigned facilities are to be incorporated into an existing licensed station, the assignee shall only file an FCC Form 403. Where a new station is to be established, FCC Forms 401 and 403 shall be submitted by the assignee. The assignment shall be consummated within 60 days from the date of authorization. In the event that consummation does not occur, FCC Form 403 shall be filed to return the assignor's authorization to its original condition.

(f) *Transfer of control of corporation holding a permit or license.* FCC Form 704 ("Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License"), shall be submitted in order to voluntarily or involuntarily transfer control (*de jure* or *de facto*) of a corporation holding any construction permits or licenses. In addition, FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") shall be submitted by the proposed transferee unless said transferee has a current and substantially accurate report on file with the Commission. Upon consummation of an approved transfer, the Commission shall be notified by letter of the date thereof.

**§ 22.12 [Reserved]**

**§ 22.13 General application requirements.**

(a) Each application for a construction permit or for consent to assignment or transfer of control shall:

(1) Disclose fully the real party (or parties) in interest, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) Demonstrate the applicant's legal, financial, technical, and other qualifications to be a permittee or licensee;

(3) Submit the information required by the Commission's Rules, requests, and application forms;

(4) State specifically the reasons why a grant of the proposal would serve the public interest, convenience, and necessity;

(5) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this Chapter; and

(6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (e.g. those required by §§ 22.100(d), 22.103, 22.501, 22.505, 22.506, 22.516, 22.608, 22.609, etc.).

(b) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one 8½ by 11" page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The radio service and station call sign or application file number whenever the reference is to stations files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding.

However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(c) In addition to the general application requirements of §§ 22.13 through 22.17 of this Part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by the other Parts of the Commission's Rules, and the other subparts of Part 22 (particularly Subpart C and those subparts applicable to the specific radio service involved); and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(d) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(e) All applicants are required to indicate at the time their application is filed whether or not the application is a "major action" as defined by § 1.1305 of the Commission's Rules. If answered affirmatively, the requisite environmental statement as prescribed in § 1.1311 must be filed with the application.

(f)(1) Where required by applicable local law, an applicant shall include a copy of the franchise or other authorization issued by appropriate regulatory authorities. If no such local requirement exists, or if Commission authority is a prerequisite for such authorization, a statement to this effect shall be included in the application. This subparagraph (1) is not applicable to the Domestic Public Land Mobile Radio Service.

(2) In the Domestic Public Land Mobile Radio Service applicants are not

required to file State certificates. Permittees and Licensees are required to abide by all State requirements of certification whether as to construction or operation. In the case of a construction permit grant, the permittee must complete construction in accordance with § 22.43 of the rules. In the case of a license grant, the licensee must have all requisite State authority, and be in operation within 240 days of the date of the license grant, or the license will automatically expire and must be submitted for cancellation.

(g) Whenever an individual applicant, or a partner (in the case of a partnership) or a full time manager (in the case of a corporation) will not actively participate in the day-to-day management and operation of proposed facilities, the applicant will submit a statement containing the reasons therefor and disclosing the details of the proposed operation, including a demonstration of how control over the radio facilities will be retained by the applicant.

§ 22.14 [Reserved]

§ 22.15 Technical content of applications.

Applications for construction permits shall contain all technical information required by the application form and any additional infomation necessary to fully describe the proposed construction and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, G, H, I, J and K as appropriate). The following paragraphs describe a number of general technical requirements.

(a) Applicants proposing a new station location (including receive-only stations and passive repeaters) shall indicate whether the station site is owned. If it is not owned, its availability for the proposed radio station shall be demonstrated. Under ordinary circumstances this requirement will be considered satisfied if the site is under lease or under written option to buy or lease, or in the case of land under U.S. Government control, written confirmation of site availability from the appropriate Government agency has been received. Where any lease or agreement to use land limits or conditions in any way the applicant's access or use of the site to provide public service, a copy of the lease or agreement (which clearly indicates the limitations) shall be filed with the application.

*(b) [Reserved]*

(c) Each application involving a new or modified antenna supporting structure or passive facility, the addition or removal of an antenna, or the repositioning of an authorized antenna for a station or receive-only facility must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above mean sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. All antennas on the structure must be clearly identified and their heights above-ground (measured to the center of radiation) clearly indicated. In addition, the height to the upper tip of the antenna shall be indicated for those operating in the Domestic Public Land Mobile Radio Service and Rural Radio Service.

(d) Each application proposing a new or modified antenna structure for a station (including a receive-only facility or passive repeater) so as to change its overall height shall include a statement indicating whether or not notification of the Federal Aeronautics Administration (FAA) is required. If notification is required, the applicant should include with the application a copy of the FAA study regarding potential hazard to aviation. If the applicant has not received the FAA study, the application should include the name used in the FAA notification, the location of the FAA regional office involved and the date of the notification. [Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter. See also § 22.111 if the structure is used by more than one station.]

(e) An applicant proposing construction of one or more new stations or modification of existing stations where substantial changes in the operation or maintenance procedures are involved must submit a showing of the general maintenance procedures involved to insure the rendition of good public communications service. The showing should include but need not be limited to the following:

(1) A general description of the technical personnel responsible for the day-to-day operation and maintenance of the facilities.

(2)

(3) A general description of the routine maintenance procedures to be followed and a description of the procedures to be followed for non-routine repair during outages. Include a description of the test equipment available.

(4) The manner in which technical personnel are made aware of malfunction at any of the stations and the appropriate time required for them to reach any of the stations in the event of an emergency. If fault alarms are to be used, the items to be alarmed shall be specified as well as the location of the alarm center.

(5) Indicate whether maintenance personnel will be on duty for all hours of station operation. If not, submit information specifying the method for identifying and correcting system malfunctions when maintenance personnel are not on duty.

(f) If the maintenance for one or more radio stations is to be accomplished by contractural arrangement with an entity unrelated to an applicant, permittee or licensee, the application shall contain a copy of the agreement or contract which shall demonstrate that:

(1) The maintenance is accomplished according to general instructions provided for by the applicant;

(2) The applicant retains effective control over the radio facilities and their operation; and

(3) The applicant assumes full responsibility for both the quality of service and for contractor compliance with the Commission's Rules.

(g) Each application for construction permit for a developmental authorization shall be accompanied by pertinent supplemental information as required by § 22.405 in addition to such information as may be specifically required by this section.

(h) Each application in the Rural Radio Services which proposes to establish a new permanently located, fixed communication facility (e.g. a transmitting site, receiving site, passive reflector or passive repeater), or to make changes or corrections in the location of such a facility already authorized, shall be accompanied by a topographic map (a U.S. Geological Survey Quadrangle or map of comparable detail and accuracy) with the location of the proposed facility accurately plotted and identifed thereon. This map should not be cropped so as to delete pertinent border information and must be submitted in the same number of copies as the application it accompanies. (Map requirements for the Domestic Public Land Mobile Radio Service are specified in the application form.)

(i) In the Domestic Public Land Mobile Radio Service each application shall contain, as appropriate, the following information:

(1) Each application for construction permit for base station which proposes to establish a new communication facility, make changes in area of

coverage of a station already authorized, or install additional transmitters shall described the antenna transmission line type, length and radio frequency power transmission losses, together with a description and power loss of all other devices in addition to the transmission line, between the output of the transmitter and the antenna radiating system expressed in decibels.

(2) All applications for new or additional facilities shall identify any other pending applications in this service for new or additional facilities for the same general geographic area that applicant, or any principal thereof, may be a party to or have an interest in, either directly or indirectly.

(3) An application for land or airborne mobile units to be licensed in the name of a person who is not the licensee of the base station with which the mobile units will be associated in the Domestic Public Land Mobile Radio Service shall be accompanied by an affirmative showing that:

(i) The mobile units for which authorization is sought are for the applicant's own use;

(ii) Definite arrangements have been made for the requested number of mobile units to obtain communication service, upon the frequencies requested, through the base stations specifically identified in the application;

(iii) Specific arrangements have been made for installation, technical service and maintenance of the mobile units by licensed first- or second-class radio operators and

(iv) The mobile units will be operated primarily in the area or areas, or both, through the base stations specifically identified in the application and more particularly detailed in subparagraph (2) of this paragraph.

(j) Each application for construction permit for a base station in the Domestic Public Land Mobile Radio Service which proposes to establish a new communication facility or make changes in the area of coverage of a station already authorized shall be accompanied by technical engineering information with respect to:

(1) Type of antenna polarization used.

(2) Type of antenna used, including type number and manufacturer thereof.

(3) Antenna power gain expressed in decibels.

(4) Antenna radiation pattern (on letter size polar coordinate paper) showing the antenna power gain distribution in the horizontal plane expressed in decibels.

(5) Orientation of directional antenna array, expressed in degrees of azimuth, with respect to true north.

(6) Antenna height above average terrain for each of the eight radials specified in paragraph (j)(8)(ii) of this section. (See also § 22.115.)

(7) Antenna transmission line type, length and radio frequency power transmission losses, together with a description and power loss of all other devices in addition to the transmission line, between the output of the transmitter and the antenna radiating system expressed in decibels.

(8) Topographic maps (see also § 21.116) showing thereon:

(i) Exact station location.

(ii) Location of radials used in determining elevation of average terrain.

(9) Effective radiated power for all eight radials specified in paragraph (j)(8)(ii) of this section.

(k) The location of the transmitting antenna shall be considered to be the station location. Applications for stations at specified fixed locations shall describe the transmitting antenna site and each passive reflector or passive repeater site by their geographical coordinates and also by conventional reference to street number, landmark, etc. In the fixed point-to-point services authorized under this part, the site of each terminal receiving antenna location shall be described by geographical coordinates. All such coordinates shall be specified in terms of degrees, minutes and seconds to the nearest second of latitude and longitude.

(l) Each application for construction permit for an offshore central station or a fixed subscriber station in the Offshore Radio Telecommunications Service which proposes a new station or changes in the frequency, operating power or antenna height of a station already authorized shall be accompanied by technical engineering information with respect to:

(1) Type of antenna polarization used.

(2) Type of antenna used, including type number and manufacturer thereof.

(3) Antenna power gain expressed in decibels.

(4) Antenna radiation pattern (on letter size polar coordinate paper) showing the antenna power gain distribution in the horizontal plane expressed in decibels.

(5) Orientation of directional antenna array, expressed in degrees of azimuth with respect to True North.

(6) Antenna height above mean sea level.

(7) Antenna transmission line type, length and radio frequency power transmission losses, together with a description and power loss of all other devices in addition to the transmission line, between the output of the transmitter and the antenna radiating system expressed in decibels.

(8) Suitable maps or charts showing thereon the exact station location.

(9) Effective radiated power.

### § 22.16 [Reserved]

### § 22.17 Demonstration of financial qualifications.

(a) Each application for authority to construct a new station or substantially modify an existing station shall demonstrate the applicant's financial ability to meet the realistic and prudent:

(1) Estimated costs of proposed construction and other initial expenses; and

(2) Estimated operating expenses for a reasonable period of time, depending upon the nature of service proposed and the degree of business uncertainty or risk. (E.g., the proposal of a new or somewhat speculative service with a higher degree of business uncertainty would require a showing for a longer time period.)

(b) Except as provided in paragraph (c) of this section, each application shall demonstrate an applicant's financial ability, under paragraph (a) of this section by submitting the following financial information, the information required by paragraph (e) of this section, and whatever other information or details the Commission may require:

(1) A balance sheet current within ninety (90) days of the date of the application and copies of any financial commitments (such as, for example, loan agreements and service contracts) in support of the proposed facilities; and

(2) Whenever the submissions of paragraph (b)(1) of this section do not satisfy paragraph (a) of this section, the applicant shall submit additional information (e.g. a current income statement, and, for the period of proposed construction plus an initial year of operation, a statement of projected revenues and expenses, a statement of projected sources and application of funds, etc.) as is necessary to demonstrate financial ability.

(c) An applicant need not submit the financial information required by paragraph (b)(1) of this section, if paragraph (a) of this section can be clearly satisfied by an exhibit demonstrating that the applicant had operating revenues of $1 million or more for the previous year, has filed annual (or monthly) reports under Part 43 of this chapter and maintains as of the date of the application a credit rating equivalent to, or better than, either a Standard & Poor's Rating of "BBB" or a Moody's Bond Rating of "Baa."

(d) Each application for an assignment of a license (or permit), or for the transfer of control of a corporation holding a license (or permit), shall demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities by submitting adequate financial information under the guidelines specified in this section, as appropriate.

(e) The following additional information shall be submitted on any form of intended credit arrangement or equity placement:

(1) The details of any loan or other form of credit arrangement intended to be utilized to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), letters of commitment, terms of the transaction, and a statement that paragraph (f) of this section is complied with; and

(2) The details of any sale or placement of any equity or other form of ownership interest.

(f) In addition to the disclosures required by paragraph (d) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed radio station facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

**§ 22.18 [Reserved]**

**§ 22.19 [Reserved]**

**§ 22.20 Defective applications.**

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not properly executed;

(2) The submitted filing fee is insufficient under §1.1113 of this chapter;

(3) The application does not demonstrate how the proposed radio facilities will serve the public need or interest;

(4) The application does not demonstrate compliance with the special requirements applicable to the radio service involved (e.g. noted in §21.13(a)(6) of this chapter);

(5) The application does not demonstrate the availability of the proposed site of a new facility;

(6) The application does not include the environmental showing required for a "major action" under § 1.1305 of this chapter;

(7) The application does not include U.S. Forest Service or Bureau of Land Management certification of site availability under § 1.70 of this chapter whenever a proposed new or modified facility is to be located on land under the jurisdiction of these agencies;

(8) The application is filed after the "cut-off" date prescribed in § 22.30 of this part;

(9) The application proposes the use of a frequency not allocated to such use; or

(10) In the Domestic Public Land Mobile Radio Service failure to provide specific answers as required to Items 1, 5, 7, 8, 10, 17, 18, 19, 20, or 26 of FCC Form 401 (answers by cross reference are not acceptable—see § 22.13(b)), or failure to propose type accepted equipment (except for developmental applications).

(c) Applications considered defective under paragraph (a) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

**§ 22.21 Inconsistent or conflicting applications.**

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

**§ 22.22 Repetitious applications.**

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by his successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by his successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

**§ 22.23 Amendment of applications.**

(a) Any pending application may be amended as a matter of right if the application has not been designated either for hearing, or for comparative evaluation pursuant to § 22.35. *Provided however,* that amendments shall comply with the provisions of § 22.29 as appropriate.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing or comparative evaluation only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to § 22.27 and § 22.31 under any of the following circumstances:

(1) [Reserved]

(2) [Reserved]

(3) If in the Domestic Public Land Mobile Radio Service and Rural Radio Service, the amendment results in a substantial modification of the

engineering proposal such as (but not necessarily limited to):

(i) A change in, or an addition of, a radio frequency;

(ii) A change in the class of station (e.g., from control to base);

(iii) A change in the type of emission of a transmitter; or

(iv) The following modifications of base station facilities, unless a complete engineering showing can demonstrate that the resultant increase in the reliable service area contour (as defined by § 22.504) is less than ten (10) percent or one (1) mile as measured in miles along any of eight radials spaced every forty five (45) degrees from zero degree True North:

(A) A change in geographic coordinates of a station's transmitting antenna of more than five (5) seconds of latitude or longitude, or both;

(B) An increase in effective radiated power in any direction which would enlarge the service contour;

(C) A change in the height, or position of a transmitting antenna which would enlarge the service contour;

(D) An increase in the number of transmitter locations on the same frequency.

(4) If the amendment would convert a proposal into a major action under § 1.1305.

(5) If the amendment results in a substantial and material alteration of the proposed service.

(6) If the amendment specifies, a substantial change in beneficial ownership or control (*de jure or de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under § 310 (d) of the Communications Act of 1934 [47 U.S.C. § 310(d)]. *Provided however,* Such a change would not be considered major where it merely amends an application for modification of an authorized station to reflect a change in ownership or control of such station as previously approved by the Commission.

(7) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to § 309 of the Communications Act of 1934.

(d) [Reserved]

(e) If a petition to deny (or other formal objection) has been filed, or if the Commission has published a notice that the application appears to be mutually exclusive with another application (or applications), any amendment (or other written communications) shall be served on the petitioner and on any such mutually exclusive applicant (or applicants), unless waiver of this requirement is granted pursuant to paragraph (f) of this section.

(f) The Commission may waive the service requirements of paragraph (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome. Requests for waiver shall be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and shall be served on the applicant. Replies to oppositions will not be entertained.

(g) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this Chapter.

### § 22.24 [Reserved]

### § 22.25 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 22.5 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirement of § 22.27(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular application is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring emergency operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) No special temporary authorization, except as provided for in paragraph (d) of this section, will be granted for a period to exceed 90 days or be extended for more than one additional period not to exceed 90 days.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant construction permits and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

## Processing of Applications

### § 22.26 Receipt of application.

(a) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (See § 22.13 for additional information concerning filing of applications.)

§ 22.27 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance; and

(4) Special environmental considerations as required by Part I of this Chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 22.23) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a construction permit or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities;

(4) For temporary authorization pursuant to § 22.25(b);

(5) For authorization of facilities for remote pickup, temporary studio links and similar facilities which service a broadcast station;

(6) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 [47 U.S.C. 308(a)];

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 22.28 Dismissal and return of applications.

(a) Except as provided under § 22.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal either prior to designation for hearing, or prior to selection of the comparative evaluation procedure of § 22.35. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 22.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered either after designation for hearing, or after selection of the comparative evaluation procedure of § 22.35, only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provisions of § 22.29 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice prior to designation for hearing or selection of the comparative evaluation procedure of § 22.35, but may be made with prejudice for unsatisfactory compliance with § 22.29, or after designation for hearing or selection of the comparative evaluation procedure.

§ 22.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications shall comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed change in the ownership of an applicant which would be classified as a major amendment under § 22.23, and for which an exemption under § 22.31(e) from the "cut-off" rule would be requested; or,

(ii) A proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing of an application previously in contested status.

(b) The provisions of this section shall not be applicable to any engineering agreement (or understanding) which:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section shall constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section shall comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto shall jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto shall file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission shall be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith.

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as

may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filing, and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs shall include only directly assignable costs and shall exclude the application of general overhead expenses. [The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.] An itemized accounting shall be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars ($1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting shall clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be *prima facie* contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

**§ 22.30 Opposition to applications.**

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), which shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contains a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) The Commission will classify as informal objections:

(1) Any petition to deny not filed in accordance with paragraph (a) of this section;

(2) Any petition to deny (or for other forms of relief) an application to which the thirty (30) day public notice period of § 22.27(b) does not apply; or

(3) Any comments on, or objections to, the grant of an application (other than the issuance of a license pursuant to a construction permit) where the comments or objections do not conform to either paragraph (a) of this section or other Commission rules and requirements.

(c) The Commission will consider informal objections, but will not necessarily discuss them specifically in a formal opinion if:

(1) The informal objection is filed at least one day before Commission action on the application; and

(2) The informal objection is signed by the submitting person (or his representative) and discloses his interest.

**§ 22.31 Mutually exclusive applications.**

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application establishes the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. [For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.]

(d) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(e) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 22.23), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 22.35), and the Commission or the presiding officer accepts the amendment pursuant to § 22.23(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications but does not create new or increased frequency conflicts;

(3) The amendment reflects only a change in ownership or control pursuant to an agreement (or understanding) which is found by the Commission to be in the public interest under § 22.29 and from which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 22.29 whereby two or more applicants entitled to comparative consideration of their

applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

**§ 22.32 Consideration of applications.**

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 22.31) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 22.35 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 22.30, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements;

(3) The application is entitled to comparative consideration (under § 22.31) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 22.31) and the applicants have chosen the comparative evaluation procedure of § 22.35 but the Commission deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section after an appropriate hearing conducted in accordance with the provisions of § 22.35 or Part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 22.35, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing on all applications might jeopardize the rights of the United States under the provisions of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of Part 1 of this chapter.

**§§ 22.33-34 [Reserved]**

**§ 22.35 Comparative evaluation of mutually exclusive applications.**

(a) In order to expedite action on mutually exclusive applications, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) of this section, if:

(1) The applications are entitled to comparative consideration pursuant to § 22.31;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of

fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of § 22.32.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of his right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and his attorney if so represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning his proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants shall have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision shall be considered final.

§§ 22.36-22.38 [Reserved]

**§ 22.39 Transfer of control or assignment of station authorizations.**

(a) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. The treatment to be accorded acquisition or disposition costs for interstate rate making purposes will be determined at such time as the question may arise in a rate proceeding.

(b) Requests for transfer of control or assignment authority shall be submitted on the application forms prescribed by § 22.11 of this chapter; shall be accompanied by the applicable showings required by §§ 22.13, 22.15, 22.17 and 22.40 of this chapter.

(c) In acting upon applications for transfer and assignment authority the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

(d) The Commission shall be notified in writing promptly of the death or legal disability of an individual permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee. Within thirty (30) days after the occurrence of such death or legal disability, an application in accordance with the provisions of paragraph (b) of this section shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.

**§ 22.40 Considerations involving transfer or assignment applications.**

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving a *pro forma* assignment or transfer of control) for consent to assignment of a common carrier construction permit or license, or for transfer of control of a corporate permittee or licensee, involve facilities which have been operated for less than two years by the proposed assignor or transferor. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee or permittee subsequent to the acquisition of the permit or license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(b) If a proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests, any showing requested under paragraph (a) of this section shall include an additional exhibit which:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(c) For the purposes of this section, the two year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the construction permit, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of construction permit or license, or transfer of control of a corporate permittee or licensee; or

(3) [Reserved]

§§ 22.41-22.42 [Reserved]

**§ 22.43 Period of construction.**

(a) Except as may be limited by § 22.35(b), each construction permit for a radio station in the Domestic Public Radio Services will specify the date of grant as the earliest date of commencement of construction, and a maximum of 8 months from the date of grant as the time within which construction will be completed and the station ready for operation, unless otherwise determined by the Commission upon proper showing in any particular case.

(b) For stations in the Offshore Radio Telecommunication Services, and except as may be limited by § 27.45(b), the construction permit issued by the Commission will specify the date of grant as the earliest date of commencement of construction and a maximum of 18 months thereafter as the time within which construction shall be completed and the station be ready for operation, unless otherwise determined by the Commission upon proper showing in any particular use.

**§ 22.44 Forfeiture and termination of station authorization.**

(a) A construction permit shall be automatically forfeited if the station is not ready for operation within the term of the construction permit (as evidenced by the commencement of service tests as specified by § 22.212), or within such additional time as may be authorized by the Commission (upon receipt of an appropriate and timely filed application), unless prevented by causes not under the control of the permittee. Where so forfeited, the Commission will consider a petition for reinstatement of a construction permit only where:

(1) It is filed within 30 days of the expiration of the construction permit;

(2) It explains the failure to timely file a renewal application; and

(3) Where it is accompanied by an appropriate application for extension of time to construct or modification of construction permit.

(b) A license shall be automatically forfeited upon the expiration date specified therein unless prior thereto an application for renewal of such license has been filed with the Commission. An application for renewal filed after the expiration date of the license will be considered only if:

(1) It is filed within 30 days of such expiration date;

(2) It explains the failure to timely file a renewal application is submitted; and

(3) It describes procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization shall automatically terminate upon the expiration date stated therein or upon failure of the carrier to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only upon specific authorization by the Commission.

**§ 22.45 License period.**

(a) Licenses for stations in the Domestic Public Land Mobile Radio, Rural Radio, and Offshore Radio Telecommunications Services will be issued for a period not to exceed 5 years;

Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the following date in the year of expiration:

| | |
|---|---|
| Domestic Public Land Mobile Radio Service (miscellaneous carriers) | Apr. 1. |
| Domestic Public Land Mobile Radio Service (telephone carriers) | July 1. |
| Domestic Public Land Mobile Radio Service (all authorization pursuant to § 21.521—air and ground) | Sept. 1. |
| Rural Radio Service | Nov. 1. |
| Offshore Radio Telecommunications Service | Aug. 1. |

The expiration date of developmental licenses shall be one year from the date of the grant thereof. When a license is granted subsequent to the last renewal date of the class of license involved, the license shall be issued only for the unexpired period of the current license term of such class; *Provided however,* That the license for land and airborne mobile units issued in the Domestic Public Land Mobile Radio Service in the name of the person who is not the licensee of the base station with which the mobile unit will be associated shall be issued for a full five-year term from the date of grant thereof.

(b) The Commission reserves the right to grant or renew station licenses in these services for a shorter period of time than that generally prescribed for such stations if, in its judgment, public interest, convenience, or necessity would be served by such action.

(c) Upon the expiration or termination of any station license, any related construction permit, which bears a later expiration date, shall be automatically terminated concurrently with the related station license, unless it shall have been determined by the Commission that the public interest, convenience or necessity would be served by continuing in effect said construction permit.

## Subpart C—Technical Standards

**§ 22.100 Frequencies.**

(a) The frequencies available for use in the services covered by this part of the rules are listed in the applicable subparts of this part. Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in these services will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in these services shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may specify a time sharing arrangement for the stations involved or may, after notice and opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

(b) Persons authorized pursuant to this part to operate radio stations on frequencies in the band 25–50 MHz must recognize that the band is shared with various services in other countries; that harmful interference may be caused by tropospheric and ionospheric propagation of signals from distant stations of all services of the United States and other countries operating on frequencies in this band; and that no protection from such harmful interference generally can be expected. Persons desiring to avoid such harmful interference should consider operation on available frequencies higher in the radio spectrum not generally subject to this type of difficulty.

(c) [Reserved]

(d) All applicants for regular authorization for use of the bands 2110–2130 MHz and 2160–2180 MHz shall, before filing an application or major amendment to a pending application, coordinate proposed frequency usage with existing users in the area and other applicants with previously filed applications, in this radio service and in the point-to-point Microwave and Local Television Radio Services, whose facilities could affect or be affected by the new proposal in terms of frequency interference or restricted ultimate system capacity. In coordinating frequency usage with stations in the fixed-satellite service, applicants shall also comply with the requirements of Section 21.706 (c) and (d). In engineering a system or modification thereto, the applicant shall by appropriate studies and analyses select sites, transmitters, antennas and frequencies that will avoid harmful interference to other users. All applicants, permittees and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems that are likely to need additional capacity in the foreseeable future. The applicant shall identify in

the application all entities with which the technical proposal was coordinated in the event that technical problems are not resolved or if the existing licensee, permittee or applicant does not respond to coordination efforts within 30 days after notification, an explanation shall be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of harmful interference (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof shall be contained in the application. The following guidelines are applicable to the coordination procedure:

(1) Coordination involves two separate elements: Notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The name of the carriers with which coordination was accomplished must be specified.

(2) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added or changed.
Transmitting equipment type, its stability, actual output power, and emission designator.
Transmitting antenna type and model and, if required, a typical pattern and maximum gain.
Transmitting antenna height above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type and model and, if required, a typical pattern and maximum gain.
Receiving antenna height above ground level and ground elevation above mean sea level.
Path azimuth and distance.

(3) For transmitters employing digital modulation techniques at frequencies below 15 GHz, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment shall also be furnished.

(4) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Every reasonable effort should be made by all carriers to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file his application without a response.

(5) The 30-day notification period is calculated from the date of receipt by the carrier being notified. If notification is by mail, this date may be ascertained by: (i) The return receipt on certified mail, (ii) the enclosure of a card to be dated and returned by the recipient, or (iii) a conservative estimate of the time required for the mail to reach its destination. In the latter case, the estimated date when the 30-day period would expire should be stated in the notification.

(6) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefor.

(7) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified.

(8) Where subsequent changes are not numerous or complex, the carrier receiving the changed notification should make an effort to respond in less than 30 days. Where the notifying carrier believes a shorter response time is reasonable and appropriate, it may be helpful for him to so indicate in the notice and perhaps suggest a response date.

(9) If it is determined that a subsequent change could have no impact on some carriers receiving the original notification, it is not necessary to coordinate the change with such carrier. However, these carriers should be advised of the change and of the opinion that coordination is not required for said change.

(10) Carriers should supply to all other carriers, or known carrier applicants, within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating carriers or applicants, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation.

(11) Carriers should keep other carriers with which they are coordinating advised of deletions or changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was completed, carriers may assume, unless notified otherwise, that such frequency use is no longer desired.

(e) [Reserved]

### § 22.101 Frequency tolerance.

(a) The carrier frequency of each transmitter authorized in these services shall be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section (unless otherwise specified in the instrument of station authorization the reference frequency shall be deemed to be the assigned frequency):

| Frequency range (MHz) | Frequency tolerance (percent) | | |
|---|---|---|---|
| | All fixed and base stations | Mobile stations over 3 watts | Mobile stations 3 watts or less [1] |
| 25 to 50 | 0.002 | 0.002 | 0.005 |
| 50 to 450 | .0005 | .0005 | .005 |
| 450 to 512 | .00025 | .0005 | .0005 |
| 512 to 1,000 [2] | .0005 | .0005 | .005 |
| 2,110 to 2,220 | .001 | | |
| 2,220 to 12,200 [2] | .005 | .005 | .005 |
| 12,200 to 40,000 | .03 | .03 | .03 |

[1] Below 512 MHz transmitter plate power input to the final frequency stage, as specified in the Commission's Radio Equipment List. Above 512 MHz transmitter power output, as specified in the Commission's Radio Equipment List.

[2] Beginning Aug. 9, 1975, this tolerance will govern the marketing of equipment pursuant to §§ 2.803 and 2.805 of this chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03 percent in the frequency range 2,200 to 10,500 MHz and .05 percent in the range 10,500 MHz to 12,000 MHz, and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized in the frequency range 2,450 to 10,500 MHz prior to June 23, 1969 at a tolerance of .05 percent may continue to be used until February 1, 1976 provided it does not cause interference to the operation of any other licensee.

[3] Equipment authorized to be operated on frequencies between 890 and 940 MHz as of Oct. 15, 1956, shall be required to maintain a frequency tolerance within 0.03 percent subject to the condition that no harmful interference is caused to any other radio station.

(b) Heterodyne microwave radio systems may be authorized a somewhat less restrictive frequency tolerance (up to .01 percent) to compensate for frequency shift caused by numerous repeaters between base band signal insertion. Where such relaxation is sought, applicant must provide all calculations and indicate the desired tolerance over each path. In such instances the radio transmitters used shall individually be capable of complying with the tolerance specified in paragraph (a) above.

(c) As an additional requirement in any band where the Commission makes assignments according to a specified channel plan, provisions shall be made to prevent the emission included within

the occupied bandwidth from radiating outside the assigned channel at a level greater than that specified in § 22.106.

**§ 22.102 Frequency measuring or calibrating apparatus.**

The frequency measuring or calibrating device used to determine compliance of transmitting equipment with the station authorization and the applicable rules and regulations shall be independent of the transmitter frequency control elements and shall have an accuracy within one-half of the allowed frequency tolerance of the transmitter being measured.

**§ 22.103 Standards and limitations governing authorization and use of frequencies in the 72–76 MHz band.**

(a) Assignments on frequencies in the band 72–76 MHz will be made only to stations located 10 or more miles from a channel 4 or 5 television station (or from the post office of the city to which such television channels are allocated, in cases where a television station has not been authorized) and shall be subject to the condition that no harmful interference is caused to reception of such television stations. Applications for use of frequencies involving less than 10 miles separation from such television stations will be returned without action.

(b) Assignments on frequencies in the band 72–76 MHz will be made only upon the applicant's affirmative showing that he agrees to eliminate any harmful interference which may be caused by his operation to television reception on either channel 4 or 5 and, if said interference cannot be eliminated within 90 days of the time the matter is first brought to his attention by the Commission, operation of the interfering fixed station will be discontinued.

(c) In cases where it is proposed to locate a 72–76 MHz fixed station less than 80, but more than 10, miles from the site of a television transmitter operating on either channel 4 or 5 (or from the post office of a community to which such television channels are allocated, in cases where a television station has not been authorized), the fixed station shall be authorized only if there are fewer than 100 family dwelling units (as defined by the United States Bureau of Census) located within a circle centered at the location of the fixed station (family dwelling units 70 or more miles distant from the television station antenna site are not be counted) the radius of which shall be determined by use of the folowing charts entitled "Chart For Determining Radius From Fixed Station In 72–76 MHz Band To Interference Contour Along Which 10 Percent of Service From Adjacent Channel Television Station Would Be Destroyed":

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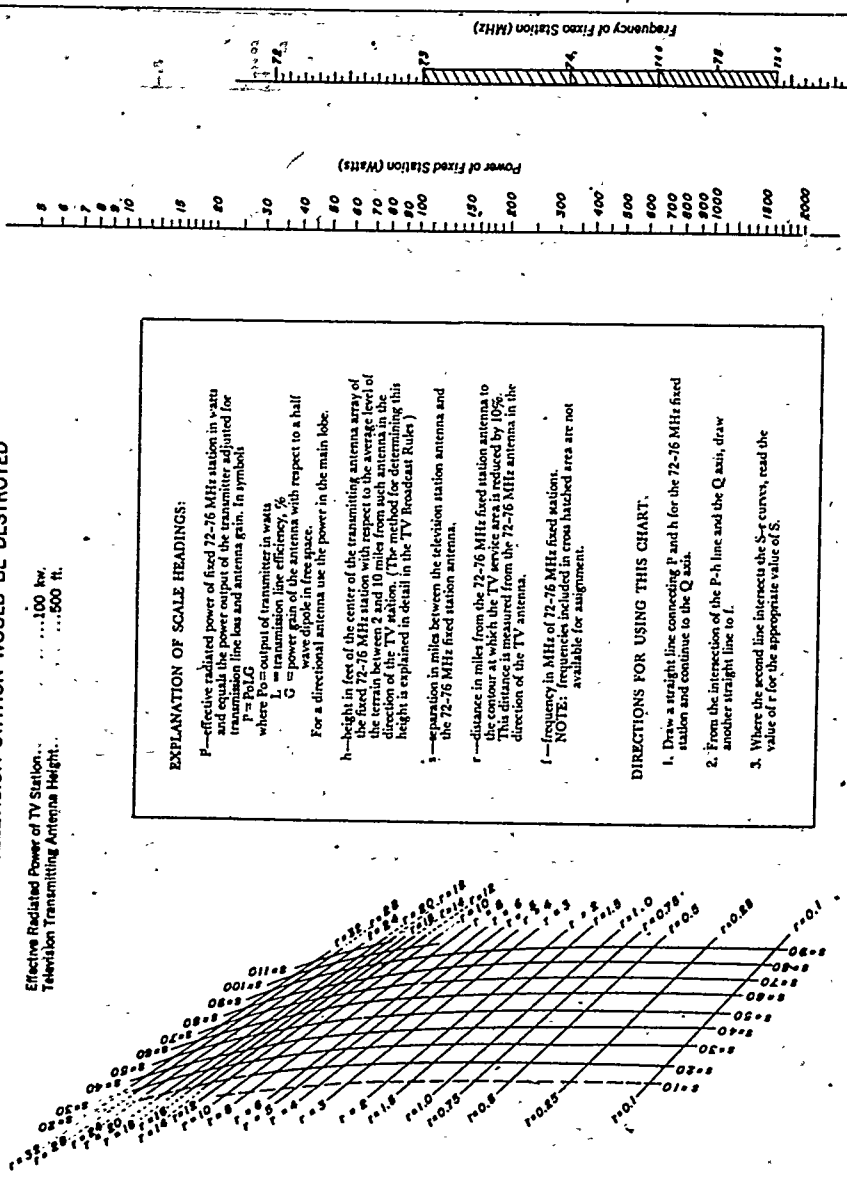
# FOR CHANNEL 4

## CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station.....100 kw.
Television Transmitting Antenna Height.....500 ft.




EXPLANATION OF SCALE HEADINGS:

P—effective radiated power of fixed 72–76 MHz station in watts and equals the power output of the transmitter adjusted for transmission line loss and antenna gain. In symbols

$P = PoLG$

where Po = output of transmitter in watts
L = transmission line efficiency, %
G = power gain of the antenna with respect to a half wave dipole in free space.

For a directional antenna use the power in the main lobe.

h—height in feet of the center of the transmitting antenna array of the fixed 72–76 MHz station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules)

s—separation in miles between the television station antenna and the 72–76 MHz fixed station antenna.

r—distance in miles from the 72–76 MHz fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72–76 MHz antenna in the direction of the TV antenna.

f—frequency in MHz of 72–76 MHz fixed station.
NOTE: Frequencies included in cross hatched area are not available for assignment.

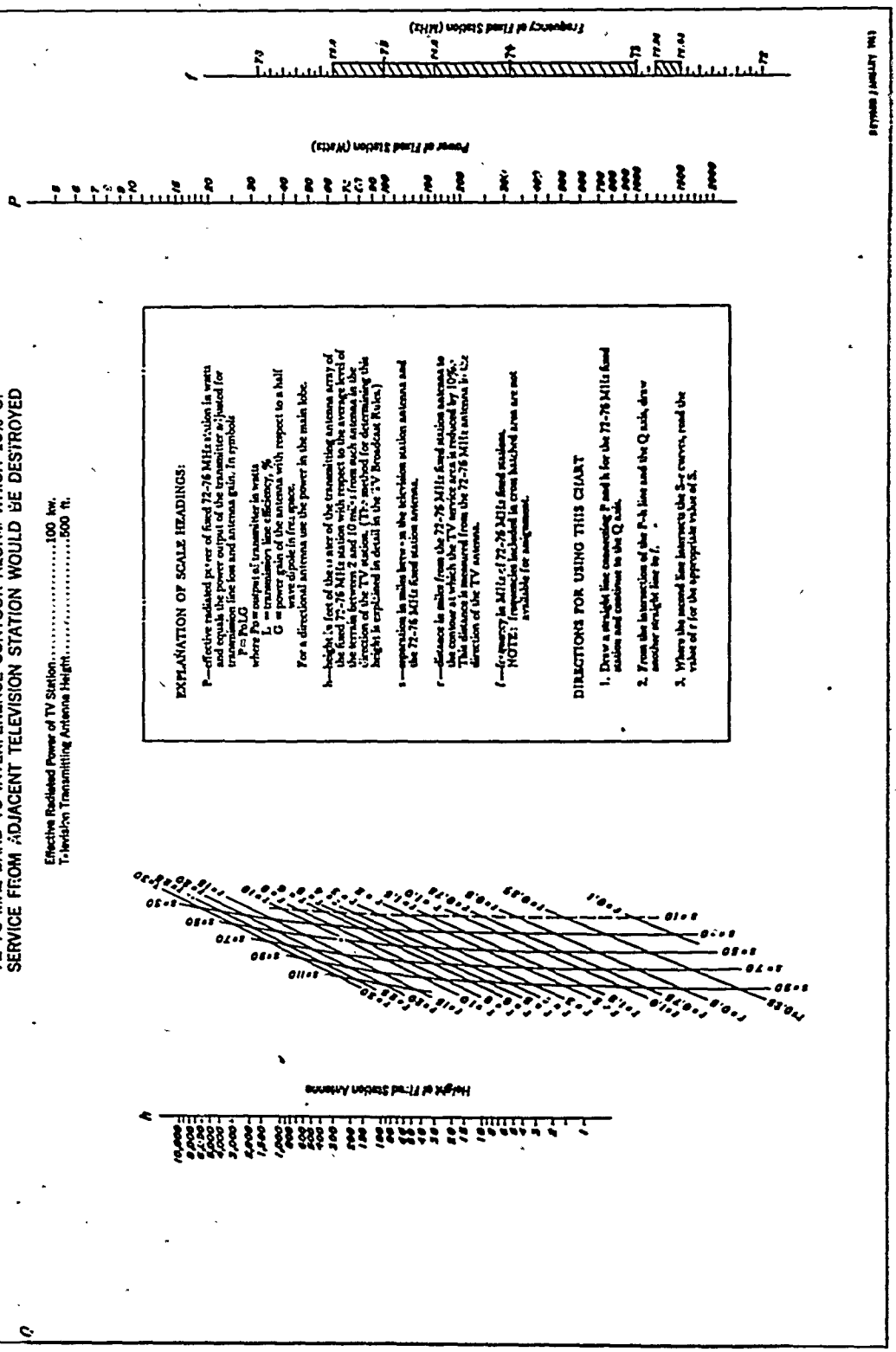
DIRECTIONS FOR USING THIS CHART.

1. Draw a straight line connecting P and h for the 72–76 MHz fixed station and continue to the Q axis.
2. From the intersection of the P–h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S–r curves, read the value of r for the appropriate value of S.

# FOR CHANNEL 5

## CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station.....100 kw.
Television Transmitting Antenna Height.....500 ft.




BILLING CODE 6712-01-C

(d) In cases where more than 100 family dwelling units are contained within the circle (determined according to paragraph (c) of this section), the Commission may, in a particular case, authorize the location of a fixed station upon a factual showing that:

(1) The proposed site is the only suitable location.

(2) It is not feasible, technically or otherwise, to use other available frequencies.

(3) The applicant has a definite plan, which should be disclosed, to control any interference that might develop to television reception from his operations.

(4) The applicant is financially able and agrees to make such adjustments in the television receivers affected as may be necessary to eliminate interference caused by his operations.

(e) No station assignments shall be made in the frequency range 74.6–75.4 MHz.

(f) No station assignments shall be made in the frequency range 72.65–72.85 MHz within 80 miles from the site of a television transmitter operating on channel 5 (or from the post office of a community to which such television channel is allocated, in cases where a television station has not been authorized).

### § 22.104 Types of emission.

(a) The types of emission which may be used by the various stations in the radio services included in this Part are specified in the rules in this Part governing the particular service. (See § 2.201 of this chapter for information concerning the manner of designating various classes of emission.)

(b) The use of F0 and A0 emission in the 72–76 MHz band will not be authorized, except for temporary or short periods necessary for testing incident to the construction or maintenance of a radio station.

### § 22.105 Bandwidth.

Each authorization issued pursuant to these rules will show, as the emission designator, a symbol representing the class of emission which shall be prefixed by a number specifying the necessary bandwidth in kilohertz. This figure does not necessarily indicate the bandwidth actually occupied by the emission at any instant. In those cases where Part 2 of this chapter does not provide a formula for the computation of the necessary bandwidth, the occupied bandwidth may be used in the emission designator.

### § 22.106 Emission limitations.

(a) The mean power of emissions shall be attenuated below the mean output of the transmitter in accordance with the following schedule:

(1) When using transmission other than those employing digital modulation techniques:

(i) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any fequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwith: At least 35 decibels;

(iii) On any fequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10 $\text{Log}_{10}$ (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques (See § 21.122):

(i) For operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels.

$A=35+0.8(P50)+10\ \text{Log}_{10}\ B.$

(Attenuation greater than 80 decibels is not required.)

Where:

A=Attenuation (in decibels) below the mean output power level.

P=Percent removed from the carrier frequency.

B=Authorized bandwidth in MHz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels.

$A=11+0.4(P50)+10\ \text{Log}_{10}\ B.$

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least $43+10\ \text{Log}_{10}$ (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

### § 22.107 Transmitter power.

(a) The power which a station will be permitted to use in these services will be the minimum required for satisfactory technical operation commensurate with the size of the area to be served and local conditions which affect radio transmission and reception. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of a station.

(b) The rated power of a transmitter employed in these radio services shall not exceed the values shown in the following tabulation:

| Frequency range (MHz): | *Rated power output (watts)* |
|---|---|
| Below 30 | 50 |
| 30 to 50 | 250 |
| 50 to 76 | 50 |
| 76 to 512 | [1]250 |
| 512 to 10,000 | [2]20 |
| Above 10,000 | [2]10 |

[1] Transmitter rated power output is limited to a maximum of 25 watts on frequencies in the bands 454.6625–455.000 MHz and 459.6625–460.000 MHz.

[2] In the bands 5.925–6.425 MHz and 27.500–29.500 MHz the maximum effective isotropically radiated power of the transmitter and associated antenna of a station in the fixed service shall not exceed—55 dBW. This limitation is necessary to minimize the probability of harmful interference to reception in this band by space stations in the fixed-satellite service. In the band 2.150–2.162 MHz up to 100 watts may be authorized pursuant to § 21.904.

(c) The power of each transmitter shall be maintained as near as practicable to the power input or output, as the case may be, specified in the instrument of station authorization: *Provided,* That the power of each base station transmitter shall not deviate by more than 20 percent above and 25 percent below the authorized power. In the event it becomes impossible to operate within such limits of the authorized power, the station may be operated with reduced power for a period of 10 days or less, provided that if such operation continues longer than 10 days the Commission and the Engineer in Charge of the radio district in which the station is located shall be notified in writing immediately thereafter and also upon the resumption of normal power.

### § 22.108 Directional antennas.

(a) Unless otherwise authorized upon specific request by the applicant, each station authorized under the rules of this part, other than base, mobile and auxiliary test stations operating in the Domestic Public Land Mobile Service and all classes of stations in the Offshore Radio Telecommunications Service, shall employ a directional antenna adjusted with the center of the major lobe of radiation in the horizontal plane directed toward the receiving station with which it communicates: *Provided, however,* Where a station communicates with more than one point, a multi- or omni-directional antenna may be authorized if necessary. New

Periscope antenna systems will not, under ordinary circumstances, be authorized.

(b) Stations operating below 2500 MHz (other than base mobile and auxiliary test stations in the Domestic Public Land Mobile Radio Service and all classes of stations in the Offshore Radio Telecommunications Service) which are required to use directional antennas shall employ antennas meeting the standards indicated below. (Maximum beamwidth is for the major lobe of radiation at the half power points. Suppression is the minimum attenuation required for any secondary lobe signal and is referenced to the maximum signal in the main lobe.)

| Frequency range | Maximum beam width (degrees) | Suppression (dB) |
|---|---|---|
| Below 512 MHz | 80 | 10 |
| 512 to 1000 MHz | 20 | 13 |
| 1500 to 2500 MHz | 12 | 13 |

(c) Fixed stations (other than temporary fixed) operating at 2.500 MHz or higher shall employ transmitting and receiving antennas meeting the appropriate performance Standard A indicated below, except that in areas not subjected to frequency congestion, antennas meeting performance Standard B may be used subject to the liability set forth in § 22.109(c). Additionally, the main lobe of each antenna operating below 5.000 MHz shall have minimum power gain of 36 dBi over an isotropic antenna; at or above 5.000 MHz the minimum gain shall be 38 dBi. The values indicated represent the suppression required in the horizontal plane, without regard for the polarization plane of intended operation.

| Angle from center line of main lobe | Minimum radiation suppression | |
|---|---|---|
| | Standard A (dB) | Standard B (dB) |
| Operation below 5,000 MHz: | | |
| 5° up to, not including 10° | 23 | 20 |
| 10° up to, not including 15° | 29 | 24 |
| 15° up to, not including 20° | 33 | 28 |
| 20° up to, not including 30° | 36 | 32 |
| 30° up to, not including 100° | 42 | 32 |
| 100° up to, including 180° | 55 | 32 |
| Operation at 5,000 MHz or above: | | |
| 5° up to, not including 10° | 25 | 20 |
| 10° up to, not including 15° | 29 | 24 |
| 15° up to, not including 20° | 33 | 28 |
| 20° up to, not including 30° | 36 | 32 |
| 30° up to, not including 100° | 42 | 35 |
| 100° up to, including 180° | 55 | 36 |

(d) In cases where passive reflectors are employed in conjunction with transmitting antenna systems, the foregoing paragraphs of this section also shall be applicable thereto. However, in such instances, the center of the major lobe of radiation from the antenna normally shall be directed at the passive reflector, and the center of the major lobe of radiation from the passive reflector directed toward the receiving station with which it communicates.

(e) No directional transmitting antenna utilized by a station operating in the band 5925–6425 MHz shall be aimed within 2° of the geostationary satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible interference to an authorized satellite system, said transmission path may be authorized on a waiver basis where the maximum value of equivalent isotropically radiated power does not exceed: (1) 47 dBW for any antenna beam directed within 0.5° of the stationary satellite orbit or (2) 47 to 55 dBW, on a linear decibel scale (8 db per degree) for any antenna beam directed between 0.5° and 1.5° of the stationary orbit. [Methods of calculating azimuths to be avoided may be found in: CCIR Report #393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for Controlled Inference With Geostationary Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Volume 48, No. 10, pages 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, D.C., 1972. This latter report and a card deck of the program itself are available through the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151, as report numbers PB–211–500, and PB–211–501.]

### § 22.109 Antenna and antenna structures.

(a) In the event harmful interference is caused to the operation of other stations, the Commission may, after notice and opportunity for hearing, order changes to be made in the height, orientation, gain and radiation pattern of the antenna system.

(b) No replacement or change of antenna or antenna structure shall be effected, except as noted below, without prior authorization from the Commission if after such replacement or change, there would be an increase in the gain of the antenna in any direction or increase in the overall structure height: *Provided, however,* That changes may be made without prior authorization from the Commission where: The power gain in any direction is not decreased by more than 1.5 dB below that specified in the application for which authorization was issued; antenna height changes or corrections do not vary more than 2 feet from the height authorized and do not increase the overall structure height; or antenna directivity changes do not vary more than 1° from the values authorized. Within 30 days after making any changes not requiring prior authorization the licensee shall report the same to the Commission and to the Engineer in Charge of its district with complete technical details including a computation of the effective radiated power and all other pertinent information together with the certification of the person responsible for preparing the information (c.f. §§ 22.15(g) and 22.121(c)).

(c) The Commission may require the replacement, at the licensee's expense, of any antenna or periscope antenna system of a permanent fixed station operating at 2500 MHz or higher which does not meet performance Standard A specified in § 22.108(c), upon a showing that said antenna causes or is likely to cause interference to (or receive interference from) any other authorized or proposed station whereas an antenna meeting performance Standard A is not likely to involve such interference.

(d) No replacement or change of antenna or antenna structure shall be effected without prior authorization from the Commission except as provided for under this section.

### § 22.110 Antenna polarization.

(a) Stations operating in the 72–76 MHz band, each base, mobile dispatch and auxiliary test station operating in the Domestic Public Land Mobile Radio Service and all classes of stations in the Offshore Radio Telecommunications Service shall employ an antenna which radiates a signal, the electrical component of which is vertically polarized.

(b) Unless otherwise authorized, each station operating on frequency below 512 MHz (other than base, mobile, dispatch, and auxiliary test stations in the Domestic, all classes of stations in the Offshore Radio Telecommunications Service, and stations operating in the 72–76 MHz band) shall employ an antenna which radiates a signal, the electrical component of which is horizontally polarized: *Provided, however,* That rural subscriber stations communicating with base stations may employ vertical polarization.

(c) Upon a satisfactory showing in each case that improved transmission will result and potentially harmful interference to other radio installations would be reduced, the Commission may

authorize a station operating on frequencies below 512 MHz (other than base, mobile and auxiliary test stations in the Domestic Public Land Mobile Radio Service, all class of stations in the Offshore Radio Telecommunications Service, and stations in the 72–76 MHz band) to employ an antenna which radiates a signal, the electrical component of which is circularly or otherwise polarized.

(d) Stations operating in the Domestic Public Radio Services above 890 MHz are not limited as to the type of polarization of the radiated signal: *Provided, however,* That in the event harmful interference is caused to the operation of other stations, the Commission may, after notice and oportunity for hearing, order the licensee to change the polarization of the radiated signal. No change in polarization shall be made without prior authorization from the Commission.

**§ 22.111 Simultaneous use of common antenna structure.**

The simultaneous use of common antenna structures by more than one domestic public radio station, or by one or more domestic public radio stations and one or more stations of any other class or service, may be authorized: *Provided, however,* That each permittee, licensee or user of any such structure is responsible for maintaining the structure, and for painting and illuminating the structure when obstruction marking is required by the Commission. (See § 22.15(d) and § 22.109(b).)

**§ 22.112 Marking of antenna structures.**

No permittee or licensee who has been required to paint or light an antenna structure shall discontinue the required painting or lighting without having obtained prior written authorization therefor from the Commission. (For complete regulations relative to antenna marking requirements, see Part 17 of this chapter.)

**§ 22.113 Quiet zones.**

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to radio frequency interference. The areas involved and procedures required are as follows:

(a) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia, any applicant for a station authorization other than mobile, temporary base, or temporary fixed seeking authorization for a new station or to modify an existing station in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical particulars of the proposed operation. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity (if any), proposed frequency, type of emission, and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that field strengths at 40°07′50″ N. latitude, 105°14′40″ W. longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

| | Field strength (mV/m) in authorized bandwidth of service | Power flux density [1] (dBW/m [2]) in authorized bandwidth of service |
|---|---|---|
| Below 540 kHz | 10 | −65.8 |
| 540 to 1600 kHz | 20 | −59.8 |
| 1.6 to 470 MHz | 10 | 2−65.8 |
| 470 to 800 MHz | 30 | 2−56.2 |
| Above 800 MHz | 1 | 2−85.8 |

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7=120 π ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plan of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plan of polarization in the azimuthal direction of Table Mountain Radio Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plan of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder CO 80303; telephone 303–499–1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the reference point in excess of the field strength specified herein.

**§ 22.114 Temporary fixed antenna height restrictions.**

The overall antenna structure heights employed by stations authorized to operate at temporary fixed locations

shall not exceed the height criteria set forth in § 17.7 of this chapter, unless in each instance, authorization for use of a specific maximum antenna height (above ground and above mean sea level) for each location has been obtained from the Commission prior to erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter.)

**§ 22.115 Method of determining average terrain elevation.**

In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for 8 radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45 degrees of azimuth starting with True North. At least one radial must include the principal community to be served even though such community may be more than 10 miles from the antenna site. Additionally, where feasible, radials should be drawn in the direction of any co-channel stations which are authorized within 75 miles of the antenna site. However, in the event none of the evenly spaced radials include the principal community to be served, or are in the direction of co-channel stations, such additional radials shall not be employed in computing the elevation of average terrain. Where the 2 to 10 mile portion of a radial extends in whole or in part over large bodies of water (e.g., ocean areas, gulfs, sounds, bays, large lakes, etc., but not rivers) or extends over foreign territory but the field intensity contour defining the limit of the service area in that direction encompasses land area within the United States (or territory under its jurisdiction) beyond the 10 mile portion of the radial, the entire 2 to 10 mile portion of the radial shall be included in the computation of elevation of average terrain. However, where the field intensity contour defining the limit of the service area in that direction does not so encompass United States land area (or territory under its jurisdiction) and (1) the entire 2 to 10 mile portion of the radial extends over large bodies of water or foreign territory, such radial shall be completely omitted from the computation of elevation of average terrain, and (2) where a part of the 2 to 10 mile portion of a radial extends over large bodies of water or over foreign territory, only that part of the radial extending from the 2 mile sector to the outermost portion of land area within the United States (or territory under its jurisdiction) covered by the radial shall be employed in the computation of elevation of average terrain. The profile graph for each radial should be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. In instances of very rugged terrain where the use of contour intervals of 100 feet would result in several points in a short distance, 200 or 400 foot contour intervals may be used for such distances. On the other hand, where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map should be used, although only relatively few points may be available. The profile graphs should indicate the topography accurately for each radial, and the graphs should be plotted with the distance in miles as the abscissa and the elevation in feet above mean sea level as the ordinate. The profile graphs should indicate the source of the topographical data employed. The graph should also show the elevation of the center of the radiating system. The graph may be plotted either on rectangular coordinate paper or on special paper which shows the curvature of the earth. It is not necessary to take the curvature of the earth into consideration in this procedure. The average elevation of the 8 mile distance between 2 and 10 miles from the antenna site should then be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded for 50 percent of the distance) in sectors and averaging those values.

**§ 22.116 Topographical data.**

In the preparation of the profile graphs described in § 22.115, and in determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. Ordinarily, the Commission will not require the submission of topographical maps for areas beyond 15 miles from the antenna site, but the maps must include the principal community to be served. If it appears necessary, additional data may be requested. United States Geological Survey Topographic Quadrangle Maps may be obtained from the Department of the Interior, Geological Survey, Washington, D.C., 20242. Sectional Aeronautical Charts are available from the Department of Commerce, Coast and Geodetic Survey, Washington, D.C., 20230.

**§ 22.117 Transmitter location.**

(a) Where appropriate to the kind of service to be afforded, the transmitter location should be as near to the center of the proposed service area as possible, consistent with the applicant's ability to find a site with sufficient elevation to provide reliable service throughout the area. Location of the antenna at a high point of elevation is desirable to reduce to a minimum the transmission shadow effect due to hills, buildings or other obstructions which may reduce materially the intensity of the station's signals in a particular direction. The transmitting site should be selected consistent with the purpose of the station, i.e., whether it is intended to serve a small city, a metropolitan area, a large region, or specified fixed points of communication. In providing the best service to an area, it is usually preferable to use a high antenna with low power rather than a lower antenna with higher power. The location should be so chosen that line-of-sight can be obtained from the antenna over the principal cities or specified fixed points of communication to be served.

(b) The transmitting location of a base station should be selected so that the area of interference-free service encompasses the urban population within the area to be served. It is recognized that topography, shape of the desired service area, and population distribution may make the choice of a transmitter location difficult. In such cases, consideration may be given to the use of a directional antenna system although it is generally preferable to choose a site where a nondirectional antenna may be employed.

(c) The applicant shall determine, prior to filing an application for a radio station authorization, that the antenna site specified therein is adequate to

render the service proposed. In cases of questionable antenna locations, it is desirable to conduct propagation tests to indicate the field intensity which may be expected in the principal areas or at the fixed points of communication to be served, particularly where severe shadow problems may be expected. In considering applications proposing the use of such locations, the Commission may require site survey tests to be made pursuant to a developmental authorization in the particular service concerned. In such cases, propagation tests should be conducted in accordance with recognized engineering methods and should be made with a transmitting antenna simulating, as near as possible, the proposed antenna installation. Full data obtained from such surveys and its analysis, including a description of the methods used and the name, address and qualifications of the engineer making the survey, must be supplied to the Commission.

(d) Antenna structures should be so located and constructed as to avoid making them hazardous to air navigation. (See Part 17 of this chapter for provisions relating to antenna structures.) Such installation shall be maintained in good structural condition together with any required painting or lighting.

**§ 22.118 Transmitter construction and installation.**

(a) The equipment at the operating and transmitting positions shall be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee. In general, each transmitter used in the Domestic Public Radio Services shall be so constructed or installed that all controls thereon which may cause off-frequency operation or result in any unauthorized emission shall be protected from access by other than duly authorized holders of first- or second-class radio operator licenses.

(b) In any case where the maximum modulating frequency of a transmitter is prescribed by the Commission, the transmitter shall be equipped with a low-pass or band-pass modulation filter of suitable performance characteristics. In those cases where a modulation limiter is employed, the modulation filter shall be installed between the transmitter stage in which limiting is effected and the modulated stage of the transmitter. (See also §§ 22.508(e) and 22.605(d).)

(c) Each transmitter, other than a hand-carried or pack-carried transmitter, employed in these services shall be equipped with an appropriately labeled pilot lamp or meter which will provide continuous visual indication at the transmitter when its control circuits have been placed in a condition to activate the transmitter. In addition, facilities shall be provided at each transmitter to permit the transmitter to be turned on and off independently of any remote control circuits associated therewith.

(d) Each base station in these services is required to have:

(1) At least one control point (see § 22.515); and

(2) A person on duty at the control point who is in charge of the station's operations during the normal rendition of service (see § 22.205). The location of an authorized control point may not be moved beyond the boundary of the city, borough, town or community without prior Commission approval. Any associated changes made in the dispatching arrangments should accompany the application for change in such cases.

(e) At each transmitter control point the following facilities shall be installed:

(1) A carrier operated device which will provide continuous visual indication when the transmitter is radiating, or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter control circuits have been placed in a condition to activate the transmitter: *Provided, however,* That the provisions of this subparagraph shall not apply to hand-carried or pack-carried transmitters.

(2) Facilities which will permit the operator to turn transmitter carrier on and off at will.

(f) Transmitter control circuits from any control point shall be so installed that grounding or shorting any line in the control circuit will not cause the transmitter to radiate: *Provided, however,* That this provision shall not be applicable to control circuits of stations which normally operate with continuous radiation or to control circuits which are under the effective operational control of responsible operating personnel 24 hours per day.

**§ 22.119 Limitation on use of transmitters for other services.**

Transmitters licensed for operation in services governed by this part may not be concurrently licensed or used for non-common carrier communication purposes. However, mobile units may be concurrently licensed or used for non-common carrier communication purposes provided that the transmitter is type-accepted for use in each service.

**§ 22.120 Type acceptance of transmitters.**

(a) Except for transmitters used at developmental stations, each transmitter shall be of a type which has been type accepted by the Commission for use under the applicable rules of this part.

(b) Any manufacturer of a transmitter to be produced for use under the rules of this part may request type acceptance by following the type acceptance procedure set forth in Part 2 of this chapter. Type accepted transmitters are included in the Commission's "Radio Equipment List". Copies of this list are available for inspection at the Commission's Office in Washington, D.C., and at each of its field offices.

(c) Type acceptance for an individual transmitter may also be requested by an applicant for a station authorization, pursuant to the type acceptance procedure set forth in Part 2 of this chapter. An individual transmitter will not normally be included in the Radio Equipment List, but will be enumerated on the station authorization.

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890–940 MHz band and has not been type accepted may continue to be used by the licensee without type acceptance provided such transmitter continues otherwise to comply with the applicable rules and regulations of the Commission.

**§ 22.121 Replacement of equipment.**

(a) The licensee of a station in this service may replace a transmitter without specific authorization by notifying the Commission at Washington, D.C. 20554, and its Engineer in Charge of the radio district wherein operation is to be conducted, at the time of the installation of the transmitter, if the replacement transmitter complies with the following conditions:

(1) Appears on Commission's current type-acceptance list for use under this Part 22 (see § 22.120) and is installed without modification.

(2) Its type-accepted output power is equal to the authorized output power for the transmitter being replaced.

(3) Conforms to the frequency, class of station and emission specified in the current instrument of authorization and all other applicable rules and regulations.

(b) For all transmitter replacements made pursuant to paragraph (a) of this section, any changes in input power, make and type of transmitting equipment must also be indicated on the next application for renewal of license or in the next application for modification of license, whichever is

filed first. Requests for authority to make other changes in equipment shall be submitted to the Commission in appropriate applications and replacements which require applications may not be made until an authorization has been issued by the Commission. Notification is not required for a replacement which conforms in all respects to the authorized transmitter.

(c) The notification required by paragraph (a) of this section shall include:

(1) Radio service and station call sign.

(2) Location of replacement transmitter as shown on current license.

(3) Name of the manufacturer and type number of transmitter installed, as it appears on the current type-acceptance list.

(4) Rated output power of such transmitter.

(5) Identification of the transmitter being replaced (and where applicable, point(s) of communication) and the frequency on which such transmitter operates.

(6) Date of replacement.

(d) The permitter or licensee of a station in this service may replace or change equipment, other than that specified in §§ 22.109(a) and 22.121(a), including the transmission line and other devices between the transmitter and antenna if, after such change or addition the effective radiated power of the station in any direction is not decreased by more than 1.5 dB below that specified in the application for which authorization was issued. Prior authorization from the Commission is required if, after such changes the effective radiated power in any direction would be increased. Within 30 days after making any changes not requiring prior authorization, the permittee or licensee shall report the same to the Commission and to the Engineer in Charge of its district with complete technical details including a computation of the effective radiated power and all other pertinent information together with the certification of the person responsible for preparing the information (c.f. §§ 22.15 and 22.121(c)).

### § 22.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in hertz (e.g., to be acceptable, equipment transmitting at a 20 MB/s rate must not require a bandwidth of greater than 20 MHz).

(2) Equipment to be used for voice transmission shall be capable of satifactory operation within the authorized bandwidth to encode at least the following number of voice channels:

| Frequency range: | Number of encoded voice channels |
|---|---|
| 2110 to 2130 MHz | 96 |
| 2160 to 2180 MHz | 96 |
| 3700 to 4200 MHz | 1,152 |
| 5925 to 6425 MHz | 1,152 |
| 10,700 to 11,700 MHz | 1,152 |

(3) The required minimum number of channels shown in paragraph (a)(2) of this section may be reduced by a factor 1/N provided that N transmitters may be operated satisfactorily within an authorized bandwidth less than, or equal to, the maximum authorizable bandwidth over the same radio path (e.g. (1) the 1152 channels requirement may be reduced to 576 if two transmitters can be satisfactorily operated over the same path within a 40 MHz maximum bandwidth for the 11 GHz band or (2) reduced to 288 channels if four transmitters can be satisfactorily accommodated within this bandwidth). Applications submitted for equipment type acceptance designed to operate in this mode must include data which will demonstrate successful operation under typical transmission conditions. Where type accepted equipment is designed to operate on the same frequency in a cross-polarized configuration to meet the above capacity requirements, the Commission will require, at the time additional transmitters are authorized, that both polarizations of a frequency be used before a new frequency assignment is made, unless a single transmitter installation was found to be justified by the Commission at the time it authorized the first transmitter.

(b) For purposes of compliance with the emission limitation requirements of Section 22.106(a)(2) of this part and the requirements of paragraph (a) of this section, digital modulation techniques are considered as being employed when digital modulation contributes 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation shall be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal shall be determined in accordance with Section 2.202(f) of Part 2 of this chapter.

(c) Transmitters employing digital modulation techniques shall effectively eliminate carrier spikes or single frequency tones in the output signal to the degree which would be obtained without repetitive patterns occurring in the signal.

(d) Transmitters type accepted for use with digital modulation prior to November 1, 1974 may continue to be used where authorized until December 31, 1976. After the latter date, such equipment will no longer be type accepted for digital modulation unless it is type accepted for such use after November 1, 1974.

## Subpart D—Technical Operation

### § 22.200 Station inspection.

The licensee of each station authorized in the Domestic Public Radio Services shall make the station and station records available for inspection by representatives of the Commission at any reasonable hour.

### § 22.201 Posting of station authorizations.

(a) The station permit, license or other authorization shall be posted at the authorized control point of the station, or, if none, at the station location. A photocopy may be posted in lieu of the original authorization if it is certified as to authenticity by an officer or duly authorized employee of the licensee or permittee and if it is annotated with the location of the original. If not posted at the station or a control point, the original authorization shall be posted at the licensee's alarm center or maintenance facility responsible for the station. (See also § 1.62 of this chapter.)

(b) If the station is authorized for mobile operation or for operation at temporary fixed locations, the documents specified in paragraph (a) of this section shall be retained as a permanent part of the station record, but need not be posted.

### § 22.202 [Reserved]

### § 22.203 Posting of operator licenses.

(a) Whenever a licensed radio operator is required for the operation of a radio station, the license of each operator, other than an operator exclusively performing service and maintenance duties, shall be posted or kept immediately available at the place where he is on duty as an operator: *Provided, however,* That if an operator who is on duty holds a restricted radiotelephone operator permit of the card form (as distinguished from such document of the diploma form) or holds a valid license verification card (FCC Form 758-F) attesting to the existence of any other valid commercial radio

operator license, he may have such permit or verification card in his personal possession or otherwise immediately available at the place where he is on duty as an operator.

(b) The license of every station operator who performs service and maintenance duties exclusively at that station shall be posted at the transmitter involved whenever the transmitter is in actual operation while service or maintenance work is being performed by him or under his immediate supervision and responsibility: *Provided,* That in lieu of posting his license, he may have on his person his license or a valid verification card.

**§ 22.204 FCC publication required for reference.**

For reference purposes, the permittee or licensee of radio facilities in the Domestic Public Radio Services shall maintain and have available at the principal control point, or alarm center, or at the transmitter location, or maintenance center for the station, a current copy of this Part 22 (available at the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402).

Note.—It is suggested that the following additional documents be obtained from the Government Printing Office and maintained for reference:

(1) Communications Act of 1934, as amended.

(2) Part 1 of this chapter, Practice and Procedure.

(3) Part 2 of this chapter, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

(4) Part 13 of this chapter, Commercial Radio Operators.

(5) Part 17 of this chapter, Construction, Marking, and Lighting of Antenna Structures.

(6) Part 25 of this chapter, Satellite Communications.

(7) Part 42 of this chapter, Preservation of Records of Communication Common Carriers.

(8) Part 61 of this chapter, Tariffs.

(9) Part 63 of this chapter, Extension of Lines and Discontinuance of Service by Carriers.

**§ 22.205 Operator requirements.**

(a) Any person in charge of a radio station in these services shall be competent to maintain proper radio logs and records relative to such operations where they are required.

(b) When a radio station is radiating all adjustments or tests during or coincident with the installation and servicing or maintenance of the transmitter and its associated radio equipment which may affect the quality of transmission or possibly cause the station radiation to exceed the limits specified in its instrument of authorization or in the rules pertaining to such station shall be made by or under the immediate supervision and responsibility of a person holding a first- or second-class commercial radio operator license (either radiotelephone or radiotelegraph, or both, as may be appropriate for the type of emission being used), who shall be responsible for the proper functioning of the radio facilities.

(c) When a radio station is not radiating any person may perform the functions set forth in paragraphs (a) and (b) of this section without direct supervision after having been authorized to do so by the station licensee. The facilities shall thereafter initially be placed in operation and be determined to be operating properly by a first- or second-class licensed commercial radio operator.

(d) In all cases, except where manual radiotelegraph keying is employed, the person responsible for the technical installation, servicing and maintenance of a radio station in these services shall hold a first- or second-class commercial radiotelephone or radiotelegraph license issued by the Commission.

(e) Where manual radiotelegraph keying is employed exclusively, the person responsible for the technical installation, servicing and maintenance of a radio station in these services shall hold a first- or second-class commercial radiotelegraph operator license issued by the Commission.

(f) In cases where manual radiotelegraph keying and other types of radio transmission are employed, the person responsible for the technical installation, servicing and maintenance of a radio station in these services shall hold a commercial radiotelegraph operator license of first- or second-class.

(g) During the course of normal rendition of service, a station employing manual radiotelegraph keying shall be operated only by a person holding a commercial radiotelegraph operator license or radiotelegraph operator permit issued by the Commission. Persons not holding such authorizations are forbidden to manipulate a manually operated telegraph key at such stations during periods of station operation.

(h) Any person may, after obtaining permission from the station licensee, operate the following types of stations during the course of normal rendition of service, under the circumstances set forth below:

(1) A mobile station, when communicating with or through a base station in the Domestic Public Land Mobile Radio Service.

(2) A rural subscriber or mobile station in the Rural Radio Service.

(3) Central office stations, inter-office stations, auxiliary test stations, and base stations, including radio stations which may be associated therewith.

(i) [Reserved]

(j) Developmental stations shall be operated during the course of normal rendition of service under the effective operational control of a person holding a first- or second-class commercial radiotelephone or radiotelegraph operator license issued by the Commission.

(k) Notwithstanding any other provisions of this section, unless the transmitter and its associated equipment is so designed that none of the operations necessary to be performed during the course of normal rendition of service may cause off-frequency operation or result in any unauthorized radiation, such transmitter shall be operated by a person holding a first- or second-class commercial radio operator license, either radiotelephone or radiotelegraph, as may be appropriate for the type of emission being used.

(l) Except under the circumstances specified in paragraphs (g) through (j) of this section, during the course of normal rendition of service, no person is required to be in attendance at a station installed at a specified fixed location provided (1) licensed radio personnel responsible for the maintenance of the radio station are continuously available on call at a location which will assure expeditious performance of such technical servicing and maintenance as may be necessary, and (2) the quality of transmission over such station is subject to the supervision of the licensee's responsible operating personnel for the radio system with which the unattended station is directly associated.

(m) The provisions of paragraph (h) of this section authorizing certain unlicensed persons to operate radio stations shall not be construed to change or diminish in any respect the responsibility of station licensees to have and to maintain effective operational control over the stations operating under their license (including all transmitter units thereof), or for the proper functioning of those stations in accordance with the terms of the instrument of authorization and applicable rules and regulations.

(n) [Reserved]

(o) A licensee of radio facilities in these services is required to have available on call at all times (either as an employee or through appropriate contractual arrangement with a person holding the requisite class of radio operator license) a licensed first- or second-class commercial radio operator (either radiotelephone or radiotelegraph,

as may be appropriate for the type of emission being used) to perform necessary technical servicing and maintenance of the radio facilities expeditiously.

**§ 22.206 Inspection and maintenance of antenna structure marking and lighting, and associated control equipment.**

The licensee of any radio station which has an antenna structure required to be painted and illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and Part 17 of this chapter, shall perform the inspection and maintain the tower marking and lighting and associated control equipment in accordance with the requirements set forth in Part 17 of this chapter.

**§ 22.207 Transmitter measurements.**

(a) The licensee of each station shall employ a suitable procedure to determine that the carrier frequency of each transmitter operating in these services is maintained within the tolerance prescribed in § 22.101 or in the instrument of station authorization. The determination shall be made, and the results thereof entered in the technical log of the station, in accordance with the following:

(1) When the transmitter is initially installed.

(2) When any change is made in the transmitting equipment which may affect the carrier frequency or the stability thereof.

(3) At intervals not to exceed one year, for transmitters employing crystal-controlled oscillators, or oscillators regulated by temperature-controlled or temperature-compensated cavities.

(4) At intervals not to exceed one month, for transmitters not employing crystal-controlled oscillators, or oscillators regulated by temperature-controlled or temperature-compensated cavities.

(b) The permittee or licensee of each station shall employ a suitable procedure to determine that the power of each transmitter which operates below 512 MHz from a specified fixed location conforms to the requirements of the station authorization and the rules of this part. Where the transmitter is so constructed that a direct measurement of plate current in the final radio stage is not practicable, the power may be determined from a measurement of the cathode current in the final radio stage. When the power is determined from a measurement of the cathode current, the required record entry shall indicate clearly the quantities that were measured, the measured values thereof, and the method of determining the power from the measured values. This determination shall be made, and the results thereof entered in the technical log of the station in accordance with the following:

(1) When the transmitter is initially installed.

(2) When any change is made in the transmitter which may cause the power to deviate by more than 20 percent above and 25 percent below the authorized power specified in the instrument of station authorization.

(3) At intervals not to exceed one year.

(c) The permittee or licensee of each station shall employ a suitable procedure to determine that the modulation characteristics of each transmitter and the signal radiated therefrom conform to the terms of the instrument of station authorization and to the applicable rules of this part. This determination shall be made, and the results thereof entered in the technical log of the station in accordance with the following:

(1) When the transmitter is initially installed.

(2) When any change is made in the transmitter which may affect the modulation characteristics.

(3) At intervals not to exceed one year.

(d) In the case of mobile transmitters, the determinations required by paragraphs (a) and (c) of this section may be made at a test or service bench: *Provided,* That the measurements are made under load conditions equivalent to actual operating conditions: *And provided further,* That after installation in the mobile unit, the transmitter is given a routine check to determine that it is capable of being received satisfactorily by an appropriate receiver.

(e) The determinations required by paragraphs (a), (b), (c), and (d) of this section shall be made by, or under the immediate supervision of, a person holding a first- or second-class commercial radio operator license who shall authenticate the accuracy of such entries by signing his name in the technical log of the station together with the class, serial number and expiration date of his license: *Provided, however,* That the licensee of the station may optionally have the required determinations made by any qualified engineering measurement service, in which case the required record entries shall also show the name and address of the engineering measurement service.

(f) The use of a frequency monitor in lieu of frequency checks will be recorded in the station log in the same manner and at the same intervals as required in paragraph (a) (3) or (4) of this section. Where automatic frequency monitors are employed which have an accuracy of at least one-half of the required frequency tolerance of the transmitters with which they are associated, their use shall be deemed to meet the frequency checking requirements for the period during which they were so used.

**§ 22.208 Station records.**

(a) Station records shall be kept in an orderly manner, and in such detail that the data required is readily available. Key letters, abbreviations or symbols may be used if proper meaning or explanation is set forth in the record.

(b) Each entry in the records of a station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.

(c) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the person originating the entry who shall strike out the erroneous portion, initial the correction made and indicate the date of correction.

(d) The records required by this part shall be retained for a period of at least one year: *Provided,* That:

(1) Records involving communications incident to a disaster or which include communications incident to, or involved in, an investigation by the Commission and concerning which the licensee has knowledge, shall be retained by the licensee until specifically authorized in writing by the Commission to destroy them.

(2) Records incident to or involved in any claim or complaint of which the licensee has knowledge shall be retained by the licensee until such claim or complaint has been fully satisfied or until the same has been barred by statute limiting the time for the filing of suits upon such claims.

(e) For each station in these services the licensee shall maintain a technical log of the station operation showing:

(1) The results and dates of the transmitter measurements required by § 22.207, and the information concerning the identity of the person making such measurements as required by § 22.207(e).

(2) Pertinent details concerning any servicing or maintenance performed on a transmitter which may affect its proper operation, including the date thereof, as well as the class, serial number and expiration date of the license of the responsible radio operator who shall authenticate the accuracy of such log by signing his name therein.

(3) Pertinent details concerning time and nature of any failure or erratic transmitter operation, including operation of automatic alarm facilities.

(f) For each station whose antenna structure is required to be illuminated, appropriate entries shall be made in the station's technical log in conformity with the requirements of Part 17 of this chapter.

(g) For each station which is required to maintain one or more control points, an operation log book shall be kept showing:

(1) The time and signature, upon entering upon duty at the station and again upon leaving duty, of the person or persons responsible for the operation of the transmitting equipment each day. Where the person responsible for the operation of the station is required to be a licensed radio operator, the log entry shall also show, on each signing in, the class, serial number, and expiration date of his operator license.

(2) The time and duration of each transmission and the identity of the station or point to which the transmission was directed: *Provided,* That in lieu thereof, a chronological record of such essential information in the form of traffic tickets, or on a separate sheet, is permissible. When such records are kept in lieu of entries in the operating log book, the minimum retention period shall be as prescribed in paragraph (d) of this section, provision for shorter retention periods in other parts of the Commission's rules notwithstanding.

(h) The log entries concerning the class, serial number and expiration date of the radio operator licenses of the persons responsible for the technical performance and operation of a station, as required by the rules of this part, are not required to be repeated in the case of persons who are regularly employed as operators on a full-time basis at the station. However, log entries shall be authenticated by the signature of such person.

(i) Each entry in the station log shall be legibly made: *Provided, however,* That in any case where it is impracticable to make such entries in the logs immediately, rough logs may be kept in the form of notes or memoranda which shall be transcribed into the station log as soon as possible by the person qualified to do so who has actual knowledge of such facts recorded. The person so transcribing shall authenticate the entries by signing the transcription.

**§ 22.209 Communications concerning safety of life and property.**

(a) Handling and transmission of messages concerning the safety of life or property which is in imminent danger shall be afforded priority over other messages.

(b) No person shall knowingly cause to be transmitted any false or fraudulent message concerning the safety of life or property, or refuse upon demand immediately to relinquish the use of a radio circuit to enable the transmission of messages concerning the safety of life or property which is in imminent danger, or knowingly interfere or otherwise obstruct the transmission of such messages.

**§ 22.210 Operation during emergency.**

The licensee of any station in these services may during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service in a manner other than that specified in the instrument of authorization: *Provided,* (a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission at Washington, D.C., and to the Engineer in Charge of the radio district in which the station is located, stating the nature of the emergency and the use to which the station is being put, and (b) that the emergency use of the station shall be discontinued as soon as substantially normal communication facilities are again available, and (c) that the Commission at Washington, D.C., and the Engineer in Charge shall be notified immediately when such special use of the station is terminated, and (d) that, in no event, shall any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law, and (e) that the Commission may, at any time, order the discontinuance of any such emergency communication.

**§ 22.211 Suspension of transmission.**

Transmission shall be suspended immediately upon detection by the station or operator licensee or upon notification by the Commission of a deviation from the technical requirements of the station authorization and shall remain suspended until such deviation is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission shall be suspended immediately after the emergency is terminated.

**§ 22.212 Equipment, service and maintenance tests.**

(a) When construction and installation or modification of a station has been completed in accordance with the terms of a construction permit, the technical provisions of the application therefor and the applicable provisions of this part, the permittee is authorized, during the term of such construction permit, to test the equipment for a period not to exceed 10 days, except that permittees of point-to-point microwave stations may conduct such tests for a period not to extend beyond the expiration date of the applicable construction permit: *Provided,* That:

(1) The Commission's Engineer in Charge of the radio district in which the station is located is notified not less than 2 days in advance of the date on which the transmitter will first be tested in such manner as to produce radiation, giving the name of the permittee, station location, call sign, frequencies, time and date on which tests are to be conducted.

(2) The Commission reserves the right to cancel, suspend, or change the date of beginning or duration of such tests when such action is in the public interest, convenience or necessity.

(3) All necessary precautions are taken to avoid interference to any other authorized station.

(4) No service to the public may be furnished over the facilities being tested during the equipment test period.

(b) When construction and equipment tests are completed in exact accordance with the terms of the construction permit, the technical provisions of the application therefor, and the other applicable provisions of this part, and after an application for station license has been filed with the Commission showing the station to be in satisfactory operating condition, the permittee is authorized to conduct service tests in exact accordance with the terms of the construction permit until the application for station license is granted or otherwise disposed of in accordance with the Commission's rules: *Provided,* That:

(1) The Commission's Engineer in Charge of the radio district in which the station is located is notified not less than 2 days in advance of the beginning of the tests of the time and date when such tests are scheduled to begin.

(2) The Commission reserves the right to cancel, suspend, or change the date of beginning or duration of such tests when such action is in the public interest, convenience or necessity.

(3) Service tests shall not commence after the expiration date of the construction permit.

(4) Charges for service furnished during the service test period shall be made, pursuant to the provisions of legally applicable tariffs (see § 61.62 of this chapter).

(c) When a construction permit and license, or a construction permit and modification of license are issued simultaneously for a mobile station, units of such station may be placed in operation without equipment and service test notification to the Commission's Engineer in Charge of the radio district in which the station is located, unless otherwise specifically required.

(d) The licensees of all stations in these services are authorized to make such test as may be necessary for the proper maintenance of the station provided, that all necessary precautions are taken to aviod interference with other authorized services. The time taken for such tests shall be held to a minimum.

(e) The authorization for tests embodied in paragraphs (a) and (b) of this section shall not be construed as constituting a license to operate but as a necessary part of the construction.

(f) Where a facility is to be constructed and operated pursuant to a temporary authorization, the Commission and the Engineer in Charge of the district in which the facility is located shall be notified upon commencement of operation.

**§ 22.213 Station identification.**

(a) Each station in these services, except as otherwise provided in this section, shall identify itself by transmitting its assigned call sign in connection with each communication or exchange of communication. In the event of a prolonged series of communications, a station shall identify itself at least every half hour. However, stations engaged in a public telephone message, telegram, radiophoto, or program transmission shall not be required to transmit identifying call signs when such identification would interrupt the continuity of the message, radiophoto, or program that is being transmitted. In any such case, the identifying call sign shall be transmitted immediately following the conclusion of the message, radiophoto or program: *Provided,* That the requirement for transmission of station identification is waived for fixed stations employing continuous radiation with multichannel or video transmission and for the exclusive channel common to all base stations which are specifically authorized to communicate with airborne stations in the Domestic Public Land Mobile Radio Service.

(b) In lieu of the use of an offical call sign, as prescribed in paragraph (a) of this section, a station may identify itself as follows:

(1) A mobile station in the Domestic Public Land Mobile Radio Service or Rural Radio Service may identify itself by the special mobile unit designation assigned by the licensee or its assigned telephone number, provided adequate records are maintained by the licensee to permit ready identification of the mobile station.

(2) A rural subscriber station may identify itself by its assigned telephone number, provided adequate records are maintained by the licensee to permit ready identification of the rural subscriber station.

(3) A station at a specified fixed location may identify itself by the nane of the city in which the station is located.

(4) A subscriber station in the Offshore Radio Telecommunications Service may identify itself by the special station designation assigned by the licensee or its assigned telephone number, provided adequate records are maintained by the licensee to permit ready identification of the subscriber station.

(5) An airborne station in the Domestic Public Land Mobile Radio Service may identify itself by either the official FAA registration number of the aircraft; special airborne unit designation assigned by the licensee; the assigned telephone number provided that adequate records are maintained by the licensee to permit ready identification of the airborne stations; or by a word designating the name of the airline followed by the scheduled flight number.

(c) Whenever it appears that the manner of identification used by a licensee in lieu of the official call sign is unsatisfactory, the Commission may require the licensee to change the method of station identification.

(d) Where transmission of station identification is required such transmission shall be capable of being received and understood at an appropriate receiver without the use of special channeling or transmission unscrambling devices: *Provided,* That:

(1) Where telephony is employed, station identification shall be by aural transmission or automatic tone signaling.

(2) Where telegraphy, radiophoto or facsimile transmission is employed, the station identification shall be transmitted at a speed not to exceed 25 words per minute at least 3 times in the International Morse Code as "QRA de" followed by the station call sign.

(3) Where television transmission is employed, station identification shall be transmitted either aurally or visually for a period of not less than 5 seconds, or via telegraphic transmission at a speed not to exceed 25 words per minute at least 3 times in the International Morse Code as "QRA de" followed by the station call sign.

**§ 22.214 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.**

Stations authorized to operate at temporary fixed locations shall not be used for transmissions between the United States and Canada, or the United States and Mexico, without prior specific notification to, and authorization from, the Commission. Notification of such intended usage of the facilities should include a detailed showing of the operation proposed, including the parties involved, the nature of the communications to be handled, the terms and conditions of such operations, the time and place of operation, such other matters as the applicant deems relevant, and a showing as to how the public interest, convenience and necessity would be served by the proposed operation. Such notification should be given sufficiently in advance of the proposed date of operation to permit any appropriate correlation with the respective foreign government involved (see § 22.611).

## Subpart E—Miscellaneous

**§ 22.300 Business records.**

Each licensee of radio facilities authorized under the rules of this part and required to file FCC Form L shall keep complete records of all phases of operations covered by such reports distinctly separate and apart from any other business or activity conducted by the licensee.

**§ 22.301 National defense; free service.**

Any common carrier authorized under the rules of this part may render to any agency of the United States Government free service in connection with the preparation for the national defense. Every such carrier rendering any such free service shall make and file, in duplicate, with the Commission, on or before the 31st of July and on or before the 31st of January in each year, reports covering the periods of 6 months ending on the 30th of June and the 31st of December, respectively, next prior to said dates. These reports shall show the names of the agencies to which free service was rendered pursuant to this rule, the general character of the communications handled for each

agency, and the charges in dollars which would have accrued to the carrier for such service rendered to each agency if charges for such communications had been collected at the published tariff rates.

**§ 22.302 Answers to notices of violation.**

Any person receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any other Federal statute or Executive Order pertaining to radio or wire communications or any international radio or wire communications treaty or convention, or regulations annexed thereto to which the United States is a party, or the rules and regulations of the Federal Communications Commission, shall, within 10 days from such receipt, send a written answer to the office of the Commission originating the official notice. If an answer cannot be sent or an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violation that may be due to the physical or electrical characteristics of transmitting apparatus, the answer shall state fully what steps have been taken to prevent future violations, and, if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given or, if a file number has not been assigned by the Commission, such identification as will permit ready reference thereto. If the notice of violation relates to inadequate maintenance resulting in improper operation of the transmitter, the name and license number of the operator performing the maintenance shall be given. If the notice of violation relates to some lack of attention to, or improper operation of, the transmitter by other employees, the reply shall set forth the steps taken to prevent a recurrence of such lack of attention or improper operation.

**§ 22.303 Discontinuance, reduction or impairment of service.**

(a) If the public communication service provided by a station in the Domestic Public Radio Services is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee shall promptly give notification thereof in writing to the Commission at Washington, D.C. 20554, and the Commission's Engineer in Charge of the radio district in which the station is located. In such cases, the licensee shall furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof shall be given in writing to the Commission at Washington, D.C. 20554, and the Commission's Engineer in Charge of the radio district in which the station is located.

(b) No station licensee subject to Title II of the Communications Act of 1934, as amended, shall voluntarily discontinue, reduce or impair public communication service to a community or part of community without obtaining prior authorization from the Commission pursuant to the procedures set forth in Part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee shall immediately give notification of the effective date thereof in writing to the Commission's Engineer in Charge of the radio district in which the station is located and shall promptly send the station license to the Commission at Washington, D.C., 20554, for cancellation.

(c) Any station licensee, not subject to Title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or part of a community shall give written notification to the Commission within 7 days thereof. In the event that service is permanently discontinued, the licensee shall give written notification thereof to the Commission's Engineer in Charge of the radio district in which the station is located and shall promptly send the station license to the Commission at Washington, D.C., 20554, for cancellation.

**§ 22.304 Tariffs, reports, and other material required to be submitted to the Commission.**

Part 1, of this chapter, beginning with § 1.771, contains a summary of certain material and reports, including, but not limited to schedule of charges and accounting and financial reports, which must be filed with or submitted to the Commission.

**§ 22.305 Reports required concerning amendments to charters and partnership agreements.**

Any amendments to charters, articles of incorporation or association, or partnership agreements shall promptly be filed at the Commission's main office in Washington, D.C. Such filing shall be directed to the attention of the Chief, Common Carrier Bureau.

**§ 22.306 Requirement that permittees and licensees respond to official communications.**

All permittees and licensees in these services are required to respond to official communications from the Commission with reasonable dispatch and according to the tenor of such communications. Failure to do so will be given appropriate consideration in connection with any subsequent applications which the offending party may file and may result in the designation of such applications for hearing, or in appropriate cases, the institution of proceedings looking to the modification or revocation of the pertinent authorizations.

**§ 22.307 Equal employment opportunities.**

(a) *General policy.* Equal opportunity in employment shall be afforded by all common carrier licensees or permittees to all qualified persons, and no personnel shall be discriminated against in employment because of sex, race, color, religion, or national origin.

(b) *Equal employment opportunity program.* Each licensee or permittee shall establish, maintain, and carry out, a positive continuing program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice. Under the terms of its program, a licensee or permittee shall:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to sex, race, color, religion, or national origin, and solicit their recruitment assistance on a continuing basis.

(4) Conduct a continuing campaign to exclude every form of prejudice or

discrimination based upon sex, race, color, religion, or national origin, from the licensee's or permittee's personnel policies and practices and working conditions.

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed in order to insure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

(c) *Additional information to be furnished to the Commission.* (1) Equal Employment Programs to be filed by common carrier licensees or permittees.

(1) All licensees or permittees will file a statement of their equal employment opportunity program not later than December 17, 1970, indicating specific practices to be followed in order to assure equal employment opportunity on the basis of sex, race, color, religion, or national origin in such aspects of employment practices as regards recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination.

(*a*) Any changes or amendments to existing programs should be filed with the Commission on April 1 of each year thereafter.

(*b*) If a licensee or permittee has fewer than 16 full-time employees, no such statement need be filed.

(2) The program should reasonably address itself to such specific areas as set forth below, to the extent that they are appropriate in terms of licensee size, location, etc.

(i) *To assure nondiscrimination in recruiting.* (*a*) Posting notices in the licensee's or permittee's offices informing applicants for employment of their equal employment rights and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency. Where a substantial number of applicants are Spanish-surnamed Americans such notice should be posted in Spanish and English.

(*b*) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission or other appropriate agency if they believe they have been discriminated against.

(*c*) Placing employment advertisements in media which have significant circulation among minority-group people in the recruiting area.

(*d*) Recruiting through schools and colleges with significant minority group enrollments.

(*e*) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants.

(*f*) Encouraging present employees to refer minority or female applicants.

(*g*) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members are being sought for consideration whenever the licensee hires.

(ii) *To assure nondiscrimination in selection and hiring.* (*a*) Instructing personally those on the staff of the licensee or permittee who make hiring decisions that all applicants for all jobs are to be considered without discrimination.

(*b*) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements.

(*c*) Avoiding use of selection techniques or tests which have the effect of discriminating against minority groups or females.

(iii) *To assure nondiscriminatory placement and promotion.* (*a*) Instructing personally those of the licensee's or permittee's staff who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination.

(*b*) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower-paid employees with respect to any of the higher-paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions.

(*c*) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect.

(*d*) Avoiding use of selection techniques or tests, which have the effect of discriminating against minority groups or females.

(iv) *To assure nondiscrimination in other areas of employment practices.* (*a*) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found.

(*b*) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority groups or female employees.

(d) *Report of complaints filed against licensees and permittees.* (1) All licensees or permittees shall submit an annual report to the FCC no later than May 31 of each year indicating whether any complaints regarding violations by the licensee or permittee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.

(i) The report should state the parties involved, the date filing, the courts or agencies before which the matters have been heard, the appropriate file number (if any), and the respective disposition or current status of any such complaints.

(ii) Any licensee or permittee who has filed such information with the EEOC need not do so with the Commission, if such previous filing is indicated.

(e) *Complaints of violations of Equal Employment Programs.* (1) Complaints alleging employment discrimination against a common carrier licensee will be considered by the Commission in the following manner:

(i) If a complaint raising an issue of discrimination is received against a licensee or permittee who is within the jurisdiction of the EEOC, it will be submitted to that agency. The Commission will maintain a liaison with that agency which will keep the Commission informed of the disposition of complaints filed against any of the common carrier licensees.

(ii) Complaints alleging employment discrimination against a common carrier licensee or permittee who does not fall under the jurisdiction of the EEOC but is covered by appropriate enforceable State law, to which penalties apply, may be submitted by the Commission to the respective State agency.

(iii) Complaints alleging employment discrimination against a common carrier licensee or permittee who does not fall under the jurisdiction of the EEOC or an appropriate State law, will be accorded appropriate treatment by the FCC.

(iv) The Commission will consult with the EEOC on all matters relating to the evaluation and determination of compliance by the common carrier licensees or permittees with the principles of equal employment as set forth herein.

(2) Complaints indicating a general pattern of disregard of equal employment practices which are received against a licensee or permittee who is required to file an employment

report to the Commission under § 1.815(a) of this chapter, will be investigated by the Commission.

(f) *Records available to public*—(1) *Commission records.* A copy of every annual employment report, equal employment opportunity program, and reports on complaints regarding violation of equal employment provisions of Federal, State, Territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(2) *Records to be maintained locally for public inspection by licensees or permittees*—(i) *Records to be maintained.* Each licensee or permittee required to file annual employment reports, equal employment opportunity programs, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, Territorial, or local law shall maintain, for public inspection, in the same manner and in the same locations as required for the keeping and posting of tariffs as set forth in § 61.72 of this chapter, a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference.

(ii) *Period of retention.* The documents specified in subdivision (i) of this subparagraph shall be maintained for a period of 2 years.

## Subpart F—Developmental Authorizations

### § 22.400 Eligibility.

Developmental authorizations for stations in the Domestic Public Radio Services will be issued only to existing and proposed communication common carriers who are legally, financially and otherwise qualified to conduct experimentation utilizing hertzian waves for the development of engineering or operational data, or techniques, directly related to a proposed Domestic Public Radio Service or to a regularly established radio service regulated by the rules of this part.

### § 22.401 Scope of service.

Developmental authorizations may be issued for:

(a) Field strength surveys relative to or precedent to the filing of applications for construction permits, in connection with the selection of suitable locations for stations proposed to be established in any of the regularly established radio services regulated by the rules of this part; or

(b) [Reserved]

(c) Development of proposed Domestic Public Radio Services to be governed by the rules and regulations of this part.

### § 22.402 Adherence to program of research and development.

The program of research and development, as stated by an applicant in the application for construction permit or license or stated in the instrument of station authorization, shall be substantially adhered to unless the licensee is otherwise authorized by the Commission.

### § 22.403 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.

(a) An authorization for the development of a new common carrier service not in accordance with the provisions of the rules in this part may be granted for a limited time, but only after the Commission has made a preliminary determination with respect to the factors set forth in this paragraph, as each case may require. This procedure also applies to any application that involves use of a frequency which is not in accordance with the provisions of the rules in this part, although in accordance with the Table of Frequency Allocations contained in Part 2 of this chapter. (An application which involves use of a frequency which is not in accordance with the Table of Frequency Allocations in Part 2 of this chapter should be filed in accordance with the provisions of part 5 of this chapter, Experimental Radio Services (other than Broadcast).) The factors with respect to which the Commission will make a preliminary determination before acting on an application filed under this paragraph are as follows:

(1) That the public interest, convenience or necessity warrants consideration of the establishment of the proposed service or the use of the proposed frequency;

(2) That the proposed operation appears to warrant consideration to effect a change in the provisions of the rules in this part; and/or

(3) That some operational data should be developed for consideration in any rule making proceeding which may be initiated.

(b) Applications for construction permits for stations which are intended to be used in the development of a proposed service shall be accompanied by a petition to amend the Commission's rules with respect to frequencies and such other items as may be necessary to provide for the regular establishment of the proposed service.

### § 22.404 Terms of grant; general limitations.

(a) Developmental authorizations normally shall be issued for one year, or such shorter term as the Commission may deem appropriate in any particular case, and shall be subject to cancellation without hearing by the Commission at any time upon notice to the licensee.

(b) Where some phases of the developmental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as it may deem necessary in the public interest, convenience or necessity.

(c) Frequencies allocated to the service toward which such development is directed will be assigned for developmental operation on the basis that no interference will be caused to the regular services of stations operating in accordance with the Commission's Table of Frequency Allocations (§ 2.106 of this chapter).

(d) The rendition of communication service for hire is not permitted under any developmental authorizations unless specifically authorized by the Commission.

(e) The grant of a developmental authorization carries with it no assurance that the developmental program, if successful, will be authorized on a permanent basis either as to the service involved or the use of the frequencies assigned or any other frequencies.

### § 22.405 Supplementary showing required.

(a) Authorizations for development of a proposed radio service in the Domestic Public Radio Services will be issued only upon a showing that the applicant has a definite program of research and development, the details of which shall be set forth, having reasonable promise of substantial contribution to these services within the term of such authorization. In addition to showing that the applicant is

financially qualified or that adequate provision has been made to underwrite the costs of the proposed venture, a specific showing should be made as to the factors which the applicant believes qualify him technically to conduct the research and development program, including a description of the nature and extent of engineering facilities which applicant has available for such purpose.

(b) Expiring developmental authorizations may be renewed only upon the applicant's compliance with the applicable requirements of § 22.406(a) and (b) relative to the authorization sought to be renewed and upon a factual showing that further progress in the program of research and development requires further radio transmission and that the public interest, convenience or necessity would be served by renewal of such authorization.

**§ 22.406 Developmental report required.**

(a) Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee shall submit, in duplicate, a comprehensive report on the following items, in the order designated:

(1) Report on the various phases of the project which were investigated.

(2) Total number of hours of operation on each frequency assigned.

(3) Copies of any publication on the project.

(4) A listing of any patents applied for, including copies of any patents issued as a consequence of the activities carried forth under the authorization.

(5) Detailed analysis of the result obtained.

(6) Any other pertinent information.

(b) In addition to the information required by paragraph (a) of this section, the developmental report of a station authorized for the development of a proposed radio service shall include comprehensive information on the following items:

(1) Probable public support and methods of its determination.

(2) Practicability of service operations.

(3) Interference encountered.

(4) Pertinent information relative to merits of the proposed service.

(5) Propagation characteristics of frequencies used, particularly with respect to the service objective.

(6) Frequencies believed to be more suitable and reasons therefor.

(7) Type of signals or communications employed in the experimental work.

(c) Normally, developmental reports will be made a part of the Commission's public records. However, an applicant may request that the Commission withhold from the public certain reports and associated material relative to the accomplishments achieved under developmental authorization, and, if it appears that such information should be withheld, the Commission will so direct.

## Subpart G—Domestic Public Land Mobile Radio Service

**§ 22.500 Eligibility.**

Authorizations for base stations and auxiliary test stations to be operated in this service will be issued to existing and proposed communication common carriers. Authorizations for mobile stations on land or on board vessels will be issued to communication common carriers or to individual users of the service. Applications will be granted only in cases where it is shown that (a) the applicant is legally, financially, technically and otherwise qualified to render the proposed service, (b) there are frequencies available to enable the applicant to render a satisfactory service, and (c) the public interest, convenience or necessity would be served by a grant thereof.

**§ 22.501 Frequencies.**

The following frequencies are available to the Domestic Public Land Mobile Radio Service for the use set forth in this section.

(a) For assignment, in accordance with the zone allocation plan, to stations of communications common carriers which are also in the business of affording public landline message telephone service, for general and dispatch communications (provided that signaling communications may also be furnished on a secondary basis by any facility rendering such general or dispatch service). The frequencies specified may be used in adjoining zones within moderate distances of the respective zone boundaries to permit continuous service to mobile units transiting such zone boundaries.

Zone I—Base station frequency: 35.66 MHz; Mobile and Auxiliary Test station frequency: 43.66 MHz.

| | |
|---|---|
| Connecticut | New Jersey |
| Delaware | New York |
| District of Columbia | Pennsylvania |
| Lake Ontario | Rhode Island |
| Maine | Vermont |
| Maryland | Virginia |
| Massachusetts | West Virginia |
| New Hampshire | |

Zone II—Base station frequency: 35.31 MHz; Mobile and Auxiliary Test station frequency: 43.34 MHz.

| | |
|---|---|
| Alabama | Mississippi |
| Florida | North Carolina |
| Georgia | South Carolina |
| Louisiana | |

Zone III—Base station frequency: 35.42 MHz; Mobile and Auxiliary Test station frequency: 43.42 MHz.

| | |
|---|---|
| Illinois | Lake St. Clair |
| Indiana | Lake Superior |
| Kentucky | Michigan |
| Lake Erie | Ohio |
| Lake Huron | Tennessee |
| Lake Michigan | Wisconsin |

Zone IV—Base station frequency: 35.54 MHz; Mobile and Auxiliary Test station frequency: 43.54 MHz.

| | |
|---|---|
| Iowa | North Dakota |
| Minnesota | South Dakota |
| Montana | Wyoming |
| Nebraska | |

Zone V—Base station frequency: 35.30 MHz; Mobile and Auxiliary Test station frequency: 43.30 MHz.

| | |
|---|---|
| Arkansas | Oklahoma |
| Kansas | Texas |
| Missouri | |

Zone VI—Base station frequency: 35.38 MHz; Mobile and Auxiliary Test station frequency: 43.38 MHz.

| | |
|---|---|
| Arizona | Nevada |
| California | New Mexico |
| Colorado | Utah |

Zone VII—Base station frequency: 35.26 MHz; Mobile and Auxiliary Test station frequency: 43.26 MHz.

| | |
|---|---|
| Idaho | Washington |
| Oregon | |

Zone VIII—Base station frequency: 35.50 MHz; Mobile and Auxiliary Test station frequency: 43.50 MHz.

| | |
|---|---|
| Indiana | New York |
| Lake St. Clair | Ohio |
| Michigan | Pennsylvania |
| New Jersey | The Great Lakes |

Zone IX—Base station frequency: 35.62 MHz; Mobile and Auxiliary Test station frequency: 43.62 MHz.

| | |
|---|---|
| Arkansas | Texas |
| Oklahoma | |

Zone X—Base station frequency: 35.46 MHz; Mobile and Auxiliary Test station frequency: 43.46 MHz.

| | |
|---|---|
| California | Washington |
| Oregon | |

(b) For assignment, to stations of communication common carriers engaged also in the business of affording public landline message telephone service, for general and dispatch communications (provided that signaling communications may also be furnished on a secondary basis by any facility rendering such general or dispatch service):

| Base station frequencies (MHz): | Mobile, dispatch, and auxiliary test station frequencies (MHz) |
|---|---|
| 152.51 | 157.77 |
| 152.54 | 157.80 |
| 152.57 | 157.83 |
| 152.60 | 157.86 |
| 152.63 | 157.89 |
| 152.66 | 157.92 |
| 152.69 | 157.95 |
| 152.72 | 157.98 |
| 152.75 | 158.01 |
| 152.78 | 158.04 |
| 152.81 | 158.07 |
| 454.375 | 459.375 |
| 454.400 | 459.400 |
| 454.425 | 459.425 |
| 454.450 | 459.450 |
| 454.475 | 459.475 |
| 454.500 | 459.500 |
| 454.525 | 459.525 |
| 454.550 | 459.550 |
| 454.575 | 459.575 |
| 454.600 | 459.600 |
| 454.625 | 459.625 |
| 454.650 | 459.650 |

(c) For assignment, to stations of communication common carriers not also engaged in the business of providing a public landline message telephone service, for general and dispatch communications (provided that signaling communications may also be furnished on a secondary basis by any facility rendering such general or dispatch service):

| Base station frequencies (MHz): | Mobile, dispatch, and auxiliary test station frequencies (MHz) |
|---|---|
| 152.03 | 158.49 |
| 152.06 | 158.52 |
| 152.09 | 158.55 |
| 152.12 | 158.58 |
| 152.15 | 158.61 |
| 152.18 | 158.64 |
| 152.21 | 158.67 |
| 454.025 | 459.025 |
| 454.050 | 459.050 |
| 454.075 | 459.075 |
| 454.100 | 459.100 |
| 454.125 | 459.125 |
| 454.150 | 459.150 |
| 454.175 | 459.175 |
| 454.200 | 459.200 |
| 454.225 | 459.225 |
| 454.250 | 459.250 |
| 454.275 | 459.275 |
| 454.300 | 459.300 |
| 454.325 | 459.325 |
| 454.350 | 459.350 |

(d) For assignment, to base stations of communication common carriers for use exclusively in providing a one-way signaling service to mobile receivers.

| | |
|---|---|
| 35.22 MHz | 43.22 MHz |
| 35.58 MHz | 43.58 MHz |

(1) Whenever feasible, the frequencies 35.22 MHz and 35.58 MHz shall be assigned for use in any area prior to the assignment of the frequencies 43.22 MHz and 43.58 MHz.

(2) If an applicant for authorization to provide an exclusive one-way signaling service provides, or proposes also to provide, General or Dispatch service in accordance with paragraphs (a), (b) and (c) of this section, the application for a one-way facility should be supported with full information to show why the proposed signaling service could not be provided in connection with the base station facilities used for such General or Dispatch service.

(e) On a shared basis with fixed stations in the Point-to-Point Microwave Radio Service, frequencies in the bands 2110-2130 MHz and 2160–2180 MHz may be authorized for use by control and repeater stations functioning in conjunction with the Domestic Public Land Mobile Radio Service on the condition that the emission bandwidth is limited to the minimum necessary to serve the purpose required; *Provided, however,* no new assignments will be made in the band 2160–2162 MHz for stations located within 50 miles of the coordinates of the sites listed in § 22.901(c), except upon a showing that no alternative frequencies are available. Channel bandwidths in excess of 800 kHz will not be authorized. In each of these bands, the highest frequency which will not cause harmful interference to any other station shall be assigned.

(f)(1) The frequencies listed in this paragraph are available for assignment to control and repeater stations functioning in conjunction with the Domestic Public Land Mobile Radio Service, on a shared basis with certain other radio services. A repeater station normally will not be authorized unless the land mobile radio system with which it is associated is continuously open for public correspondence and the emission of the repeater station are under the operational surveillance of the land mobile system's operating personnel.

**72–76 MHz Band [1]**

| MHz: | MHz | MHz | MHz |
|---|---|---|---|
| 72.02 | 75.42 | 72.82 | 75.62 |
| 72.04 | | 72.84 | 75.64 |
| 72.06 | 75.46 | 72.86 | 75.66 |
| 72.08 | | 72.88 | 75.68 |
| 72.10 | 75.50 | 72.90 | 75.70 |
| 72.12 | | 72.92 | 75.72 |
| 72.14 | 75.54 | 72.94 | 75.74 |
| 72.16 | | 72.96 | 75.76 |
| 72.18 | 75.58 | 72.98 | 75.78 |
| 72.20 | | 75.42 | 75.80 |
| 72.22 | 72.62 | | 75.82 |
| 72.24 | 72.64 | 75.46 | 75.84 |
| 72.26 | 72.66 | | 75.86 |
| 72.28 | 72.68 | 75.50 | 75.88 |
| 72.30 | 72.70 | | 75.90 |
| 72.32 | 72.72 | 75.54 | 75.92 |
| 72.34 | 72.74 | | 75.94 |
| 72.36 | 72.76 | 75.58 | 75.96 |
| 72.38 | 72.78 | | 75.98 |
| 72.40 | 72.80 | | |

**72–76 MHz Band—Continued**

| MHz: | MHz | MHz | MHz |
|---|---|---|---|

[1] Assignments made to stations on frequencies in this band are subject to the condition that no harmful interference will be caused to operational fixed stations or reception of television stations on channels 4 or 5. (See § 22.103.) Existing stations authorized in the 73 to 74.6 MHz band as of Dec. 1, 1961, may continue to operate, are not required to afford protection to the radio astronomy service and must comply with the following technical specifications:

Frequency Tolerance: .005 percent.
Frequency Deviation: ± 15 kHz.
Authorized Bandwidth: 40 kHz.
Modulation Limiter: Required of transmitter authorized or installed after July 1, 1950.
Audio Low Pass Filter: Not required.

(2) Each application requesting authority to establish operations on frequencies in the 72–76 MHz band shall be accompanied by:

(i) A showing that the applicant agrees to eliminate any harmful interference which may be caused by his operation to television reception on either channel 4 or 5, and if said interference cannot be eliminated within 90 days of the time the matter is first brought to his attention by the Commission, operation of the interfering fixed station will be immediately discontinued.

(ii) In cases where it is proposed to locate a 72–76 fixed station less than 80, but more than 10 miles from the site of a television transmitter operating on either channel 4 or 5, or from the post office of a community in which such channels are assigned but not in operation, a showing shall be made as to the number of family dwelling units (as defined by the U.S. Bureau of Census) located within a circle centered at the location of the proposed fixed station (family dwelling units 70 or more miles distant from the television station antenna site are not to be counted (the radius of which shall be determined by use of charts entitled, "Chart for Determining Radius From Fixed Station in 72–76 MHz Band to Interference Contour Along Which 10 Percent of Service from Adjacent Channel Television Station Would Be Destroyed" (Charts for television channels 4 and 5 are set forth in § 22.103).

(iii) In cases where more than 100 family dwelling units are contained within the circle (determined according to paragraph (f)(2) of this section), the number of dwelling units therein shall be stated and a factual showing made that:

(A) The proposed site is the only suitable location.

(B) It is not feasible, technically or otherwise, to use other available frequencies.

(C) The applicant has a definite plan, which should be disclosed, to control any interference that might develop to television reception from his operations.

(D) The applicant is financially able and agrees to make such adjustments in the television receivers affected as may be necessary to eliminate interference caused by his operations.

(g) New control and repeater stations will not be authorized in the 890–940 MHz band. However, stations which were authorized to operate on such frequencies on April 16, 1958, may be granted renewed licenses subject to the following conditions:

(1) Operations shall not be protected against any interference received from the emission of industrial, scientific, and medical equipment operating on 915 MHz or from the emission of radiolocation stations in the 890–942 MHz band.

(2) No harmful interference shall be caused to stations operating in the radiolocation service in the 890–942 MHz band.

(h) For assignment to base stations for use exclusively in providing a one-way signaling service to mobile receivers as follows:

(1) Communication common carriers engaged also in the business of affording public landline message telephone service:

152.84 MHz 158.10 MHz

(2) Communication common carriers not also engaged in the business of providing a public landline message telephone service:

152.24 MHz 158.70 MHz

(i) In lieu of a wireline circuit for control of a specific base station transmitter from its required control point or in lieu of wirelines for an audiocircuit to a base station control point from a remotely located fixed receiver used for reception of mobile station transmissions, and upon an affirmative showing that the conditions set forth in subparagraphs (1) through (5) of this paragraph are satisfied, a single control and repeater station may be authorized to miscellaneous common carriers upon the frequencies indicated below:

| Control station frequencies MHz | *Repeater station frequencies (MHz)* |
|---|---|
| 454.025 | 459.025 |
| 454.050 | 459.050 |
| 454.075 | 459.075 |
| 454.100 | 459.100 |
| 454.125 | 459.125 |
| 454.150 | 459.150 |
| 454.175 | 459.175 |
| 454.200 | 459.200 |
| 454.225 | 459.225 |
| 454.250 | 459.250 |
| 454.275 | 459.275 |
| 454.300 | 459.300 |
| 454.325 | 459.325 |
| 454.350 | 459.350 |

(1) The control station, and the base station controlled thereby, are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(2) The repeater station, and the point to which its transmissions are directed, are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(3) The effective radiated power of the control or repeater station does not exceed 150 watts.

(4) The use of the frequencies by a control or repeater station will not cause harmful interference to any other station authorized to use such frequencies and shall be on a secondary basis to the provision of mobile and rural radio service by other classes of stations.

(5) Series operation of more than one control or repeater station is not involved.

Note.—The provisions of subparagraphs (1) and (2) of this paragraph may be waived by the Commission upon a factual showing, supported by such engineering proof as may be necessary, that all of the currently assignable pairs of 152–162 MHz band frequencies listed in paragraph (c) of this section are not assigned or applied for within interference range of existing or possible station assignments within the urbanized area having a population of over 300,000 and, upon a satisfactory showing, that in such area over a substantial period of years the growth of the public land mobile radio service has not been hampered and is not likely to be hampered by a shortage of frequencies allocated to such service in the 152 to 162 MHz band. Facilities authorized under the provisions of such waivers shall be on a secondary basis and subject to the condition that, in the event the frequencies are required for assignment to base and mobile stations in the area, operation thereon shall be terminated within 60 days after notice is received from the Commission.

(j) In lieu of a wire-line circuit for control of a specific base station transmitter from its required control point or in lieu of wirelines for an audio circuit to a base station control point from a remotely located fixed receiver used for reception of mobile station transmissions, and upon an affirmative showing that the conditions set forth in subparagraphs (1) through (5) of this paragraph are satisfied, a single control and repeater station may be authorized to communication common carriers, who are engaged also in the business of affording public landline message telephone service, upon the frequencies indicated below:

| *MHz* | *MHz* |
|---|---|
| 454.375 | 459.375 |
| 454.400 | 459.400 |
| 454.425 | 459.425 |
| 454.450 | 459.450 |
| 454.475 | 459.475 |
| 454.500 | 459.500 |
| 454.525 | 459.525 |
| 454.550 | 459.550 |
| 454.575 | 459.575 |
| 454.600 | 459.600 |
| 454.625 | 459.625 |
| 454.650 | 459.650 |

(1) The control station, and the base station controlled thereby, are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(2) The repeater station, and the point to which its transmissions are directed, are located over 50 airline miles from the nearest geographical boundary of the nearest urbanized area having a population over 300,000 (as determined and defined in the most recent census reports of the U.S. Bureau of the Census).

(3) The effective radiated power of the control or repeater station does not exceed 150 watts.

(4) The use of the frequencies by a control or repeater station will not cause harmful interference to any other station authorized to use such frequencies and shall be on a secondary basis to the provision of Mobile and Rural Radio Service by other classes of stations.

(5) Series operation of more than one control or repeater station is not involved.

Note.—The provisions of subparagraphs (1) and (2) of this paragraph may be waived by the Commission upon a factual showing, supported by such engineering proof as may be necessary, that all of the currently assignable pairs of 152–162 MHz band frequencies listed in paragraph (b) of this section are not assigned or applied for within interference range of existing or possible station assignments within the urbanized area having a population of over 300,000 and, upon a satisfactory showing, that in such area over a substantial period of years the growth of the public land mobile radio service has not been hampered by a shortage of frequencies allocated to such service in the 152–162 MHz band. Facilities authorized under the provisions of such waivers shall be on a secondary basis and subject to the condition that, in the event the frequencies are required for assignment to base and mobile stations in the area, operation thereon shall be terminated within 60 days after notice is received from the Commission.

(k) The following frequencies are available for assignment to stations in the Domestic Public Land Mobile Radio Service operated by miscellaneous

common carriers operating in the listed urbanized areas and subject to the limitations contained therein:

| Base station frequencies (MHz) | Mobile, dispatch, and auxiliary test frequencies (MHz) |
|---|---|
| **Boston** | |
| *Channel 14* | *Channel 16* |
| Group 1: | |
| 470.0125 | 482.0125 |
| 470.0375 | 482.0375 |
| 470.0625 | 482.0625 |
| 470.0875 | 482.0875 |
| 470.1125 | 482.1125 |
| 470.1375 | 482.1375 |
| 470.1625 | 482.1625 |
| 470.1875 | 482.1875 |
| 470.2125 | 482.2125 |
| 470.2375 | 482.2375 |
| 470.2625 | 482.2625 |
| 470.2875 | 482.2875 |
| Group 2: | |
| 473.0125 | 485.0125 |
| 473.0375 | 485.0375 |
| 473.0625 | 485.0625 |
| 473.0875 | 485.0875 |
| 473.1125 | 485.1125 |
| 473.1375 | 485.1375 |
| 473.1625 | 485.1625 |
| 473.1875 | 485.1875 |
| 473.2125 | 485.2125 |
| 473.2375 | 485.2375 |
| 473.2625 | 485.2625 |
| 473.2875 | 485.2875 |
| **Chicago, Cleveland, New York—Northeastern New Jersey** | |
| *Channel 14* | *Channel 15* |
| Group 1: | |
| 470.0125 | 476.0125 |
| 470.0375 | 476.0375 |
| 470.0625 | 476.0625 |
| 470.0875 | 476.0875 |
| 470.1125 | 476.1125 |
| 470.1375 | 476.1375 |
| 470.1625 | 476.1625 |
| 470.1875 | 476.1875 |
| 470.2125 | 476.2125 |
| 470.2375 | 476.2375 |
| 470.2625 | 476.2625 |
| 470.2875 | 476.2875 |
| Group 2: | |
| 473.0125 | 479.0125 |
| 473.0375 | 479.0375 |
| 473.0625 | 479.0625 |
| 473.0875 | 479.0875 |
| 473.1125 | 479.1125 |
| 473.1375 | 479.1375 |
| 473.1625 | 479.1625 |
| 473.1875 | 479.1875 |
| 473.2125 | 479.2125 |
| 473.2375 | 479.2375 |
| 473.2625 | 479.2625 |
| 473.2875 | 479.2875 |
| **Dallas-Fort Worth** | |
| *Channel 16* | |
| 482.0125 | 485.0125 |
| 482.0375 | 485.0375 |
| 482.0625 | 485.0625 |
| 482.0875 | 485.0875 |
| 482.1125 | 485.1125 |
| 482.1375 | 485.1375 |
| 482.1625 | 485.1625 |
| 482.1875 | 485.1875 |
| 482.2125 | 485.2125 |
| 482.2375 | 485.2375 |
| 482.2625 | 485.2625 |
| *Channel 16* | *Channel 15* |
| 482.2875 | 485.2875 |
| **Detroit** | |
| *Channel 16* | *Channel 15* |
| Group 1: | |
| 482.0125 | 476.0125 |
| 482.0375 | 476.0375 |
| 482.0625 | 476.0625 |
| 482.0875 | 476.0875 |
| 482.1125 | 476.1125 |
| 482.1375 | 476.1375 |
| 482.1625 | 476.1625 |
| 482.1875 | 476.1875 |
| 482.2125 | 476.2125 |
| 482.2375 | 476.2375 |
| 482.2625 | 476.2625 |
| 482.2875 | 476.2875 |
| Group 2: | |
| 485.0125 | 479.0125 |
| 485.0375 | 479.0375 |
| 485.0625 | 479.0625 |
| 485.0875 | 479.0875 |
| 485.1125 | 479.1125 |
| 485.1375 | 479.1375 |
| 485.1625 | 479.1625 |
| 485.1875 | 479.1875 |
| 485.2125 | 479.2125 |
| 485.2375 | 479.2375 |
| 485.2625 | 479.2625 |
| 485.2875 | 479.2875 |
| **Houston** | |
| *Channel 17* | |
| 488.0125 | 491.0125 |
| 488.0375 | 491.0375 |
| 488.0625 | 491.0625 |
| 488.0875 | 491.0875 |
| 488.1125 | 491.1125 |
| 488.1375 | 491.1375 |
| 488.1625 | 491.1625 |
| 488.1875 | 491.1875 |
| 488.2125 | 491.2125 |
| 488.2375 | 491.2375 |
| 488.2625 | 491.2625 |
| 488.2875 | 491.2875 |
| **Los Angeles** | |
| *Channel 20* | *Channel 14* |
| Group 1: | |
| 506.0125 | 470.0125 |
| 506.0375 | 470.0375 |
| 506.0625 | 470.0625 |
| 506.0875 | 470.0875 |
| 506.1125 | 470.1125 |
| 506.1375 | 470.1375 |
| 506.1625 | 470.1625 |
| 506.1875 | 470.1875 |
| 506.2125 | 470.2125 |
| 506.2375 | 470.2375 |
| 506.2625 | 470.2625 |
| 506.2875 | 470.2875 |
| Group 2: | |
| 509.0125 | 473.0125 |
| 509.0375 | 473.0375 |
| 509.0625 | 473.0625 |
| 509.0875 | 473.0875 |
| 509.1125 | 473.1125 |
| 509.1375 | 473.1375 |
| 509.1625 | 473.1625 |
| 509.1875 | 473.1875 |
| 509.2125 | 473.2125 |
| 509.2375 | 473.2375 |
| 509.2625 | 473.2625 |
| 509.2875 | 473.2875 |
| **Miami** | |
| *Channel 14* | |
| 470.0125 | 473.0125 |
| 470.0375 | 473.0375 |
| 470.0625 | 473.0625 |
| 470.0875 | 473.0875 |
| 470.1125 | 473.1125 |
| 470.1375 | 473.1375 |
| 470.1625 | 473.1625 |
| 470.1875 | 473.1875 |
| 470.2125 | 473.2125 |
| 470.2375 | 473.2375 |
| *Channel 20* | *Channel 14* |
| 470.2625 | 473.2625 |
| 470.2875 | 473.2875 |
| **Philadelphia** | |
| *Channel 19* | *Channel 20* |
| Group 1: | |
| 500.0125 | 506.0125 |
| 500.0375 | 506.0375 |
| 500.0625 | 506.0625 |
| 500.0875 | 506.0875 |
| 500.1125 | 506.1125 |
| 500.1375 | 506.1375 |
| 500.1625 | 506.1625 |
| 500.1875 | 506.1875 |
| 500.2125 | 506.2125 |
| 500.2375 | 506.2375 |
| 500.2625 | 506.2625 |
| 500.2875 | 506.2875 |
| Group 2: | |
| 503.0125 | 509.0125 |
| 503.0375 | 509.0375 |
| 503.0625 | 509.0625 |
| 503.0875 | 509.0875 |
| 503.1125 | 509.1125 |
| 503.1375 | 509.1375 |
| 503.1625 | 509.1625 |
| 503.1875 | 509.1875 |
| 503.2125 | 509.2125 |
| 503.2375 | 509.2375 |
| 503.2625 | 509.2625 |
| 503.2875 | 509.2875 |
| **Pittsburgh** | |
| *Channel 14* | *Channel 18* |
| Group 1: | |
| 470.0125 | 494.0125 |
| 470.0375 | 494.0375 |
| 470.0625 | 494.0625 |
| 470.0875 | 494.0875 |
| 470.1125 | 494.1125 |
| 470.1375 | 494.1375 |
| 470.1625 | 494.1625 |
| 470.1875 | 494.1875 |
| 470.2125 | 494.2125 |
| 470.2375 | 494.2375 |
| 470.2625 | 494.2625 |
| 470.2875 | 494.2875 |
| Group 2: | |
| 473.0125 | 494.0125 |
| 473.0375 | 494.0375 |
| 473.0625 | 494.0625 |
| 473.0875 | 494.0875 |
| 473.1125 | 494.1125 |
| 473.1375 | 494.1375 |
| 473.1625 | 494.1625 |
| 473.1875 | 494.1875 |
| 473.2125 | 494.2125 |
| 473.2375 | 494.2375 |
| 473.2625 | 494.2625 |
| 473.2875 | 494.2875 |
| **San Francisco** | |
| *Channel 17* | *Channel 16* |
| Group 1: | |
| 488.0125 | 482.0125 |
| 488.0375 | 482.0375 |
| 488.0625 | 482.0625 |
| 488.0875 | 482.0875 |
| 488.1125 | 482.1125 |
| 488.1375 | 482.1375 |
| 488.1625 | 482.1625 |
| 488.1875 | 482.1875 |
| 488.2125 | 482.2125 |
| 488.2375 | 482.2375 |
| 488.2625 | 482.2625 |
| 488.2875 | 482.2875 |
| Group 2: | |
| 491.0125 | 485.0125 |
| 491.0375 | 485.0375 |
| 491.0625 | 485.0625 |
| 491.0875 | 485.0875 |
| 491.1125 | 485.1125 |
| 491.1375 | 485.1375 |
| 491.1625 | 485.1625 |
| 491.1875 | 485.1875 |
| 491.2125 | 485.2125 |
| 491.2375 | 485.2135 |
| 491.2625 | 485.2625 |

| Channel 17 | Channel 16 |
|---|---|
| 491.2875 | 485.2875 |

Washington, D.C.

| Channel 18 | Channel 17 |
|---|---|
| Group 1: | |
| 494.0125 | 488.0125 |
| 494.0375 | 488.0375 |
| 494.0625 | 488.0625 |
| 494.0875 | 488.0875 |
| 494.1125 | 488.1125 |
| 494.1375 | 488.1375 |
| 494.1625 | 488.1625 |
| 494.1875 | 488.1875 |
| 494.2125 | 488.2125 |
| 494.2375 | 488.2375 |
| 494.2625 | 488.2625 |
| 494.2875 | 488.2875 |
| Group 2: | |
| 497.0125 | 491.0125 |
| 497.0375 | 491.0375 |
| 497.0625 | 491.0625 |
| 497.0875 | 491.0875 |
| 497.1125 | 491.1125 |
| 497.1375 | 491.1375 |
| 497.1625 | 491.1625 |
| 497.1875 | 491.1875 |
| 497.2125 | 491.2125 |
| 497.2375 | 491.2375 |
| 497.2625 | 491.2625 |
| 497.2875 | 491.2875 |

(1) Frequencies in paragraph (k) of this section are for assignment in, or in the vicinity of, the urbanized areas listed in table A below, subject to the following conditions:

(1) The transmitter site(s) for base stations(s) shall be located not more than 50 miles from the geographic center of an urbanized area as defined in table A.

(2) Mobile stations shall be operated not more than 80 miles from the "Geographic Center" of an urbanized area as defined in table A, below, nor beyond a 30-mile radii of the associated base station or stations.

(3) Base stations operating on the frequencies available for land mobile use in any listed urbanized area shall afford protection to cochannel and adjacent channel television stations in accordance with the values set out in tables B and C, below, except for channel 15 in New York, N.Y., and Cleveland, Ohio, and channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in tables C and F, below.

(i) Base stations shall be located a minimum of one mile from local television stations operating on TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

(ii) Mobile units operating on the frequencies available for land mobile use in any given urbanized area shall afford protection to cochannel and adjacent channel television stations in accordance with the values set out in tables D and G, below, except for channel 15 in New York, N.Y., and Cleveland, Ohio, and channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in tables E and G, below.

(iii) The television stations to be protected in any given urbanized area, in accordance with the provisions of (i) and (ii) of this paragraph, are identified in the Commission's publication "TV Stations To Be Considered in The Preparation of Applications for Land Mobile Facilities in the Band 470–512 MHz." The publication is available at the offices of the Federal Communications Commission at Washington, D.C. or upon the request of interested persons.

(4) For antenna heights between 500 feet and 3,000 feet above average terrain the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure A, below except for channel 15 in New York, N.Y., and Cleveland, Ohio and channel 16 in Detroit, Mich., where the effective radiated power must be reduced in accordance with figure B. For heights of more than 500 feet above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the grade B contour of a cochannel TV station, an authorization will not be granted unless it can be shown that actual terrain considerations are such as to provide the desired protection at the grade B contour, or that the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the grade B contour will be achieved.

(5) Applicants for base stations in the Miami, Fla., urbanized area may, in lieu of calculating the height of average terrain, use 10 feet as average terrain height.

(i) Tables and figures:

Table A.—*Frequency Available for Land Mobile Use*

| Urbanized area | Geographic center | | Frequencies (MHz) |
|---|---|---|---|
| | N. latitude | W. longitude | |
| Boston, Mass. | 42°21'24" | 71°03'24" | Channel 14 470–470. Channel 15 482–488. |
| Chicago, Ill. | 41°52'28" | 87°38'22" | Channel 14 470–476. Channel 15 476–482. |
| Cleveland, Ohio [1]. | 41°29'54" | 81°41'50" | Channel 14 470–476. Channel 15 476–482. |
| Dallas, Tex. | 32°47'51" | 96°47'37" | Channel 16 482–488. |
| Detroit, Mich.[2]. | 42°19'48" | 83°02'57" | Channel 15 476–482. Channel 16 482–488. |
| Houston, Tex. | 29°45'26" | 95°21'37" | Channel 17 488–494. |
| Los Angeles, Calif. | 34°03'15" | 118°14'28" | Channel 14 470–476. Channel 20 506–512. |
| Miami Fla. | 25°46'37" | 80°11'32" | Channel 14 470–476. |
| New York, Northeastern New Jersey. | 40°45'06" | 73°59'39" | Channel 15 470–476. Channel 15 476–482. |
| Philadelphia, Pa. | 39°56'58" | 75°09'21" | Channel 19 500–506. Channel 20 506–512. |
| Pittsburgh, Pa. | 40°26'19" | 80°00'00" | Channel 14 470–476. Channel 18 494–500. |
| San Francisco-Oakland, Calif. | 37°46'39" | 122°24'40" | Channel 16 482–488. Channel 17 488–494. |
| Washington, D.C., Maryland, Virginia. | 38°53'51" | 77°00'33" | Channel 17 488–494. Channel 18 494–500. |

[1] Channels 14 and 15 are not availabe in Cleveland, Ohio, until further order from the Commission.

[2] Channels 15 and 16 are not available in Detroit, Mich., until further order from the Commission.

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## TABLE B.—BASE STATION—COCHANNEL FREQUENCIES

(50 dB Protection)

MAXIMUM EFFECTIVE RADIATED POWER (ERP)

| At this distance from transmitter site of protected UHF television station. → | Distance in miles | Antenna height in feet (AAT) [1] | | | | | | | | | | The effective radiated power (ERP)* and antenna height above average terrain (AAT) shall not exceed the values given in the table. ← |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 50 | 100 | 150 | 200 | 250 | 300 | 350 | 400 | 450 | 500 | |
| | 162 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | |
| | 160 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | | |
| | 155 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | | | | | 800 | |
| | 150 | 1,000 | 1,000 | | | | 875 | 775 | 700 | 625 | 575 | |
| | 145 | | | 950 | 775 | 725 | 625 | 550 | 500 | 450 | 400 | |
| | 140 | 850 | 750 | 650 | 575 | 500 | 440 | 400 | 350 | 320 | 300 | |
| | 135 | 600 | 575 | 465 | 400 | 350 | 300 | 275 | 250 | 230 | 235 | |
| | 130 | 450 | 400 | 335 | 300 | 255 | 240 | 200 | 185 | 165 | 150 | |
| | 125 | 350 | 300 | 245 | 200 | 185 | 160 | 145 | 125 | 120 | 100 | |
| | 120 | 225 | 200 | 170 | 150 | 125 | 110 | 100 | 90 | 80 | 75 | |
| | | 175 | 150 | 165 | 105 | 90 | 80 | 70 | 60 | 55 | 50 | |

*Power levels listed in table are given in watts.

NOTE: To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in Table B, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite a selection of powers that may be used for antenna heights ranging from 50 to 500 feet (AAT). If the exact antenna height proposed for the land mobile base station does not appear in Table B, use the power figure beneath the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than that determined hereafter from Table C, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever are the latest. If such maps are not published for the area in question, the next best topographic information should be used.

## TABLE C.—BASE STATION—ADJACENT CHANNEL FREQUENCIES

MAXIMUM EFFECTIVE RADIATED POWER (ERP)

| At this distance from transmitter site of protected UHF television station. → | Distance in miles | Antenna height in feet (AAT)[1] | | | | | | | | | | The effective radiated power (ERP)* and antenna height above average terrain (AAT) shall not exceed the values given in the table. ← |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 50 | 100 | 150 | 200 | 250 | 300 | 350 | 400 | 450 | 500 | |
| | 67 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | |
| | 66 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 750 | |
| | 65 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 825 | 650 | 600 | |
| | 64 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 775 | 625 | 500 | 400 | |
| | 63 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 650 | 450 | 325 | 325 | 225 | |
| | 62 | 1,000 | 1,000 | 1,000 | 1,000 | 525 | 375 | 250 | 200 | 150 | 125 | |
| | 61 | 1,000 | 1,000 | 700 | 450 | 250 | 200 | 125 | 100 | 75 | 50 | |
| | 60 | 1,000 | 1,000 | 425 | 225 | 125 | 100 | 75 | 50 | | | |

*Power levels listed in table are given in watts.

NOTE: To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in Table C, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 feet (AAT). If the exact antenna height proposed for the land mobile base station does not appear in Table C, use the power figure beneath the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than that determined heretofore from Table F or B, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

TABLE D.—DISTANCE BETWEEN ASSOCIATED BASE STATION AND PROTECTED COCHANNEL TV STATION WHERE MOBILE OPERATES IN THE SAME TELEVISION CHANNEL.

(50 dB Protection)

| *Effective radiated power (watts) of mobile unit* | *Distance (miles)* |
|---|---|
| 60 | 140 |
| 50 | 135 |
| 25 | 125 |
| 10 | 117 |
| 5 | 112 |

TABLE E.- DISTANCE IN MILES BETWEEN ASSOCIATED LAND MOBILE BASE STATION AND PROTECTED COCHANNEL TELEVISION STATION WHERE MOBILE OPERATORS IN THE SAME TELEVISION CHANNEL

(40 dB Protection)

| *Effective radiated power (watts) of mobile unit* | *Distance (miles)* |
|---|---|
| 60 | 120 |
| 50 | 115 |
| 25 | 110 |
| 10 | 105 |
| 5 | 100 |

TABLE F.—BASE STATION—COCHANNEL FREQUENCIES

(40 dB Protection)

MAXIMUM EFFECTIVE RADIATED POWER (ERP)

| At this distance from transmitter site of protected UHF television station. → | Distance in miles | Antenna height in feet (AAT) [1] | | | | | | | | | | The effective radiated power (ERP)* and antenna height above average terrain (AAT) shall not exceed the values given in the table. ← |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 50 | 100 | 150 | 200 | 250 | 300 | 350 | 400 | 450 | 500 | |
| | 130 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | |
| | 125 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | | | | |
| | 120 | 1,000 | 1,000 | 1,000 | 1,000 | | | | 850 | 750 | 725 | |
| | 115 | 1,000 | 1,000 | | | 900 | 750 | 675 | 600 | 550 | 500 | |
| | 110 | | | 800 | 725 | 600 | 525 | 475 | 425 | 375 | 350 | |
| | 105 | 850 | 700 | 600 | 500 | 425 | 375 | 325 | 300 | 275 | 225 | |
| | 100 | 600 | 475 | 400 | 325 | 275 | 250 | 225 | 200 | 175 | 150 | |
| | 95 | 400 | 325 | 275 | 225 | 175 | 150 | 140 | 125 | 110 | 100 | |
| | 90 | 275 | 225 | 175 | 125 | 110 | 95 | 80 | 70 | 60 | 50 | |
| | | 175 | 125 | 100 | 75 | 50 | | | | | | |

*Power levels listed in table are given in watts.

NOTE: To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611 or charts or maps of suitable scale, determine the distance between the proposed land mobile base station and the protected cochannel television station. If the exact mileage does not appear in Table F, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above, find opposite, a selection of powers that may be used for antenna heights ranging from 50 to 500 feet (AAT). If the exact antenna height proposed for the land mobile base station does not appear in Table F, use the power figure beneath the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than the determined hereafter from Table G, this lower figure is the maximum power that may be employed at the proposed land mobile base station.

[1] In determining the average elevation of the terrain, the elevations between 2 and 10 miles from the antenna site are employed. Profile graphs shall be drawn for eight radials beginning at the antenna site and extending 10 miles therefrom. The radials should be drawn for each 45° of azimuth starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 to 100 feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 200 to 400 feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour internal indicated on the topographic map may be used. The average elevation of the 8-mile distance between 2 and 10 miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distances in sectors and averaging those values. In the preparation of the profile graphs the elevation or contour intervals shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps, whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

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**Table G.**—*Distance in Miles Between Associated Land Mobile Base Station and Protected Adjacent Channel Television Station Where Mobile Operates in Adjacent Television Channel*

[0,0 dB Protection]

| | *Distance (miles)* |
|---|---|
| Effective radiated power (watts) of mobile unit: | |
| 60 | 90 |
| 50 | 90 |
| 25 | 90 |
| 10 | 90 |
| 5 | 90 |

**Table H.**—*Decibel Reduction/Power Equivalents*

| | *E.R.P. permitted (figures rounded)* |
|---|---|
| Decibel reduction below 1 kW: | |
| 1 | 795 |
| 2 | 630 |
| 3 | 500 |
| 4 | 400 |
| 5 | 345 |
| 6 | 250 |
| 7 | 200 |
| 8 | 160 |
| 9 | 125 |
| 10 | 100 |
| 11 | 80 |
| 12 | 65 |
| 13 | 50 |
| 14 | 40 |
| 15 | 30 |
| 16 | 25 |
| 17 | 20 |
| 18 | 15 |
| 19 | 12 |
| 20 | 10 |
| 21 | 8 |
| 22 | 6 |
| 23 | 5 |
| 24 | 4 |
| 25 | 3 |
| 26 | 2.5 |
| 27 | 2 |
| 28 | 1.5 |
| 29 | 1.25 |
| 30 | 1 |

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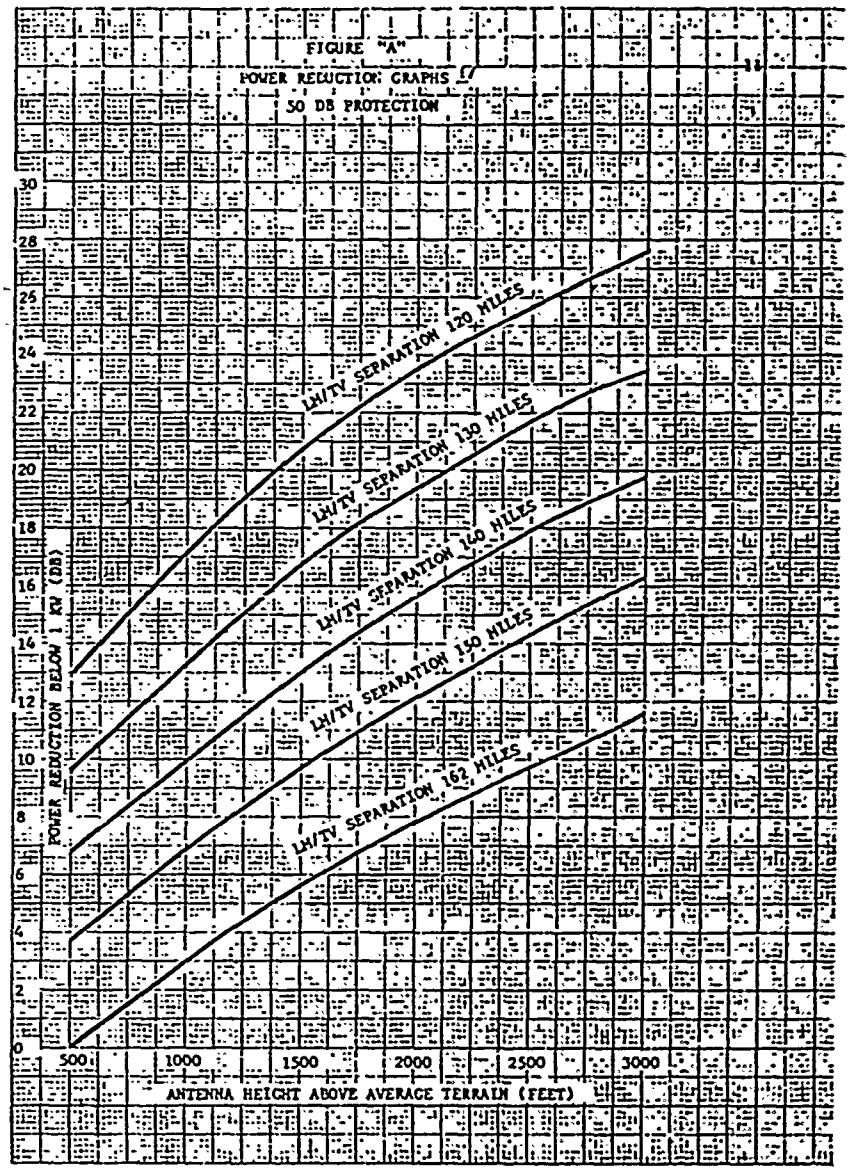
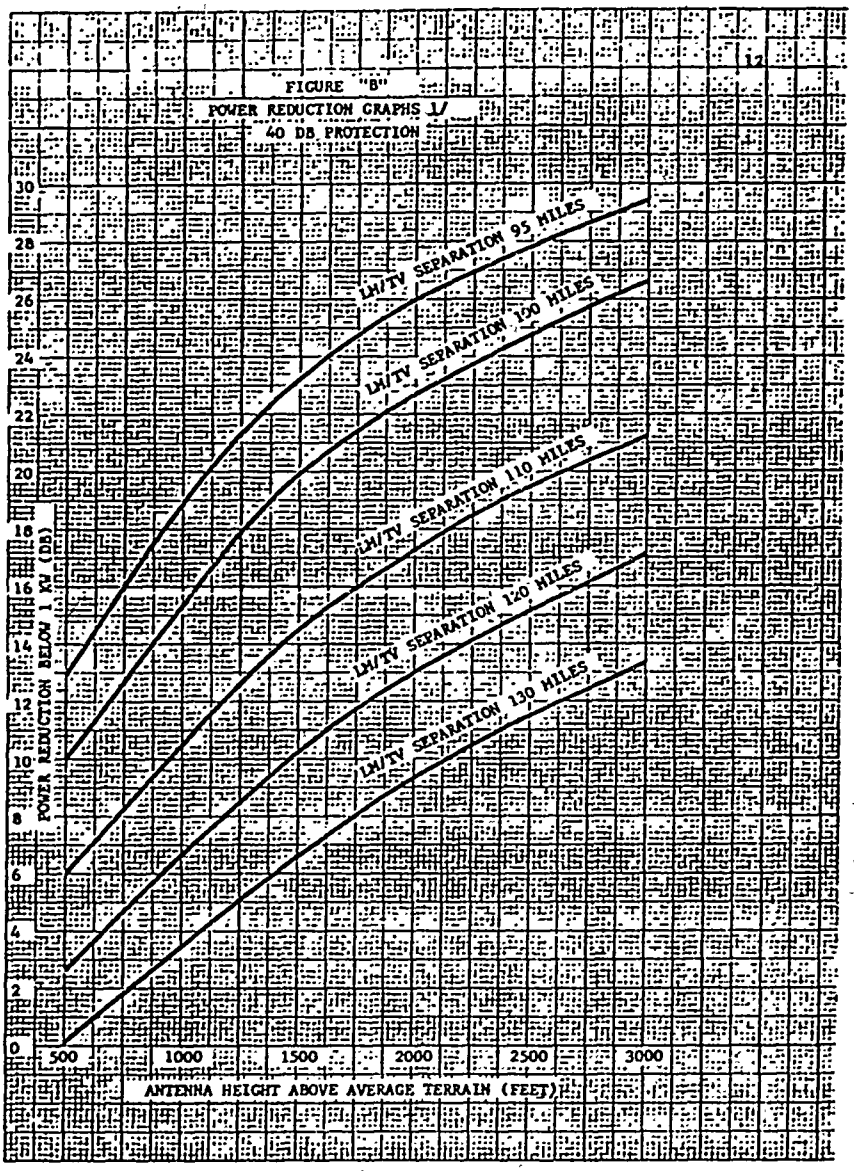



[1] Directions for using this graph.

1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table H for dB/power equivalents

[2] For stations in the Los Angeles urbanized area with antenna elevations 1,500 or more feet above sea level, the maximum authorized effective radiated power (ERP) shall be in accordance with the following table:

| Antenna height (AGL) (feet): | *Power (ERP)* |
|---|---|
| 1,501–2,000 | 155 W. |
| 2,001–2,500 | 100 W. |
| 2,501–3,000 | 70 W. |
| 3,001–3,500 | 50 W. |
| 3,501–4,000 | 40 W. |
| 4,001–4,500 | 30 W. |
| 4,501–and above | 25 W. |




[1] Directions for using this graph.

1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table H for dB/power equivalents.

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(ii) Upon prior coordination with the Broadcast Bureau, departures from the separation distances shown in the tables of this section may be authorized upon a specific engineering showing by an applicant that the protection ratios specified (i.e. 50, 40 or 0.0 dB as may be applicable) will be afforded to the protected television station(s) by the applicant's proposed facilities.

(6) These frequencies are to be employed solely for providing land mobile communication services. Signaling communications will be authorized only when employed for the purposes of establishing and maintaining mobile communications and to "mark" a busy channel in order to prevent interference between two or more licensees.

(7) Assignment of frequencies will be made from pairs listed within a single 12-channel group and, in the event of assignment to more than one applicant, will be available only on a cooperative shared basis. In this event, each licensee will be granted exclusive use of a channel only when the channel is idle and then only for the duration of a call or call attempt, after which the channel must be relinquished.

(8) To facilitate interference free operation between two or more systems assigned the same block of frequencies in the same urbanized area, each permittee shall, prior to commencing operation, submit to the Commission copies of agreements and system diagrams and plans illustrating how interference free operation will be accomplished. Submitted plans must contain as a minimum the following provisions:

(i) A means whereby a base station transmitter will be prevented from being keyed when the frequency is in use by any other base station in the area. If this is to be accomplished by off-the-air monitoring of base station transmit frequencies, then each base station must be equipped with a receiver monitoring base station frequencies which is colocated with the base station transmitter and interconnected with the transmitter in such a way that it is impossible to key the associated transmitter upon detection of a signal by the receiver.

(ii) A means to insure rapid selective calling and station identification. Selective calling will be permitted on any channel in a group but may only take place on one channel at a time by any one licensee, and only on idle channels. No more than one (1) second of channel time may be employed for each call attempt, and no more than three (3) attempts are to be made during a one (1) minute period. High-speed signaling must be used for selective calling and station identification. Each identification code must provide at least 6 decimal digits of unique code capacity. Calling and identification shall take no more than 500 milliseconds at either base or mobile from the time the transmitter has reached 90 percent power output, and the time needed to reach this output should not exceed 50 milliseconds. Likewise, receiver squelch circuits should be fully opened within 10 milliseconds from detection of carrier above threshold.

(iii) A means whereby it will be impossible for the operator of a mobile unit to key his transmitter in such a way as to cause harmful interference or to obstruct the communications of other stations or to transmit when beyond range of its base station. Each mobile unit shall be so configured as to provide automatic station identification when initiating a request for service; that such request can only be transmitted on an idle channel, and further that it shall be impossible to activate the mobile transmitter unless the mobile unit has received an enabling signal from a base station in response to its request for service.

(iv) A means whereby the total number of mobile units, as determined in subsection 10, operating within a metropolitan area on a 12-channel group of frequency pairs, as listed in 21.501(k), does not exceed the total authorized number of mobile units.

(9) Notwithstanding other provisions of this part, applications for any of the frequencies listed in paragraph 21.501(k) hereof will be processed under the following procedure.

(i) All applicants who file within 60 days after the public notice date of the first application that requests assignment of a particular 12-channel group of frequency pairs substantially in the same metropolitan area for which the first application is submitted are jointly responsible for compliance with § 21.501(l)(8).

(ii) Any applicant who files more than 60 days after the public notice date of the first application that requests assignment of the particular 12 channel group of frequency pairs substantially in the same metropolitan area for which the first application is submitted, pursuant to § 21.501(l)(8), must conform its application to be compatible with whatever technical arrangements are implemented pursuant to § 21.501(l)(8) by applicants that file within the 60-day period.

(10) The total number of mobile units for all carriers operating within a metropolitan area on a 12-channel group of frequency pairs, as listed in 21.501(k), will be authorized as follows:

(i) A total of 40 mobile units per channel will initially be authorized. The Commission will authorize additional mobile units if the applicant can demonstrate, as indicated in subsection (b) below, that the average busy-hour channel usage is below 85 percent.

(ii) The licensees in each market shall measure channel usage at least once every 3 months. These measurements shall be reported to the Commission within 30 days. Measurements shall be taken during the busiest 12-hour periods on 3 days (within a 7-day period) having normal usage. This information should be reported separately for each of the 3 days selected, should be reported by dates, and should disclose the following:

(A) The number of mobile units in service during each of the days specified;

(B) The number of calls completed each hour;

(C) The total number of minutes that the channels (base and mobile) were utilized for transmissions between the base station and land mobile units during each hour;

(D) The average channel usage for the busiest hour as defined in subsection (iii) above for the 3 days being measured; and

(E) Such other additional information which may more accurately reflect channel usage.

(iii) If the average busy-hour channel usage of the 12-channel group of frequency pairs is in excess of 85 percent, the Commission may order a reduction in the authorized number of mobile units, provided that a minimum of 40 mobile units per channel are in service for a 12-channel pair system. This reduction shall be implemented by the carriers through normal attrition of system users.

(iv) The carriers utilizing any 12-channel group of frequency pairs in a given metropolitan area may petition the Commission to alter the 85-percent average busy-hour channel usage figure. The Commission shall authorize such a change if good cause is shown.

[*§ 21.501(k) & (l) amended eff. 12-26-78; VII(74)-6*]

**§ 22.502 Classification of base stations.**

Base stations in the Domestic Public Land Mobile Radio Service shall be classified, as set forth below, according to their transmitting antenna height above average terrain in any particular direction and according to their effective radiated power in the horizontal plane of the antenna in that direction. This classification is not applicable to base stations in the frequency bands

454.6625–455.000 MHz, 459.6625–460.000 MHz, and 570–512 MHz.

| Antenna height above average terrain (feet) | Class of station | | | | |
|---|---|---|---|---|---|
| 400 to 500 | C | B | B | A | A |
| 300 to 400 | C | C | B | B | A |
| 200 to 300 | D | C | C | B | B |
| 100 to 200 | D | D | C | C | B |
| 0 to 100 | E | D | D | C | C |
| | 30 | 60 | 120 | 250 | 500 |

Effective radiated power (watts).

### § 22.503 Geographical separation of co-channel stations.

(a) Base stations engaged in two-way communications, employing frequency modulation or phase modulation and operating cochannel in this service, shall normally be separated by not less than the distances shown below:

| Class of station in the band 35–44 MHz | Minimum mileage separation between co-channel stations | | | | |
|---|---|---|---|---|---|
| A | 105 | | | | |
| B | 99 | 92 | | | |
| C | 93 | 87 | 76 | | |
| D | 88 | 81 | 70 | 58 | |
| E | 82 | 75 | 65 | 52 | 40 |
| | A | B | C | D | E |

Class of station

| Class of station in the band 152–162 MHz | Minimum mileage separation between co-channel stations | | | | |
|---|---|---|---|---|---|
| A | 83 | | | | |
| B | 78 | 72 | | | |
| C | 73 | 67 | 58 | | |
| D | 69 | 62 | 54 | 43 | |
| E | 65 | 59 | 50 | 39 | 29 |
| | A | B | C | D | E |

Class of station

| Class of station in the band 450–460 MHz | Minimum mileage separation between co-channel stations | | | | |
|---|---|---|---|---|---|
| A | 73 | | | | |
| B | 69 | 59 | | | |
| C | 66 | 56 | 43 | | |
| D | 63 | 53 | 41 | 38 | |
| E | 60 | 51 | 38 | 35 | 27 |
| | A | B | C | D | E |

Class of station

(b) In any particular case, where it appears that unusual radio wave propagation conditions are involved, the Commission may require greater separation than indicated in the tables in paragraph (a) of this section, or make assignments at lesser stations spacing. Reference may be made to § 73.611(d) of this chapter for methods of computing mileage separation between station locations.

### § 22.504 Service area of base station.

(a) The limits of reliable service area of a base station engaged in two-way communication service with mobile stations are considered to be described by a field strength contour of 31 decibels above 1 microvolt per meter for stations operating on frequencies in the 35.44 MHz band, 37 decibels above 1 microvolt per meter for stations operating on frequencies in the 152–162 MHz band, and 39 decibels above 1 microvolt per meter for stations operating on frequencies in the 450–460 MHz and 470–512 MHz bands. The limits of reliable service area of base station engaged in one-way signaling service is considered to be 43 decibels above 1 microvolt per meter. Service within such areas is generally expected to have an average reliably of not less than 90 percent.

(b) The field strength contours described in paragraph (a) of this section shall be regarded as determining the limits of the reliable service area of the related base stations for the purpose of providing protection to such stations from co-channel electrical harmful interference and defining the area within which consideration will be accorded claims of economic competitive injury. The following F(50,50) radio wave propagation charts shall be used in connection with making such determinations, and shall be used in combination with the following F(50,10) radio wave propagation charts in the determination of areas of harmful interference between co-channel stations.

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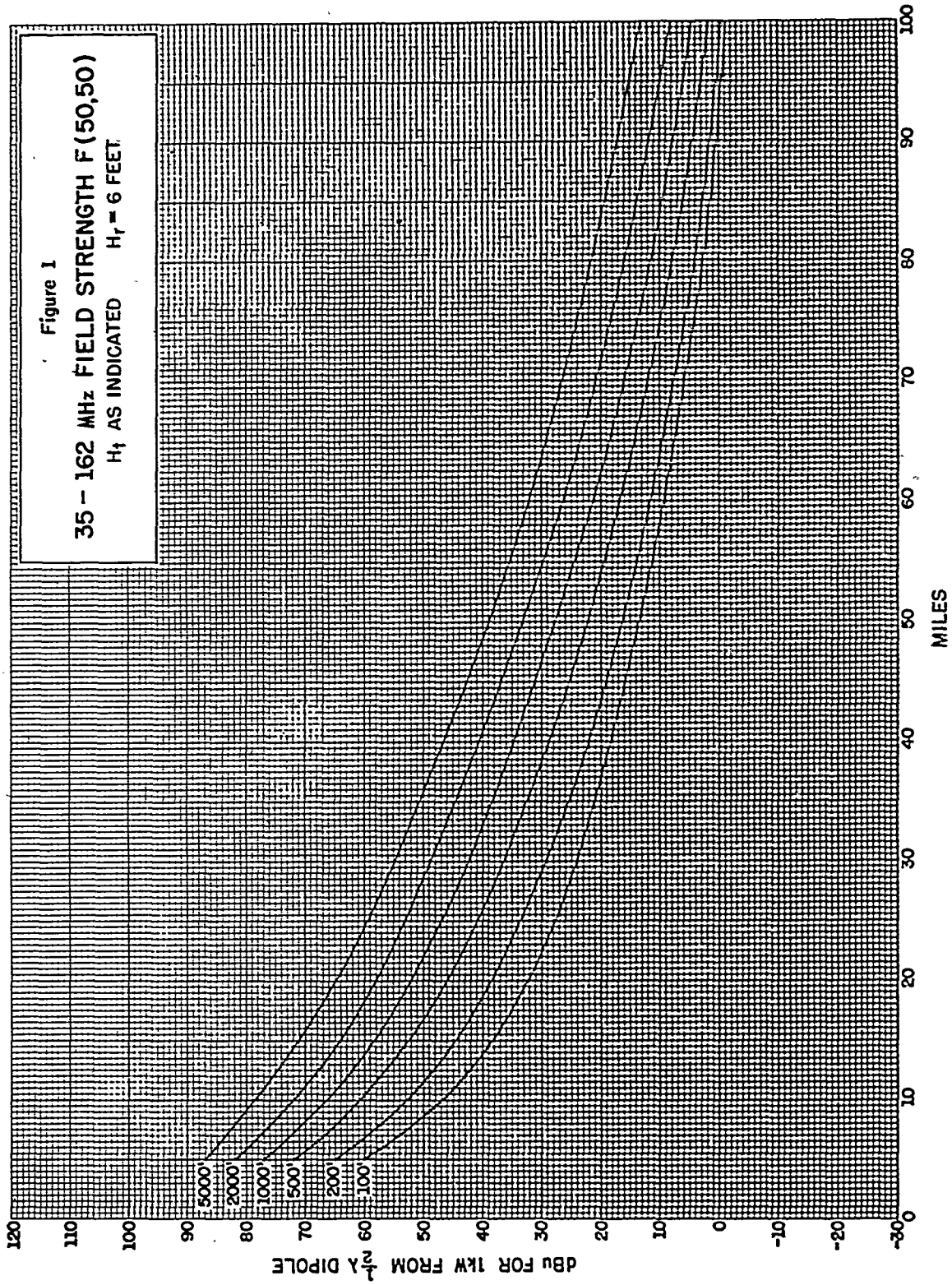
Figure 1
35 – 162 MHz FIELD STRENGTH F(50,50)
$H_t$ AS INDICATED $H_r$ = 6 FEET
5000'
2000'
1000'
500'
200'
100'
120
110
100
90
80
70
60
50
40
30
20
10
0
-10
-20
-30
dBu FOR 1kW FROM $\frac{1}{2}\lambda$ DIPOLE
0
10
20
30
40
50
60
70
80
90
100
MILES

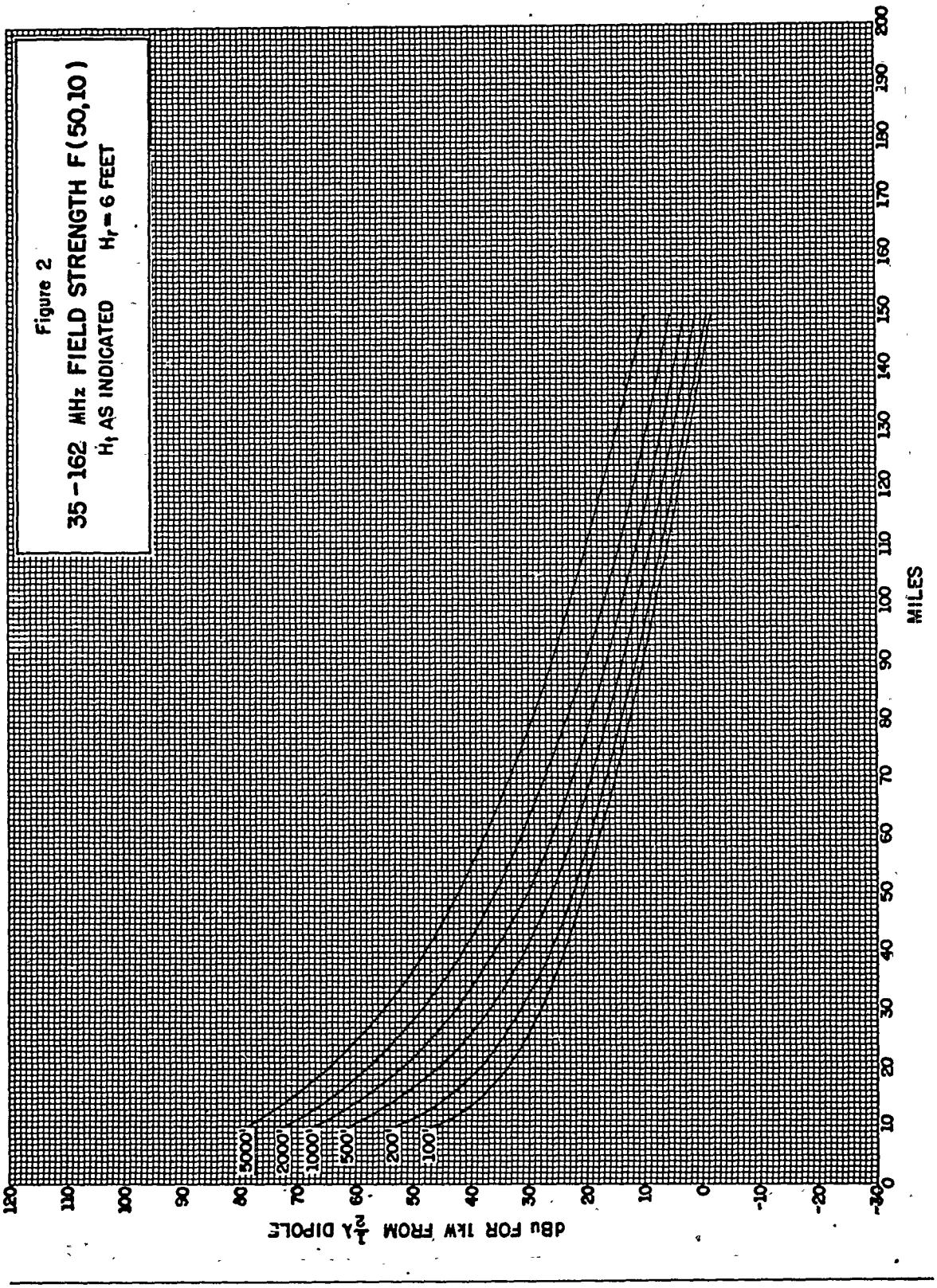
Figure 2
35 – 162 MHz FIELD STRENGTH F(50,10)
$H_1$ AS INDICATED $H_r$ = 6 FEET
5000'
2000'
1000'
500'
200'
100'
120
110
100
90
80
70
60
50
40
30
20
10
0
-10
-20
-30
dBu FOR 1kW FROM $\frac{1}{2}\lambda$ DIPOLE
0
10
20
30
40
50
60
70
80
90
100
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150
160
170
180
190
200
MILES

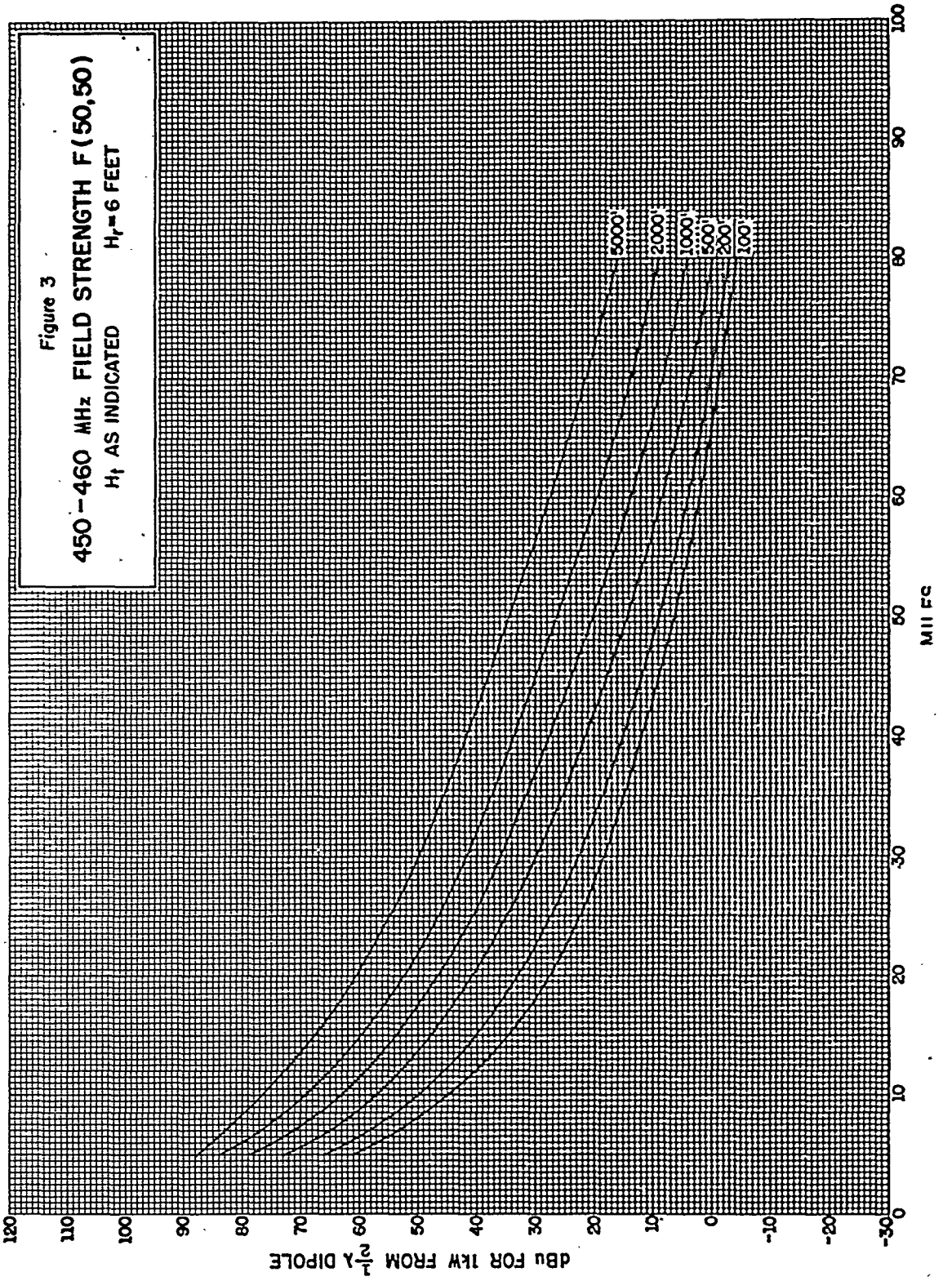
Figure 3
450–460 MHz FIELD STRENGTH F(50,50)
$H_t$ AS INDICATED $H_r$=6 FEET
5000'
2000'
1000'
500'
200'
100'
dBu FOR 1kW FROM $\frac{2}{\lambda}$ DIPOLE
MILES
120
110
100
90
80
70
60
50
40
30
20
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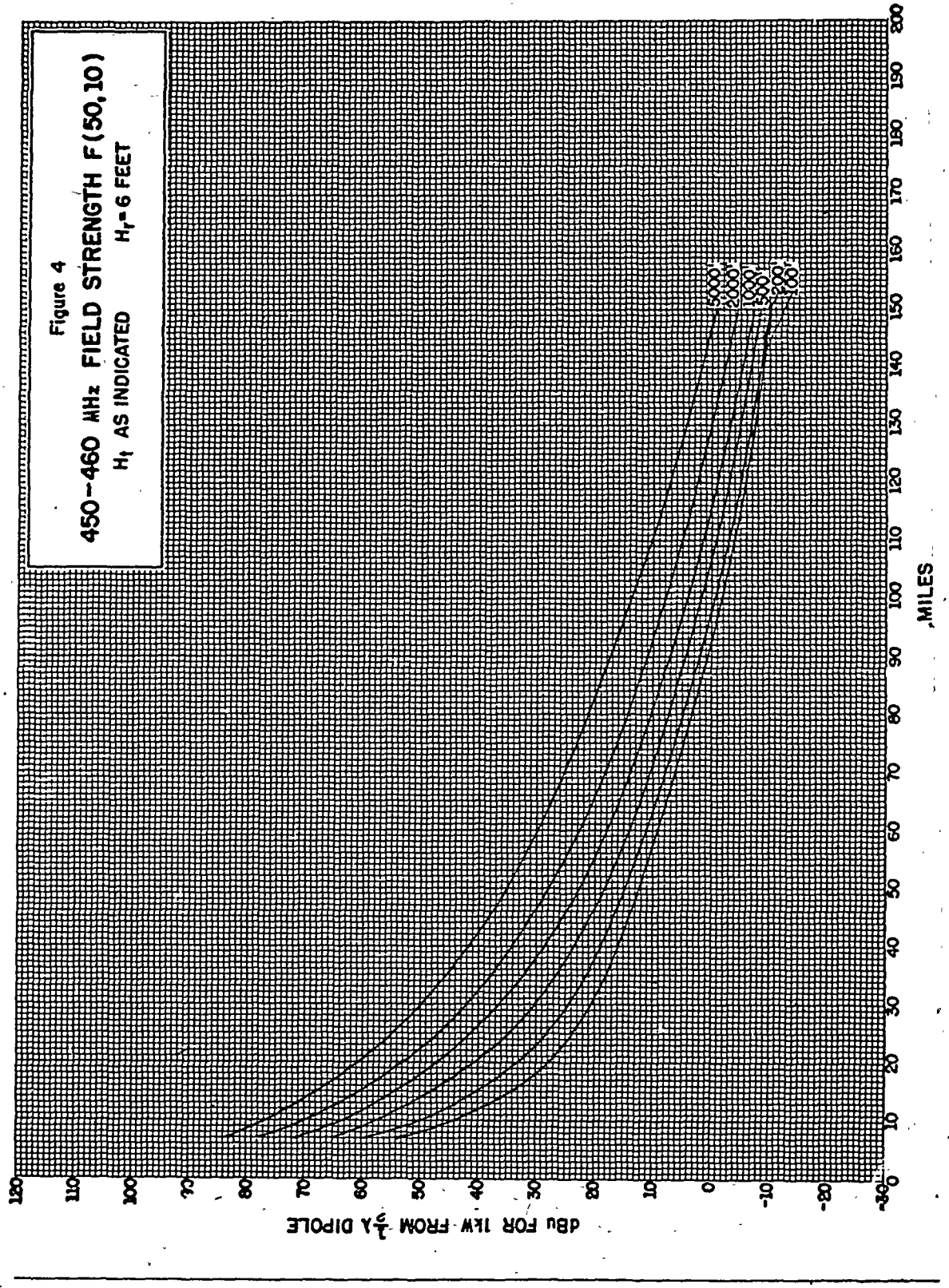
50
40
30
20
10
0

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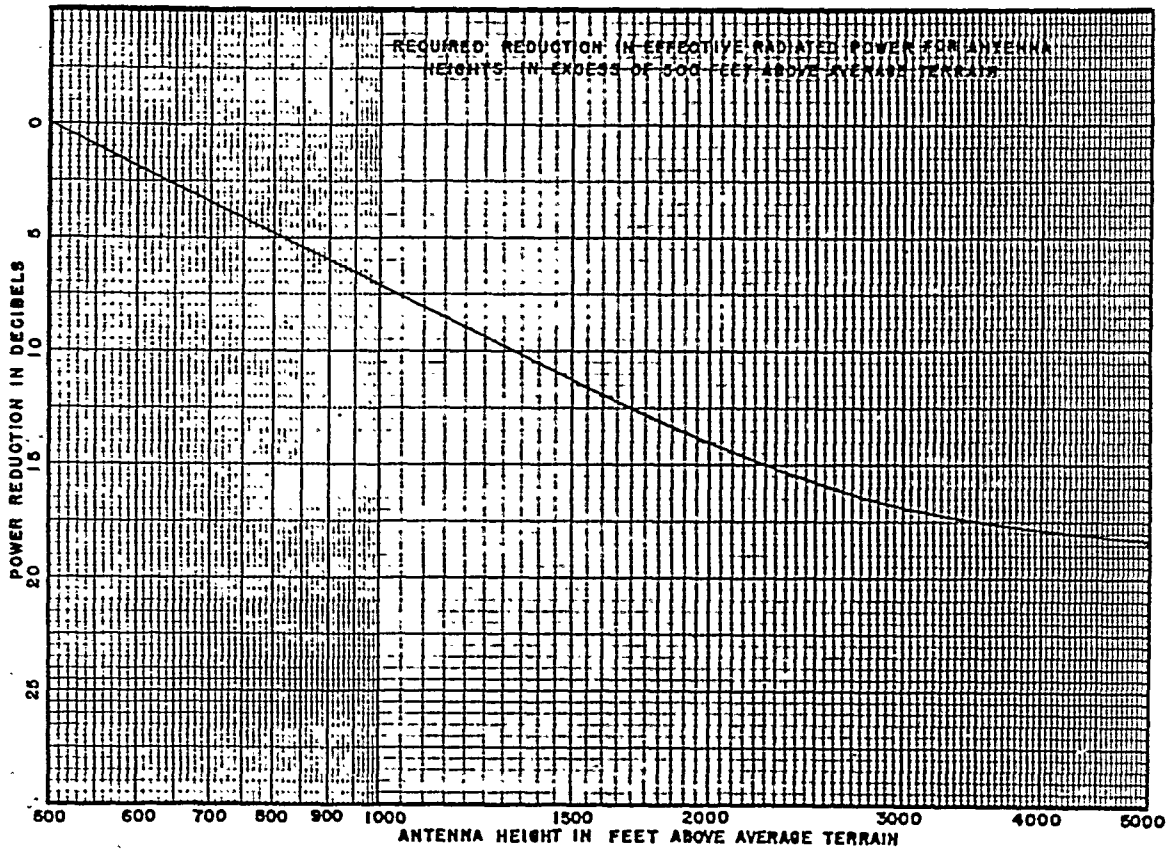
**§ 22.505 Antenna height-power limit for base stations.**

In view of the fact that the predominant need for mobile communication service can usually be met by base stations within the classification set forth in § 22.502, and because widespread coverage is undesirable in areas where no substantial need exists for mobile communication service through a distant base station, base stations will not be authorized to employ transmitting antennas in excess of 500 feet above average terrain unless the effective radiated power of the base station is reduced below 500 watts by not less than the amount as shown in the chart below entitled "Required Reduction in Effective Radiated Power for Antenna Heights in Excess of 500 Feet Above Average Terrain". This antenna height-power limit does not apply to base stations in the frequency band 470–512 MHz.




**§ 22.506 Power limitations.**

(a) Stations in this service (other than base stations in the frequency band 470–512 MHz) shall not be permitted to exceed 500 watts effective radiated power and shall not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 22.107(b): *Provided, however,* That the effective radiated power of dispatch stations, and auxiliary test stations and base stations operating on frequencies specified in § 22.521 shall not exceed 100 watts: *Provided, further,* That the rated power output of transmitters used on frequencies specified in § 22.521 shall not exceed 25 watts and that the transmitter output power of airborne stations operating on such frequencies shall not be less than 4 watts. A base station standby transmitter having a rated power output in excess of that of the main transmitter of the base station with which it is associated and will not be authorized. For stations in the 470–512 MHz frequency band see section 22.501(1).

(b) The power output of land mobile station transmitters shall not exceed 60 watts. The power output of airborne station transmitters shall not exceed 25 watts. A transmitter may consist of an exciter plus a radio frequency power amplifier provided that such a combination is type accepted by the Commission.

(c) Under idle traffic conditions, a base station assigned frequencies specified in § 22.521 shall radiate continuously on its working channel(s) a tone modulated carrier reduced in power by at least 10 decibels, but not more than 20 decibels, below its normal power. (See also § 22.508(b).)

### § 22.507 Bandwidth and emission limitations.

(a) Stations in the Domestic Public Land Mobile Radio Service shall normally be authorized to use only type A3 or F3 emission for radiotelephony, and type A1, A2, F1, or F2 emission for selective signaling. The authorization to use type A3 or F3 emission for radiotelephony shall be construed to include the use of tone signals or signaling devices the sole function of which is to establish and maintain communication. Stations providing one-way signaling service by means of selective signaling which is not associated with a voice message are required to be authorized to employ telegraph type emission appropriate to the type of transmission employed. The use of types A0 or F0 emission in the 72–76 MHz band will not be authorized, except for temporary or short periods necessary for testing incident to the construction or maintenance of a radio station. (Further reference should be made to §§ 22.103 to 22.105, inclusive.)

(b) The maximum authorized bandwidth of emission and, for the cases of frequency or phase modulated emissions, the maximum authorized frequency deviation shall be as follows:

| | 25–50 MHz | | 50–150 MHz | | 150–512 MHz | |
|---|---|---|---|---|---|---|
| Type of emission | Authorized bandwidth (kHz) | Frequency deviation (kHz) | Authorized bandwidth (kHz) | Frequency deviation (kHz) | Authorized bandwidth kHz | Frequency deviation (kHz) |
| A1 | 1 | | 1 | | 1 | |
| A2 | 3 | | 3 | | 3 | |
| A3 | 8 | | 8 | | 8 | |
| F1 | 3 | | 3 | | 3 | |
| F2 | 15 | | 15 | | 15 | |
| F3 | 20 | 5 | [2]40 | [2]15 | [1]20 | [1]5 |

[1] In the frequency band 450 to 470 MHz, radio facilities using frequency modulated or phase modulated emission, authorized prior to June 1, 1968, will continue to be authorized with bandwidth of 40 kHz until Nov. 1, 1971, provided that the frequency deviation is reduced to 5 kHz by June 1, 1968.

[2] In the frequency bands 72.0–73.0 and 75.4–76.0 MHz, radio facilities using frequency modulated or phase modulated emission will be authorized with maximum bandwidth of 20 kHz and maximum frequency deviation of 5 kHz. Radio facilities which were authorized for operation on Dec. 1, 1961, in the frequency band 73.0–74.6 MHz may continue to be authorized without change and with bandwidth of 40 kHz and frequency deviation of 15 kHz. New or modified facilities in the frequency band 73.0–74.6 MHz will not be authorized.

(c) On frequencies above 512 MHz, the bandwidth authorized shall not exceed 400 kHz for each derived communication channel and may be restricted to lesser bandwidth when appropriate to the type of operation involved in any particular case.

(d) Other type of emission or bandwidth in excess of those specified in paragraph (b) of this section may be authorized upon an adequate showing of need therefor. An application requesting such authorization shall fully describe the modulation characteristics (for FM include maximum modulating frequency and maximum frequency deviation) emission and bandwidth desired, shall specify the bandwidth to be occupied, and shall state the reasons why such emission or bandwidth is required.

(e) The authorization to employ any of the various types of modulated emission in this service shall be construed to include authority to employ unmodulated emission only for temporary or short periods necessary for equipment testing incident to the construction and maintenance of a radio station.

### § 22.508 Modulation requirements.

(a) The use of modulating frequencies higher than 3000 hertz for radiotelephone or tone signaling is not authorized for frequencies below 512 MHz.

(b) During idle traffic conditions, the working channel carrier of a base station on frequencies specified in § 22.521 shall be modulated continuously with a distinctive tone except during period required for station identification.

(c) When amplitude modulation is used, the modulation percentage shall be sufficient to provide efficient communication and shall normally be maintained above 70 percent on peaks, but shall not exceed 100 percent on negative peaks.

(d) When phase or frequency modulation is used for single channel operation on frequencies below 512 MHz, the deviation arising from modulation shall not exceed the limits specified in § 22.507(b).

(e) Each transmitter, which has more than 3 watts plate power input to the final radio frequency stage and was initially authorized or installed at the station in this service after July 1, 1950, employing type A3 or F3 emission shall be equipped with a device which will automatically prevent greater than normal audio level from modulating in excess of the limits specified in paragraphs (c) and (d) of this section.

(f) Each transmitter, which operates on frequencies below 450 MHz and employs type A3 or F3 emission, shall be equipped with a modulation limiter in accordance with the provisions of paragraph (e) of this section and also shall be equipped with a low-pass audio filter installed between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 15 kHz, the filter shall have an attenuation greater than the attenuation of 1 kHz by at least:

$40 \log_{10} (f/3)$ decibels

where "f" is the audio frequency in kilohertz. At audio frequencies above 15 kHz, the attenuation shall be at least 28 decibels greater than the attenuation at 1 kHz.

(g) Each transmitter which operates on frequencies between 450 and 512 MHz and employs type A3 or F3 emission, shall be equipped with a modulation limiter in accordance with the provisions of paragraph (e) of this section and also shall be equipped with a low-pass audio filter installed between the modulation limiter and the modulated stage. At audiofrequencies between 3 kHz and 20 kHz, the filter shall have an attenuation greater than the attenuation at 1 kHz by at least:

$60 \log_{10} (f/3)$ decibels

where "f" is the audiofrequency in kilohertz. At audiofrequencies above 20 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz: *Provided, however,* that in lieu of such filter, transmitters authorized to operate between 450 and 470 prior to June 1, 1968, may continue to operate until November 1, 1971, with a filter meeting the requirements prescribed in paragraph (f) of this section.

(h) Each airborne station shall use suitable means to prevent impairment of transmission by the ambient noise present when the aircraft is in operation. Ambient noise in excess of 95 decibels Reference Acoustical Pressure (flat weighting) shall require use of a noise-cancelling type of microphone, or suitable environmental acoustic treatment to reduce the ambient noise level to 95 decibels RAP or less.

### § 22.509 Permissible communications.

(a) Mobile stations in this service are authorized to communicate with and through base stations only. Such communication between base and mobile stations shall be upon frequencies which are paired in the manner set forth in § 22.501(a), (b), and (c).

(b) Base stations in this service are normally authorized to communicate with associated land mobile stations in the same service: *Provided, however,* That base stations may also render service to properly licensed transient land mobile stations normally associated with another common carrier base station, including mobile units of

Canadian registry. Under specific authorization from the Commission, service may be rendered to stations on board vessels. Authority to provide service to vessels may be granted upon a showing that the rendition of service to vessels will not degrade, by kind or extent of usage, the service which would be available, in the absence of service to vessels, to land vehicles receiving or subsequently requesting such services in the area: *Provided,* That any authorization to render service to vessels, other than itinerant vessels requiring service in other areas where VHF public coast service is not available, shall automatically terminate at the expiration of 60 days after inauguration of VHF public coastal service in the area involved. Applications for authority to communicate with vessels shall be accompanied by a showing of the following:

(1) The total number of land mobile units being served through the base station.

(2) The total number of land mobile units to which it is reasonably expected that such service will be furnished at any time in the next 12 months.

(3) The total number of stations on board vessels initially proposed to be served through the base station.

(4) The total number of stations on board vessels to which it is reasonably expected that such service will be furnished at any time in the next 12 months.

(5) Other public radio facilities available in the area providing service to mobile stations on board vessels.

(6) Such other information as may be deemed pertinent, showing that communication with vessels will not degrade or deny service to land vehicles receiving or requesting land vehicular communication service over the radio facilities of the base station, and that such service to vessels is necessary and desirable.

(c) Applications requesting renewal of authority to render service to vessels shall be accompanied by a current showing of information as required in paragraph (b) of this section.

(d) Mobile stations in this service may not be operated aboard aircraft except when licensed for such installation as airborne stations upon frequencies designated in § 22.521.

(e)(1) Base stations in this service which are authorized to render one-way signaling service may also render such service to receivers aboard aircraft and vessels, and may engage in two-way communication with airborne stations upon frequencies designated in § 22.521.

(2) Base stations in this service may also be authorized to render one-way signaling communications service by subaudible means to multipoint mobile and/or fixed locations for purposes of communicating information intended for reception at multipoint mobile and/or fixed locations, provided that this does not interfere with normal communications.

(f) Base stations in this service may communicate with appropriately authorized Rural Subscriber stations in the Rural Radio Service, where the use of wire lines is not practicable or feasible. Authorization for the establishment of a Rural Subscriber station may be granted upon a satisfactory showing that it will not degrade the mobile communication service rendered by the base station and a supplementary showing as set forth in § 22.609. Such showing should be incorporated in the application for construction permit for the fixed point to which communication is to be effected.

(g) The base and mobile station facilities authorized in this service shall not be used in connection with any taxicab operations wherein the licensee is directly or indirectly interested through stock ownership or otherwise.

(h) Pursuant to the provisions of the "Convention Between the United States of America and Canada, Relating to Operation by Citizens of Either Country of Certain Radio Equipment or Stations in the Other Country," United States licensed mobile units in this service which are in Canada may be authorized by the Canadian Government to communicate with or through Canadian licensed common carrier base stations in the land mobile radio service or with base stations licensed under the rules of this part. Canadian licensed mobile units in the common carrier land mobile radio service which are in the United States may communicate with and through United States licensed base stations in this service provided authority for such communication has been granted by the Commission upon proper application therefor.

(i) Unless otherwise prohibited by agreements, laws, rules, regulations, etc. of the foreign country concerned, base stations in this service are not prohibited from rendering trans-border communication service for hire to mobile units in that country which are properly licensed to operate in the common carrier land mobile service of either country.

(j) Auxiliary test stations in this service shall normally be operated upon mobile station frequencies only for the purpose of determining the performance of fixed receiving equipment remotely located from the base station with which it is associated or where the receiving equipment is located with the base station and both are remote from the control point of the station: *Provided, however,* That a transmitter used in an auxiliary test station may be used as a standby transmitter upon the frequency of the base station with which it is associated whenever such base station is out of service for maintenance or repair.

(k) A subscriber's dispatch station in this service is authorized to intercommunicate only with the mobile stations of said subscriber through the base station with which it is associated. Where more than one subscriber jointly operate a dispatch station, each subscriber shall communicate only with his own mobile stations.

**§ 22.510 Base stations may be authorized only as part of integrated radio system.**

Base stations will be authorized only as a part of an integrated communication system wherein land mobile units assocated therewith are also licensed to the base station licensee. (See also § 22.15(i).)

**§ 22.511 Communication service to own mobile units.**

(a) Upon filing an application for renewal of station license for a base station in this service, a miscellaneous common carrier applicant shall submit a factual statement to show that, during the preceding license period, at least an average of 50 percent of the mobile units on any channel to which communication service has been rendered by a base station have been used by persons not directly or indirectly controlling or controlled by, or under direct or indirect common control with the applicant. If an applicant is unable to meet such criterion, he shall show what efforts have beem made to achieve use of the service by the public and offer such further showing or explanation as he may deem appropriate.

(b) Wire-line communication common carriers may be authorized to establish land mobile radio facilities under this part of the rules for the purpose of providing communication facilities for their own use incident to construction and maintenace of public communication facilities: *Provided, however,* That the use of the authorized facilities on such frequencies shall be on a secondary basis and subject to use by public subscribers at any time when required for the rendition of public communication service.

**§ 22.512 Priorities for service to subscribers.**

(a) Subscriptions to mobile telephone service shall be afforded in the following order of precedence and in chronological order of filing of request for service within each of the following customer categories:

(1) *Category 1: Public safety and health.* Official federal, state, county and municipal government agencies protecting the public safety and health; private organizations and persons engaged primarily in protecting the public safety and health such as physicians, hospitals, ambulance services, volunteer fire departments, American Red Cross, licensed protective patrols and armored cars and similar agencies.

(2) *Category 2: Public service.* Contract carriers, common carriers, and public utilities (exclusive of taxicab and livery service), for communications other than correspondence of the general public.

(3) *Category 3: Quasi public service.* Emergency repair organizations, not included in Category 1, protecting health and property; press assocations, newpapers and broadcasting stations.

(4) *Category 4: Physically handicapped.* Persons who because of physical handicaps, operate specifically equipped vehicles and are unable to leave such vehicles without assistance.

(5) *Category 5: Industrial.* Gas or oil producing or drilling operators; producers and distributors of fuel and lumber and other construction materials and equipment; food processing, distribution and storage organizations; producers of substantial quanities of food; business concerns engaged in construction of housing and industrial or public works; taxicabs and livery service.

(6) *Category 6: Traveling public.* Trains and watercraft where service is made available to passengers.

(7) *Category 7: All others.*

(b) After initial establishment of service in accordance with the table of priorities in paragraph (a) of this section when facilities in a given area are insufficient to furnish service to all who desire mobile radiotelephone service, applications for new or additional mobile units shall be ranked within the categories in order of date of filing and service shall be afforded such applicants as facilities become available, in descending order of precedence.

**§ 22.513 Location of message center.**

Within the service area encompassed by the field strength contour of each base station as defined in § 22.504, there shall be at least one message center so located that the major portion of subscribers' local exchange landline telephone calls, which originate or terminate in such area in conjuction with messages transmitted or received by said station, cost no more per call than the local message single unit rate. In cases where the control point of a base stations is not so located, a public foreign exchange telephone circuit shall be provided to afford service so that a radio service subscriber may communicate between such points at a cost per call not in excess of the local message single unit rate.

**§ 22.514 Responsibility for operational control and maintenance of mobile units.**

(a) The licensee of a base station in this service shall be responsible for exercising effective operational control over all mobile units with which it communicates. The proper installation and maintenance of such mobile units shall be the responsibility of the respective licensees thereof.

(b) A mobile unit normally associated with and licensed to a specified base station will be deemed, when communicating with a different base station pursuant to legally effective tariff provisions, to be temporarily associated with and licensed to such different base station and the licensee of such different base station shall, for such temporary period, assume the same licensee responsibility for such mobile unit as if such unit were regularly licensed to it.

**§ 22.515 Control points, dispatch points and dispatch stations.**

(a) Dispatch stations, other than those installed pursuant to § 21.519(a), may be installed only with specific authorization from the Commission. Upon removal of a specifically licensed dispatch station, the licensee must within 30 days thereafter submit to the Commission in Washington, D.C., the dispatch station license for cancellation. Dispatch points may be installed or removed without authorization. Dispatch point circuit facilities shall be installed in conformance with the requirements of paragraph (c)(2) of this section.

(b) To insure the maintenance of station control, means shall be provided whereby each dispatch station and each dispatch point is maintained under continuous effective operational supervision of one or more control points.

(c) At each control point for a base station or fixed station in this service, the following facilities will be installed:

(1) Equipment to permit the responsible radio operator to monitor aurally at such intervals as may be necessary to insure proper operation of the integrated communication system, all transmissions orginating at dispatch points under his supervision and at stations with which the base station communicates.

(2) Facilities which will permit the responsible radio operator either to disconnect immediately the dispatch point circuits from the transmitter or immediately to render the transmitter inoperative from any dispatch point associated therewith.

Note: Reference should be made to §§ 22.118 and 22.518 for additional control point requirements and also to § 22.205 concerning operator requirements.

**§ 22.516 Additional showing required with application for assignment of additional channel or channels.**

An application requesting the assignment of an additional channel or channels at an existing Domestic Public Land Mobile radio station (other than control, dispatch or repeater), in addition to the information required by other sections of the rules, shall include a showing of the following:

(a) The number of mobile units for which orders for service are being held.

(b) Data showing the actual traffic loading on each channel assignment of the present radio systems during the busiest 12-hour periods on 3 days (within a 7-day period) having normal message traffic not more than 60 days prior to the date of filing. This information should be reported separately for each of the 3 days selected, which should be identified by dates, and should disclose the following:

(1) The number of mobile units using the service during each of the days specified.

(2) The number of calls completed each hour.

(3) For systems that provide message relay service, (i) the number of calls held, (ii) the total holding time, and (iii) the maximum holding time for a call, due to busy radio circuit conditions during each hour; or, for systems that do not provide message relay service, the total number of minutes that the channel (base and mobile) was utilized for transmissions between the base station and land mobile units during each hour.

(4) For systems that provide one-way signaling as a primary service, (i) the number of mobile receivers in operation during the study period, (ii) the number of calls held, (iii) the total holding time; or for systems that do not provide message relay service, (iv) the total number of minutes the channel is

utilized for transmission between the base station and the mobile receiver during each hour.

(5) Such other additional information which may more accurately reflect channel loading, and any further information which may be applicable and pertinent to the application.

**§ 22.517 Use of base station as a repeater station.**

On its regularly assigned frequency, a base station may be used to perform the added functions of a repeater station when means are provided whereby the licensee of the radio system is able to turn the base station on and off at will from its control point irrespective of the transmissions of subscriber units on the mobile station frequency associated therewith.

**§ 22.518 Use of mobile station frequency for control station.**

Upon proper application to the Commission for a construction permit to install a control station, a base station applicant or licensee may be authorized to operate its base station via a control station using the mobile station frequency paired therewith. In order to ensure retention of essential operational control of the radio system by its licensee, it is expected that this method of operation will not be installed where the signals from subscriber operated units are able to override the functions of the control path between the control and base station, or where such operation will cause harmful interference to another radio system. The control station shall be provided with coded signals whose transmission will enable the control station to shut down and reactivate the base station at will, irrespective of the transmissions of subscriber units associated therewith. Additional coded signals may be employed by the controls station for selective signaling of subscriber units or for performing essential functions at the base station, e.g., controlling aeronautical obstruction marking lights on the base station antenna tower. The coded signals used by control stations for shut down and reactivation of the base station, or for any other essential control functions (other than selective signaling incidental to establishment of subscriber communications) connected therewith, shall consist of two or more sequentially transmitted tones whose combined duration shall not exceed one second. Use of tone modulation for selective signaling to and from subscriber radio installations is not required; however, when tone modulation is used for this purpose, the aforementioned limitation on the combined duration of tones is not applicable. Radio installations in the premises of, or in vehicles of, subscribers are not permitted to be equipped with code signaling devices (other than for signaling incidental to establishment of subscriber communications) whereby the user would be able to reactivate the base station after the radio system has been shut down by the licensee. Applications for authority to operate a control station upon the mobile station frequency shall be supported by complete engineering information disclosing, among other things, all particulars of the code signaling system which is to be employed.

**§ 22.519 Use of mobile station frequency for dispatch station.**

A base station licensee may be authorized to install, for a mobile station subscriber or a group of mobile station subscribers, a dispatch station using the mobile station frequency paired with the associated base station frequency. Authorization for the establishment and operation of any dispatch station will be on the express condition that such station will not cause harmful interference to the mobile or rural radio services and will not inhibit use by the mobile radio service of the frequencies assigned to the dispatch station or degrade the mobile communication service rendered by the base station. No dispatch station shall be installed at any site or under conditions whereby it will be capable of overriding the control functions of a control station using the same frequency.

(a) A licensee may install a dispatch station without authorization for the specific location if the antenna height employed at any such location does not exceed the criteria set forth in § 17.7 of this chapter, the rated power output of the transmitter does not exceed 10 watts and each such installation otherwise complies with the requirements of §§ 22.107, 22.108, 22.110, 22.506, 22.520 and all other pertinent provisions of this part. The number of such dispatch station installations shall not exceed the number stated on the base station license. The operation of any such installation shall be subject to termination by the Commission without a hearing upon notice to the licensee.

(b) Any proposal for the installation of a dispatch station which does not comply with the limitations and requirements of paragraph (a) of this section shall be submitted to the Commission, upon proper application (FCC Form 401) for a construction permit.

**§ 22.520 Notification of operation of dispatch station without specific authorization.**

(a) The licensee of a base station who proposes to establish a dispatch station pursuant to the provisions of § 22.519(a) shall notify the Commission at Washington, D.C., 20554, and its Engineer in Charge of the radio district wherein operation is to be conducted, at least two days prior to the installation of the facilities. This notification shall include:

(1) The name(s) and address(es) of subscriber(s) and the number of mobile stations assigned to each subscriber.

(2) A description of the transmitting location, including the geographic coordinates to the nearest second of latitude and longitude, and also by conventional reference to street number, landmark, etc.

(3) The name of the manufacturer, type number and rated power output of transmitter to be installed.

(4) The transmitting antenna make, model number and power gain in decibels with respect to a reference half-wave dipole antenna.

(5) The overall height of the transmitting antenna structure in feet above ground and above mean sea level.

(6) The location of the transmitter control point.

(7) The exact frequency or frequencies to be used.

(8) The identity and location of the base station through which it will communicate.

(9) The commencement date of operation.

(b) A copy of the foregoing notification shall be posted with the base station license.

(c) Upon termination of the operation of a dispatch station for which notification was given pursuant to paragraph (a) of this section or, in the event any of the facts alleged in such notification will be changed, written notice thereof shall be given to the Commission and its Engineer in Charge, at least two days prior to the execution of the change.

**§ 22.521 Nationwide plan for assignment of frequencies to land mobile systems rendering communication service to airborne stations.**

(a) The following frequency pairs designated by the working channel numbers indicated below are designated for assignment only to land mobile radio systems, which are interconnected to the nationwide public landline message telephone system and afford communication service to airborne stations:

| Base station frequencies (MHz) | Working channel designations | Mobile and auxiliary test station frequencies (MHz) |
|---|---|---|
| 454.675 [1] | | |
| 454.700 [2] | 6 | 459.700 |
| 454.725 [2] | 7 | 459.725 |
| 454.750 [2] | 5 | 459.750 |
| 454.775 [2] | 8 | 459.775 |
| 454.800 [2] | 4 | 459.800 |
| 454.825 [2] | 9 | 459.825 |
| 454.850 [2] | 3 | 459.850 |
| 454.875 [2] | 10 | 459.875 |
| 454.900 [2] | 2 | 459.900 |
| 454.925 [2] | 11 | 459.925 |
| 454.950 [2] | 1 | 459.950 |
| 454.975 [2] | 12 | 459.975 |

[1] This frequency is to be associated with each of the base station channels listed herein and is to be used exclusively as a signaling channel for calling airborne stations.

[2] Use of the frequencies for base stations indicated herein, is limited on a secondary basis to land mobile systems which also provide communication service to airborne stations and upon a showing that mobile service will not adversely affect the availability or adequacy of service to airborne subscribers.

(b) Base stations operating on the frequencies specified in this section shall be situated within 25 statute miles of the location specified below. This distance shall be measured from the intersection of the geographic coordinates shown, or from the main post office where coordinates are not specified herein.

| Location | Channel |
|---|---|
| Alabama: | |
| Troy | 10 |
| Alaska: | |
| Anchorage | 8, 10 |
| Fairbanks | 5, 6 |
| Juneau | 2, 7 |
| Ketchikan | 4, 3 |
| Nome | 2, 7 |
| Arizona: | |
| Grand Canyon | 12 |
| Phoenix | 2, 8 |
| Arkansas: | |
| Little Rock | 6 |
| California: | |
| East of Fresno (36°44' N. lat.) (119°17' W. Long.) | 3, 11 |
| Northwest of Los Angeles (34°20' N. lat.) (118°36' W. long.) | 4, 7, 10 |
| North of Redding (40°55' N. lat.) (122°27' W. long.) | 6 |
| Northeast of San Francisco (37°51' N. lat.) (122°11' W. long.) | 1, 8 |
| Northwest of Santa Barbara (34°32' N. lat.) (119°58' W. long.) | 5 |
| East of San Diego (32°53' N. lat.) (116°25' W. long.) | 9 |
| Colorado: | |
| Denver | 2, 7, 8 |
| Grand Junction | 4 |
| Trinidad | 10 |
| District of Columbia: | |
| Washington | 1, 7, 10 |
| Florida: | |
| Cocoa | 3, 11 |
| Miami | 2, 7, 8, 9 |
| Tampa | 5, 12 |
| Georgia: | |
| Atlanta | 7, 8, 9 |
| Waycross | 1 |
| Hawaii: | |
| Hilo (Hawaii) | 2, 4 |
| Honolulu (Oahu) | 1, 3, 5, 7 |
| Kailua-Kona (Hawaii) | 6, 8 |
| Kamuela (Hawaii) | 9 |
| Kahului (Maui) | 10, 12 |
| Lihue (Kauai) | 11 |
| Idaho: | |
| Boise | 4 |
| Idaho Falls | 10 |
| Illinois: | |
| Alton | 4, 10 |
| Chicago | 1, 7, 9 |
| Indiana: | |
| Vincennes | 11 |
| Iowa: | |
| Waterloo | 12 |
| Kansas: | |
| Colby | 9, 11 |
| Salina | 1 |
| Kentucky: | |
| Middlesboro | 5 |
| Louisiana: | |
| New Orleans | 3, 11 |
| Maine: | |
| Shreveport | 5 |
| Bangor | 1, 7 |
| Massachusetts: | |
| Boston | 2, 3, 4 |
| Michigan: | |
| Detroit | 2, 8 |
| Minnesota: | |
| Duluth | 2 |
| Minneapolis | 8, 11 |
| Mississippi: | |
| Jackson | 2 |
| Missouri: | |
| Kansas City | 2, 8 |
| Montana: | |
| Billings | 9 |
| Glendive | 8 |
| Great Falls | 2, 12 |
| Missoula | 7 |
| Nebraska: | |
| Alliance | 5, 12 |
| North Bend | 6 |
| Nevada: | |
| Elko | 5 |
| Las Vegas | 6 |
| Northwest of Reno (39°35' N. lat.) (119°56' W. long.) | 2 |
| New Jersey: | |
| Newark | 6, 8, 9 |
| New Mexico: | |
| Albuquerque | 5 |
| Artesia | 1 |
| Silver City | 3 |
| New York: | |
| Elmira | 5 |
| Southwest of Albany (42°38' N. lat.) (73°59' W. long.) | 11 |
| North Carolina: | |
| Charlotte | 2 |
| Rocky Mount | 11 |
| North Dakota: | |
| Bismarck | 1 |
| Fargo | 4, 7 |
| Ohio: | |
| Dayton | 6 |
| Oklahoma: | |
| Oklahoma City | 3, 12 |
| Oregon: | |
| Klamath Falls | 12 |
| Pendleton | 8 |
| Salem | 3, 11 |
| Pennsylvania: | |
| Pittsburgh | 4, 12 |
| Puerto Rico: | |
| Mayaguez | 12 |
| Ponce | 11 |
| San Juan | 8, 9, 10 |
| South Carolina: | |
| Charleston | 4 |
| South Dakota: | |
| Pierre | 10 |
| Tennessee: | |
| Columbia | 12 |
| Texas: | |
| Amarillo | 6 |
| Dallas | 4, 7, 10 |
| El Paso | 9, 11 |
| Harlingen | 3 |
| Houston | 1, 9 |
| San Antonio | 8 |
| Sweetwater | 2 |
| Utah: | |
| Ogden | 3, 11 |
| Richfield | 1, 9 |
| Virgin Islands: | |
| Charlotte Amalie | 7 |
| Fredericksted | 6 |
| Washington: | |
| Seattle | 1, 2, 5, 9 |
| Spokane | 6 |
| West Virginia: | |
| Beckley | 3 |
| Wisconsin: | |
| Wausau | 5 |
| Wyoming: | |
| Casper | 6 |

### § 22.522 Base station signaling system requirements for calling airborne stations.

(a) Each base station operating on frequencies specified in § 22.521 shall be equipped for two-tone selective signaling of airborne stations by means of a code comprised of seven basic elements, A through G, as follows:

| A | B | C | D | E | F | G |
|---|---|---|---|---|---|---|
| Digit one (1) | Pause | Five digits (e.g., 29035) | Pause | One or more digits (e.g., 3) | Pause | Digit one (1) |

A—A clearing pulse to reset selectors to zero.

B—An idle period pulse of 0.66 to 1.4 seconds between the transmission of the clearing pulse and the time of start of transmission of the assigned selective signaling code.

C—The selective signaling code or "number" assigned to the airborne station. This always comprises five digits. The digit one is not used. The arithmetic sum of the five digits will be anything from 10 to 50, counting 0 as 10.

D—An idle period, 1.0 second (minimum) between the transmission of the five digit code and element E, the channel designation number.

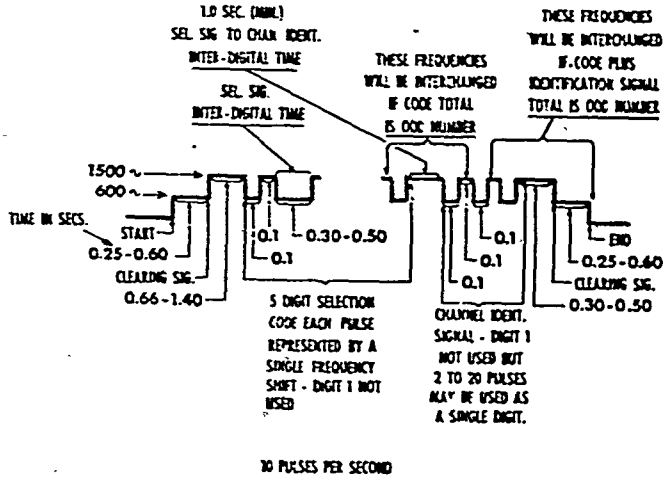
E—The channel designation number to indicate the working channel of the calling base station. This may also be used to activate an audible ringing signal in the aircraft. Two to thirteen pulses are used to select channels 1 to 13 and are sent in a continuous train as a single digit. The digit comprised of one pulse is not used.

F—A 0.30 second period is provided prior to transmission of a clearing pulse.

G—A clearing pulse to enable the airborne station selective signaling receiver equipment to return the selective signaling selector to zero.

(b) The basic elements of the selective signaling system shall conform to the frequencies and time intervals illustrated. The times shown apply to automatic-pulsing selective-signaling equipments using digit counting circuitry at the ground station. If manual dialing is employed, the pauses and interdigit times will be dependent upon the speed of the operator.

Two-tone signal for ground-to-air calling




**§ 22.523 Airborne station receiver requirements.**

(a) An airborne station desiring to receive calls originated by a base station shall be equipped to receive and respond to its assigned telephone number when transmitted by the selective signaling system prescribed by § 22.522.

(b) Airborne stations desiring to receive calls originated by a base station must employ a receiver designed to automatically revert to the signaling channel frequency upon completion of a call.

## Subpart H—Rural Radio Service

**§ 22.600 Eligibility.**

Authorizations for central office stations and interoffice stations will be issued to existing and proposed communication common carriers. Authorizations for rural subscriber stations will be issued to communication common carriers or to individual users of the service. Applications will be granted only in cases where it is shown that (a) the applicant is legally, financially, technically and otherwise qualified to render the proposed service, (b) there are frequencies available to enable the applicant to render a satisfactory service and (c) the public interest convenience or necessity would be served by a grant thereof.

**§ 22.601 Frequencies.**

(a) The following frequencies are available primarily to the Domestic Public Land Mobile Radio Service and, on a secondary basis, to stations in the Rural Radio Service, provided no harmful interference is caused to stations in the Domestic Public Land Mobile Radio Service:

| *Central office and interoffice station frequencies (MHz)* | *Rural subscriber and interoffice station—frequencies (MHz)* |
|---|---|
| 152.51[1] | [1]157.77 |
| 152.54[1] | [1]157.80 |
| 152.57[1] | [1]157.83 |
| 152.60[1] | [1]157.86 |
| 152.63[1] | [1]157.89 |
| 152.66[1] | [1]157.92 |
| 152.69[1] | [1]157.95 |
| 152.72[1] | [1]157.98 |
| 152.75[1] | [1]158.01 |
| 152.78[1] | [1]158.04 |
| 152.81[1] | [1]158.07 |
| | [2]158.49 |
| | [2]158.52 |
| | [2]158.55 |
| | [2]158.58 |
| | [2]158.61 |
| | [2]158.64 |
| | [2]158.67 |
| | [2]459.025 |
| | [2]459.050 |
| | [2]459.075 |
| | [2]459.100 |
| | [2]459.125 |
| | [2]459.150 |
| | [2]459.175 |
| | [2]459.200 |
| | [2]459.225 |
| | [2]459.250 |
| | [2]459.275 |
| | [2]459.300 |
| | [2]459.325 |
| | [2]459.350 |
| 454.375[1] | [1]459.375 |
| 454.400[1] | [1]459.400 |
| 454.425[1] | [1]459.425 |
| 454.450[1] | [1]459.450 |
| 454.475[1] | [1]459.475 |
| 454.500[1] | [1]459.500 |
| 454.525[1] | [1]459.525 |
| 454.550[1] | [1]459.550 |
| 454.575[1] | [1]459.575 |
| 454.600[1] | [1]459.600 |
| 454.625[1] | [1]459.625 |
| 454.650[1] | [1]459.650 |

[1]This frequency is available for assignment only to stations of communication common carriers also engaged in the business of affording public landline message telephone service.

[2]This frequency is available for assignment only to stations of communication common carriers not also engaged in the business of providing a public landline message telephone service.

(b) New stations will not be authorized in the 890–940 MHz band. However, stations which were authorized to operate on April 16, 1958, may be granted renewed licenses subject to the following conditions:

(1) Operations shall not be protected against any interference received from the emission of industrial, scientific, and medical equipment operating on 915 MHz or from the emission of radiolocation stations in the 890–942 MHz band.

(2) No harmful interference shall be caused to stations operating in the radiolocation service in the 890–942 MHz band.

(c) In the State of Hawaii, the following frequencies are available for assignment to Inter-Office stations:

76–108 MHz Band

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 76.02 | 78.70 | 81.38 | 84.06 | 86.74 | 99.42 | 102.10 | 104.78 |
| 76.06 | 78.74 | 81.42 | 84.10 | 86.78 | 99.46 | 102.14 | 104.82 |
| 76.10 | 78.78 | 81.46 | 84.14 | 86.82 | 99.50 | 102.18 | 104.86 |
| 76.14 | 78.82 | 81.50 | 84.18 | 86.86 | 99.54 | 102.22 | 104.90 |
| 76.18 | 78.86 | 81.54 | 84.22 | 86.90 | 99.58 | 102.26 | 104.94 |
| 76.22 | 78.90 | 81.58 | 84.26 | 86.94 | 99.62 | 102.30 | 104.98 |
| 76.26 | 78.94 | 81.62 | 84.30 | 86.98 | 99.66 | 102.34 | 105.02 |
| 76.30 | 78.98 | 81.66 | 84.34 | 87.02 | 99.70 | 102.38 | 105.06 |
| 76.34 | 79.02 | 81.70 | 84.38 | 87.06 | 99.74 | 102.42 | 105.10 |
| 76.38 | 79.06 | 81.74 | 84.42 | 87.10 | 99.78 | 102.46 | 105.14 |
| 76.42 | 79.10 | 81.78 | 84.46 | 87.14 | 99.82 | 102.50 | 105.18 |
| 76.46 | 79.14 | 81.82 | 84.50 | 87.18 | 99.86 | 102.54 | 105.22 |
| 76.50 | 79.18 | 81.86 | 84.54 | 87.22 | 99.90 | 102.58 | 105.26 |
| 76.54 | 79.22 | 81.90 | 84.58 | 87.26 | 99.94 | 102.62 | 105.30 |
| 76.58 | 79.26 | 81.94 | 84.62 | 87.30 | 99.98 | 102.66 | 105.34 |
| 76.62 | 79.30 | 81.98 | 84.66 | 87.34 | 100.02 | 102.70 | 105.38 |
| 76.66 | 79.34 | 82.02 | 84.70 | 87.38 | 100.06 | 102.74 | 105.42 |
| 76.70 | 79.38 | 82.06 | 84.74 | 87.42 | 100.10 | 102.78 | 105.46 |
| 76.74 | 79.42 | 82.10 | 84.78 | 87.46 | 100.14 | 102.82 | 105.50 |
| 76.78 | 79.46 | 82.14 | 84.82 | 87.50 | 100.18 | 102.86 | 105.54 |
| 76.82 | 79.50 | 82.18 | 84.86 | 87.54 | 100.22 | 102.90 | 105.58 |
| 76.86 | 79.54 | 82.22 | 84.90 | 87.58 | 100.26 | 102.94 | 105.62 |
| 76.90 | 79.58 | 82.26 | 84.94 | 87.62 | 100.30 | 102.98 | 105.66 |
| 76.94 | 79.62 | 82.30 | 84.98 | 87.66 | 100.34 | 103.02 | 105.70 |
| 76.98 | 79.66 | 82.34 | 85.02 | 87.70 | 100.38 | 103.06 | 105.74 |
| 77.02 | 79.70 | 82.38 | 85.06 | 87.74 | 100.42 | 103.10 | 105.78 |
| 77.06 | 79.74 | 82.42 | 85.10 | 87.78 | 100.46 | 103.14 | 105.82 |
| 77.10 | 79.78 | 82.46 | 85.14 | 87.82 | 100.50 | 103.18 | 105.86 |
| 77.14 | 79.82 | 82.50 | 85.18 | 87.86 | 100.54 | 103.22 | 105.90 |
| 77.18 | 79.86 | 82.54 | 85.22 | 87.90 | 100.58 | 103.26 | 105.94 |
| 77.22 | 79.90 | 82.58 | 85.26 | 87.94 | 100.62 | 103.30 | 105.98 |
| 77.26 | 79.94 | 82.62 | 85.30 | 87.98 | 100.66 | 103.34 | 106.02 |
| 77.30 | 79.98 | 82.66 | 85.34 | 98.02 | 100.70 | 103.38 | 106.06 |
| 77.34 | 80.02 | 82.70 | 85.38 | 98.06 | 100.74 | 103.42 | 106.10 |
| 77.38 | 80.06 | 82.74 | 85.42 | 98.10 | 100.78 | 103.46 | 106.14 |
| 77.42 | 80.10 | 82.78 | 85.46 | 98.14 | 100.82 | 103.50 | 106.18 |
| 77.46 | 80.14 | 82.82 | 85.50 | 98.18 | 100.86 | 103.54 | 106.22 |
| 77.50 | 80.18 | 82.86 | 85.54 | 98.22 | 100.90 | 103.58 | 106.26 |
| 77.54 | 80.22 | 82.90 | 85.58 | 98.26 | 100.94 | 103.62 | 106.30 |
| 77.58 | 80.26 | 82.94 | 85.62 | 98.30 | 100.98 | 103.66 | 106.34 |
| 77.62 | 80.30 | 82.98 | 85.66 | 98.34 | 101.02 | 103.70 | 106.38 |
| 77.66 | 80.34 | 83.02 | 85.70 | 98.38 | 101.06 | 103.74 | 106.42 |
| 77.70 | 80.38 | 83.06 | 85.74 | 98.42 | 101.10 | 103.78 | 106.46 |
| 77.74 | 80.42 | 83.10 | 85.78 | 98.46 | 101.14 | 103.82 | 106.50 |
| 77.78 | 80.46 | 83.14 | 85.82 | 98.50 | 101.18 | 103.86 | 106.54 |
| 77.82 | 80.50 | 83.18 | 85.86 | 98.54 | 101.22 | 103.90 | 106.58 |
| 77.86 | 80.54 | 83.22 | 85.90 | 98.58 | 101.26 | 103.94 | 106.62 |
| 77.90 | 80.58 | 83.26 | 85.94 | 98.62 | 101.30 | 103.98 | 106.66 |
| 77.94 | 80.62 | 83.30 | 85.98 | 98.66 | 101.34 | 104.02 | 106.70 |
| 77.98 | 80.66 | 83.34 | 86.02 | 98.70 | 101.38 | 104.06 | 106.74 |
| 78.02 | 80.70 | 83.38 | 86.06 | 98.74 | 101.42 | 104.10 | 106.78 |
| 78.06 | 80.74 | 83.42 | 86.10 | 98.78 | 101.46 | 104.14 | 106.82 |
| 78.10 | 80.78 | 83.46 | 86.14 | 98.82 | 101.50 | 104.18 | 106.86 |
| 78.14 | 80.82 | 83.50 | 86.18 | 98.86 | 101.54 | 104.22 | 106.90 |
| 78.18 | 80.86 | 83.54 | 86.22 | 98.90 | 101.58 | 104.26 | 106.94 |
| 78.22 | 80.90 | 83.58 | 86.26 | 98.94 | 101.62 | 104.30 | 106.98 |
| 78.26 | 80.94 | 83.62 | 86.30 | 98.98 | 101.66 | 104.34 | 107.02 |
| 78.30 | 80.98 | 83.66 | 86.34 | 99.02 | 101.70 | 104.38 | 107.06 |
| 78.34 | 81.02 | 83.70 | 86.38 | 99.06 | 101.74 | 104.42 | 107.10 |
| 78.38 | 81.06 | 83.74 | 86.42 | 99.10 | 101.78 | 104.46 | 107.14 |
| 78.42 | 81.10 | 83.78 | 86.46 | 99.14 | 101.82 | 104.50 | 107.18 |
| 78.46 | 81.14 | 83.82 | 86.50 | 99.18 | 101.86 | 104.54 | 107.22 |
| 78.50 | 81.18 | 83.86 | 86.54 | 99.22 | 101.90 | 104.58 | 107.26 |
| 78.54 | 81.22 | 83.90 | 86.58 | 99.26 | 101.94 | 104.62 | 107.30 |
| 78.58 | 81.26 | 83.94 | 86.62 | 99.30 | 101.98 | 104.66 | 107.34 |
| 78.62 | 81.30 | 83.98 | 86.66 | 99.34 | 102.02 | 104.70 | 107.38 |
| 78.66 | 81.34 | 84.02 | 86.70 | 99.38 | 102.06 | 104.74 | 107.42 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 107.46 | 107.54 | 107.62 | 107.70 | 107.78 | 107.86 | 107.94 |
| 107.50 | 107.58 | 107.66 | 107.74 | 107.82 | 107.90 | 107.98 |

(d) Within the geographic areas in which the frequencies in paragraphs (a) and (b) of this section may be assigned, and under the same limitations of shared usage and reservations concerning interference set forth therein, such frequencies may also be assigned to radio relay stations in the Rural Radio Service upon a satisfactory showing as to why it is impracticable to achieve the requisite communication without the use of radio relay stations operating on such frequencies.

(e) In Puerto Rico and the Virgin Islands only, the bands 154.04 MHz to 154.46 MHz and 161.40 MHz to 161.85 MHz are available for assignment to stations in the Rural Radio Service on a shared basis with stations in the International Fixed Public and Aeronautical Fixed Radio Services. Spacings between assignments in these services are unspecified.

(f) Stations now authorized in the band 890–942 MHz may be authorized to operate in the band 942–952 MHz on the following conditions:

(1) That such stations can show that harmful interference is being caused by Government radiopositioning stations in the 890–942 MHz bands or by ISM equipment operating on 915 MHz.

(2) That an engineering study by the Commission indicates that the proposed frequency assignment in the band 942–952 MHz is likely to eliminate the interference.

(3) That the bandwidth of emission does not exceed 1100 kHz.

(4) That the proposed frequency assignment will not cause interference to existing operations in the band 942–952 MHz.

### § 22.602 Transmitter power.

Stations in this service shall not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 22.107(b). A standby transmitter having a rated power output in excess of that of the main transmitter with which it is associated will not be authorized.

### § 22.603 Types of emission.

(a) Stations in this service within the continental limits of the United States normally shall be authorized to use only types A1, A2, A3, or F1, F2 and F3 emission for radiotelephony. However, multi-channel type of amplitude or frequency modulated emission for radiotelephony may be authorized upon a satisfactory showing of need therefor and provided that the criteria concerning bandwidth of emission set forth in § 22.604(b) are satisfied.

(b) In addition to the types of emission which may be authorized under the provisions of paragraph (a) of this section, stations in this service outside the continental limits of the United States may be authorized to employ A4 and F4.

(c) The authorization for use of A3 and F3 emission shall be construed to include the use of tone signals or signaling devices whose sole function is to establish and maintain communication between stations.

(d) Other types of emission not described in paragraph (a) of this section may be authorized upon a satisfactory showing of need therefor. An application requesting such authorization shall fully describe the emission desired, shall indicate the bandwidth required for satisfactory communication, and shall state the purpose for which such emission is required.

(e) Further reference should be made to §§ 22.103 to 22.105, inclusive.

### § 22.604 Emission limitations.

(a) The maximum authorized bandwidth of emission and, for the cases of frequency or phase modulated emissions, the maximum authorized frequency deviation shall be as follows:

| Type of emission | 50–150 MHz | | 150–500 MHz | |
|---|---|---|---|---|
| | Authorized bandwidth (kHz) | Frequency deviation (kHz) | Authorized bandwidth (kHz) | Frequency deviation (kHz) |
| A1 | 1 | | 1 | |
| A2 | 3 | | 3 | |
| A3 | 8 | | 8 | |
| A4 | 12 | | 12 | |
| F1 | 3 | | 3 | |
| F2 | 3 | | 3 | |
| F3 | [2]140 | [2]115 | [1]20 | [1]5 |
| F4 | [2]140 | [2]115 | [1]20 | [1]5 |

[1] In the frequency band 450 to 470 MHz, radio facilities using frequency modulated or phase modulated emission, authorized prior to June 1, 1968, will continue to be authorized with bandwidth of 40 kHz until November 1, 1971, provided that, the frequency deviation is reduced to 5 kHz by June 1, 1968.

[2] In the frequency bands 72.0–73.0 and 75.4–76.0 MHz, radio facilities using frequency modulated or phase modulated emission will be authorized with maximum bandwidth of 20 kHz and maximum frequency deviation of 5 kHz. Radio facilities which were authorized for operation on December 1, 1961, in the frequency band 73.0–74.6 MHz may continue to be authorized without change and with bandwidth of 40 kHz and frequency deviation of 15 kHz. New or modified facilities in the frequency band 73.0–74.0 MHz will not be authorized.

(b) Bandwidths of emission greater than shown in paragraph (a) of this section may be authorized for multichannel operation upon an adequate showing of need therefor and provided a showing is made that the efficiency of frequency utilization per derived communication channel is equivalent to or greater than on a single channel basis. Radio facilities using frequency modulated or phase modulated emission shall not exceed a frequency deviation of 5 kHz due to modulation of the carrier frequency. An application requesting such authorization shall fully describe the modulation, emission and bandwidth desired and shall specify the bandwidth to be occupied.

### § 22.605 Modulation requirements.

(a) The use of modulating frequencies higher than 3000 hertz for single channel radiotelephony or tone signaling on frequencies below 500 MHz is not authorized.

(b) When amplitude modulation is used, the modulation percentage shall be sufficient to provide efficient communication and shall be normally maintained above 70 percent on peaks, but shall not exceed 100 percent on negative peaks.

(c) When phase or frequency modulation is used for single channel operation on frequencies below 500 MHz, the deviation arising from modulation shall not exceed the limits specified in § 21.604(a).

(d) Each transmitter, which has more than 3 watts plate power input to the final radio frequency stage and was initially authorized or installed at the station in this service after July 1, 1950, employing type A3 or F3 emission shall be equipped with a device which will automatically prevent greater than normal audio level from modulating in excess of the limits specified in paragraphs (b) and (c) of this section.

(e) Each transmitter, which operates on frequencies below 450 MHz and employs type A3 or F3 emission, shall be equipped with a modulation limiter in accordance with the provisions of paragraph (d) of this section and also shall be equipped with a low-pass audio

filter installed between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 15 kHz, the filter shall have an attenuation greater than the attenuation at 1 kHz by at least:

$40 \log_{10} (f/3)$ decibels

where "f" is the audio frequency in kilohertz. At audio frequencies above 15 kHz, the attenuation shall be at least 28 decibels greater than the attenuation at 1 kHz.

(f) Each transmitter, which operates on frequencies between 450 MHz and 470 MHz and employs type A3 or F3 emission, shall be equipped with a modulation limiter in accordance with the provisions of paragraph (c) of this section and also shall be equipped with a low-pass audio filter installed between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 20 kHz, the filter shall have an attenuation greater than the attenuation at 1 kHz by at least:

$60 \log_{10} (f/3)$ decibels

where "f" is the audio frequency in kilohertz. At audio frequencies above 40 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz: *Provided, however,* That in lieu of such filter transmitters authorized to operate between 450 MHz and 470 MHz prior to June 1, 1968, may continue to operate until November 1, 1971, with a filter meeting the requirements proscribed in paragraph (f) of this section.

**§ 22.606 Permissible communications.**

(a) Rural Subscriber stations normally are authorized to communicate with and through the central office station with which they are associated. However, where the establishment of central office station facilities in this service is shown to be impracticable, Rural Subscriber stations may be authorized to communicate with and through a specified base station in the Domestic Public Land Mobile Radio Service pursuant to the provisions of § 22.509(f).

(b) Central Office stations may communicate only with Rural Subscriber stations.

(c) Inter-Office stations may communicate only with other Inter-Office stations.

(d) The foregoing paragraphs of this section shall not be construed to prohibit stations in this service from communicating through radio relay stations authorized pursuant to the provisions of § 22.601(d).

**§ 22.607 Priority of service.**

Within the Rural Radio Service, the frequencies set forth in § 22.601 are intended primarily for use in rendition of public message service between Rural Subscriber and Central Office stations and to provide radio trunking facilities between central offices. However, the frequencies may also be used for the rendition of private leased line communication service provided that such usage will not reduce or impair the extent or quality of communication service which would be available, in the absence of private leased line service, to the general public receiving or subsequently requesting public message service from a central office.

**§ 22.608 Supplementary showing required with application for interoffice stations.**

(a) Each application for initial installation of a radio station in this service, or for installation of additional transmitters, or for authority to communicate with new points, shall be accompanied by a statement showing how the proposed construction, etc., will serve the public interest, convenience and necessity. (When a series of related applications is filed for authority to construct a coordinated radio system or additional channels thereon, the supporting data may refer to all of the proposed stations or transmitters in such system.) Among other things, such statement should include information concerning:

(1) The number of communication circuits (telephone, telegraph, etc.) to be derived initially from the radio facilities proposed to be established. In the case of a radio system involving one or more circuit branching points, indicate the number of such circuits to be derived in each section of the system.

(2) The availability, adequacy, and reliability of existing public communication facilities along the route or in the area proposed to be served by the proposed radio facilities, operated by the applicant or any other carrier, indicating:

(i) The type of each communication facility (open wire, cable, radio, etc.).

(ii) The number of communication circuits of each type, listed in paragraph (a)(1) of this section, currently being derived from each of these facilities in the limiting cross-section or cross-sections, as appropriate.

(iii) Current traffic load trends, as indicated by periodic traffic load studies, including an estimate as to future circuit requirements.

(iv) Where more than 24 circuits are to be derived from the proposed construction, list the principal circuit groups currently operated, the number of circuits in each group, and the estimated number of circuits required in each group to meet load demands for the ensuing one year, two year, or five year period, as may be appropriate in order to provide adequate justification for said increases.

(b) Where specific information required by paragraph (a) of this section has been submitted in connection with applications filed under Part 63 of this chapter, duplication of information in support of applications submitted pursuant to this part is not required provided appropriate references are made therein. After an application for the initial establishment of a radio station or for the addition of transmitters on an existing system has been granted, and where the number of communication circuits (i.e., telephone, telegraph, etc.) is to be expanded without otherwise affecting the terms of the applicable radio station authorization, authority to install necessary channelizing equipment shall be secured by an application filed pursuant to section 214(a) of the Communications Act of 1934, as amended, and Part 63 of the Commission's rules and regulations, in those cases where the applicant is subject to the provisions of section 214.

**§ 22.609 Supplementary showing required with applications for central office stations and rural subscriber stations.**

Each application in this service should be accompanied by a statement showing why it is impracticable to provide the required communication service by means of wire line facilities, including the estimated cost of such facilities as compared with radio facilities, operating or maintenance difficulties, or similar factors which indicate the desirability of providing service by means of radio facilities. Additionally, where it is proposed to provide rural subscriber service through a base station, a showing should be made that the proposed rural subscriber service will not adversely affect the availability or adequacy of service to mobile subscribers.

**§ 22.610 Rural subscriber, interoffice, and central office stations at temporary fixed locations.**

(a) Authorizations may be issued upon proper application for the use of frequencies listed in § 21.601(a) by rural subscriber stations, interoffice stations, and central office stations for rendition of rural radio service at temporary locations under the following conditions:

(1) When a fixed station is to remain at a single location for less than 6

months and the location is considered to be temporary. Services which are initially known to be for longer than 6 months' duration shall not be provided under a temporary fixed authorization but rendered pursuant to a regular license.

(2) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than six months, applications (FCC Forms 401 and 403) for a station authorization designating that single location as the permanent location shall be filed at least thirty days prior to expiration of the six-month period.

(3) The station shall be used only for rendition of communication service to remote points where the provision of wire telephone facilities is not practicable, or for restoration of communication service disrupted by storms, floods, earthquakes, or other emergencies.

(4) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height has been obtained from the Commission prior to erection of the antenna. Requests for such authorization shall be accompanied by FCC Form 714 and a sketch of the proposed antenna structure.

(b) Applications for authorizations to operate rural subscriber stations, inter-office stations, and central office stations at temporary locations under the provisions of this section shall be made upon FCC Form 401, and may be accompanied by completed FCC Form 403 for simultaneous consideration, provided the equipment to be used is of "packaged" design. Blanket applications may be submitted for the required number of rural subscriber, inter-office and central office transmitters.

### § 22.611 Notification of station operation at temporary locations.

(a) The licensee of stations which are authorized pursuant to the provisions of § 21.610 shall notify the Commission, and its Engineer in Charge of the radio district wherein operation is to be conducted, of each period of operation at least two days prior to installation of the facilities. This notification shall include:

(1) The call sign and specific location of the transmitter.

(2) The location of the transmitter control point.

(3) The identity and location of the station with which it will communicate.

(4) The exact frequency or frequencies to be used.

(5) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission and its Engineer in Charge.

(b) Less than 2 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(c) A copy of the foregoing notification shall be posted with the station license (see § 22.214).

## Subpart I—[Reserved]

## Subpart J—[Reserved]

## Subpart K—[Reserved]

## Subpart L—Offshore Radio Telecommunications Service

### § 22.1000 Eligibility.

Authorizations for stations to be operated in this service will be issued to existing and proposed communications common carriers. Authorizations for subscriber stations will be issued to communication common carriers or to individual users of the service. Applications will be granted only in cases where it is shown that (a) the applicant is legally, financially, technical and otherwise qualified to render the proposed service and (b) there are frequencies available to enable applicant to render a satisfactory service and (c) the public interest, convenience or necessity would be served by a grant thereof.

### § 22.1001 Frequencies.

(a) On a shared basis with television broadcasting channel 17, the following frequencies are for assignment to stations of communication common carriers in the zone specified in Table A below together with the classes of station(s) to which they are normally assigned and the specific limitations, which are enumerated in paragraph (b) of this section:

| Offshore central station frequencies (megahertz) | Offshore subscriber frequencies (megahertz) | Limitations |
|---|---|---|
| 488.025 | 491.025 | 1 |
| 488.050 | 491.050 | 1 |
| 488.075 | 491.075 | 1 |
| 488.100 | 491.100 | 1 |
| 488.125 | 491.125 | 1 |
| 488.150 | 491.150 | 1 |
| 488.175 | 491.175 | 1 |
| 488.200 | 491.200 | 1 |
| 488.225 | 491.225 | 1 |
| 488.250 | 491.250 | 1 |
| 488.275 | 491.275 | 1 |
| 488.300 | 491.300 | 1 |
| 488.325 | 491.325 | 1 |
| 488.350 | 491.350 | 1 |
| 488.375 | 491.375 | 1 |
| 488.400 | 491.400 | 1 |
| 488.425 | 491.425 | 1,2 |
| 488.450 | 491.450 | 1,2 |
| 488.475 | 491.475 | 1,2 |
| 488.500 | 491.500 | 1,2 |
| 488.525 | 491.525 | 1,2 |
| 488.550 | 491.550 | 1,2 |
| 488.575 | 491.575 | 1,2 |
| 488.600 | 491.600 | 1,2 |
| 488.625 | 491.625 | 1,2 |
| 488.650 | 491.650 | 1,2 |
| 488.675 | 491.675 | 1,2 |
| 488.700 | 491.700 | 1,2 |
| 488.725 | 491.725 | 4 |
| 488.750 | 491.750 | 4 |
| 488.775 | 491.775 | 4 |
| 488.800 | 491.800 | 4 |
| 488.825 | 491.825 | 3 |
| 488.850 | 491.850 | 3 |
| 488.875 | 491.875 | 3 |
| 488.900 | 491.900 | 3 |
| 488.950 | 491.950 | 5 |
| 489.000 | 492.000 | 6 |
| 489.025 | 492.025 | 6 |
| 489.050 | 492.050 | 6 |
| 489.075 | 492.075 | 6 |
| 489.100 | 492.100 | 6 |
| 489.125 | 492.125 | 6 |
| 489.150 | 492.150 | 6 |
| 489.175 | 492.175 | 6 |
| 489.200 | 492.200 | 6 |
| 489.225 | 492.225 | 6 |
| 489.250 | 492.250 | 6 |
| 489.300 | 492.300 | 6 |
| 489.350 | 492.350 | 6 |
| 489.400 | 492.400 | 2 |
| 489.425 | 492.425 | 2 |
| 489.450 | 492.450 | 2 |
| 489.475 | 492.475 | 2 |
| 489.500 | 492.500 | 2 |
| 489.525 | 492.525 | 2 |
| 489.550 | 492.550 | 2 |
| 489.575 | 492.575 | 2 |
| 489.600 | 492.600 | 2 |
| 489.625 | 492.625 | 2 |
| 489.650 | 492.650 | 2 |
| 489.675 | 492.675 | 2 |
| 489.700 | 492.700 | 2 |
| 489.725 | 492.725 | 2 |
| 489.750 | 492.750 | 2 |
| 489.775 | 492.775 | 2 |
| 489.800 | 492.800 | 2 |
| 489.825 | 492.825 | 2 |
| 489.850 | 492.850 | 2 |
| 489.875 | 492.875 | 2 |
| 489.900 | 492.900 | 2 |
| 489.925 | 492.925 | 2 |
| 489.950 | 492.950 | 2 |
| 489.975 | 492.975 | 2 |
| 490.000 | 493.000 | 2 |

(b) Explanation of assignment limitations appearing in the frequency list of this section:

(1) These frequencies will be assigned for voice grade general communications.

(2) These frequencies may be assigned for private line service.

(3) These frequencies are available for emergency communication involving protecting of life property.

(4) These frequencies may be assigned to radio relay stations upon a satisfactory showing as to why it is impracticable to achieve the requisite communication without the use of radio relay stations operating on such frequencies.

(5) These frequencies shall be used only for emergency auto alarm and

voice transmission pertaining to emergency conditions.

(6) These frequencies may be used for emergency shut-off remote control telemetry, environmental Data Acquisition and Dissemination, or facsimile transmissions.

(c) All frequencies listed in this section are subject to the following condition:

(1) No fixed or temporary-fixed stations shall be located and no mobile stations shall be operated outside the limits of the zone specified in Table A.

(2) All classes of stations in the Offshore Radio Telecommunications Service shall afford protection to cochannel television stations in accordance with the values set out in Table B below.

(3) All classes of stations in the Offshore Radio Telecommunications Service shall afford protection to adjacent channel television stations in accordance with the values set out in Table C below.

(4) No airborne subscriber station shall be operated with an effective radiated power in excess of 1 watt or at heights in excess of 1000 feet above mean sea level and shall not be operated outside the limits of the zone specified in Table A. Further, to provide adjacent channel protection to TV channel 18, no airborne subscriber station shall operate within an 80 mile radial distance to Lake Charles, Louisiana.

(5) Antenna heights in excess of 200 feet above mean sea level will not be authorized, except that, surface mobile stations will be limited to a height of 30 feet above the waterline.

(6) Mobile stations shall not operate with effective radiated power in excess of 25 watts within 20 miles of the 3 mile limit. In all other areas, the effective radiated power shall not exceed 100 watts.

(7) On its regularly assigned frequency, an offshore central station may be used to perform the added functions of a repeater station when means are provided whereby the license of the radio system is able to turn the station on and off at will irrespective of the transmissions of subscriber units on the mobile frequency associated therewith.

Table A.—*Frequency availability for offshore radio telecommunications service use*

| Offshore zone | Boundaries of zone | Frequencies (megahertz) |
|---|---|---|
| Southern Louisiana Zone | From long 87°45' on the east to long 94°00' on the west and from the 3-mi. limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south | Channel 17 488–490 491–493 |

Table C.—*Protection of adjacent channel television stations by stations in the offshore radio telecommunications service*[1]

(0 db protection)

| Distance beyond the 3-mi limit (miles) | Antenna height above sea level: 100 ft ERP (watts) | 200 ft ERP (watts) |
|---|---|---|
| 4 | 25 | 6 |
| 5 | 40 | 10 |
| 6 | 65 | 15 |
| 7 | 100 | 25 |
| 8 | 150 | 35 |
| 9 | 215 | 50 |
| 10 | 295 | 70 |
| 11 | 400 | 100 |
| 12 | 530 | 130 |
| 13 | 685 | 170 |
| 14 | 870 | 215 |
| 15 | 1,000 | 270 |
| 16 | 1,000 | 415 |
| 17 | 1,000 | 505 |
| 18 | 1,000 | 610 |
| 19 | 1,000 | 730 |
| 20 | 1,000 | 865 |
| 21 | 1,000 | 1,000 |

[1] Table C applies only within an 80 mi radial distance of adjacent TV stations

## § 22.1002 Power limitations.

Stations in this service will not be permitted to exceed 1000 watts effective radiated power and shall not be authorized to use transmitters which have a rated power output in excess of the limits set forth in Section 22.107(b): *Provided, however,* That the effective radiated power of mobile stations operating within 20 miles of the 3 mile limit shall be 25 watts or less. In all other areas mobile stations may operate with effective radiated power of 100 watts. The effective radiated power of airborne stations is limited to 1 watt.

## § 22.1003 Bandwidth and emission limitations.

(a) Stations in this service normally will be authorized to use only type F3 emission for radiotelephone. The authorization to use type F3 emission will be construed to include the use of tone signals or signaling devices the sole function of which is to establish and maintain communication.

Table B.—*Protection of co-channel television stations by stations in the offshore radio telecommunications service—maximum effective radiated power (watts)*

(-50dB protection)

| Distance from transmitter to TV channel 17 Buda, Miss | Antenna height above sea level: 100 ft. | 150 ft | 200 ft |
|---|---|---|---|
| *Miles* | *Watts* | *Watts* | *Watts* |
| 210 | 1,000 | 1,000 | 1,000 |
| 205 | 1,000 | 900 | 800 |
| 200 | 800 | 710 | 630 |
| 195 | 590 | 520 | 450 |
| 190 | 450 | 400 | 330 |
| 185 | 320 | 280 | 240 |
| 180 | 250 | 210 | 175 |
| 175 | 175 | 150 | 130 |
| 170 | 180 | 110 | 100 |
| 165 | 95 | 80 | 70 |
| 160 | 65 | 55 | 50 |
| 155 | 50 | 40 | 35 |
| 150 | 35 | 30 | 25 |

Note:—To determine the maximum permissible effective radiated power:

(1) Using the method specified in § 73.611, determine the distance between the proposed station and the protected cochannel television station. If the exact mileage does not appear in Table B, the next lower mileage separation figure is to be used.

(2) Entering the table at the mileage figure found in (1) above find opposite, a selection of powers that may be used for antenna height for the proposed station does not appear in Table B, use the power figure above the next greater antenna height.

(3) If the power found to be permitted following this procedure is lower than that determined hereafter from Table C, this lower figure is the maximum power that may be employed at the proposed station.

(b) Other types of emission may be authorized upon a satisfactory showing of need therefor. An application requesting such authorization shall fully describe the emission desired shall indicate the bandwidth required for satisfactory communication, and shall state the purpose for which such emission is required.

(c) The maximum authorized bandwidth of emission and maximum authorized frequency deviation shall be as follows:

| Type of emission | Authorized bandwidth (kilohertz) | Frequency deviation (kilohertz) |
|---|---|---|
| F3 | 20 | 5 |

(d) Other types of emission of bandwidths in excess of that specified in paragraph (c) of this section may be authorized upon an adequate showing of need therefor. An application requesting such authorization shall fully describe the modulation, emission and bandwidth desired, shall specify the bandwidth to be occupied and shall state the reasons why such emission or bandwidth is required.

**§ 22.1004 Modulation requirements.**

(a) The use of modulating frequencies higher than 3000 hertz for single channel radiotelephony or tone signaling is not authorized.

(b) The frequency deviation arising from modulation shall not exceed 5 kHz.

(c) Each transmitter, which has more than 1 watt power output employing type F3 emission shall be equipped with a device which will automatically prevent greater than normal audio level from modulating in excess of the limits specified in paragraph (b) of this section.

(d) Each transmitter, which employs type F3 emission, shall be equipped with a modulation limiter in accordance with the provisions of paragraph (c) of this section and also shall be equipped with a low pass audio filter installed between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 20 kHz the filter shall have an attenuation greater than the attenuation at 1 kHz by at least:

$60 \log_{10} (f/3)$ decibels.

where "f" is the audio frequency in kilohertz. At audio frequencies above 20 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz.

**§ 22.1005 Permissible communications.**

(a) Offshore Central Station shall communicate only with subscriber stations (fixed, temporary-fixed, mobile and airborne).

(b) Subscriber station normally are authorized to communicate with and through Offshore Central.

(c) The foregoing paragraphs of this section shall not be construed to prohibit stations in this service from communicating through radio relay stations authorized pursuant to the provisions of § 22.1001(b).

**§ 22.1006 Station at temporary-fixed locations.**

Authorizations may be issued upon proper application for the use of frequencies listed in § 22.1001(a) by stations in the Offshore Telecommunications Service for rendition of temporary service to subscribers under the following conditions:

(a) When a fixed station is to remain at a single location for less than 6 months and the location is considered to be temporary.

(b) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than six months, applications (FCC Forms 401 and 403) for a station authorization designating that single location as a permanent location shall be filed at least thirty days prior to the expiration of the six-month period.

(c) The station shall be used only for rendition of communication service at points where regular facilities are not available or for restoration of communication service disrupted by storms or other emergencies.

(d) The antenna structure height employed at any of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height has been obtained from the Commission prior to erection of the antenna. Request for such authorization shall be accompanied by FCC Form 714 and a sketch of the proposed antenna structure.

(e) Applications for authorizations to operate stations at temporary locations under the provisions of this Section shall be made upon FCC Form 401, and may be accompanied by completed 403 for simultaneous consideration provided the equipment to be used is of packaged design. Blanket applications may be submitted for the required number of transmitters.

**§ 22.1007 Notification of station operation at temporary locations.**

(a) The licensee of stations which are authorized pursuant to the provisions of § 21.1006 shall notify the Commission, its Engineer in Charge of the radio district wherein operation is to be conducted, of each period of operation at least two days prior to installation of the facilities. This notification shall include:

(1) The call sign and specific location of the transmitter.

(2) The location of the transmitter control point.

(3) The identity and location of the station with which it will communicate.

(4) The exact frequency or frequencies to be used.

(5) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission and its Engineer in Charge.

(b) Less than 2 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such notice are stated.

(c) A copy of the foregoing notification shall be posted with the station license (see § 22.114).

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Federal Register

Part IV

# Department of Health, Education, and Welfare

Office of the Secretary

Telecommunications Demonstration Program; Solicitation for Grants

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of the Secretary

### Telecommunications Demonstration Program; Solicitation for Grants

Pursuant to Section 395 of the *Communications Act of 1934,* the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications from public and private non-profit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations using non-broadcast technology for the delivery of health, education, and social services.

This solicitation specifically seeks applications for projects which:

—Add to the Nation's knowledge of ways to improve the delivery of health, education, and social services using non-broadcast telecommunications;

—Show potential for being cost-effective, through sharing hardware facilities and networking among local, State, and/or regional government agencies and service providers;

—Have a strong base of local support, including financial and/or in-kind support;

—Successfully implement the institutional or organizational changes necessary to the new delivery approach.

#### A. Applicable Regulations

Regulations applicable to the Telecommunications Demonstration Program are:

1. 45 CFR Part 63—Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation, as amended, which includes Final Regulations for the Demonstration Program.

2. 45 CFR Part 74—Administration of Grants.

The regulations define program objectives, limitations, and criteria for evaluation of proposed demonstration projects.

#### B. Effective Date and Duration

1. This Solicitation is intended for grant applications and awards to be made on or about March 1, 1980. Should this Solicitation remain in effect for any succeeding Fiscal Year or portion thereof, it shall be applied as if issued in said Fiscal year, subject only to those changes in specification of dates necessary to allow it to be read as applying to such year.

2. This Solicitation shall not be construed as limiting or preventing the issuance of additional solicitations by the Department under these authorities in Fiscal Year 1980, even though such additional solicitations would reduce the amount of funds under this Solicitation or might duplicate in part the substantive scope of this Solicitation.

3. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. Applications will be accepted no later than 5:30 p.m. December 17, 1979.

#### C. Statement of Funds Availability

1. The Act, as amended, authorizes $1,000,000 each for the Fiscal Years ending September 30, 1979, and September 30, 1980 for the award of grants and contracts.

2. Since it is desired to explore a variety of innovative and cost effective telecommunications applications which might improve the delivery of health, education, rehabilitation and other social services, it is expected that *about seven new projects may be funded.* However, the proposal review committee will retain flexibility on size and number of grants based on the proposals received. Obviously, this may simultaneously limit the size of individual grants and may require that significant support, in addition to this Program, be available to some projects. The source and degree of support should be substantiated.

Organizations awarded grants in 1977 and 1978 are eligible to apply for second-year or third-year funding, although such funding is not assured.

3. Funds will not be available for acquisition or development of programming materials and content, and/or acquisition of studio production equipment. If such material or equipment is necessary to the project, funding for it will have to be found elsewhere and substantiated in the applications. Generally, acquisition of large amounts of hardware should not be the objective of a project. Rather, an emphasis on services to be provided, utilizing or supplementing available telecommunications systems, is what is sought.

4. Projects should be designed to achieve results which can stand on their own merit during any given year of funding because legislative support for the program cannot be guaranteed.

Applicants may submit projects for up to three years' duration (a three-year "project period"), but funds will be awarded for only one year at a time. That is, awards are made for only a one-year "budget period." Applicants who apply for a multi-year project period, and who subsequently receive a grant, will be eligible for additional funding during the project period on a non-competitive basis. However, future funding is in no way guaranteed. To be considered for a multi-year project period, an application should contain a clear explanation of the need for and the purpose of such a project period. A proposed budget for all three years must be submitted with the initial application, and a plan for gradual transition of the project to self-sustaining operation must be included.

#### D. Application Processing

1. Grant applications will be reviewed by an inter-governmental panel, including both technical staff and program specialists. Proposals should be written with clarity so as to be understood by both the lay person and the technical reviewer. Adherence to the format prescribed below cannot be overemphasized; failure to respond in this manner may result in disqualification. Ten (10) copies of each application are required.

2. Applicants will be judged as to eligibility *according to the criteria set forth in § 63.6(c) of the Final Regulations,* and discussed in Item 8 below. Priority will be given to applicants who, in the judgment of the Assistant Secretary, best meet these criteria.

3. An unacceptable rating on any individual criterion may render an application unacceptable.

4. *Introduction:* The beginning of each proposal should contain a summary of the project, *in five pages or less.* The summary should be designed to quickly orient the reviewers to the essence of the project. It should include a clear statement of the objectives of the proposal; a description of need; the general approach for accomplishing the objectives; and an overview of the evaluation plan. A chart of institutional relationships may be included if appropriate.

5. *Technical Section:* Applications which propose access to specific telecommunications systems in order to carry out a demonstration must show adequate evidence that such access is assured in order to demonstrate the technical feasibility of the project. In the section following the summary statement, technical and regulatory considerations should be described, *in five pages or less.* This section should include a system diagram, and address such questions as: To what extent is the system in place? Is FCC approval required? If so, the applicant must show evidence that a filing for such licensing has been *submitted* to the FCC. (Please

identify applications to the FCC as being associated with the Telecommunications Demonstration Program.) The organization which will hold the license must be specified. The technical description must be sufficient to allow the FCC to determine whether the proposal is generally within regulatory and technical feasibility, and should give relevant license and docket information. (Any necessary license must be *granted* by the FCC before actual funds are released to the applicant; however, the final license need not be issued until after the applicant has been *notified* of his selection as a grantee.)

6. *Methodology:* The body of the proposal should address the ten criteria listed in the Regulations, which are discussed under Item 8 below. The tasks related to accomplishing the objectives provided in the summary statement should be defined.

Other items which should be included are: a time chart for accomplishing the tasks; identification of personnel with each task, whenever possible; a description of the organizational and institutional arrangements and relationships; evaluation plans; budget; and other relevant information.

7. The appendices should include such data as:

(a) Resume or vitae—*two pages* maximum

(b) Formal letters of agreement, if applicable

(c) Letters of endorsement—Only those which are substantive and significantly related to the project should be included.

(d) Information on related projects performed by the applicant—include a *brief summary* only.

In the interests of reducing reproduction costs, and conserving resources, *we urge applicants to limit supportive material.*

8. Listed below are the criteria from the Final Regulations (§ 63.6(c)), and their relative weights. Applicants should make certain that the ten criteria are fully addressed in the proposal since failure to satisfy any one criterion could seriously weaken or invalidate a proposal.

"(1) That the project for which application is made demonstrates innovative methods or techniques of utilizing non-broadcast telecommunications equipment or facilities to satisfy the purpose of this authority;" (15 Points)

*Discussion:* "Innovative methods or techniques" means that the innvoation sought is in the *way in which the technology is used to deliver services.* A "new technology" *per se* does not adequately fulfill this criterion. Wholly new technological systems are not generally what is sought, but rather innovative social applications of what may in some cases be fairly common technologies.

"(2) That the project will have original research value which will demonstrate to other potential users that such methods or techniques are feasible and cost-effective;" (10 Points)

*Discussion:* "Original research value" means that the project should provide heretofore unavailable information to other potential users in a form that will assist them in making decisions about their own approaches to the delivery of services. Thus "research" is used more in the practical, developmental sense than in the pure scientific sense. In response to this criterion, applicants should include an assessment of the potential of the project to cost-effectively deliver sevices once it achieves full operational status and is no longer a "demonstration."

"(3) That the services provided are responsive to local needs as identified and assessed by the applicant;" (10 Points)

*Discussion:* "Responsiveness to local needs" means that the applicant should *assess* the needs of the community to be served and present explicit evidence to this effect. The term *local* means specific target populations, as well as geographical location.

"(4) That the applicant has assessed existing telecommunications facilities (if any) in the proposed service area and explored their use of interconnection in conjunction with the project;" (5 Points)

*Discussion:* "Assessment of existing telecommunications facilities" means that an applicant has identified and evaluated existing telecommunication systems serving the demonstration area. This criterion helps to avoid duplication of facilities or communications capacities that are currently available and perhaps underutilized.

"(5) That there is significant local commitment (e.g., evidence of support, participation, and contribution by local institutions and agencies) to the proposed project, indicating that it fulfills local needs, and gives some promise that operational systems will result from successful demonstrations and will be supported by service recipients or providers;" (15 Points)

*Discussion:* "Local support or commitment" is important since successful projects supported by this demonstration program will ultimately fail unless they become self-supporting or otherwise subsidized. Early evidence of such support, especially commitment of resources, indicates that long term prospects are good because the project responds to the needs of the community to be served.

"(6) That demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;" (5 Points)

*Discussion:* Administrative control simply establishes that the grantee will and must be responsible for proper use of grant funds in accordance with the terms of the grants.

"(7) That the applicant has the managerial and technical capability to carry out the project for which the application is made;" (5 Points)

*Discussion:* The applicant must demonstrate an ability to manage complex service delivery programs they may utilize telecommunications resources from Federal, State, or local agencies. Proposed staff should be identified for each position included in the management plan. Experience with similar projects is desirable.

"(8) That the facilities and equipment acquired or developed pursuant to the applications will be used substantially for the transmission, distribution, and delivery of health, education, or social service information, and that use of such facilities and equipment may be shared among these and additional public or other services;" (5 Points)

*Discussion:* Projects supported by a demonstration grant must primarily provide services of a health, education, or social service nature. However, projects are encouraged to develop systems that can be shared with other public services so as to ensure maximum use of communications capacity support by public funds.

"(9) That the provision has been made to submit a summary and factual evaluation of the results of the demonstration at least annually for each year in which funds are received, in the form of a report suitable for dissemination to groups representative of national health, education and social services telecommunications interests;" (15 Points)

*Discussion:* A substantive evaluation plan is vital to the purposes of this Program. Information on the experience transferred to potential users is of great value in any demonstration. Data on cost-effectiveness, barriers, implementation, and the like should be collected systematically, and a detailed plan outlining the evaluation is required. Evaluations will form the basis for annual reports submitted to HEW (which may be distributed through the National Technical Information Service, NTIS), and possibly for publications, presentations to professional groups, or other forms of information dissemination.

"(10) That the project has potential for stimulating cooperation and sharing among institutions and agencies, both within and across disciplines." (15 Points)

*Discussion:* The institution impact—overcoming institutional resistence, stimulating cooperation, sharing of common facilities among a variety of services, increasing the organizational effectiveness of communities, agencies, and service delivery—may be one of the most difficult

problems and important outcomes of telecommunications applications. The projected effects of the project, and in some cases the institutional achievements in evidence at the time of the proposal, are extremely important considerations in this program.

9. Nothing in this Solicitation should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants.

**E. Reporting Requirements**

1) A substantive evaluation, as explained above, is required of each grantee at the end of each budget period.

2) Quarterly progress reports are required from grantees during the term of each budget period.

**F. Applications Sent by Mail**

Applications sent by mail will be considered to be received on time by the Grants Officer if the application was sent by registered or certified mail and mailed not later than December 17, 1979 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

**G. Hand-Delivered Applications**

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this Solicitation. Hand-delivered applications will be accepted daily between the hours of 9:00 a.m. and 5:30 p.m. (Washington, D.C. time), except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 5:30 p.m. on the closing date.

**H. Disposition of Applications**

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, the Assistant Secretary will either (a) approve the application in whole or in part, for such amount of funds and subject to such conditions as he/she deems necessary or desirable for the completion of the approved project, (b) disapprove the application, or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of Disposition.* The Assistant Secretary will notify the applicants in writing of the disposition of their application. A signed notification of grant award will be issued to notify the applicant of an approved project application.

**I. Application Instructions and Forms**

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from, or submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation; Department of Health, Education, and Welfare, 200 Independence Avenue, SW, Room 457F, Hubert H. Humphrey Building, Washington, DC 20201.

Dated: October 15, 1979.

John L. Palmer,

*Acting Assistant Secretary for Planning and Evaluation.*

[FR Doc. 79-32221 Filed 10-18-79; 8:45 am]

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Friday
October 19, 1979

# Part V

# Department of Energy

## Economic Regulatory Administration

## Petroleum Allocation Regulations; Revision for Propane and Other Natural Gas Liquids

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 205, 211, and 212

[Docket No. ERA-R-77-9]

# Petroleum Allocation Regulations; Revision for Propane and Other Natural Gas Liquids

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Final rule and request for comments.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) consolidates and revises its petroleum allocation regulations with respect to propane, butane and the other allocated natural gas liquid products, including the propane content of ethane-propane mixtures. As part of the revision, the ERA has removed all limitations on the use and inventory accumulation of imported propane and butane, and on ethane-propane mixtures. Other changes include general waivers of the use limitations on domestically produced surplus product.

The ERA also amends its regulations to require separate pricing for sales of imported allocated natural gas liquid products and unfractionated natural gas liquid mixtures designated for industrial use, gas utility use, gas transmission company use, or synthetic natural gas feedstock or enrichment use in excess of the users' base period uses.

**DATES:** Effective on January 1, 1980.

**ADDRESSES:** All comments to Public Hearing Management, Docket No. ERA-R-77-9, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

**FOR FURTHER INFORMATION CONTACT:**

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, (202) 634-5170.

Robert A. Reinstein (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 8222, Washington, D.C. 20461, (202) 632-8494.

Bruce Starnes (Petroleum Operations), Economic Regulatory Administration, 2000 M Street, NW. Room 6318, Washington, D.C. 20461, (202) 254-6030.

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

**SUPPLEMENTARY INFORMATION:**

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*Abbreviations Used*

B-P mixture—butane-propane mixture.
DOE—Department of Energy.
DOE Act—Department of Energy Organization Act, Pub. L. 95-91.
E-P mixture—Ethane-propane mixture.
EPAA—Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.
EPCA—Energy Policy and Conservation Act, Pub. L. 94-163.
ERA—Economic Regulatory Administration.
FEA—Federal Energy Administration.
FERC—Federal Energy Regulatory Commission.
Gas Utility Guidelines—Guidelines for the Allocation of Propane and Other NGLs for Gas Utility and Gas Transmission Company Use.
GPA—Gas Processors Association.
mcf—thousand cubic feet.
NGL—natural gas liquid.
Secretary—Secretary of Energy.
SNG—synthetic natural gas.

## I. Background

### *A. FEA Proposal*

On August 12, 1977, the FEA, a predecessor of the DOE, proposed a revision of 10 CFR Parts 205, 211, and 212 dealing with the allocation of propane, butane and the other natural gas liquid products (42 FR 41242, August 15, 1977). A public hearing was held by FEA in Washington on the proposal on September 12 and 13, 1977. Numerous written comments were received from all segments of the industry, including large and small suppliers, refiners, gas producers and a variety of ultimate users of the affected products, such as petrochemical companies and gas utilities.

The proposal was part of FEA's overall review of its allocation policy toward natural gas liquid products. Written comments were also received and a separate hearing was held on September 6, 1977 regarding FEA's July 26, 1977 Gas Utility Guidelines (42 FR 38553, July 29, 1977) which were adopted on an emergency basis to allow action to be taken on then pending applications.

### *B. ERA and FERC Consideration*

On October 1, 1977, under the DOE Act and Executive Order 12009 (42 FR 46267, September 15, 1977), the Secretary assumed most of the functions of the FEA, including the responsibility for administering the petroleum allocation and price regulations promulgated by FEA under the authority of the EPAA. The Administrator of the ERA has been delegated by the Secretary the authority to promulgate regulations under the EPAA.

The proposal, and, subsequently, a draft of a final rule were sent by ERA to the FERC for its review under section 404(a) of the DOE Act which provides in part:

> If the Commission, in its discretion, determines * * * that the proposed action may significantly affect any function of the Commission pursuant to section 402(a)(1), (b) and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

In accordance with section 404(b), following the public comment period and after consultation with the Secretary, the FERC may either: (1) Concur in the adoption of the rule as proposed, (2) concur in the adoption of the rule only with any changes the FERC recommends, or (3) recommend that the rule not be adopted. The FERC's action is required to be published along with an explanation of the reasons for its action. Subsection (c) of section 404 states that the Secretary shall then have the option of: (1) Issuing the rule (if the FERC has concurred), (2) issuing the rule with any changes recommended by the FERC or (3) ordering that the rule not be issued.

On August 9, 1978, the FERC, in the exercise of its discretion under section 404 of the DOE Act, determined that ERA's proposed final rule may significantly affect various of its

statutory functions prescribed under section 402 of the DOE Act. In notifying the Secretary of its determination, the FERC stated:

One of the purposes for the creation of the Department of Energy was "* * * to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented * * *" (section 102(3)). The Commission views its authority to review rules proposed to be promulgated by the Department under section 404 as an important part of that mechanism.

We recognize that a considerable amount of time has passed since the Commission was preliminarily advised of the proposed rule. In the interval, there have been various discussions and drafts exchanged between your staff and ours. Although the Commission is reluctant to delay further a conclusion on the rule, we deem it essential to make use of the mechanism provided by the DOE Act to coordinate more precisely our policies in this area. This is particularly important in view of a variety of sophisticated relationships between the natural gas market and the natural gas liquids markets.

Illustratively, natural gas liquids have been explicitly treated, over a number of years, as an issue in setting producer rates and in setting pipeline rates and charges. There are also considerations in relation to curtailment and synthetic natural gas feedstock. Moreover, the vesting of oil pipeline rate jurisdiction adds new responsibilities to this agency with regard to natural gas liquids.

The regulation of propane and natural gas liquids pursuant to the Emergency Petroleum Allocation Act is very closely related to regulatory responsibilities vested in this Commission by section 402 (a)(1) and (b) of the DOE Act.

The FERC requested public comments (43 FR 36264, August 16, 1978) on whether and in what respect ERA's proposed final rule may affect the FERC's functions under section 402 (a)(1), (b), or (c)(1) of the DOE Act.

Specifically, the FERC requested comments from parties who previously filed comments in response to FEA's proposals and had additional comments due to variations in the proposed final rule (which was published as an appendix to the FERC notice) or as to changed conditions. The FERC also requested that comments focus on the following questions:

(a) Whether the proposal would be consistent with a proposed regulation which the Commission intends to issue shortly relating to emergency natural gas purchases, as to ERA's proposed:

(1) Definition of "process use", and

(2) Method of agency purchase.

(b) Whether ERA's proposed final rule should provide a revised base period.

(c) Whether, if the natural gas liquids market is expected to be in a surplus condition, allocation, and pricing regulations should be maintained on other than a standby basis.

(d) Whether there is a valid distinction that should be made in pricing policies as to Canadian and non-Canadian imports and assuming such a distinction, how the incremental pricing rule would affect distribution companies' ability to serve their customers and State commissions' ability to regulate such service.

(e) Whether the draft final rule, in the opinion of the management of firms which will have to utilize it, creates a system that is clear, responsive to the comments submitted to FEA, and workable under present and foreseeable conditions.

(f) What implications the draft final rule may have for the Commission's exercise of its responsibility to set oil pipeline rates under the DOE Act.

The FERC held a public hearing on these and other issues on September 22, 1978 and afterwards the ERA and FERC staffs consulted informally. On May 22, 1979, the ERA Administrator sent a letter to the FERC containing suggested modifications to the proposed final rule that attempted to respond to FERC concerns about the treatment of natural gas utilities.

On June 19, 1979, the FERC notified the ERA that the suggested changes satisfactorily addressed the FERC's concern regarding the treatment of natural gas utilities and that the FERC concurred in the adoption of the proposed final rule with the suggested changes. The formal FERC recommendations have been published (44 FR 40321, July 10, 1979) together with an analysis of the comments received by the FERC and the reasons for its concurrence. That document is incorporated herein by reference.

In accordance with section 404(c) of the DOE Act, the ERA is today issuing a rule with the changes recommended by the FERC. Conforming changes to the proposed final rule have been made where necessary to be consistant with the FERC recommendations.

The remainder of this preamble consist generally of the preamble to the proposed final rule that was published by the FERC on August 16, 1978, together with an updated description of the amendments actually adopted.

## II. Amendments Adopted

### *A. New Subpart D*

FEA proposed to replace Subparts D and E of Part 211, pertaining to propane, butane and natural gasoline, with a new Subpart D entitled *Natural Gas Liquids (NGLs).* It was FEA's belief that allocation rules relating to all "allocated natural gas liquid products," the definition of which is set forth herein, should appear in one subpart that would also contain the use restrictions and provisions regarding imports previously contained in sections 211.10(g) and 211.12(g), respectively. The comments supported this format change. Accordingly, we are adopting a new Subpart D substantially as proposed, containing separate sections as to "Scope" (§ 211.81), "Definitions" (§ 211.82), "Allocation levels" (§ 211.83), "Adjustments and assignments" (§ 211.84), "Supplier/purchaser relationships" (§ 211.85), "Method of allocation" (§ 211.86), "Special limitations" (§ 211.87), "Importers of allocated natural gas liquid products" (§ 211.88), and "Procedures and reporting requirements" (§ 211.89), all of which are subject to the general provisions of Subpart A except where specifically noted. Conforming amendments to Subpart A are also adopted, as explained herein. The guidelines for the allocation of propane and other NGL's for gas utility use in propane-air peak shaving plants are not being republished at this time because the generally improved natural gas supply situation has reduced the expected demand for propane for gas utility use. If circumstances should warrant, ERA will reevaluate the need for guidelines.

### *B. Scope and Definitions (§ 211.81, § 211.82, and § 211.51) Proposal*

As proposed, the new subpart would have provided for the mandatory allocation, as separate products with separate allocation entitlements, of all commercial propane, propane HD–5, commercial butane, normal butane, isobutane, commercial B–P mixture, commercial grade natural gasoline, all unfractionated NGL mixtures, and (if greater than 10 percent by weight) the propane, butane, and natural gasoline content of all fractionated NGL mixtures produced in or imported into the United States. The exclusions set forth were (1) bottled propane or butane and (2) the propane or butane content of refinery gas used for refinery fuel purposes. Such allocated products would have been defined collectively in § 211.51, by the term "allocated natural gas liquid products." The new subpart was proposed to be applicable to all suppliers, including producers, and purchasers of allocated natural gas liquid products, derived from any source, including both refineries and gas processing plants.

The definition of propane set forth in § 211.51 which encompassed mixtures containing ten percent or more of the chemical $C_3H_8$ by weight was proposed to be amended to mean a normally gaseous paraffinic compound whose chemical composition is predominantly $C_3H_8$, including all products which meet GPA specifications for commerical

propane and propane HD–5. Similarly the definition of butane was proposed to be amended to mean a normally gaseous paraffinic compound whose chemical composition is predominantly $C_4H_{10}$, including normal and isobutane and mixtures of these two isomers, and all products which meet GPA specifications for commerical butane. The proposal went on to define further commerical propane, propane HD–5, normal butane, isobutane, and commerical butane, as well as commercial natural gasoline and commercial butane-propane mixture. In such a manner, FEA proposed to allocate distinct specification grade products recognized by the marketplace. Under FEA's proposal, purchasers of specification grade allocated natural gas liquid products would have been entitled to allocations based on their base period use of each such product. Unfractionated NGL mixtures would also have been allocated as a separate product. Furthermore, FEA indicated that the ethane portion of fractionated mixtures would no longer be indirectly included under the allocation regulations because of the changed definitions of propane and butane.

*Separate Products*

The comments to FEA supported amending the definitions of propane and butane, but the general consensus among suppliers and purchasers was that, at this late date, it was unnecessary to allocate separately each grade of propane or isomer of butane. It was stated that the NGL industry has been able to function efficiently using the allocation categories of propane and butane. Furthermore, for particular uses certain products, such as commerical propane and propane HD–5, may be interchangeable. In addition to complicating the regulations, it was pointed out that many suppliers did not keept such records and would be unable to determine the volumes of particular grades of product supplied during the base period year. It was further stated that state energy offices could have difficulty administering more than one state set-aside for propane and responding quickly if suppliers had to apportion separate amounts of commerical propane and propane HD–5 in distinct set-asides.

We consider these criticisms to have substantial merit and are adopting revised definitions of propane and butane as proposed, but are not providing for allocation as separate products of each of the various grades of propane or isomers of butane. The new definitions of propane and butane conform to industry usage of these terms.

The new subpart provides for the separate allocation of propane, butane and natural gasoline. If greater than ten percent by weight, the propane, butane or natural gasoline portion of fractionated NGL mixtures will also be allocated as propane, butane or natural gasoline, respectively (except for the propane content of certain ethane-propane mixtures described herein). In this context, the term "allocated natural gas liquid products" is being defined as commerical propane, propane HD–5, commerical butane, normal butane, isobutane, commerical B–P mixture, commerical grade natural gasoline and, if greater than 10 percent by weight, the propane, butane, or natural gasoline content of all fractionated mixtures of natural gas liquids. Although the phrase "natural gas liquid" is used, we clearly intend that allocation extends to such product produced in refineries. The definition of "fractionated" is adopted from the proposal to mean separated into components by partial or complete fractional distillation of natural gas liquid mixtures. Once having been so separated, each component, including the residuum of partially separated mixtures, shall be considered fractionated regardless of subsequent mixing or commingling. The products allocated will be propane, butane and natural gasoline and not the different grades of each.

*Unfractionated Mixtures*

Comment was also received regarding FEA's proposal to allocate unfractionated mixtures as a separate product. Commenters stated that the proposal did not properly account for the changing composition of unfractionated mixtures. It was also pointed out that the propane and butane content of natural gas liquids has been explicity excluded, in §§ 211.81(b) and 211.91(b) respectively, from mandatory allocation under subparts D and E. While the distinction between fractionated and unfractionated was not expressly enunciated, FEA made clear in the past (at 39 FR 44405, December 24, 1974) that although the propane and butane content of natural gas liquids was subject to use restrictions contained in § 211.10(g)(8), such liquids themselves were not at that time subject to allocation.

We have reevaluated FEA's proposal and have concluded that it is not necessary at this time to allocate unfractionated mixtures. The provisions of subpart D will apply to unfractionated mixtures only in specific situations described herein (see discussion of §§ 211.87 and 211.88(d), *infra*). By excluding unfractionated mixtures from allocation and from the definition of allocated natural gas liquid products, supply obligations and allocation entitlements will not attach to allocated natural gas liquid products until partial or complete fractionation occurs. Once a mixture has been subject to even partial fractionation, the products removed and the residuum will both be subject to mandatory allocation. By adopting this rule we retain sufficient control over the ultimate destinations of products to ensure their equitable distribution.

*Ethane-Propane Mixtures*

We have received considerable comment, both in connection with this rulemaking and also as the subject of separate petitions for rulemaking, that there is a need to allow increased production of E–P mixtures since the base period to be distributed without regulatory restriction and that the proposal did not adequately account for technical constraints relating to such mixtures.

E–P mixtures are suitable as petrochemical feedstocks, to a limited degree for direct injection into natural gas pipelines, and possibly as synthetic natural gas feedstock. Most traditional users of propane, such as residences, cannot use E–P mixtures containing predominantly ethane.

Historically, the design capability of most fractionators required that some propane be removed when an NGL mixture was deethanized. A number of the older fractionators produce E–P mixtures which typically contain up to thirty percent propane by liquid volume (thirty-seven percent by weight). Economically and technically it is not feasible for the older processes to extract ethane with less accompanying propane. Although newer processes have been developed (e.g., cryogenic) which allow extraction of purer mixtures, containing lower percentages of propane, it still takes significant additional capital expenditure to extract an E–P mixture with less than ten percent propane. In addition, propane volumes of up to approximately twenty percent are needed in E–P mixtures to accommodate most storage and transportation systems. The high vapor pressure of nearly pure ethane makes transportation by pipeline and storage difficult and hazardous.

Large volumes of E–P mixtures, considered propane under the previous regulations and thereby subject to the industrial and other use limitations, have in the past been forced to remain unused, except where the ERA limitations have been explicitly waived. The DOE's Task Force on Winter Energy

Emergency Planning and the Senate Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs (*The Status of the Nation's Preparedness for the Winter of 1977–78,* October 1977) also both supported easing the restrictions on E–P mixtures to augment natural gas supplies during winter months.

The proposal, by retaining a use limitation on the propane content of E–P mixtures containing greater than ten percent propane, would have effectively prohibited the distribution of most available E–P mixtures. The intent of the final rule is to free up possible surplus volumes of E–P mixtures for new use by gas transmission companies and other users, while assuring that historical base period purchasers of these mixtures have allocation entitlements to the propane portion of the mixtures. The rule applies separately to fractionating facilities which produced E–P mixtures prior to January 1, 1979, and to new or refurbished facilities which began operation after January 1, 1979. [In the draft final rule published by the FERC, the cutoff date was January 1, 1978 rather than January 1, 1979. The January 1, 1979 date we have selected in this final rule is consistent with the FERC recommendations and updates the earlier draft.]

For facilities that produced E–P mixtures prior to January 1, 1979, the final rule provides for mandatory allocation of the propane portion of E–P mixtures produced at such facilities as a separate product to which base period purchasers have a separate allocation entitlement, provided the average propane percentage content in 1978 did not exceed 30 percent by liquid volume. By separate allocation we mean that a propane supplier will not be required to include the propane portion of E–P mixes as part of its allocable supply of propane but will be required to maintain a separate allocable supply of the mix to be supplied to historical purchasers, if any, of the E–P mix.

The rule allows the separate allocation (and sale of surplus volumes) for the propane content of any E–P mixture produced at a fractionating facility of up to the 1978 average percentage propane content for such mixtures at that facility, subject to the 30 percent limit. If the propane content of an E–P mixture exceeds the 1978 average percentage content, then those propane volumes corresponding to the excess over the 1978 average shall be considered part of the supplier's general propane supply to be distributed under § 211.10.

For example, if a fractionating facility produced E–P mixtures in 1978 with an average propane content of 25 percent by liquid volume, then any E–P mixtures produced subsequent to the adoption of this rule may be allocated separately only to the extent that their propane content is 25 percent or less. If this facility were to produce 100,000 barrels of an E–P mixture which consisted of 65,000 barrels of ethane and 35,000 barrels of propane, then 10,000 barrels of propane in this mixture, i.e., the excess over 25 percent, would be considered part of the supplier's general propane supply. From a practical point of view, if the supplier sold this stream as is, without further fractionation to remove the excess propane, then a corresponding 10,000 barrels of propane from another source would have to be offered to base period purchasers in accordance with 10 CFR § 211.10(g)(5) before the supplier could release this portion of the E–P mixture as surplus to be purchased by the user of the total mixture.

For new or refurbished fractionating facilities, which did not produce E–P mixtures prior to 1979, current technology for ethane extraction should permit the production of E–P mixtures containing no more than 20 percent propane by liquid volume. Thus, the final rule provides that the volumetric percentage limit for propane to be allocated separately in E–P mixtures from new facilities is 20 percent by liquid volume, rather than 30 percent.

As to E–P mixtures produced prior to January 1, 1979 which currently are in inventory, their propane content may also be separately allocated to the degree that it is less than thirty percent by liquid volume.

*Other Definitions and Exclusion*

FEA proposed to amend certain other definitions. For instance, "plant protection fuel," would have meant the use of allocated natural gas liquid products in the minimum volume required to prevent physical harm to the plant facilities or danger to plant personnel. Under the proposal, allocated natural gas liquid products would not have been considered plant protection fuel if an alternate fuel capability is in place for a fuel other than allocated natural gas liquid products or natural gas and can be operated on a continuing basis. Comments indicated that, notwithstanding the physical capability of a plant to use an alternate fuel, the alternate fuel may not be available for plant protection purposes. We are broadening the definition of plant protection fuel to apply to situations where an alternate fuel capability is in place but the alternate fuel is not available.

Similarly, we received comments regarding the proposed definition of "process fuel", which in essence would have continued the definition in effect at the time the proposal was issued. The commenters urged removal of the restriction requiring that a process use be one in which a substance is converted from one form to another. It was correctly pointed out that other kinds of processes require precise temperature and flame characteristics. In addition it was asserted that the technical feasibility and availability of natural gas as an alternative should not preclude a use from being classified as one requiring process fuel.

We are adopting a definition which provides that "process fuel" means allocated natural gas liquid products used in applications requiring precise temperature controls or precise flame characteristics. Allocated natural gas liquid products may not be considered process fuel if an alternate fuel (other than natural gas) is available and technically feasible for substitution.

The term "gas service for essential human needs and property protection" is being deleted because it does not appear in the body of the regulations. A comment indicated that the proposed definition of "producer" could be read to include a firm which is only a reseller. A clarifying phrase insures that, as relates to gas fractionating or processing plants, producers include only firms which have an ownership interest in the stream at the time the allocated NGL product is produced. A further conforming change includes importers of unfractionated mixtures as producers.

Finally, in response to comments from aerosol propellant manufacturers, we are expressly excluding from allocation the propane and butane content of hydrocarbon aerosol propellants. The propane and butane content of such propellants were prevously subject to the allocation regulations. However, the total demand for these products is minor compared with the overall NGL demand, and therefore excluding these products from mandatory allocation will cause little, if any, economic disruption and should foster competition in that segment of the industry. The exclusion of these products from the allocation regulations is not intended to affect their treatment under the price regulations.

C. *Allocation Levels*

Residential Use

FEA specifically requested comments as to whether the allocation level for residential use should remain at one hundred percent of current requirements subject to an allocation fraction.

Responses varied depending upon the interests of the commenters. Among those who objected to the current requirements standard, suppliers particularly were concerned about exaggerated and unverifiable increased requirements being certified to them by wholesale purchaser-resellers. To the extent disagreements occur regarding the validity of certifications, the validation provisions of § 211.13(d) will be sufficient to resolve disputes.

We are concerned that in the event of another winter emergency such as occrued during the 1976–77 winter which, among other things, prompted the increase to the current allocation level for residential users, direct residential users will not be adequately protected by the current rules. Accordingly, while retaining the allocation level for residential use at one hundred percent of current requirements subject to an allocation fraction, we are providing that an allocation fraction of less than nine tenths (.90) may not be applied with respect to a firm's entitlement to product intended for residential use. In the event that a supplier's allocation fraction is calculated to be less than .90 for an allocation period, the final rule requires the supplier to distribute product intended for residential use as if the allocation level for such use is ninety (90) percent of current requirements, not subject to an allocation fraction.

We recognize that this provision will protect residential users at the expense of firms using products for other important uses which have an allocation level subject to an allocation fraction, such as for plant protection fuel or small commercial use. We have no information that the 90 percent supply requirement would likely cause serious hardship for such users.

We would welcome additional comment from any person as to whether further amendments to allocation levels of propane are necessary. Particularly we wish to know if we should effect allocation level changes similar to the ones recently adopted for priority users of gasoline, i.e., allowing such users 100 percent of a fixed historical usage *not* subject to an allocation fraction rather than an allocation level based on current requirements. If such an approach were to be adopted, would a more recent period than 1972–1973 accurately reflect current demand? In the alternative, with the possibility of NGL's being decontrolled, should we refrain from making any further regulatory changes unless necessitated by severe problems?

Gasoline Blending and Manufacturing and Process Fuel Use

Under the proposal, the allocation level for the gasoline blending and manufacturing use of butane and natural gasoline would have been raised from ninety to one hundred percent of base period use. Additionally, an adjustment procedure was proposed in § 211.84 to allow refiners to increase their base period use for gasoline blending and manufacturing. Refiners commenting on these provisions asserted that the allocation level for this use should be raised to one hundred percent of current requirements subject to an allocation fraction. They stated that butane and natural gasoline were then in abundant supply. They indicated that their requirements for butane, a high octane blending component, have generally increased since the base period, particularly in light of the Environmental Protection Agency's lead phasedown requirements for motor gasoline and the time needed to introduce additional needed catalytic reforming capacity. They claimed that in the short term at least, without access to 100 percent of their butane requirements, many refiners will not be able to meet the increasing demand for unleaded gasoline. They contended that their allocation level should be the same as for petrochemical feedstock use of butane and natural gasoline, their competitors for available butane supplies. Without access to such product to maintain motor gasoline production, they stated that refinery supplies of other products could be diminished because in most refineries there is a limit to which gasoline production can be reduced without reducing production of other refined products.

Although the removal of industrial use limitations for butane will make available surplus product for gasoline blending and manufacturing use, adjustments to base period uses would have been necessary in many instances to assure refiners continued supplies of product if the allocation level were not raised. We have raised the allocation level for butane and natural gasoline for this use primarily to allow refiners the flexibility to optimize gasoline production, particularly during the current period of inadequate gasoline supplies.

For similar reasons, and also in response to comments, we are also raising the allocation level for process fuel use of butane and natural gasoline to one hundred percent of current requirements, subject to an allocation fraction.

Gas Utility Use

The proposal included an allocation level for gas utility use of one hundred percent of base period use. This was distinct from the previous allocation level for peak shaving, also at one hundred percent of base period use, which contained a use limitation allowing utilities to use volumes of propane contracted for or purchased for delivery during the base period year. The promulgation of the Gas Utility Guidelines which required any usage of propane for gas utilities beyond actual base period use to be from non-Canadian imports, and the further requirement in the proposal that such product be incrementally priced to gas utility users, brought forth a substantial amount of criticism from the gas utility industry.

A large number of utilities commented, both in connection with the proposal and the guidelines, that their appropriate allocation entitlement of propane should be the volume contracted for during the base period year. They asserted that such a volume would be most reflective of their historical pattern of usage which for any particular year would vary depending on the weather. They emphasized that their contractual arrangements in many cases were on a "take or pay" basis for which they paid a premium to have secure supply available. They stated that allowing utilities to continue using supplies of domestic propane which have historically been available to them would not deprive other traditional high priority users of product. On the other hand, requiring utilities to apply individually for adjustments to their base period uses or for waivers of the use limitations to enable them to receive non-Canadian imports equivalent to the volumes which were historically available to them from domestic sources would, they claimed, be unnecessarily disruptive. Setting utilities' base period uses equal to volumes actually acquired in the base period, commenters alleged, was a substitution of agency judgment for that of the technical experts and planners most familiar with the operations of a particular utility. It was further argued that historically the annual overall volume of propane used for injection by utilities amounted to less than approximately five percent of propane consumed in this country. But to the utilities the propane provided a critical margin allowing them to meet high priority requirements in time of peak demand. Commenters urged that if ERA believes imports should be used by gas utilities, such a policy should apply

prospectively for new gas utility use only.

We have carefully evaluated all the comments concerning the appropriate allocation level for gas utilities and accept as valid many of the comments critical of the proposal. Therefore, while retaining an allocation level for gas utility use of one hundred percent of base period use subject to an allocation fraction, the base period use for gas utilities has been set as the larger of that volume of an allocated natural gas liquid product which a gas utility contracted for (if a specific maximum volume was designated) or purchased for delivery in each calendar quarter during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was actually obtained during the base period. This change from the proposal will properly protect historical gas utility users of propane and other allocated NGL products.

In those few instances where during the base period gas utilities entered into open-ended contracts which allow unlimited volumes of product to be supplied to meet their "requirements," redefining base period use to correspond to contract volumes would give such firms an advantage over other firms in times of shortage. Accordingly, the base period use for utilities with such open-ended contracts will continue to be the volume purchased for delivery in the base period. To the extent such a firm believes that the volume purchased for delivery during the base period is inadequate to establish a proper base period use, it should apply to ERA for an adjustment to its base period use.

In response to FERC concerns, we have added an allocation level for gas transmission company use of 100 percent of base period use that will be determined in the same manner as allocations for gas utilities.

*Other Allocation Level Changes*

In response to comments, we recognize that it would be appropriate to include a separate allocation level for transportation of crude oil, NGL's, and refined petroleum products. The level is set at one hundred percent of current requirements subject to an allocation fraction.

Process fuel use of propane is taken from the category of other industrial use and is specifically delineated as having an allocation level of one hundred percent of base period use subject to an allocation fraction. Additionally, an allocation level of one hundred percent of base period use subject to an allocation fraction is being set for boiler fuel use of allocated NGL products for energy production to account for the removal of such use from the energy production allocation level of one hundred percent of current requirements subject to an allocation fraction.

*D. Adjustments and Assignments*

Petrochemical Feedstock and Process Fuel

Section 211.84 reflects the changes in allocation levels and the scope of the new subpart. Because the allocation levels for gasoline blending and manufacturing and for process fuel use of butane and natural gasoline have been raised to one hundred percent of current requirements subject to an allocation fraction, it is not necessary to adopt the proposed adjustment mechanism for such uses. Similarly because commercial B–P mixture is not to be allocated as a separate product, and unfractionated mixtures are not to be allocated, separate adjustment procedures for these mixtures are not needed.

Although petrochemical firms commenting urged that petrochemical feedstock use of propane be given an allocation level of one hundred percent of current requirements, we have concluded that the needs of such users would adequately be met by retaining the allocation level of one hundred percent of base period use subject to an allocation fraction and, as proposed, providing an adjustment mechanism (not limited to cases of hardship or gross inequity) for which applications may be made, under § 211.86(f), for separate facilities. The proposal requested commenters to suggest criteria to be used in evaluating applications for adjustment by petrochemical feedstock users. We are not enumerating criteria at this time, but if necessary, we will promulgate such standards.

Accordingly, as adopted, § 211.84(a) provides that a wholesale purchaser-consumer may apply (1) to the ERA National Office for adjustments to its base period use for petrochemical feedstock use of propane (including the propane content of fractionated natural gas liquid mixtures) and (2) to the appropriate ERA Regional Office for adjustments to base period use of propane for process fuel.

*Gas Utilities*

Sections 211.84(b)(1) and (2) pertaining to adjustments, assignments and waivers by gas utilities, are being adopted as proposed, subject to the deletion of the gas utility guidelines. Applications for adjustments and assignment will be considered under the procedures and criteria of Subparts B and C, respectively, of Part 205.

Section 211.84(b)(3) permits gas utilities to act as agents in acquiring and delivering allocated natural gas liquid products through natural gas pipelines to end-users or wholesale purchaser-consumers separately authorized to purchase such products. Unless otherwise authorized by ERA, such actions will be permitted only in those cases where the wholesale purchaser-consumer or end-user owns the product and bears the entire cost of its storage, gasification, and transmission and where there will be no adverse effects on the gas utility's other customers. As proposed, this provision basically would have codified a procedure already contemplated by the guidelines to 10 CFR 211.12(h). The proposal would have required that the user have no facilities for using a fuel other than pipeline gas but such a requirement is not being adopted.

A sentence is added at the end of the section setting forth that volumes injected by the gas utility will not be counted as part of its use for purposes of the use limitation contained in § 211.87(a)(3). That is, where the use of the allocated NGL product by an end-user or wholesale purchaser-consumer is separately authorized and the other requirements of the section are met, a gas utility may act as an agent without regard to its own base period use of such product.

*E. Supplier/Purchaser Relationships*

Changes in Relationships

The comments generally supported section 211.85(b) of the proposal, which provided a means for wholesale purchasers to switch base period suppliers. It is being adopted substantially as proposed, and provides as follows, with the changes from the proposal noted:

Any wholesale purchaser of any allocated natural gas liquid product may terminate a supplier/purchaser relationship or adjust downward its allocation entitlement from a supplier for a calendar quarter by providing written notice to its base period supplier of its intent to do so, provided that the affected supply obligation will be assumed by another supplier or the purchaser no longer requires the affected volumes. Wholesale purchasers shall specify in the notice the volume of the supply obligation which shall be reduced or terminated, and shall include the effective date of termination or downward adjustment. Such dates shall correspond to the first day of a calendar quarter. Upon receipt of such notification a supplier shall subtract the volumes so terminated or adjusted

downward from its base period supply obligations, and shall not include such volumes in its base period use from its supplier, unless by the exclusion of such volumes its base period use (after being adjusted upward by the addition of new base period purchasers) would fall below its original unadjusted base period use.

In a change from the proposal suggested by the comments, in those situations where a supplier has historically maintained an allocation fraction of one (1.0) or less by importing directly a volume of product equal or greater than the sum of its base period obligations terminated under this provision, the supplier would not be required to exclude such volumes from its allocation entitlement from its domestic supplier. In such cases, the terminated obligations may be deemed to have been supplied through imports. To provide otherwise could cause wholesale purchaser-resellers to become increasingly reliant upon possibly higher-priced imports with a correspondingly adverse effect on the supplier's remaining base period purchasers.

The provision further provides that any supplier of allocated natural gas liquid products may establish a supplier/purchaser relationship with a wholesale purchaser to the extent that the purchaser has terminated a supplier/purchaser relationship or has adjusted downward its base period use, provided that (i) the supplier's net new obligations for a particular calendar quarter corresponding to a base period would not, if applied in the immediately preceding corresponding calendar quarter, have reduced the supplier's allocation fraction below one (1.0), and (ii) the supplier can demonstrate that its net adjustments to its base period supply obligations for any particular calendar quarter for which supply obligations will be assumed are not reasonably estimated to reduce its allocation fraction below 1.0 for that quarter. The mere ability to certify upward such adjustments to its supplier will not be sufficient to constitute a demonstration by a wholesale purchaser-reseller that its allocation fraction will not be reduced below 1.0. The supplier and wholesale purchaser must notify ERA and obtain approval from the appropriate ERA Regional Office before a new supplier/purchaser relationship and base period use can be established. In certain instances, the ERA Regional Office may approve the shift in suppliers but will not permit the new supplier to certify the new obligation to its supplier.

A wholesale purchaser-reseller which in its capactiy as a supplier establishes new supplier/purchaser relationships under this provision that increase its base period supply obligations, or which has excluded certain volumes from its base period use pursuant to this provision, shall receive an upward or downward adjustment, respectively, to its base period use in an amount equal to the net change in its base period obligations. In another change prompted by the comments, the final rule provides that, unless ordered by ERA, a wholesale purchaser-reseller may receive an upward adjustment pursuant to this subparagraph only with the consent of its supplier whose obligations would thereby be increased. This change should insure that wholesale purchaser-resellers which take on increased supply obligations for existing firms will not do so with the expectation of meeting these additional obligations through an upward certification to their suppliers unless there is a reasonable certainty that the additional volumes can be supplied. Of course, an adjustment certifiable under § 211.13(c) on any other basis does not require such approval.

*Underlifting*

Section 211.85(c) of the proposal, providing a means to facilitate the distribution of underlifted supplies, received criticism, most of it valid, from all segments of the industry. While there was general support for the aim of the provision (with the notable exception of comments from gas utilities), there was also a common criticism that the section was unduly complex, cumbersome and burdensome to administer. Many of the suppliers thought that a minimum of one year was too long before a purchaser's allocation entitlement could be permanently excluded from the supplier's base period supply obligations. Other suppliers thought that the proposal contained so many loopholes that it would provide little protection and ought not be adopted. Still others indicated that the proposal was anti-conservation oriented and encouraged firms to purchase unneeded supplies. Gas utilities strongly asserted that since their requirements for propane and other NGL products were entirely temperature-sensitive, they could lose their allocation entitlements arbitrarily.

While we remain concerend about the underlifting of supplies and the effect of regulations which require suppliers to hold such product as part of their allocable supply until the end of a base period quarter, we do not wish to adopt an underlifting section under which purchasers could too easily lose the protection of the allocation regulations. The allocation regulations do not require consumers to purchase product from their base period suppliers. Allowing purchasers to lose their entitlement to product if they do not purchase product from their base period supplier over a short time period could inhibit competition. Furthermore, in some instances noted earlier, purchasers enter into "take or pay" contracts which already discourage underlifting by providing added incentives to purchase product. The complexities of the problem are such that we believe the prudent course of action is not to adopt a provision on underlifting at this time.

*Gas Processing Plants or Fractionation Facilities*

In the proposal FEA expressed its concern over protecting the purchasers downstream from operators of gas processing plants or fractionation facilites when the volume of allocated NGL products produced at a facility is reduced. FEA proposed a provision which would have provided that a firm which acquired allocated natural gas liquid products through its ownership interest in or operation of a gas processing plant or fractionating facility during the base period would have an allocation entitlement with respect to the volumes of such products acquired during the base period from the firm that supplied the allocated natural gas liquid products in the base period, regardless of whether such products were purchased or acquired under a processing agreement. The regulation would have applied to the absolute volumes of such products acquired and not to the percentages of production from a particular natural gas stream. Under the proposal, should available volumes of allocated natural gas liquid products have declined at a particular plant due to declining natural gas production in the plant's vicinity, the supplier would have retained a supply obligation equal to its base period volumes subject to imposition of an allocation fraction.

We received a substantial number of comments opposed to this provision. It was pointed out that transfers of natural gas liquids from producers to gas processors represent in-kind fees for services performed under processing agreements and should not be subject to allocation obligations. In many cases, the volumes of NGLs produced at plants decline over time, and it would be unreasonable to require the payment to processors of specified volumes of product when the services also decline. Particularly in the case of isolated gas

plants, specified volumes of allocated NGL products often cannot physically be delivered to the processor when gas streams decline. It was also asserted that the proposal overlooked the downstream obligations of the producer at the expense of the processor's purchasers. Commenters stated that the proposal would unnecessarily upset contracts which often were on the basis of a particular percentage of NGLs taken from a stream (or even on an mcf basis) and in the future would control the nature of processing fees. In addition, the regulation would effectively have kept natural gas streams tied to a particular gas plant even though economies of production or other business judgments would dictate movement to other plants.

Under this final rule, allocations will continue to be on a firm-wide volumetric (not proportional) basis. However, in light of the comments received, we have decided not to adopt a specific provision setting forth supply obligations of gas plant operators. Our decision not to allocate unfractionated mixtures means that allocation obligations, which do not attach until the first sale or exchange of an allocated natural gas liquid product, will not occur until after fractionation of the natural gas liquids. Under the final rule, where a processor, in exchange for its services in extracting the liquids from a gas stream or for fractionating the liquids, acquired ownership during the base period of a portion of the NGL products produced, no allocation entitlement to the products will accrue to it. In such a situation, no sale or exchange of an allocated product is deemed to have occurred and such a transaction does not give rise to a mandatory supplier/purchaser relationship under the allocation regulations. For purposes of the allocation regulations, the firm that first owns the fractionated products is considered the initial supplier of the allocated NGL products.

To deal with the problem of declining production of products, a producer may apply to the ERA National Office for permission, under § 211.10(b), to allocate its available supply from an isolated facility on the basis of a separate allocation fraction. The criteria of that section provide that a separate fraction will not be allowed unless the distribution subsystems represented by such fraction are independent and that it would be impracticable to employ a single allocation fraction or it would be inconsistent with the provisions of the allocation program.

One commenter asserted that ERA would receive many petitions for multiple allocation fractions which would reflect declining gas streams across the country. We intend that suppliers make every effort to provide NGLs to base period purchasers and thus we expect to allow the use of separate allocation fractions only in limited situations. An applicant for a separate fraction for an isolated plant will be required to demonstrate that it is unable to meet from any source (including, but not limited to, substitutions or exchanges) its base period supply obligations to its base period purchasers which during the base period acquired products at that facility. The allocations permitted by such a determination will not affect a producer's supply obligations or purchaser's allocation entitlement at any other location.

*F. Method of Allocation*

Other than paragraph (e) relating to inventory accumulation, § 211.86, pertaining to the method of allocation, is being adopted substantially as proposed.

*Producers*

As proposed in the notice of rulemaking, the final rule provides that if a producer is the base period supplier to wholesale purchaser-resellers which have certified amounts of propane to be resold for ultimate use under an allocation level of one hundred (100) percent of current requirements whether or not subject to an allocation fraction, that producer may not recertify such amounts to any other producer which may be its base period supplier. DOE received a comment that the latter rule could adversely affect producers which historically have only produced a small fraction of the product they supply. We believe that such situations are anomalies which can be handled on a case-by-case basis if necessary, and that generally such a rule is necessary to prevent overloading of producer-to-producer supplier/purchaser relationships.

*Inventory Accumulation*

The inventory accumulation section being adopted contains a number of changes from the proposal.

To accord with the differing treatment afforded certain ethane-propane mixtures, the final inventory accumulation regulation provides that the propane content of ethane-propane mixtures separately allocated under § 211.81(b)(2) are not subject to the inventory restrictions adopted.

The inventory accumulation restrictions themselves will conform to the use limitations of § 211.87, discussed *infra*. For example, gas utilities will be able to accumulate 100 percent of their annual base period uses plus the amount in inventory on April 1, 1972. In addition, the provisions specifically limiting inventory accumulation by certain firms to 100 percent of their annual usage will only apply to domestically-produced product.

For the present, the inventory limitations will not be effective because they will be subject to a general waiver. As with the general waiver of the use limitations, the waiver of the inventory restrictions will be effective until terminated by the ERA Administrator by notice in the Federal Register.

*G. Special Limitations*

The use limitations in § 211.87 for allocated NGL products have been annualized to allow firms greater flexibility than previously. Firms' usage will not be limited to the volumes of product purchased or acquired during any one base period calendar quarter. Instead, the firms to which the limitations will apply will have the flexibility to use the sum of the base period uses for the four calendar quarters in any twelve-month period commencing October 1 and ending September 30 of the following year.

*Imports*

Use limitations will apply only to NGL's produced in the United States. There will be no restrictions on the use of imports, Canadian or otherwise. Certain pricing provisions will be adopted for passing through separately the costs of imports, but their usage will not be restricted.

*Ethane-Propane Mixtures*

As stated earlier, the final rule provides that the use restrictions set forth in § 211.87 also will not apply to the propane content of ethane-propane mixtures separately allocated under § 211.81(b)(2). This should allow free movement of and competition for the volumes of these products in excess of historical production levels which are expected to be available as processing plants using newer technology become operational.

*Industrial Use*

A use limitation has been retained for industrial uses of propane but it will not apply to process fuel use, plant protection fuel use and any other industrial uses which will have an allocation level of 100 percent of current requirements. There will be no use limit applicable to industrial uses of butane.

*Gas Utilities*

As previously described, there were a substantial number of comments in regard to the proposed sections relating to gas utilities. As to that part of the proposal which limited gas utility use of propane to one hundred percent of the base period use for the four base period quarters, most of the critical comments received related to the definition of the "base period use" which included only those volumes actually purchased during the base period. To the extent that the base period use for gas utilities is redefined to include amounts contracted for delivery during the base period, this will increase considerably the amounts of product that can be used without being subject to the use limitation (particularly since the limitation only applies to product produced in the United States).

Commenters indicated that some utilities had purchased propane prior to the base period and had product available for their own use on April 1, 1972. Such product would have been available for use in addition to volumes obtainable under contracts during the base period. We believe that the sum of base period contracted-for volumes (or purchased volumes) and April 1, 1972 inventory volumes is the most appropriate measure of a gas utility's volumetric use constraint. The final rule amends the proposal to include the inventory volume.

The proposal also provided that no wholesale purchaser-consumer would have been permitted to use any quantities of an allocated natural gas liquid product for gas utility use or gas transmission company use as long as gas service would have been continued to industrial or commercial customers which have an alternate fuel capability in place which uses a fuel other than allocated natural gas liquid products or natural gas and can be operated on a continuing basis. Such a provision would have been an easing of the prior use limitation on peak shaving which prohibited propane or butane from being used for peak shaving whenever gas utilities continued service to "interruptible" industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any non-residential customer which can use a fuel other than natural gas, propane or butane. In response to FERC concerns, this qualitative limitation is not being adopted.

*Synthetic Natural Gas Use*

While the notice did not propose any changes with respect to the volumetric limitation on allocated NGL products used for SNG production pending the completion of the work of the task force studying the SNG regulations, FEA solicited comments as to whether the use restriction should continue to be on a quarterly basis in light of the proposed yearly limitations for industrial and gas utility users. Comments from firms which operated SNG plants preferred an annual to a quarterly limitation.

In the final rule, the SNG use limit is an annual one. A conforming regulatory change is provided in § 211.29(e) in which we are deleting references to allocated natural gas liquid products to avoid duplication or inconsistency with § 211.87(a)(4).

Notwithstanding the exclusion of unfractionated mixtures from mandatory allocation, their explicit inclusion within the SNG use limitations is necessary to prevent extensive use of such mixtures to circumvent the use restrictions on NGL products. Unfractionated mixtures are therefore included in this rule. This provision is consistent with both the proposal, which included unfractionated mixtures in the definition of allocated natural liquid products, and with the provisions of § 211.10(g)(8) which are being replaced.

Since the SNG feedstock use limitation is set forth in terms of the annual "base period use" and unfractionated mixtures will not be allocated (and thus have no base period use), there could be a problem in applying the use limitation to unfractionated mixtures. We intend that the SNG feedstock use limitation apply to unfractionated mixtures in the same manner as it would apply to fractionated mixtures. In other words, the limitation will be determined with reference to the base period use of each component of a mixture as if it were allocated.

*Waivers*

At the time the FERC was reviewing the draft final rule, NGL supplies appeared to be more than adequate relative to demand. Accordingly, in response to concern that the administrative burdens associated with case-by-case processing of applications for waivers would not be warranted in such a supply environment, we have included general waivers of the use and inventory limitations in the rule. These waivers will be effective until the ERA Administrator terminates them by notice published in the Federal Register.

However, recent data on current propane stock levels have raised the possibility of isolated spot shortages if the coming winter is colder than average. Thus, we are considering the possibility of terminating the general waiver provisions to ensure the availability of adequate product to high priority users. We wish to receive your views as to any aspect of the rule about which you may have concerns and particularly with regard to whether circumstances exist which warrant the termination of the general waiver.

*H. Importers of Allocated Natural Gas Liquid Products*

Section 211.88 is being adopted as proposed, with a few differences. The proposal related only to non-Canadian imports of allocated NGL products. It left unclear the treatment afforded imports of such products from Canada. Therefore, the scope of § 211.88 has been broadened to include Canadian imports. The separate inventory record requirements which trigger the separate cost calculation pricing provisions will apply to Canadian imports. As amended, the final rule applies to all importers of allocated natural gas liquid products and sets forth the method of allocation for imports. It will also apply to domestically produced product exchanged for imports as if they were imports.

As proposed, § 211.88 did not apply to NGL products used for SNG production. We have concluded that to the extent imports of allocated NGL products are permitted to be used for SNG production in excess of their allocation level, such imports should be incrementally priced to the SNG plant operator in the same manner as imports used for gas utility use in excess of allocation levels. Section 211.88 accordingly requires separate inventory records to be maintained for such use.

The final rule provides that separate inventory records (the maintenance of which trigger the incremental price provisions of part 212) are required for allocated NGL products sold for "incrementally priced uses." "Incrementally priced uses" means industrial use (including petrochemical feedstock and refinery fuel), gas utility use, gas transmission company use and SNG feedstock or enrichment use in excess of the intended users' allocation levels. It also includes other uses as specified by ERA.

Paragraph 211.88(b) provides that end users and wholesale purchaser-consumers of allocated natural gas liquid products may import such products for their own use and that acquisition of such imports does not affect a firm's allocation entitlement unless ERA detemines that such imports are inconsistent with the objectives of the EPAA.

In addition, end-users and wholesale purchaser-consumers importing

allocated natural gas liquid products pursuant to § 211.88 will not be considered by reason thereof to be prime suppliers or producers of allocated natural gas liquid products.

Suppliers may acquire allocated natural gas liquid poducts imported for distribution to end-users and wholesale purchasers only in accordance with paragraph (c) of § 211.88. Under paragraph (c), any supplier of allocated natural gas liquid products which would have an allocation fraction less than one (1.0) for a calendar quarter corresponding to a base period may import (or acquire from suppliers which have so imported) such products for the purpose of achieving an allocation fraction of 1.0 during the calendar quarter. Imports used to achieve an allocation fraction of 1.0 will be allocated in accordance with the provisions of § 211.10.

ERA may require separate inventory records to be maintained and incremental pricing for imports sold to meet base period supply obligations for gas utility, gas transmission company or SNG feedstock or enrichment use to new wholesale purchaser-consumers which will establish a base period use, or to meet upward adjustments for existing wholesale purchaser-consumers. The product approved in these delineated instances will be deemed to be for incrementally priced uses.

Any supplier of allocated natural gas liquid products which achieves an allocation fraction of 1.0 or greater for a calendar quarter may import (or acquire from suppliers which have so imported) such products to increase further its allocation fraction above 1.0 and will also distribute such imports in accordance with the provisions of § 211.10, except that distribution of imports (or domestically produced product exchanged for imports) for incrementally priced uses shall be in accordance with the provisions of subparagraph (c)(3) of § 211.88.

Subparagraph (c)(3) requires that all imported surplus allocated natural gas liquid product distributed by suppliers to wholesale purchasers for all incrementally priced uses will have to be accounted for by separate inventory records and will be subject to separate cost computation requirements as described herein. Because such imports are not distributed under § 211.10, they will not first have to be offered as surplus product to the suppliers' base period customers. Thus, purchasers of incrementally priced product should be insured continued access to the imports as long as the supplier maintains an allocation fraction of at least 1.0.

Specifically, the rule provides that suppliers with an allocation fraction of one (1.0) or greater may import (or acquire from suppliers which have so imported) allocated natural gas liquid products for distribution to wholesale purchaser-consumers which certify in writing that they will use such imported products for incrementally priced uses or for distribution to any wholesale purchaser-resellers which certify they will distribute such products for such uses. A mandatory certification requirement is also included requiring all wholesale purchasers which purchase imported allocated natural gas liquid products (or domestically produced NGL's exhanged for imported NGL's) for incrementally priced uses to certify in writing to the suppliers of such products the intended end use of such products.

All suppliers receiving such certifications will be required to maintain inventory records for such allocated natural gas liquid products separate from their inventory records for allocated natural gas liquid products distributed under the provisions of § 211.10. Suppliers which do not receive such certifications will also be required to determine to the maximum extent practicable whether their imported allocated natural gas liquid products will be distributed for incrementally priced uses. To the extent their products are intended to be so distributed, separate inventory records will also have to be maintained.

One other change from the proposal is included, and is necessary to account for the exclusion from mandatory allocation of unfractionated mixtures. Such mixtures would have been subject to the provisions of § 211.88 under the proposal by being included as an allocated NGL product. The final rule provides that separate inventory records be maintained for imports of such mixtures in certain circumstances to allow costs of such imports to be traced prior to fractionation in those instances when separate cost computation will be required for all or a portion of the fractionated components.

*I. Pricing Amendments*

We are adopting amendments to Subparts E and F of Part 212 to incorporate the requirements of § 211.88 pertaining to imported allocated natural gas liquid products (and domestically produced allocated natural gas liquid products exchanged for imported allocated natural gas liquid products) into the special price rules relating to imported propane and butane currently contained in § 212.83(h)(2)(iii) and § 212.93(f)(2). Corresponding changes to subpart K are also being adopted. The purpose of these amendments is to separate the cost computation for imported allocated natural gas liquid products utilized for incrementally priced uses and to insulate and protect other historical users of such products from the higher costs generally associated with such imports.

Under the change to § 212.83(h)(2)(iii), a refiner will be required to apply amounts of increased costs unequally to the weighted avarage May 15, 1973 selling prices of any propane, butane, natural gasoline or natural gas liquids if separate inventory records for such products are kept as required pursuant to § 211.88(c). There is no longer a requirement that unequal cost computation occur only when inventories of such products are physically separate.

Section 212.93(f)(2) pertaining to resellers of imported propane and butane for industrial use is extended to all imported propane, butane, natural gasoline or natural gas liquids (or domestically produced product exchanged for imports) designated for incrementally priced uses. As adopted, § 212.93(f)(2) provides that any seller of imported propane, butane, natural gasoline or natural gas liquids shall determine the price permitted to be charged for such products pursuant to paragraph (a) of § 212.93 by calculating increased product costs as follows:

—With respect to the propane, butane, natural gasoline and natural gas liquids for which separate inventory records are required to be maintained pursuant to § 211.88(c), for each such separate inventory the seller will make a separate calculation of increased product costs as defined in § 212.92 to be used in determining its selling price for such products pursuant to paragraphs (a) and (b) of § 212.93, with the selling prices for propane included in such products not, however, subject to paragraph (f)(1) of § 212.93.

—With respect to quantities of propane, butane, natural gasoline and natural gas liquids for which separate inventory records are not required to be maintained pursuant to § 211.88(c), the seller will add the cost of such quantities to the cost of all other quantities of the same product for which separate inventory records are not maintained pursuant to § 211.88(c), in making a separate calculation of increased product costs as defined in § 212.92 to be used in determining its selling price for all sales of products other than those maintained in a separate inventory pursuant to § 211.88(c), subject to all other

provisions of § 212.93, including paragraph (f)(1).

In subpart K of part 212, a new paragraph 211.167(e) is added to correspond to the changes to subparts E and F for refiners and resellers. Under this paragraph, separate calculations of increased costs are required for each volume of propane, butane, natural gasoline or natural gas liquids which are subject to subpart K and for which separate inventory records will be required under § 211.88(c).

Increased costs so calculated in each of subparts E, F, and K are not available for recovery in the prices charged for other propane, butane, natural gasoline or natural gas liquids.

*J. Reporting Requirements and Subpart A Amendments*

Conforming amendments to subpart A are being adopted as proposed, as are reporting requirements. The only change from the proposal relates to the borrow-payback provisions of § 211.25(c). The notice proposed permitting borrow-payback of future allocations of allocated natural gas liquid products within total allocations for any twelve month period beginning October 1 and ending September 30 of the following year. The twelve month period for such transactions relating to allocated natural gas liquid products was proposed to be changed from a calendar year basis to allow borrowing during the entire winter season of heavy temperature-related demand, with paybacks in the following summer when demand would be slackened. We also wish to encourage the building of inventories prior to the start of a winter heating season, however, and are therefore adopting a final rule permitting borrow-payback transactions for allocated NGL products within total allocations for any twelve-month period agreed upon by both the supplier and purchaser.

*K. Gas Utility Guidelines*

Much of the comment received in connection with FEA's Gas Utility Guidelines was addressed to the provision requiring only non-Canadian imports to be used for peak shaving in excess of base period use. For the reasons previously discussed relating to gas utilities' allocation entitlements, most utilities thought it unfair that historical peak shavers should now be forced to acquire higher priced imports. However some gas utility representatives acknowledged that it would be appropriate for new gas utility use to be treated differently from historical volumes.

In light of the current improved natural gas supply situation and the resulting reduced demand for propane by gas utilities, the Gas Utility Guidelines are not being republished.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 205, 211 and 212 of Chapter II, title 10 of the Code of Federal Regulations, are amended as set forth below, effective January 1, 1980.

Issued in Washington, D.C., October 12, 1979.

David J. Bardin,
*Administrator, Economic Regulatory Administration.*

## PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. Section 205.13 is amended by revising subparagraph (3) of paragraph (a) to read as follows:

**§ 205.13 Where to file.**

(a) Except as otherwise specifically provided in other subparts of this part, all documents to be filed with the ERA pursuant to this part shall be filed with the appropriate ERA Regional Office (unless otherwise specified in Part 211 of this Chapter), except that all documents shall be filed with the ERA National Office that relate to:

* * * * *

(3) The pricing of propane, butane and natural gasoline pursuant to Part 212 of this chapter and the allocation of butane and natural gasoline pursuant to Part 211 of this chapter;

* * * * *

## PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

2. The Table of Contents to Part 211 is amended by revising the references to Subparts D and E to read as follows:

* * * * *

### Subpart D—Natural Gas Liquids (NGLs)

Sec.
211.81 Scope.
211.82 Definitions.
211.83 Allocation levels.
211.84 Adjustments and assignments.
211.85 Supplier/purchaser relationships.
211.86 Method of allocation.
211.87 Special limitations.
211.88 Importers of allocated natural gas liquid products.
211.89 Procedures and reporting requirements.

### Subpart E—[Deleted]

* * * * *

3. Section 211.10 is amended by revising subparagraph (1) of paragraph (b), by revising subparagraph (1) of paragraph (g), by adding a sentence at the end of subparagraph (5) of paragraph (g) and by revising subparagraph (8) of paragraph (g) to read as follows:

**§ 211.10 Supplier's method of allocation.**

* * * * *

(b) *Allocation fraction.* * * *

(1) *Allocable supply.* Each supplier's allocable supply of an allocated product for a period which corresponds to a base period shall be equal to its total supply for that period, which is the sum of its estimated production, including amounts received under processing and exchange agreements, imports (except to the extent imports are excluded pursuant to § 211.66), purchases and any reduction in inventory of that allocated product made pursuant to § 211.22 except as otherwise ordered by ERA; less (i) any amounts designated as a state set-aside for a prime supplier pursuant to § 211.17, (ii) any amounts of allocation requirements supplied directly to end-users or wholesale purchaser-consumers under an allocation level not subject to an allocation fraction, (iii) any amounts supplied to wholesale purchaser-resellers which have certified these amounts to be for ultimate use under an allocation level not subject to an allocation fraction, and (iv) any amounts supplied to customers through exchange agreements. Any existing inventory, production, importation or purchase of an allocated product used to increase that inventory consistent with the provisions of § 211.22 shall not be included in the allocable supply of that product.

* * * * *

(g) *Allocation fractions greater than one.* (1) *General.* In allocating allocable supplies of any allocated product among wholesale purchasers and end-users, no supplier may use an allocation fraction greater than one (1.0) except as provided herein. Allocated natural gas liquid products imported and distributed by suppliers pursuant to § 211.88 shall be subject only to the provisions of that section, except as provided therein.

* * * * *

(5) *Distribution of surplus product.* * * * With respect to the distribution of

surplus allocated natural gas liquid products, suppliers which distribute such product pursuant to this paragraph, unless otherwise notified by ERA, may distribute such product upon submission by certified mail of the notification required under paragraph (g)(3) of this section without waiting ten (10) days for an ERA notification.

* * * * *

(8) *Limitations on purchaser's rights.* No supplier shall supply and no end-user or wholesale purchaser-consumer shall accept quantities of an allocated product which exceed one hundred (100) percent of the end-user's or wholesale purchaser-consumer's current requirements, except as provided for purchasers of allocated natural gas liquid products in § 211.87.

* * * * *

4. Section 211.12 is amended in paragraph (g) by revising subparagraphs (g)(1) and (g)(2) to read as follows:

**§ 211.12 Purchasers' allocation entitlement.**

* * * * *

(g) *End-user and wholesale purchaser-consumer importers.* (1) Except with respect to allocated natural gas liquid products as provided in § 211.88, end-users and wholesale purchaser-consumers which import an allocated product in excess of volumes which they imported in the base period, and end-users and wholesale purchaser-consumers which have not previously imported an allocated product may import that product for their own use, provided that should circumstances warrant, ERA may order suppliers of a firm which imports or purchases an imported allocated product to limit or terminate the allocation entitlement of such firm for any period corresponding to a base period or ERA may order that imports made pursuant to this paragraph (g) be allocated to other end-users, wholesale purchasers, producers or suppliers.

(2) End-users and wholesale purchaser-consumers who import allocated products are required to report to both the ERA National and appropriate Regional offices pursuant to § 211.225.

5. Section 211.13 is amended by revising subparagraph (1) of paragraph (a) and paragraph (c) to read as follows:

**§ 211.13 Adjustments to base period volume.**

(a) *Scope.* (1) The adjustment procedures under this section are applicable to the allocation of allocated natural gas liquid products, motor gasoline, middle distillate, aviation fuels (except allocations to civil air carriers), and residual fuel oil (except allocations to utilities) and other products subject to Subpart K of this part. Except as provided in §§ 211.84, 211.85, 211.104 and 211.105, this section describes the means by which wholesale purchasers and end-users may receive adjustments to their base period volumes. All adjustments made pursuant to this section are subject to verification by ERA audit.

* * * * *

(c) *Adjustments to a wholesale purchaser-reseller's base period use for new and increased allocation entitlements of purchasers.* (1) A wholesale purchaser-reseller shall be entitled to receive an adjustment to its base period use whenever (i) it is notified pursuant to § 205.36(d) of an assignment to supply a new wholesale purchaser; or (ii) it is notified of an adjustment granted pursuant to § 211.12(h), § 211.13(e), § 211.84, § 211.85, § 211.104, § 211.105, § 211.125(b) or § 211.145(b) to the base period use of a wholesale purchaser entitled to receive an allocation from that wholesale purchaser-reseller, in an amount equal to the increases in the allocation entitlements or new allocation entitlements which the wholesale purchaser-reseller is to supply.

(2) A wholesale purchaser-reseller which is entitled to receive an adjustment to its base period use pursuant to paragraph (c)(1) of this section or § 211.85 may certify to and shall receive an upward or downward adjustment to its base period use from its supplier or suppliers in proportion to that part of its base period use received from each supplier.

(3) All suppliers which receive a certification of an adjustment to base period use made pursuant to this paragraph or § 211.85, or which receive a certification from any other supplier of an adjustment to base period use under this paragraph or § 211.85 which has been certified to that other supplier, may in turn certify to their suppliers the amount of the adjustment and shall receive an adjustment in proportion to that part of their base period use received from each supplier to cover the certified increases granted under this paragraph or § 211.85, or the decreases mandated under § 211.85.

6. Section 211.25 is amended by revising paragraph (c) to read as follows:

**§ 211.25 Supplier substitution.**

* * * * *

(c) To accommodate seasonal and other fluctuations in both supply and demand, such as requirements for agricultural production, suppliers and wholesale purchasers may agree between and among themselves either to borrow on future allocations or to defer current allocations or both on a volume-for-volume basis within the total allocations for one calendar year as long as such arrangements do not result in an involuntary reduction in allocations to other wholesale purchasers. With respect to allocated natural gas liquid products, such transactions are permitted within the total allocations for any agreed upon 12 month period.

7. Section 211.29 is amended by revising paragraph (e) to read as follows:

**§ 211.29 Synthetic natural gas production.**

* * * * *

(e) *Special limitations.* Unless directed by DOE upon application pursuant to Subpart G of Part 205 of this chapter or waived upon its own motion, no supplier shall supply and no wholesale purchaser or end-user shall accept or use naphtha for synthetic natural gas feedstock in excess of the sum of one hundred percent of the base period uses for the four calendar quarters.

* * * * *

8. Section 211.51 is amended by deleting the definition of "modified allocation level," and by inserting in the proper alphabetical order the following revised definitions of "butane" and "propane," and the new definitions of "allocated natural gas liquid products," "gas utility use," "gas transmission company use," and "synthetic natural gas enrichment use" to read as follows:

**§ 211.51 General definitions.**

"Allocated natural gas liquid products" means (regardless of origin) commercial propane, propane HD-5, commercial butane, normal butane, isobutane, commercial B-P mixture, commercial grade natural gasoline and, if greater than 10 percent by weight, the propane, butane, or natural gasoline content of all fractionated mixtures of natural gas liquids.

* * * * *

"Butane" means a normally gaseous paraffinic compound whose chemical composition is predominantly $C_4H_{10}$, including normal and isobutanes and mixtures of these two isomers, and all products which meet Gas Processors Association (GPA) specifications for commercial butane as revised in 1977 and listed in GPA Publication 2140(77), "GPA LPG Specifications and Test Methods."

* * * * *

"Gas transmission company use" means usage, by firms primarily engaged in the pipeline transmission and sale of natural gas for resale, for the purpose of supplementing, replacing, or displacing pipeline natural gas, other than by the manufacture of synthetic natural gas.

* * * * *

"Gas utility use" means usage, by firms primarily engaged in the distribution of natural gas to ultimate consumers, for the purpose of supplementing, replacing, or displacing pipeline natural gas, other than by the manufacture of synthetic natural gas.

* * * * * *

"Propane" means a normally gaseous paraffinic compound whose chemical composition is predominantly $C_3H_8$, including all products which meet Gas Processors Association (GPA) specifications for commercial propane and propane HD-5 as revised in 1977 and listed in GPA Publication 2140(77), "GPA LPG Specifications and Test Methods."

* * * * *

"Synthetic natural gas enrichment use" means usage by a synthetic natural gas producer to enrich or adjust the Btu value of synthetic natural gas so that the resulting mixture will approximate the Btu value, flame characteristics, and other physical properties of the pipeline natural gas with which it is to be mixed.

* * * * *

9. Subpart D of Part 211 is deleted and replaced with a new Subpart D to read as follows:

## Subpart D—Natural Gas Liquids (NGL's)

### § 211.81 Scope.

(a) This subpart applies to all suppliers, including producers, and purchasers of allocated natural gas liquid products, derived from any source.

(b)(1) This subpart provides for the mandatory allocation as separate products with separate allocation entitlements of all propane, butane and natural gasoline. If greater than 10 percent by weight, the propane, butane, and natural gasoline content of all fractionated NGL mixtures produced in or imported into the United States will also be allocated as propane, butane and natural gasoline, respectively, except for the propane content of certain ethane-propane mixtures as described in subparagraph (b)(2) of this section. Excluded are (i) unfractionated NGL mixtures (except as set forth in § 211.88); (ii) bottled propane or butane; (iii) the propane or butane content of refinery gas used for refinery fuel purposes and (iv) the propane and butane content of hydrocarbon aerosol propellants.

(2) This subparagraph applies to the propane content of ethane-propane mixtures.

(i) At a fractionation facility which produced ethane-propane mixtures prior to January 1, 1979, the propane portion of such mixtures produced subsequent to January 1, 1979 which is less than either the 1978 average propane content of E-P mixtures produced at that facility or thirty percent by liquid volume, whichever is smaller, shall be allocated as a separate allocated natural gas liquid product.

(ii) At a fractionation facility which initially produces ethane-propane mixtures subsequent to January 1, 1979, the propane portion of such mixtures produced at that facility which is twenty percent or less by liquid volume shall be allocated as a separate allocated natural gas liquid product.

(iii) The propane portion of ethane-propane mixtures in inventory prior to January 1, 1979 which is thirty percent or less by liquid volume shall be allocated as a separate allocated natural gas liquid product.

(c) This subpart provides for a state set-aside for propane only.

### § 211.82 Definitions.

For purposes of this subpart—"Base period" means each calendar quarter during the period April 1, 1972, through March 31, 1973, which corresponds to the present calendar quarter.

"Bottled propane or butane" means propane or butane or mixtures of propane and butane bottled in cylinders with a capacity of one hundred (100) pounds or less, provided that the cylinders are not manifolded at the time of sale

"Commercial B-P mixture" means any product which meets Gas Processors Association (GPA) specifications for commercial B-P mixture as revised in 1977 and listed in GPA Publication 2140 (77), "GPA LPG Specifications and Test Methods."

"Commercial butane" means all products which meet GPA specifications for commercial butane as revised in 1977 and listed in GPA Publication 2140 (77), "GPA LPG specifications and Test Methods."

"Commercial grade natural gasoline" means any product which meets Gas Processors Association (GPA) specifications for any of the twenty-four (24) grades of natural gasoline as revised in 1974 and listed in GPA Publication 3132 (74), "GPA Natural Gasoline Specifications and Test Methods."

"Commercial propane" means all products which meet Gas Processors Association (GPA) specifications for commercial propane as revised in 1977 and listed in GPA Publication 2140 (77), "GPA LPG Specifications and Test Methods."

"Dispensing station" means those retail sales outlets which sell less than 15,000 gallons per year and sell or fill only bottled propane or butane.

"Fractionated" means separated into components by partial or complete fractional distillation of natural gas liquids mixtures. Once having been so separated, each component shall be considered fractionated regardless of subsequent mixing or commingling.

"Isobutane" means butane which contains 95 percent or more by volume of the saturated branch chain hydrocarbon isomer known as isobutane.

"Merchant storage facility" means any facility which is utilized to store allocated natural gas liquid products for firms other than the owner or operator of such a facility.

"Normal butane" means butane which contains 95 percent or more by volume of the saturated straight-chain hydrocarbon isomer known as normal butane.

"Plant protection fuel" means the use of allocated natural gas liquid products in the minimum volume required to prevent physical harm to the plant facilities or danger to plant personnel. This includes the protection of such material and equipment which would otherwise be damaged, but does not include sufficient quantities of allocated natural gas liquid products required to maintain plant production. Allocated natural gas liquid products may not be considered plant protection fuel if an alternate fuel capability is in place which uses an available fuel other than allocated natural gas liquid products or natural gas and can be operated on a continuing basis.

"Process fuel" means allocated natural gas liquid products used in applications requiring precise temperature controls or precise flame characteristics. Allocated natural gas liquid products may not be considered process fuel if an alternate fuel (other than natural gas) is available and technically feasible for substitution.

"Producer" means a firm which (1) produces an allocated natural gas liquid product in a refinery, (2) maintains an ownership interest in any allocated natural gas liquid product when such product is initially extracted from natural gas in a gas processing plant or separated from an unfractionated natural gas liquid mixture at a

fractionating facility or (3) imported into the United States more than 5,000,000 gallons of allocated natural gas liquid products or unfractionated natural gas liquid mixtures during the immediately preceding four calendar quarters.

"Propane HD–5" means all products which meet Gas Processors Association (GPA) specifications for propane HD–5 as revised in 1977 and listed in GPA Publication 2140(77), "GPA LPG Specifications and Test Methods."

**§ 211.83 Allocation levels.**

(a) *General.* The allocation levels in this paragraph apply only to allocations made by suppliers or producers to wholesale purchaser-consumers and end-users. Except as otherwise provided in this subpart, suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users and wholesale purchaser-consumers which are entitled to purchase allocated natural gas liquid products under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users and wholesale purchaser-consumers which are entitled to purchase allocated natural gas liquid products under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of current requirements for the following uses:

(1) Agricultural production;

(2) Department of Defense use as specified in § 211.26.

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements for the following uses:

(i) Emergency services;

(ii) Energy production (excluding boiler fuel uses);

(iii) Sanitation services;

(iv) Telecommunications services;

(v) Passenger transportation services;

(vi) Transportation of crude oil, natural gas liquids, and refined petroleum products;

(vii) Medical and nursing buildings;

(viii) Aviation ground support vehicles and equipment;

(ix) Start-up, testing, and flame stability of electric utility plants;

(x) Residential use, except that an allocation fraction of less than nine tenths (.90) may not be applied with respect to a firm's entitlement to product intended for residential use; a supplier whose allocation fraction is less than .90 shall allocate product intended for residential use as if the allocation level for such use is ninety (90) percent of current requirements, not subject to an allocation fraction;

(xi) Plant protection fuel use; and

(xii) Petrochemical feedstock and process fuel use of allocated natural gas liquid products other than propane and the propane content of fractionated natural gas liquid mixtures;

(xiii) Gasoline blending and manufacturing use of allocated natural gas liquid products other than propane.

(2) One hundred (100) percent of base period use for:

(i) Petrochemical feedstock and process fuel use of propane (including the propane content of fractionated natural gas liquid mixtures);

(ii) Synthetic natural gas feedstock use;

(iii) Synthetic natural gas enrichment use;

(iv) Other industrial use;

(v) Governmental use;

(vi) Gas utility and gas transmission company use; the base period use for gas utilities and gas transmission companies shall mean the larger of that volume of an allocated natural gas liquid product which a gas utility or gas transmission company either contracted for (if a specific maximum volume was designated) or purchased for delivery in each calendar quarter during the period April 1, 1972 through March 31, 1973, regardless whether that volume was used during the base period;

(vii) Refinery fuel use;

(viii) Commercial use;

(ix) Transportation service other than passenger transportation service or aviation ground support vehicles, for vehicles equipped to use allocated natural gas liquid products as of December 27, 1973;

(x) Schools; and

(xi) Boiler fuel use for energy production.

**§ 211.84 Adjustments and assignments.**

(a) *Specified industrial use.* Notwithstanding the provisions of § 211.13(e), a wholesale purchaser-consumer may apply (1) to the ERA National Office for adjustments to its base period use, in accordance with the provisions of Subpart B of Part 205 of this chapter, for petrochemical feedstock use of propane (including the propane content of fractionated natural gas liquid mixtures), and (2) to the appropriate ERA Regional Office for adjustments to base period use of propane for process fuel.

(b) *Gas utility use, gas transmission company use and gas utilities as agents.* (1) *Adjustments and assignments.* Wholesale purchaser-consumers shall apply to the ERA National Office for all assignments of a base period use of allocated natural gas liquid products for gas utility or gas transmission company use, and, notwithstanding the provisions of § 211.13(e), may apply to the ERA National Office for an adjustment to base period use, in accordance with Subparts B and C, respectively, of Part 205 of this chapter.

(2) *Waivers.* Applications for waivers of the limitations on gas utility use or gas transmission company use of allocated natural gas liquid products set forth in § 211.87(a)(3) (when such limitations are in effect) shall be filed with the ERA National Office in accordance with the provisons of Subpart G of Part 205 of this chapter.

(3) *Gas utilities as agents for end-users or wholesale purchaser-consumers.* In addition to acquiring product under their own allocation entitlement, gas utilities may act as agents in acquiring and delivering allocated natural gas liquid products through natural gas pipelines to end users or wholesale purchaser-consumers separately authorized to purchase and use such products pursuant to this part. Unless otherwise authorized by ERA, such actions are permitted only in those cases (i) where the wholesale purchaser-consumer or end user owns the product and bears the entire cost of its storage, gasification, and transmission; (ii) where there will be no adverse effects on the gas utility's other customers; and (iii) where this procedure is consistent with all applicable Federal and State laws, regulations, and orders. Actions taken by gas utilities under this subparagraph (b)(3) are not subject to the volumetric limitations contained in § 211.87(a)(3).

**§ 211.85 Supplier/purchaser relationships.**

(a) *General.* Supplier/purchaser relationships shall be as set forth in §§ 211.9–211.13 unless otherwise specified in this subpart.

(b) *Changes in relationships.* (1) Notwithstanding the provisions of subpart A of this part, any wholesale purchaser of any allocated natural gas liquid product may terminate a supplier/purchaser relationship or adjust downward its allocation entitlement from that supplier for a calendar quarter by providing written notice to its base period supplier of its intent to do so, provided that the affected supply obligation will be assumed by another supplier pursuant to subparagraph (b)(2) of this section or the purchaser certifies that such volumes are no longer required from any supplier. Wholesale purchasers shall specify in the notice the volume of the supply obligation which shall be reduced or terminated, and

shall include the effective date of termination or downward adjustment. Such date shall correspond to the first day of a base period. Upon receipt of such notification a supplier shall subtract the volumes so terminated or adjusted downward from its base period supply obligations, and, under the procedures set forth in subparagraph (b)(3), shall not include such volumes in its base period use from its supplier, unless (i) by the exclusion of such volumes its base period use, as adjusted by this paragraph (b), would fall below its original unadjusted base period use or (ii) it has historically maintained an allocation fraction of one (1.0) or less by importing a volume of such product equal to or greater than the sum of its base period obligations terminated under this section.

(2) Any supplier of allocated natural gas liquid products may establish a supplier/purchaser relationship with a wholesale purchaser to the extent such purchaser has terminated a supplier/purchaser relationship or has adjusted downward its base period use pursuant to paragraph (b)(1) of this section, provided that (i) the supplier's net new obligations for a particular calendar quarter corresponding to a base period would not, if applied in the immediately preceding corresponding calendar quarter, have reduced the supplier's allocation fraction below one (1.0), and (ii) the supplier can demonstrate that its net adjustments to its base period supply obligations for any particular calendar quarter for which supply obligations will be assumed are not reasonably estimated to reduce its allocation fraction below 1.0 for that quarter. The mere ability to certify upward such adjustments to its supplier will not be sufficient to constitute a demonstration by a wholesale purchaser-reseller that its allocation fraction will not be reduced below 1.0. The supplier and wholesale purchaser must notify ERA and obtain approval from the appropriate ERA Office before a new supplier/purchaser relationship and base period use can be established under this section.

(3) A wholesale purchaser-reseller, which in its capacity as a supplier establishes new supplier/purchaser relationships under subparagraph (b)(2) of this section that increase its base period supply obligations, or which has excluded certain volumes from its base period use pursuant to subparagraph (b)(1) of this section, shall receive an upward or downward adjustment, respectively, to its base period use in an amount equal to the net change to its base period obligations, except that unless ordered by ERA, a wholesale purchaser-reseller may receive an upward adjustment pursuant to this subparagraph only with the consent of its supplier whose obligations would thereby be increased. Certifications of such adjustments shall be made in accordance with the procedures set forth in § 211.13(c) (2) and (3).

### § 211.86 Method of allocation.

(a) *General.* Except as specifically otherwise provided in this subpart and except with respect to the allocation of such products for synthetic natural gas feedstock use as provided in § 211.29, the allocation of allocated natural gas liquid products shall be as specified in § 211.10. Adjustments to a wholesale purchaser's base period volume specified in §§ 211.13, 211.84 and 211.85 shall apply to this subpart. New wholesale purchasers and end-users are subject to the requirements of § 211.12. Notwithstanding the provisions of § 211.12(c), each supplier or producer which sells allocated natural gas liquid products to a wholesale purchaser-consumer, end-user, or dispensing station shall determine the base period volume of those purchasers but is not required to report that determination to such purchasers except on written request by a purchaser.

(b) *State set-aside.* The initial state set-aside level for propane is three (3) percent of a prime supplier's estimated portion of its total supply for that month which will be sold into the State's distribution system for consumption within the State. Section 211.17 shall control the distribution of propane from the State set-aside.

(c) *Dispensing stations.* Notwithstanding the provisions of § 211.10, dispensing stations which sell or fill only bottled propane or butane to end-users shall be entitled to receive a volume of propane or butane equal to one hundred (100) percent of the volume necessary to supply the current requirements of all end-users purchasing from them, without being subject to an allocation fraction.

(d) *Producers.* Producers shall allocate their total supply in accordance with § 211.10 except as otherwise provided in this subpart. If a producer is the base period supplier to wholesale purchaser-resellers which have certified amounts of propane to be for ultimate use under an allocation level of one hundred (100) percent of current requirements whether or not subject to an allocation fraction, that producer may not recertify such amounts to any other producer which may be its base period supplier.

(e) *Inventory accumulation.* (1) Except as otherwise provided in this paragraph (e), producers, suppliers, wholesale purchasers and end-users may accumulate allocated natural gas liquid products in inventory in quantities which are normal and reasonable for seasonal usage in accordance with their normal business practices. The propane content of those ethane-propane mixtures separately allocated under § 211.81(b)(2) are not subject to the inventory restrictions contained in subparagraphs (e)(2), (e)(3), and (e)(4). [See paragraph (e)(5) for a waiver of the limitations imposed by subparagraphs (e)(2) and (e)(3).]

(2) Unless authorized by the ERA, no end-user or wholesale purchaser-consumer shall accumulate in inventory allocated natural gas liquid products produced in the United States for gas utility use, gas transmission company use or synthetic natural gas feedstock or enrichment use in excess of one hundred (100) percent of the sum of their base period uses for the four base period quarters plus the amount held in inventory for such uses on April 1, 1972.

(3) Unless authorized by the ERA, no end user or wholesale purchaser-consumer shall accumulate in inventory propane (including the propane content of fractionated natural gas liquid mixtures) produced in the United States for industrial use (for other than process fuel use or plant protection fuel use) in excess of one hundred (100) percent of the sum total of such base period use for the four base period quarters.

(4) If a firm controls greater than the above mentioned inventories of allocated natural gas liquid products, it shall not acquire or accept an allocation of such products from a supplier or producer until its inventories are reduced to conform to the limitations imposed by this subsection (e).

(5) The ERA Administrator waives the limitations of subparagraphs (e)(2) and (e)(3) until such time as the Administrator terminates such waiver by notice published in the Federal Register.

(f) *Separate facilities.* Notwithstanding the provisions of § 211.11(b), in considering applications for adjustments to or assignments of base period use of an allocated natural gas liquid product filed pursuant to §§ 211.12(h) or 211.84, DOE may consider the requirements for a particular facility separate from the remainder of the firm, and may designate the facility for which such assignments or adjustments may be made.

### § 211.87 Special limitations.

(a) Unless otherwise authorized by the DOE upon application pursuant to

subpart G of Part 205 of this chapter or waived upon its own motion, the following limitations shall apply to the acquisition and use of allocated natural gas liquid products produced in the United States (other than the propane content of those ethane-propane mixtures separately allocated under § 211.81(b)(2)) during each twelve month period commencing October 1 and ending September 30 of the following year:

(1) *Industrial use.* For all industrial use (including petrochemical feedstock use and gasoline blending and manufacturing use), except for process fuel use, plant protection fuel use and industrial uses accorded allocation levels of 100 percent of current requirements (and refinery fuel use separately provided for in subparagraph (2) of this paragraph (a)), no supplier shall supply and no end-user or wholesale purchaser-consumer shall accept or use quantities of propane (including the propane content of fractionated natural gas liquids and refinery gas) and unfractionated natural gas liquid mixtures in excess of one hundred (100) percent of the sum of the base period use for the four base period quarters, except for the purpose of increasing inventories for such industrial uses to the levels allowed under § 211.86(e).

(2) *Refinery fuel use.* For refinery fuel use, no supplier shall supply and no end-user or wholesale purchaser-consumer shall accept or use quantities of allocated natural gas liquid products (excluding the propane and butane content of refinery gas) in excess of one hundred (100) percent of the sum of the base period use for the four base period quarters except for the purpose of increasing inventories for such refinery fuel use to the levels allowed under § 211.86(e).

(3) *Gas utility and gas transmission company use.* For gas utility use or gas transmission company use, no supplier shall supply and no end-user or wholesale purchaser-consumer shall accept or use quantities of allocated natural gas liquid products (including the propane and butane content of refinery gas) in excess of one hundred (100) percent of the sum of the base period use for the four base period quarters plus the amount in inventory on April 1, 1972, except for the purpose of increasing inventories for such use to the levels allowed under § 211.86(e).

(4) *Synthetic natural gas use.* For synthetic natural gas feedstock use or synthetic natural gas enrichment use, no supplier shall supply and no end-user or wholesale purchaser-consumer shall accept or use quantities of allocated natural gas liquid products (including the propane and butane content of refinery gas) or unfractionated natural gas liquid mixtures in excess of one hundred (100) percent of the sum of the base period uses for the four calendar quarters, except for the purpose of increasing inventories for such uses to the levels allowed under § 211.86(e).

(b) Pursuant to paragraph (a) of this section, the ERA Administrator waives the limitations contained in subparagraph (1) through (4) of paragraph (a) until such time as the Administrator terminates such waiver by notice published in the Federal Register.

### § 211.88 Importers of allocated natural gas liquid products.

(a) *General.* This section shall apply to all imports of allocated natural gas liquid products by end-users, wholesale purchaser-consumers, or by suppliers of such products. For purposes of this section, "incrementally priced uses" means industrial use (including petrochemical feedstock and refinery fuel), gas utility use, gas transmission company use or synthetic natural gas feedstock or enrichment use in excess of the intended users' allocation level and, pursuant to subparagraph (c)(2)(ii) of this section, those other specified uses for which separate inventory records are required.

(b) *End-user and wholesale purchaser-consumer importers of allocated natural gas liquid products.*—(1) *Applicability.* Except as specified in subparagraphs (2) and (3) of this paragraph (b), the provisions of § 211.12(g) shall be applicable to all end-users and wholesale purchaser-consumers of imported allocated natural gas liquid products. Such users shall be subject to the provisions of paragraph (c) of this section in acquiring imports of such products from domestic suppliers.

(2) Acquisition of imports of allocated natural gas liquid products will not affect a firm's allocation entitlements unless ERA determines that such imports are inconsistent with the objectives of the Emergency Petroleum Allocation Act of 1973 and pursuant to § 211.12(g)(1) orders a firm's supplier to limit or terminate the firm's allocation entitlement.

(3) End-users and wholesale purchaser-consumers importing allocated natural gas liquid products pursuant to the provisions of this paragraph (b) shall not be considered by reason therof to be prime suppliers or producers of allocated natural gas liquid products.

(c) *Supplier importers of allocated natural gas liquid products.*—(1) *General.* Suppliers may acquire imported allocated natural gas liquid products for distribution to end-users and wholesale purchasers only in accordance with this paragraph (c). Should circumstances warrant, ERA may require that imported allocated natural gas liquid products obtained by a firm pursuant to this paragraph (c) be allocated to other wholesale purchasers, end users, producers or suppliers, in accordance with the provisions of § 211.14.

(2) *Suppliers with allocation fractions less than 1.0.*—(i) Any supplier of allocated natural gas liquid products which has an allocation fraction less than one (1.0) for a calendar quarter corresponding to a base period may import (or acquire from suppliers which have so imported) such products for the purpose of achieving an allocation fraction of 1.0 during the calendar quarter. Imports used to achieve an allocation fraction of 1.0 shall be allocated in accordance with the provisions of § 211.10.

(ii) ERA may by order require separate inventory records to be maintained and separate cost calculations for imports (or domestic product exchanged for imports) sold for industrial use (including petrochemical feedstock use and refinery fuel use), gas utility, gas transmission company or synthetic natural gas feedstock or enrichment use to new wholesale purchaser-consumers which establish a base period use or to existing wholesale purchaser-consumers with respect to upward adjustments to their base period use received after September 1, 1979.

(3) *Suppliers with allocation fractions of 1.0 or greater.*—(i) *Allocation rule.* Any supplier of allocated natural gas liquid products which has achieved an allocation fraction of 1.0 or greater for a calendar quarter may import (or acquire from suppliers which have so imported) such products to increase further its allocation fraction above 1.0 and shall distribute such imports in accordance with the provisions of § 211.10, except that distribution of imports (and domestic product exchanged for imports) to wholesale purchasers for incrementally priced uses shall be in accordance with subparagraph (c)(3)(ii) of this section.

(ii) *Incrementally priced uses.*—(A) *General authorization.* Suppliers with an allocation fraction equal to or greater than 1.0 may import (or acquire from suppliers which have so imported) allocated natural gas liquid products for distribution to wholesale purchaser-consumers which certify in writing that they will use such imported products for incrementally priced uses or for

distribution to any wholesale purchaser-reseller which certifies it will distribute such products for such uses under this subparagraph (c)(3)(ii).

(B) *Certification.* All wholesale purchaser-consumers which purchase imported allocated natural gas liquid products (or purchase domestically produced product exchanged for imported product) for incrementally priced uses and all wholesale purchaser-resellers which purchase such products for distribution for such users shall certify in writing to the suppliers of such products the intended end use of such products.

(C) *Separate inventory records.* A supplier which has allocated natural gas liquid products to be distributed under a certification received pursuant to this subparagraph shall maintain inventory records for such allocated natural gas liquid products separate from its inventory records for allocated natural gas liquid products distributed under the provisions of § 211.10. In the event no certification is received by a supplier pursuant to this subparagraph (c)(3)(ii), a supplier whose allocation fraction is equal to or greater than 1.0 remains obligated to determine to the maximum extent practicable whether its imported allocated natural gas liquid products (or domestic product exchanged for imports) are to be distributed for incrementally priced uses. If the supplier determines that such products are to be so distributed, the supplier shall maintain separate inventory records as if it had received a certification.

(d) *Importers of unfractionated natural gas liquid mixtures.* Any firm which imports unfractionated natural gas liquid mixtures (1) for any portion of which, after fractionation, separate inventory records will be required to be maintained under § 211.88(c) above, or (2), if not to be fractionated, will be distributed for incrementally priced uses, shall maintain separate inventory records for such mixtures or portions thereof.

**§ 211.89 Procedures and reporting requirements.**

(a) All owners of storage facilities (or operators thereof) which store allocated natural gas liquid products shall report to the DOE National Office on any applicable DOE or ERA form in accordance with the instructions accompanying such form or forms. All owners of allocated natural gas liquid products in a merchant storage facility shall, in accordance with the instructions thereto, file the applicable DOE form with the operator of a merchant storage facility. These reports shall be kept on file by the merchant storage facility operator, and are subject to DOE audit.

(b) Except as provided in § 211.84, all applications for assignment of a base period use of propane shall be filed with the appropriate ERA Regional Office in accordance with the procedures specified in Subparts B and C, respectively, of Part 205 of this chapter and for butane or natural gasoline with the ERA National Office.

(c) The general reporting and recordkeeping requirements contained in Subpart L of this part apply to this subpart except that the requirements of § 211.224 shall not apply and the information required to be kept on DOE forms in § 211.223 may be kept by suppliers or producers in accordance with that firm's customary recordkeeping practices.

(d) An application for an assignment of propane from the state set-aside system, as provided in § 211.17, based on hardship or emergency requirements is to be filed with the appropriate State Office in accordance with the procedures stated in Subpart Q of Part 205 of this chapter.

(e) Producers and specified wholesale purchaser-resellers of allocated natural gas liquid products shall report to DOE in accordance with the instructions accompanying any applicable DOE forms.

## Subpart E [Deleted]

10. Subpart E of Part 211 is deleted in its entirety.

11. Subparagraph (2) of paragraph (h) of § 212.83 is amended by revising subparagraph (2)(iii) to read as follows:

**§ 212.83 Price Rule.**

* * * * *

(h) *Equal application among classes of purchaser.* * * *

(2) *Special Rules.* * * *

(iii) *Certain imports of propane, butane, natural gasoline and natural gas liquids maintained in a separate inventory.* Notwithstanding the provisions of paragraph (1) above with respect to equal application of costs, a refiner shall apply amounts of increased costs unequally to the weighted average May 15, 1973 selling prices of any imported propane, butane, natural gasoline or natural gas liquids (or domestically produced propane, butane, natural gasoline or natural gas liquids exchanged for imported propane, butane, natural gasoline or natural gas liquids), if separate inventory records for such products are maintained pursuant to § 211.88(c) and provided that the increased costs for such products are computed pursuant to the following formula and further provided that the increased costs so computed are subtracted from the amount computed in § 212.83(c)(2)(iii)(D) for $B_i$ when $i = 4$: $I_i^u = B_i$

Where: $I^u$ = The total dollar amount that may be applied in the period "u" (the current month) to the May 15, 1973 selling prices of products "i" to compute maximum allowable prices for these products.

B = The "B" factor as defined in § 212.83(c)(2)(iii)(D).

i = propane, butane, natural gasoline or natural gas liquids maintained in a separate inventory pursuant to § 211.88(c) of part 211 of this chapter.

Increased costs so calculated shall not be available for recovery in the prices of other natural gas liquids or other propane, butane or natural gasoline.

* * * * *

12. Paragraph (f) of Section 212.93 is amended by changing its title and revising subparagraph (2) to read as follows:

**§ 212.93 Price rule.**

* * * * *

(f) *Special rules for natural gas liquid products.* * * *

(2) *Separate cost of product in inventory for certain imported propane, butane, natural gasoline or natural gas liquids.* Any seller of imported propane, butane, natural gasoline or natural gas liquids (or domestically produced propane, butane, natural gasoline or natural gas liquids exchanged for imported propane, butane, natural gasoline or natural gas liquids) shall determine the price permitted to be charged for such products pursuant to paragraph (a) of this section by calculating increased product costs as follows:

(i) With respect to such propane, butane, natural gasoline and natural gas liquids for which separate inventory records are required to be maintained pursuant to § 211.88(c), for each such separate inventory the seller shall make a separate calculation of increased product costs as defined in § 212.92 to be used in determining its selling price for such products pursuant to paragraphs (a) and (b) of this section, with the selling prices for propane included in such products not, however, subject to paragraph (f)(1) of this section. Increased costs so calculated shall not be available for recovery in the prices of other natural gas liquids or other propane, butane or natural gasoline.

(ii) With respect to any quantity of propane, butane, natural gasoline and natural gas liquids for which a separate

inventory record is not required to be maintained pursuant to § 211.88(c), the seller shall add the cost of such quantities to the cost of all other quantities of the same product for which separate inventory records are not maintained pursuant to § 211.88(c) or pursuant to § 212.92, in making a separate calculation of increased product to § 212.92, in making a separate calculation of increased product costs as defined in § 212.92 to be used in determining its selling price for all sales of products other than those maintained in a separate inventory pursuant to § 211.88(c), subject to all other provisions of this section, including paragraph (f)(1).

* * * * *

13. A new paragraph (e) is added to § 212.167, to read as follows:

**§ 212.167 Allocation of increased product costs.**

* * * * *

(e) *Separate aggregation and allocation of increased costs of certain imported natural gas liquids and certain imported propane, butane or natural gasoline.* Anything in this subpart to the contrary notwithstanding, if purchased natural gas liquids, or purchased propane, butane or natural gasoline are or have been imported (or are exchanged for imports of such products) and for which separate inventory records are required to be maintained under § 211.88(c), increased costs of such purchased natural gas liquids or such purchased propane, butane or natural gasoline shall be separately calculated for each such separate inventory and shall be allocated to the natural gas liquids or the propane, butane or natural gasoline in such inventory. Increased costs so calculated shall not be available for recovery in the prices of other natural gas liquids or other propane, butane or natural gasoline.

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Part VI

# Department of Energy

## Economic Regulatory Administration

## Proposed Guideline for Termination of Electric Service and Gas Service Standard Under the Public Utility Regulatory Policies Act of 1978

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[Docket No. ERA-R-79-47]

### Voluntary Guideline for Procedures for Termination of Electric Service and Gas Service Standard Under the Public Utility Regulatory Policies Act of 1978

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Proposed Voluntary Guideline.

**SUMMARY:** Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA) establishes certain Federal purposes and policy standards for the regulation of electric utilities and imposes certain obligations upon State regulatory authorities and certain nonregulated utilities with respect to the standards established by sections 111 and 113.

Under section 131 of PURPA, the Secretary of Energy is authorized to prescribe voluntary guidelines respecting consideration of standards. Appendix A of this Notice is the proposed voluntary guideline for the standard established by section 113(b)(4) of PURPA, Procedures for Termination of Electric Service. Written comments will be received and one public hearing will be held with respect to the proposed guideline.

**DATES:** Comments by 4:30 p.m., e.s.t., November 19, 1979. Request to speak by November 13, 1979, 4:30 p.m., e.s.t. Public hearing on November 20, 1979, 9:30 a.m., e.s.t.

**ADDRESSES:**

All comments addressed to: Department of Energy, Office of Public Hearings Management, Docket No. ERA-R-79-47, 2000 M Street NW., Room 2313, Washington, D.C. 20461.

Requests to speak addressed to: Department of Energy, Office of Public Hearings Management, Docket No. ERA-R-79-47, 2000 M Street NW., Room 2313, Washington, D.C. 20461, telephone (202) 254-5201.

Hearing location: Department of Energy, 2000 M Street NW., Room 2105, Washington, D.C. 20461.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Stephen S. Skjei, Division of Regulatory Assistance, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 4016D, Washington, D.C. 20461, telephone (202) 254-6209.

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

Mary Ann Masterson, Office of General Counsel, Department of Energy, 20 Massachusetts Avenue, N.W., Room 3228, Washington, D.C. 20585, telephone (202) 376-9469.

## I. Background

On, November 8, 1978, the President signed into law 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.*), as one part of the National Energy Act.

Section 113(b)(4) of PURPA establishes a standard on Procedures for Termination of Electric Service for State regulatory authorities and certain nonregulated electric utilities. The standard applies to those electric utilities whose annual retail sales exceed 500 million kilowatt-hours in any calendar year beginning with 1976 and ending two years before the reporting year. Section 115(g) sets forth certain special rules regarding this standard.

The standard, which must be considered by State regulatory authorites and certain nonregulated utilities in a manner specified by PURPA, provides that

(1) No electric service to an electric 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 consumer would be especially dangerous to health as determined by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric 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.

Special provisions shall be made to take into account the need to include reasonable provisions for elderly and handicapped consumers.

Section 131 of PURPA authorizes the Secretary of Energy to prescribe voluntary guidelines respecting consideration of the 11 PURPA standards.

## II. Guideline on Procedures for Termination of Electric Service

The purpose of this voluntary guideline is to assist State regulatory authorities and nonregulated utilities in their consideration of the Procedures for Termination of Electric Service standard established under Title I of PURPA. The guideline addresses four major issues raised in PURPA section 115(g): Reasonable prior notice, reasonable opportunity to dispute, protection during health emergencies, and special provisions for elderly and handicapped. The guidance set forth herein is advisory in nature and is not legally binding. It does, however, constitute DOE's opinion on the issues that should be addressed when considering the termination standard. Accordingly, the guideline complements, and is fully consistent with, the other activities undertaken by DOE pursuant to PURPA.

Section 131 of PURPA authorizes the Secretary of Energy to prescribe voluntary guidelines for the PURPA standards which relate to electric utilities; however, section 303(b)(1) of PURPA establishes a termination of service standard for natural gas utilities parallel to that established by Title I of PURPA for electric utilities. Because of the importance of this standard for both electric and gas consumers, it is DOE's opinion that State regulatory authorities and nonregulated utilities should consult the proposed guideline when considering the termination of serivce standard for natural gas utilities, as well as when considering the termination of service standard for electric utilities.

## III. Written Comments and Public Hearing Procedures

### *A. Written Comments*

The public is invited to participate in this proceeding by submitting to DOE's Economic Regulatory Administration (ERA) information, views or arguments with respect to the proposals set forth in Appendix A to this Notice. Comments should be submitted by 4:30 p.m., e.s.t., November 19, 1979, to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside of the envelope and on documents submitted with the designation: "Proposed Voluntary Guideline on Procedure for Termination of Electric and Gas Service, Docket No. ERA-R-79-47." Five copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, and the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m. e.s.t., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one

complete copy and 15 copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

*B. Public Hearing*

(1) Procedures for request to make oral presentation. The times and places for the hearing are indicated in the "DATES" and "ADDRESSES" sections of this Notice. Any person who has an interest in this proposed guideline or represents a person, group or class of persons that has an interest, may make a written request for an opportunity to speak at the public hearing. Request to speak must be sent to the address shown in the "ADDRESSES" section and be received by November 9, 1979. The request should include a telephone number where the speaker may be contacted through the day before the hearing.

All persons participating in the hearing will be so notified on or before November 14, 1979. Speakers should submit 100 copies of their hearing testimony for distribution at the hearing by 4:30 p.m. e.s.t. on November 19, 1979, to the Office of Public Hearings Management, U.S. Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

(2) Conduct of the hearing. ERA reserves the right to schedule participants' presentations and to establish the procedures governing the conduct of the hearing. ERA may limit the length of each presentation based on the number of persons requesting to be heard. ERA encourages groups that have similar interests to choose one appropriate spokesperson qualified to represent the views of the group.

ERA will designate officials to preside at the hearings. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if time permits, to make a rebuttal statement. Rebuttal statements, will be given in the order in which the intial statements were made and will be subject to time limitations.

Questions to be asked at a hearing should be submitted in writing to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer. The presiding officer will announce any further procedural rules needed for the proper conduct of the hearings.

ERA will have a transcript made of the hearing and will retain the entire record of the hearing, including the transcript. The record will be available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 and the ERA Office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday. A copy of the transcript may be purchased from the reporter.

(Public Utility Regulatory Policies Act of 1978 Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*): Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*).)

Issued in Washington, D.C., on October 15, 1979.

Jerry L. Pfeffer,

*Assistant Administrator for Utility Systems, Economic Regulatory Administration.*

Appendix

*Title:* PURPA Guideline Number 2: Procedures for Termination of Electric Service and Gas Service.

*Introduction.* This guideline provides general advisory assistance to State regulatory authorities and nonregulated utilities on the issues that the Department of Energy (DOE) believes should be addressed when considering the termination of service standard. It is recognized that implementation of the recommendations in this guideline may require changes in State laws or regulations under which such authorities and utilities now operate.

The intent of this guideline is to suggest and discuss procedural matters pertinent to safeguarding consumer rights and remedies with respect to the termination of electric utility service, and to effectuate the basic purpose of PURPA to prevent endangerment to public health and safety as a result of power cut-offs.

For the elderly, the handicapped, and the ailing, termination of electric service can result in real risks to health and safety. Termination of electric service substantially reduces a consumers ability to keep clean, to cook, to keep warm, and to avoid danger and accidents in darkened areas. DOE believes that the purpose of the Termination of Service Standard was to prevent these causes of endangerment to public health and safety resulting from power cut-offs. Accordingly, DOE believes (a) that electric service should not be terminated, particularly in winter months, when termination would be dangerous to the health and safety of the consumer, (b) that the unique problems of elderly and handicapped consumers should receive reasonable consideration before electric service is terminated, and (c) that all consumers are entitled to due process before service is terminated.

*Coverage.* This guideline covers the PURPA standard on Procedures for Termination of Electric Service. It is DOE's opinion that the guideline should also apply to the PURPA standard for Procedures for Termination of Natural Gas Service. In this guideline, any reference to electric utilities also applies to gas utilities.

*Definitions.* As used in this guideline, except as otherwise specifically provided—

"Electric consumer" means any person, State agency or Federal agency to which electric energy is sold other than for purposes of resale.

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

"Nonregulated electric utility" means any electric utility other than a State regulated electric utility.

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

"State agency" means a State, 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 (other than 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.

*Organization and Content.* The guideline is organized around four major issues surrounding the termination of service standard:

A. Reasonable Prior Notice—What constitutes reasonable prior notice of termination?

B. Reasonable Opportunity to Dispute—What constitutes a reasonable opportunity to dispute the reasons for termination?

C. Protection during Health Emergencies—What provisions are reasonable to protect consumers who are unable to pay their bills or who are only able to pay in installments during a period when termination of service would be especially dangerous to health?

D. Reasonable Provisions for Elderly and Handicapped—What provisions should be made for elderly and handicapped consumers?

Each of these issues and important factors which must be taken into account when addressing them are discussed in turn.

*A. Reasonable Prior Notice*

Section 115(g)(1) of PURPA requires that reasonable prior notice (including notice of rights and remedies) be given to an electric consumer prior to termination. It is DOE's opinion that reasonable prior notice requires utilities to provide consumers with both a statement of termination policy and a clear and informative notice of proposed termination.

1. *Statement of termination policy.* The current general policy statement should be provided, in clear and understandable language, to all existing consumers and to all new consumers when they initiate service. Where a substantial percentage of a utility's consumers do not speak English, the statement should also be printed in an appropriate second language. The general policy statement should include the following information:

(a) The general starting and ending dates of the payment period,

(b) The time allowed to pay outstanding bills,

(c) The time allowed to make arrangements for payment and the nature of available arrangements,

(d) The contact point (name and telephone number) for inquiries and complaints,

(e) The time allowed to initiate a complaint, and

(f) Instructions for designating (1) a third party (agency or individual) to receive a copy of a termination notice, (2) elderly or handicapped status, and (3) presence of appliances essential for maintenance of health or safety.

2. *Notice of proposed termination.* The following general information should be included in all notices:

(a) Identification of customer and service account affected by proposed termination,

(b) Statement of reasons for termination,

(c) Date of proposed termination,

(d) Amount of reconnection fee if any, and

(e) Notice of rights and remedies.

The last of these, a notice of rights and remedies, should contain information on the following:

(a) Procedures to dispute and appeal the termination notice, including the office address and telephone number of the utility representatives available to handle complaints or inquiries,

(b) Appropriate administrative or other action to take in order to avoid termination,

(c) Provisions relating to elderly and handicapped consumers,

(d) Provisions for consumers who are unable to pay their bills and steps necessary to make a claim of inability to pay, as well as alternative payment arrangement, and

(e) Sources of financial assistance.

The notice of rights and remedies should also state whether and, if so, under what circumstances a consumer must pay that portion of a bill which is in dispute while the dispute process is under way.

In cases where termination is based on failure to pay, each notice of termination should include the following additional information:

(a) Dates of meter readings for period of unpaid service,

(b) Designation of the bill in question as actual or estimated,

(c) Amount owed and time period over which amount was incurred, and

(d) Statement of provisions available to elderly and handicapped consumers, as well as those unable to pay their bills, and procedure for utilizing those provisions.

Notices of proposed termination should be provided, in clear and understandable language, in sufficient number and frequency and with a sufficient number of days advance notice so as to allow a consumer a reasonable opportunity to respond properly. Neither consumers nor the utility benefit by hasty termination. Local practice for overdue bills may provide an indication of the minimum number and frequency of notices and time allowed for consumer response.

The first notice should be sent by first class mail. If the utility receives no response, the second or subsequent notice should be delivered by registered or certified mail, or by personal contact (telephone or visit). Notices should be provided to the account name and address and, if different, to the address where service is provided, as well as any other party previously designated by a consumer to receive a copy of a termination notice. As with the general statement of policy, the notice should be provided in alternate languages where appropriate.

Tenants who pay for electric service as part of their rent (or as part of purchase payments) in master metered buildings should be individually notified of any proposed termination. In addition, tenants should be collectively notified by posting termination notice(s) in conspicuous locations such as near mail boxes, building entrances and exits, and other areas of common usage. In general, termination of service should not occur until after tenants are advised of possible alternatives to termination such as (a) recourse through agencies responsible for enforcing housing codes, (b) paying for continued service individually or collectively, and (c) other possibilities available in the jurisdiction involved.

*B. Reasonable Opportunity to Dispute*

Section 115(g)(1) of PURPA requires that the consumer be given a reasonable opportunity to dispute the reasons for termination of service prior to termination. It is DOE's opinion that reasonable opportunity to dispute a notice of termination requires that prior notice be given in the manner defined above and that procedures for disputing the reasons for termination with the utility and before the State regulatory authority, or a designated alternate agency, be clearly defined. In general, DOE believes that service should not be terminated while the dispute is being processed in accordance with established procedures.

1. *Utility dispute procedures.* The steps required to file and process a complaint or dispute with the utility, and the required procedures to be adhered to by a utility in handling disputes should be clearly set forth in the rules and regulations of the State regulatory authority and the nonregulated utility. These procedures should include a requirement that the utility involved render in writing to the consumer all decisions concerning a complaint or dispute which are unfavorable to the consumer.

2. *State regulatory authority procedures.* Procedures should be adopted which provide for disputes which cannot be resolved by the utility and the consumer to be brought by either party to the State regulatory authority, or a designated alternate agency, for resolution. An indigent consumer should not be required to pay an advance filing fee.

The steps required to file and process a complaint or dispute with the State regulatory authority, or a designated alternate agency, and the procedures to be followed in hearing disputes between the utility and consumer should be set forth in clear and understandable language in the rules and procedures of the State regulatory authority and should include the following:

(a) Definition of right of representation,

(b) Definition of power of subpoena,

(c) Definition of right to present evidence and testimony, oral and written argument,

(d) Definition of right to confront witnesses,

(e) Location of burden of proof,

(f) Applicable rules of evidence,

(g) Method of recording any proceeding,

(h) Identity of hearing officer,

(i) Findings and decision, and

(j) Appeal.

These procedures should be designed to provide an effective opportunity for the customer to present any opposition or alternatives to the proposed termination.

*C. Protection During Health Emergencies*

Section 115(g)(2) of PURPA provides that service may not be terminated if a consumer establishes inability to pay for service in accordance with the requirements of the utility's billing, or ability to pay only in installments during any period when termination would be especially dangerous to health, as determined by the State regulatory authority or nonregulated utility.

In DOE's opinion, the following are periods especially dangerous to health: The entire winter season and/or a period when the consumer or party residing at the consumer's address is or is likely to become seriously ill as a result of, or a serious threat to human safety may result from, service termination. To provide reasonable protection during such situations, the State regulatory authority or nonregulated utility should define or establish the following:

(1) Periods when postponement of termination should be granted,

(2) All steps required of a consumer asserting the presence of serious illness or that serious illness may follow termination,

(3) Number of times postponement of termination of service for health related reasons may be granted,

(4) All steps required of a consumer asserting inability to pay or ability to pay only in installments,

(5) All steps required of a utility in responding to assertions of inability to pay or ability to pay only in installments,

(6) Procedure for resolving disputes about assertions of inability to pay or of serious illness,

(7) An installment plan which permits flexibility based on the amount of money owed, consumer's ability to pay, consumer's payment history, time that the debt has been outstanding, reasons why the debt has been outstanding, and any other relevant factors, and

(8) All steps required of a utility in the event a consumer does not meet the requirements of the agreed upon installment plan.

*D. Reasonable Provisions for Elderly and Handicapped*

According to section 115(g) of PURPA, the procedures for termination of service shall take into account the need to include reasonable provisions which consider unique problems of elderly and handicapped consumers.

The criteria for justification for specific provisions applicable to elderly and handicapped consumers should be set forth clearly within the State regulatory authority's rules and regulations or the nonregulated utility's policy governing termination of service.

Elderly and handicapped consumers should be given at least two notices of proposed termination. The final notice should be made through personal contact.

Prior to terminating service to elderly and handicapped consumers, the utility should be required to notify the State regulatory authority or a designated alternate agency identified by that authortity.

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Part VII

# Department of Energy

## Solar in Federal Buildings Demonstration Program Rules

DEPARTMENT OF ENERGY

10 CFR Part 436

[Docket No. CAS-RM-79-401]

# Solar in Federal Buildings Demonstration Program Rules

**AGENCY:** Department of Energy.

**ACTION:** Notice of Final Rulemaking.

**SUMMARY:** The Department of Energy today establishes a new Part 436 in Title 10 of the Code of Federal Regulations for rules governing programs to conserve Federal energy use and to promote consumption of renewable energy sources under the Energy Policy and Conservation Act, as amended, Executive Order 11912, as amended, and the National Energy Conservation Policy Act. This notice inaugurates the new Part 436 by finalizing rules for the administration of the Solar in Federal Buildings Demonstration Program under Title V, Part 2, of the National Energy Conservation Policy Act. These rules set forth requirements and procedures for the submission and content of Federal agency proposals, criteria for evaluation and selection of projects to be funded, transfer of funds for approved projects, and periodic reports with respect to the maintenance and operation of active and passive solar heating and solar heating and cooling demonstration projects in Federal buildings.

**EFFECTIVE DATE:** November 19, 1979.

**FOR FURTHER INFORMATION CONTACT:**

William A. Lemeshewsky, Office of Conservation and Solar Energy, Department of Energy, Room 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585, (202) 376-9600.

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**SUPPLEMENTARY INFORMATION:**

## I. Background

In a notice of proposed rulemaking (NOPR) published on April 2, 1979 (44 FR 19328), the Department of Energy (DOE) proposed to establish a new Part 436 in Title 10 of the Code of Federal Regulations for rules governing programs to promote energy conservation and use of renewable energy sources by Federal agencies. Specifically, the NOPR set forth proposed rules to inaugurate Part 436 by implementing the Solar in Federal Buildings Demonstration Program under Title V, Part 2, of the National Energy Conservation Policy Act. These proposed rules included provisions governing procedures for the submission and content of Federal agency proposals, criteria for evaluation and selection of projects to be funded, transfer of funds for approved projects, and periodic reports with respect to the maintenance and operation of active and passive solar heating and solar heating and cooling demonstration projects in Federal buildings. For the reasons stated in the preamble to the NOPR, DOE concluded that although these rules are significant under Executive Order No. 12044, 43 FR 12661 (March 24, 1978), they do not have the kind of impacts which call for a regulatory analysis or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et. seq.* A public hearing was held on the NOPR on April 17, 1979, in Washington, D.C. and the record remained open for the submission of written comments until May 31, 1979. A major purpose of this program is to show Federal confidence in and focus public attention on proven applications of solar heating and solar heating and cooling technology which can be used in the private sector.

## II. Discussion of Comments

In response to the NOPR, five persons presented oral testimony at the public hearing, and 21 written comments were received. The final rules promulgated today are a revised version of the proposed rules reflecting technical changes and changes in response to public input. The following is a discussion of the relevant issues raised by commentors which call for a DOE response. Important, general issues which arise out of comments are treated first and a discussion of comments directed at specific sections of the proposed rules follows.

### *A. General Issues*

1. *Role of Passive Solar Energy Systems.* Several commentors expressed concern that the proposed rules tended to overemphasize "active solar energy systems" at the expense of "passive solar energy systems" and to overlook the desirability of minimizing buildings loads by using a passive solar energy system in tandem with an active one. Generally speaking, and as defined by § 436.71, "active solar energy systems" are distinguishable from "passive solar energy systems" because they rely on mechanical equipment (pumps or fans) to move heat transfer fluids or air throughout the systems. In contrast, passive solar energy systems rely on a structural design which involves natural convection, conduction and radiation. Since passive solar energy systems are often cost effective in new buildings and should be attractive to the private sector, it is vitally important for the DOE Solar in Federal Buildings Demonstration Program to give them appropriate emphasis, and to achieve this objective, certain substantive changes have been made.

In response to a specific suggestion by one commentor, DOE has revised the definition of the key term—"solar energy equipment" in proposed § 436.71. The proposed definition was: "* * * equipment which is for active or passive solar hot water heating, heating, heating and cooling including but not limited to collectors, storage devices, heat exchangers, south-facing glazing, mountings, piping, valves, gauges and contols." That definition was an elaboration of the same term that appears in the authorizing language of Title V, Part 2, of the NECPA. The words easily connote the mechanical equipment common to active solar energy systems, but do not as readily call to mind specially designed building components and materials such as thermal storage walls. DOE believes that the Congress intended that some or all of the cost of passive systems be fundable. In order to provide more clearly for funding of building components and materials designed to capture solar energy, DOE today promulgates a modified definition of the term "solar energy equipment" which reads: " 'Solar energy equipment' means building components, materials, or other items of equipment which are the means for passive or active solar heating, hot water, or heating and cooling including but not limited to collectors, storage devices, heat exchangers, south-facing glazing, mountings, piping, instrumentation, pumps, valves, guages, and controls."

DOE has also revised the selection criteria of § 436.78(c) to emphasize the desirability of taking advantage of passive solar energy systems. As revised, the section gives weight to proposed projects which take account of feasible opportunities to include such a system in the design of a building.

Finally, in response to one of the comments, DOE is also modifying the proposed forms for agency proposals which were made available in the public file. One of these forms, which is to be used by agencies submitting cost data on proposals, contained a statement to the effect that passive and process heat applications were subject to restraints due to funding limitations. The phrase "funding limitations" referred only to the overall program constraint created by limited appropriations, a constraint which applies to the funding of active solar energy systems as well as passive ones. Because the statement in question

apparently was ambiguous and is unnecessary, it has been deleted.

2. *Provisions for Energy Conservation Measures.* Some commentors suggested the need for changes to require energy conservation measures to be included as part of a proposal to install "solar energy equipment." One commentor referred to various conservation technologies to reduce consumption of scarce fossil fuel Btu's, technologies which did not involve control of insolation. Another referred to waste heat recovery and biomass. However, none of the persons commenting on this aspect of the program suggested specific language changes.

In response to these comments, DOE has modified the screening criteria of § 436.78(b) so that proposed projects will be rejected if, for the building in question, the application does not show that appropriate energy-saving changes in operation and maintenance practices and cost effective non-solar energy conservation measures to reduce building energy loads have been implemented or are scheduled and budgeted. This criterion should result in smaller, less expensive systems in many cases.

It should be noted that the proposed rules did encourage conservation actions. Proposed § 436.78(d) provided for preference in selection for "innovative and diverse applications" a term which was defined to include combinations of solar energy systems and innovative non-solar energy conservation measures.

3. *Technical Support by Other Federal Agencies.* In the past, DOE has availed itself of technical support by other Federal agencies with expertise to contribute to the administration of solar and other programs. DOE has decided to follow that practice for this program by calling upon the National Aeronautics and Space Administration (NASA) for technical support.

One of the commentors criticized a possible arrangement with NASA, arguing that DOE should be the manager of the program with responsibility for oversight and evaluation. That comment was based on the mistaken assumption that DOE intended to delegate management responsibility to NASA. In fact, DOE will be actively managing all aspects of the program including final evaluation of proposals and oversight. NASA will make recommendations to DOE and provide technical support services which cannot be obtained from any other source in the short term. This arrangement with NASA is essential to make the program operational as soon as possible.

4. *Relationship to Other Conservation and Solar Programs.* Some of the comments received by DOE in response to the NOPR indicated a lack of awareness of other programs involving a broader range of conservation and solar technologies or raised questions about the relationship of the Solar in Federal Buildings Demonstration Program to some of those other programs. As was noted at the outset, this program is primarily a market initiative intended to show Federal confidence in and to focus public attention on applications of solar heating and cooling technology which the private sector can be using. It is also intended to reduce consumption of nonrenewable fossil fuels. Other programs with similar objectives are the Federal Buildings Program to reduce building energy use on a cost effective basis, the Federal Photovoltaic Utilization Program, the Residential Energy Conservation Service Program, the Schools and Hospitals Grant Program, the Solar Heating and Cooling Demonstration Program (under the Solar Heating and Cooling Demonstration Act of 1974), and the Department of Defense Military Construction Program. To ensure that these programs are properly coordinated, DOE has instituted regularly scheduled meetings among representatives of these programs. In addition, meetings are scheduled with Federal agencies involved in significant building construction activities such as the General Services Administration so that all Federal participants can better utilize and be aware of Federal activities related to solar energy. In this manner, DOE and other Federal agencies will exchange information, avoid duplication, and improve efficiency in carrying out their respective programs.

B. Comments on Particular Sections

1. *Section 436.71—Definitions*

*"Design Costs".* One commentor questioned whether the definition of "design costs" included costs incurred as a result of Federal agency personnel performing the designing activity. DOE considers design costs to be fundable regardless of who specifically performs the actual design so long as it is done by qualified personnel subequent to project selection by DOE and the expenditures can be audited.

Based on DOE experience with solar demonstration programs, DOE recommends that Federal agencies utilize experienced solar design personnel in either formulating their designs or in the review of the design in order to minimize any potential problems and to draw from current solar experiences and accepted practices. In this manner, agencies can attempt to minimize significant design problems.

*"Non-Fundable Costs".* Several comments were submitted which dealt with the question of whether costs incurred by a Federal agency in the preparation of its proposal (sunk design costs) should be fundable. Two commentors suggested that sunk design costs should be included under the "non-fundable cost" category. However, another took a contrary viewpoint, pointing out that at least one Federal agency normally does not request design funds separate from the request for funds for the entire project. As the NECPA specifically limits financial assistance to the design, acquisition, construction and installation of a solar energy equipment, DOE has specifically placed proposal costs and sunk design costs under non-fundable costs. DOE does not believe that this feature of the program will be especially burdensome since the conduct of a detailed architectural and engineering study is not necessary for a proposal.

*"Process Heat Application".* The preamble to the proposed rules mentioned the possibility that an application of solar heating technology to provide process heat in a Federal building might be funded. Process heat is energy for production of goods, services, or commodities. A definition for the terms "process heat application" has been added to the rules, and a funding limit of $1,000,000 based on experience has been set for a project involving such an application.

*"Passive Solar Energy Systems".* One comment raised the question of whether daylighting of buildings is considered a passive solar energy system. Daylighting involves a structural feature such as a special skylight to control exposure to sunlight and to minimize internal heating and cooling loads. DOE considers that daylighting used to supply or control all or part of the heating or space heating and cooling requirements of a building may be a passive solar energy system.

*"State".* One commentor urged DOE to delete the definition of "State" and provide for demonstrations in foreign countries. DOE did not accept this recommendation because the program is aimed at enhancing the domestic market.

2. *Section 436.72—Procedures for Submitting Proposal.* One commentor asked whether DOE proposal evaluation procedures would be structured so that agencies could submit proposals every 60 days during the program period. The procedures will not be so structured. DOE anticipates publishing a notice

inviting further proposals in the spring of 1980.

3. *Section 436.73—Summary of Content of a Proposal.* Several comments were received regarding the information required in a proposal. A few comments suggested that DOE was creating unnecessarily complex and time consuming requirements for submitting a proposal and thereby discouraging agencies from applying. DOE is aware of the potential burden that any proposal requirement may impose on an agency. In the creation of the proposal requirements in accordance with statutory provisions, DOE attempted to minimize the proposal information required for evaluation. The forms referenced in this rule were carefully reviewed prior to the issuance of the proposed rule and also as a result of comments submittted during the comment period. DOE considers the general project information, the technical project information, and the project cost information required as a result of the statutory provisions establishing this program to be a minor burden on the agency and the minimal amount of information needed by DOE in carrying out its duties assigned by the legislation. The basic information requirements have been summarized on a form to simplify the application process. These forms do not necessitate that a complete solar energy system design be completed at the time of submission. DOE emphasizes that only conceptual information regarding the proposed systems and basic building information is required. DOE's attempt to assess the feasibility of the concept will be aimed at determining the basic validity of the agency's approach and ensuring that major issues have not been overlooked.

In conferences held in the ten DOE regions, DOE has attempted to assist Federal agency personnel in understanding and completing the information required in the forms. DOE hopes that these conferences have assisted agencies in understanding the requirements of the program. Additional technical and solar conferences will be held in the regions to assist Federal agency personnel in solar and program-related activities.

4. *Section 436.74—Required Program Information.* Several comments expressed doubts about some of the proposed agency reporting requirements applicable to the period of construction. Questions were raised as to the need for quarterly status reports, final construction status reports, reproducible drawings, design review results, acceptance testing plans, and the operation and maintenance manual. A few comments stated that these requirements would result in excessive expenses in the operation of the program. DOE is well aware of the potential expense of some of these items and has made every attempt to minimize these requirements consistent with its management responsibility. With the exception of the quarterly status report, DOE believes that anyone properly designing and constructing a solar energy system would require all of the above-mentioned items and that belief is based upon past and on going experience with solar heating and cooling demonstration projects. Insofar as the quarterly design and construction status reports are concerned, DOE considers them to be essential for its management function. DOE estimates that these reports could be done on each project in several pages including one or two charts or tables. Every attempt has been made to minimize reporting burdens, but DOE does not think that further deletions are warranted.

5. *Section 436.75—Required General Project Information.* The information requirements of proposed § 436.75 were reviewed in light of comments criticizing the rules because of burdens entailed in responding. It was decided to eliminate some of these objectionable requirements which would have yielded information of marginal value. The eliminated provisions were items, such as number of buildings in surrounding area, which were somewhat relevant to the "visibility" selection criterion which will not influence decisionmaking as heavily as the other criteria in § 436.78.

6. *Section 436.76—Technical Project Information.* A number of comments were received on particular aspects of technical project information requirements. DOE considered these comments, reviewed the potential burden involved in responding, and modified specific provisions accordingly.

Several comments proposed the introduction of additional design requirements. One comment suggested the use of natural ventilation as a prerequisite to the installation of solar energy cooling equipment. Another comment suggested that a limit be imposed on fossil fuel Btu's to be consumed in the operation of an active solar energy system to insure that the energy consumed to operate pumps for example is not excessive. These and other specific suggestions for identifying and improving the technical aspects of individual designs are useful, and will be considered, as appropriate, in evaluating the merits of proposed projects.

One comment was received which addressed the problem of potential confusion in evaluating combined active and passive projects if no distinction is made between Btu consumption and cost figures. DOE is aware of the potential difficulty in evaluating certain types of combined solar energy systems. However, the program forms provide for separate calculation of performance and cost of active and passive solar energy systems, respectively, even if combined in a proposed project. The active and passive solar energy systems will be evaluated on their individual merits and then on their combined merits to insure proper integration.

Several commentors suggested revising provisions of the rules incorporating the National Bureau of Standard (NBS) Interim Performance Criteria and HUD Minimum Property Standards. The suggested revisions involved substitution of recent privately developed standards such as the thermal performance certification standard of the Solar Energy Industries Association (SEIA). DOE does not regard the specific standards suggested as final voluntary consensus standards and it would therefore be inappropriate to incorporate them into the rules at this time.

Another comment questions the validity of the standards DOE proposed to use and suggested that they might hamper the use of successful solar energy systems. DOE believes that the standards do in fact promote the use of reliable, commercially-available and environmentally-safe solar energy equipment and that they should not be deleted.

Another comment suggested that certain forthcoming modifications to the NBS standards be included in the final rules. Because the modifications to the standards have not yet been finalized, DOE feels that it would be inappropriate to incorporate the changes at this time.

As SEIA, NBS, and other relevant standards become final, DOE will be examining them, and, at an appropriate time, expects to publish a notice of inquiry seeking public comment on the advisability of using one or more of them in DOE programs such as the Solar in Federal Buildings Demonstration Program. Should the DOE decide to incorporate any of these standards in this program, today's final rule will be revised appropriately.

Several commentors opposed the requirement for a minimum five-year limited warranty on the solar collectors from the manufacturer and suggested that the warranty period be reduced.

They pointed out that the five-year limited warranty was inconsistent with three-year warranties usually provided by manufacturers in the heating and cooling industry, that the warranty provisions might impede the growth of the solar collector manufacturing industry, and that the additional costs incurred by solar collector manufacturers to maintain a five-year limited warranty might be passed on to the consumer. Based on the current practices with regard to the period of warranties, DOE determined that a three-year limited warranty on the solar collectors from the manufacturer would be acceptable at present. This change has been incorporated into the final rules. However, in view of the five-year warranties common to conventionally powered energy systems, DOE feels that solar consumers will eventually demand, and solar manufacturers will offer, a five-year limited warranty on the solar collectors.

An additional comment focused on the specific aspect of the warranty requirements providing for reasonable inspections on request, by installers and manufacturers at no cost to the Federal agency, to investigate complaints regarding possible defects in materials, manufacture, or installation and take expeditious corrective action. The commentor felt that the requirement was unfair and that a limit to the complaints should be inserted in the rules. DOE does not agree that a limit is appropriate, but encourages agencies to ensure that complaints are made only when a valid concern or problem exists.

One commentor urged DOE to insert a requirement for consultation with a qualified architectural or engineering firm when a detailed architectural and engineering study seems appropriate. In most instances these kinds of studies will be unnecessary in order to formulate a proposal, and in any event, the desirability of engaging firms with demonstrated qualifications at an appropriate time is obvious. DOE was not persuaded that this suggested insertion was desirable.

Another comment focused on the requirement that Federal agencies describe the method of calculation for determining the optimized solar collector area and on the preamble discussion of possible computer programs usable for this purpose. This comment urged that other acceptable computer programs be acknowledged or that the mention of government-sponsored programs be deleted. It was argued that mention of certain programs represented an implied endorsement of them and should be avoided. DOE recognizes that other solar design calculation programs are available in the public and private sectors and encourages the use of any reasonable technique. The reference to specific computer programs in the preamble was intended only as an example and not as an endorsement of any one program. Furthermore, DOE does not intend to discourage the use of alternate programs and has not specifically named any particular computer program in the rules.

*7. Section 436.78—Evaluation Procedures and Criteria.* Several comments were received on various aspects of the evaluation procedures and criteria. DOE considered these comments and determined that no basic changes in these procedures and criteria are necessary.

One commentor contended that the statement allowing dismissal of proposals if the cost estimates are unrealistic needs further clarification unless each proposal is to be subjected to a varying standard. The commentor offered no specific language changes. Another noted that the evaluators would need to be thoroughly familiar with the best local and agency cost data available. DOE agrees with the latter observation, but has decided that further elaboration on this provision would eliminate essential flexibility.

A number of comments addressed the proposed selection criterion of visibility. One commentor opposed the inclusion of visibility on the basis of experience which indicated that large installations tended to discourage the layman. The commentor argued that consumers would think their homes would require systems as large and as expensive. Another comment commended the provisions regarding selection criteria but expressed concern over the possibility that the visibility criterion would lead to "gold-plated," custom-built solar energy systems. One comment recommended that all Federal Buildings be eligible for DOE selection regardless of their visibility. A final comment urged that DOE accept proposals for Federal facilities not highly visible to the public due to limited access or remote locations. It is doubtful that DOE will approve projects simply because they are visible. The projects likely to be approved are those that score high when all the criteria are applied. Nevertheless, since an object of the program is to illustrate applications of solar heating and cooling technology for the public that they may want to apply to their own circumstances, visibility based on location and public access is an important consideration which should not be deleted.

Another comment suggested that some modification should be allowed in the replication criterion to account for the type of Federal buildings unique to the public sector. This suggestion has been accepted.

One comment recommended that an additional selection criterion be included: The degree to which the project is monitored to show its compatibility with the conventional energy network. The impact of solar energy systems on the conventional energy network and utility rates is a subject being considered by DOE pursuant to the President's direction to issue voluntary guidelines applicable to solar energy for the eleven rate standards established in the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95-617). In light of that effort, DOE sees little to be gained by adding the suggested selection criterion and desires to avoid the drain on the program budget which the instrumentation implied by the criterion would necessitate.

Another comment recommended that some provisions be included to recognize the true value of solar energy to the nation including such benefits as minimal pollution, supplanting the use of fossil fuels, and national security or balance of payments improvements. It was suggested that the use of replacement cost pricing for the displaced conventional energy could help. This issue and others concerning economic evaluation of investments will be addressed in the forthcoming notice of final rulemaking on the life cycle costing methodology which will be applicable to this program.

Several comments were received on the relative importance of the proposed selection criteria. In the preamble of the NOPR, DOE had invited public comment on the desirability of assigning points (weighting factors) to each selection criterion. In general, the comments discussed the merits and, to a lesser degree, the relative importance of the proposed selection criteria. There were, however, no specific suggestions for assigning weights. In order to show its priorities more clearly, DOE has revised § 436.78 to include specific percentages for each selection criteria. The highest percentages have been attached to the factors which correlate best with the program objective of demonstrating proven, cost effective, commercially available solar energy equipment. DOE expects that the application of the weighted selection criteria will result in the following distribution during the first cycle of this program—

- 50% active solar hot water and space heating applications;
- 30% passive solar hot water and space heating applications;
- 10% active solar space heating and cooling applications; and
- 10% active process heat applications.

Agencies should bear these figures in mind in selecting projects to propose; but should not regard them as inflexible.

Several comments were received which were critical of the provisions for considering estimated simple payback time in evaluating proposed projects. One comment suggested that reliance solely on life cycle costing procedures would avoid unnecessary inconsistency with other building programs. Other comments claimed that estimated simple payback time does not allow for recognition and evaluation of other potential tangible benefits which accrue subsequent to payback. Simple payback is a rough measure of cost effectiveness which the NECPA requires. DOE intends to take the calculation into account in assessing the proposals, but expects to give determinative weight to life cycle costing calculations in making selections of projects for funding.

In the NOPR, DOE discussed the possibility of adding provisions to the final rules regarding cost-sharing with Federal agencies and for attaching additional points in the evaluation criteria as a means of extending program impact. One comment supported cost-sharing, while another comment noted that cost-sharing would only create complications. It was added that cost-sharing with other Federal agencies—unlike cost-sharing with private parties—would not have the advantage of extending Federal funds. Another comment considered cost sharing of questionable merit because it could discriminate against agencies with low budgets or budget problems. Despite these comments, DOE still believes that agency cost-sharing offers tremendous potential for broadening the program impact and has modified § 436.78(c) to include cost-sharing as one of the selection criteria.

One commentor urged that the program be structured to encourage participation by small business; and specifically suggested, without clearly explaining the connection, that the rule be modified to extend the 180-day period for agency submission of proposals to DOE. DOE is sympathetic to the need for special action to ensure participation of small business, but the real opportunities for encouraging that participation belong to the proposing agencies who have the procurement function under this program. A modification of the 180-day period for submitting proposals would probably not significantly advance the interests of small businesses, and in any event is not permissible because Congress established that period by law. However, DOE will advise small businesses who inquire of the names of contact persons in each agency and of developments in the program which may be of interest to them. Furthermore, DOE urges participating agencies to publicize their competitive procurements and take whatever other steps they can to reach solar small businesses and involve them in the program.

DOE requested and received comments on the advisability of rejecting project with costs exceeding the following ceilings: $500,000 for an active solar space heating, cooling, and hot water project; $300,000 for an active solar space heating and hot water project; $200,000 for an active solar hot water project; $100,000 for any passive solar space heating, cooling, or hot water project; and $500,000 for any active or passive solar energy system generating energy for consumption in an industrial-type process. DOE rationalized these proposed ceilings by pointing out that agencies could fund the balance from their own appropriations, and by saying that it was more desirable to maximize the number and diversity of projects without inhibiting proposal of reasonably sized solar energy systems. Although some commentors suggested adjustments to favor one type of system over others, none advanced documented and persuasive arguments for different numbers. Accordingly, with some adjustments based upon historic facility construction cost data, DOE is promulgating the funding ceilings suggested in the preamble to the NOPR.

8. *Section 436.79—Transfer of Funds.* A few comments were received regarding the desirability of provisions dealing with the availability of supplemental funding. One commentor argued that all feasible and/or cost-effective projects experiencing cost overruns should be funded. The criticized provisions were designed to preclude cost overruns and excessive expenditures on any one project. DOE believes that cost overruns must be discouraged, and that relaxation of the rules to provide for such overruns would have the opposite effect.

Several comments criticized proposed § 436.79 for providing for an initial transfer of funding for design costs in the amount of 6–10 percent of construction costs. One commentor argued that tying design costs to percentages of construction costs would result in biased design decisions in favor of expensive equipment, high technology, and high maintenance active solar systems. This commentor also argued that smaller projects costing below $200,000 would be discouraged because they may involve design costs far in excess of the proposed 6–10 percent range. Another commentor expressed the view that the fixing of design fees as a percentage of total system costs might result in escalation of total system costs and suggested soliciting proposals with design fees based on complexity and size of buildings and on simplicity of the solar system.

DOE proposed the 6–10 percent range because it represented an approximation of design costs based upon historic facility construction cost data, and would establish reasonable limits. DOE still believes in the concept of limits, but in order to eliminate possible bias against small projects, the range has been widened to 6–20 percent. To prevent inflated costs, DOE will review each estimate and reduce it if unjustified.

9. *Section 436.80—Reporting Requirements.* Several comments were received regarding the operation and maintenance reporting requirements. One comment argued that recurring reports should be on an annual basis only and should pertain to reliability, availability, maintainability, maintenance requirements, and cost for operating the system. Two comments opposed the reporting requirements and suggested that the requirements should be simplified with the number of reports from each agency held to a minimum. Another comment suggested the inclusion of continuous data on the microclimate surrounding each building as a partial factor governing the heating or cooling data, and the total sun and sky radiation available to the solar collectors at each building. DOE decided not to make any of the suggested changes. In most cases the general operation and maintenance information data required to be collected by the proposed rules is considered to be the minimum information that DOE considers the agencies would generate or collect for their own needs. To require collection of more data not directly related to the maintenance and operation requirements of the solar energy system would lead to excessive and expensive instrumentation which would divert funds better spent on implementing more projects.

## III. Forms

In light of revisions of the rules to make technical changes and to respond

to comments, DOE has also revised the forms for submitting proposals. Federal agencies may obtain these forms by calling Mr. A. Krupnick at FTS 872–1870.

IV. Effective Date and Initial Application Period

In the NOPR, DOE indicated that the final rules might be made effective immediately rather than 30 days from publication. DOE has decided not to follow through on this indication because the final life cycle costing rules, which are essential for Solar in Federal Building Demonstration Program, can not be issued simultaneously with today's notice and are scheduled to be published later this summer. The period for submitting applications will begin upon issuance of the final life cycle costing rules. DOE expects to commence evaluation and selection of projects 30 days from the date that the period for submitting applications begins.

(Energy Policy and Conservation Act, [42 U.S.C. 6361 *et seq.* (1970)]; E.O. 11912, as amended by E.O. 12003, 42 FR 37523 (July 20, 1977); Title V of the National Energy Conservation Policy Act, [42 U.S.C. 8241 *et seq.*]; Department of Energy Organization Act, [42 U.S.C. 7101, *et seq.*])

In consideration of the foregoing Chapter II, Title 10 of the Code of Federal Regulations is hereby amended by establishing Part 436, and Subpart D thereof, as set forth below.

Issued in Washington, D.C., on October 12, 1979.

Omi G. Walden,

*Assistant Secretary, Conservation and Solar Energy.*

## PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

Sec.

436.1 Scope.
436.2 General objectives.

Subparts A–C [Reserved]

436.3–436.69 [Reserved]

Subpart D—Solar in Federal Buildings Demonstration Program

436.70 Purpose and scope.
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436.72 Procedures for submitting a proposal.
436.73 Summary of required content of a proposal.
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436.77 Required project cost information.
436.78 Evaluation procedures and criteria.
436.79 Transfer of funds.
436.80 Operation and maintenance reports.

Authority: Energy Policy and Conservation Act, 42 U.S.C. 636.1; Executive Order 11912, as amended, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, Title V, Part 2, 42 U.S.C. 8241.

### § 436.1 Scope.

This part sets forth the rules for Federal energy management and planning programs to reduce Federal energy consumption and to promote cost-effective investments in energy-saving alternative building systems, energy-saving new building designs, and use of solar and other renewable energy sources. These rules are required or authorized under section 381(a)(2) of the Energy Policy and Conservation Act, 42 U.S.C. 6361(a)(2), section 10 of Executive Order 11912 as amended, 42 FR 37523 (July 20, 1977), or Title V of the National Energy Conservation Policy Act, 42 U.S.C. 8241.

### § 436.2 General objectives.

The objectives of Federal energy management and planning programs are—

(a) To promote the design, construction, and operation of buildings to conserve and make more efficient use of fuels and energy;

(b) To shift from use of nonrenewable to renewable energy sources;

(c) To stimulate industries and create new job opportunities for supply and servicing new or improved energy-conserving and energy-supplying systems and equipment;

(d) To promote consideration of the cost of energy consumed over the useful life of a building in addition to initial costs of construction or renovation; and

(e) To place the Federal Government, the largest energy consumer in the United States, in the forefront in implementing energy conservation measures and in promoting use of solar and other renewable energy resources.

### §§ 436.3–436.69 Subparts A–C [Reserved]

## Subpart D—Solar in Federal Buildings Demonstration Program

### § 436.70 Purpose and scope.

This subpart contains the rules required or authorized to be promulgated under section 523 of Title V, Part 2, of the National Energy Conservation Policy Act, 42 U.S.C. 8241, which provides for a program for Federal agencies to demonstrate the application to Federal buildings of solar heating and solar heating and cooling systems. The rules set forth procedures and requirements for the content and submission of proposals by Federal agencies, for the criteria for evaluation and selection of projects to be funded, and for the periodic reporting of data regarding maintenance and operation of solar energy systems funded under this subpart.

### § 436.71 Definitions.

"Acceptance testing plan" means a test procedure to measure the performance of solar energy system to determine if the system is operating as designed.

"Active solar energy system" means a solar heating or a solar heating and cooling system in which thermal energy from the sun is collected and transferred by pumps or fans that move heat transfer fluids or air throughout the system. (See also "passive solar energy system" in this section)

"Acquisition costs" means project acquisition costs which are fundable by DOE under this subpart, including but not limited to full purchase costs of solar energy equipment to be used exclusively for the solar energy system, and that portion, attributable to the solar energy system, of costs of equipment used as part of that system as well as for other non-solar purposes.

"Building" means any structure with a roof and walls designed for storage or human occupancy which uses energy for hot water, heating, or heating and cooling.

"Building System" means any part of the structure of a building or any energy using system contributing to energy use in a Federal building.

"Btu" means British thermal unit.

"Category" means the characterization of a Federal building in terms of the primary function performed in or by the building, including but not limited to retail, office, health, education, public service, storage, and residential functions.

"Construction costs" means project construction costs which are fundable by DOE under this subpart, including but not limited to that increment of the costs of constructing or modifying a building or site attributable to the installation of the solar energy system.

"Design costs" means project design costs which are fundable by DOE under this subpart, including but not limited to preliminary feasibility design, detailed design, analysis of a solar energy system, and preparation of drawings and specifications.

"Design review" means a meeting or series of meetings held by a Federal agency with the designer of a solar energy system to assess and document the adequacy and accuracy of the mechanical, electrical, and control portions of the solar energy system and to ensure that estimates of acquisition, construction, and installation costs are correct.

"DOE" means the Office of Conservation and Solar Energy of the Department of Energy.

"Energy conservation measure" means energy conservation measure as defined by Subpart C of this part.

"Existing Federal building" means a Federal building for which construction was completed by November 9, 1978, or for which the design cannot be feasibly modified after the effective date of this subpart.

"Federal agency" means an Executive agency as defined in section 105 of Title 5, United States Code; and each entity enumerated in paragraphs (B) through (H) of Subsection (1) of section 5721 of Title 5, United States Code.

"Federal building" means any building or other structure owned by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

"Innovative and diverse application" means the application to a Federal building of an active or passive solar energy system in combination with a feasible, new or under-utilized energy conservation technology or renewable energy system as defined by Subpart C of this part to reduce consumption of non-renewable energy resources in that building.

"Insolation" means a rate of solar energy received per unit area.

"Installation costs" means project installation costs which are fundable by DOE under this subpart, including but not limited to the emplacement of the solar energy system and conduct of the acceptance testing plan.

"Investment costs" means the initial costs of design, acquisition, construction, and installation.

"Jurisdiction or control" means power or authority to direct, administer, or control the use or operation of a Federal building.

"Memorandum of agreement" means the internal DOE document by which funds are transferred within DOE to install solar heating and solar heating and cooling equipment in a DOE-controlled Federal building.

"New Federal building" means a Federal building for which construction was not completed prior to November 9, 1978, and the design of which can be feasibly modified after the effective date of the rule.

"Non-fundable costs" means project costs which are not fundable by DOE under this subpart, including but not limited to costs of energy conservation investments, cost of a backup system, operation and maintenance costs, administrative and managerial costs, sunk design costs, and proposal costs.

"Optimized collector area" means the collector area for a solar energy system that gives the greatest total (or annualized) net savings where net savings are determined by a life cycle cost comparison of the solar system and an alternative solar energy system.

"Passive solar energy system" means a solar energy system characterized by reliance on natural convection, conduction and radiation, and by heat collection and storage devices that are structurally integrated with the occupied space, such as storage walls, storage roof, greenhouse, atrium or sunspace, thermosyphon hot water system, reflector assemblies, shading devices or reflective surfaces or glazings.

"Process heat application" means the application of solar heating technology in the production of goods, services, or commodities in a Federal building.

"Project" means specific actions to accomplish the design, acquisition, construction and installation of a solar energy system in a Federal building.

"Proposal" means an application by a Federal agency under this subpart requesting funding for one or more projects.

"Replication" means the extent to which a Federal building is representative of a significant number of existing or new buildings in the public or private sector, by category or design.

"Retrofit" means the installation of an alternative building system as defined by Subpart A of this part in an existing Federal building.

"Solar collector" means a device or structure specifically designed for receipt of solar radiation, conversion of the solar radiation to useful heat;

"Solar energy equipment" means building components, materials, or other items of equipment which are the means for active or passive solar hot water heating, heating, or heating and cooling including but not limited to collectors, storage devices, heat exchangers, south-facing glazing, mountings, piping, instrumentation, pumps, valves, gauges and controls.

"Solar energy system" means the assembly or structual integration of solar energy equipment, according to a design, for the purpose of supplying all or part of the hot water, heating, or heating and cooling requirements of a Federal building by the use of solar collectors.

"Solar heating" means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water) or all or part of the needs of such building for hot water.

"Solar heating and cooling" means, with respect to any Federal building, the use of solar energy to provide all or part of the heating needs of such building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

"State" means a State, the District of Columbia, Puerto Rico or any territory or possession of the United States.

### § 436.72 Procedures for submitting a proposal.

(a) Any Federal agency that has or will have jurisdiction or control over a Federal building in a State may submit a proposal under this subpart with respect to such a building. Initial proposals are due on or before 180 days from the date of issuance of subpart A of this part. Subsequent proposals may be submitted only upon notice of invitation by DOE in the Federal Register.

(b) An original of each proposal, signed by the head of the submitting Federal agency, or a designated Assistant Secretary or Assistant Administrator, and four copies shall be submitted to the Department of Energy, Office of Conservation and Solar Energy, Attn: Solar in Federal Buildings Program, Washington, D.C. 20585.

### § 436.73 Summary of content of a proposal.

A proposal, with a table of contents and pages numbered consecutively, shall contain the program information required under § 436.74, and for each project—(a) The general project information required under § 436.75;

(b) The technical project information required under § 436.76; and

(c) The project cost information required under § 436.77.

### § 436.74 Required program information.

A proposal shall contain—(a) The address and telephone number of the Assistant Secretary or Assistant Administrator responsible for implementation of a proposal approved under this subpart;

(b) The responsibilities with respect to projects of headquarters, regional, and field offices;

(c) Procedures for monitoring project expenditures;

(d) A plan for quarterly status reports beginning 45 days after transfer of design funds under § 436.79 which—

(1) Identifies individual milestone schedules for each project, including—

(i) Completion of the design, acquisition, construction and installation of each project;

(ii) Design reviews;
(iii) Award of major solar energy system subcontracts;
(iv) Acceptance testing plan; and
(v) Planned publicity, if any;
(2) Describes progress toward completion of each project;
(3) Identifies on a form provided by DOE all costs incurred during the reporting period for each project and any current or projected revisions to estimated investment costs for each project; and
(4) Describes any significant problems or delays in meeting the milestone schedule of any project during the reporting period and actions proposed or implemented to solve the problems, including any necessary revision of the schedule;
(e) An assurance that a final construction status report will be submitted forty-five days after the completion of an acceptance testing plan, which contains the following—
(1) A table of contents;
(2) A description of the completed solar energy system;
(3) Total costs on a DOE form, of the solar energy system, as constructed;
(4) A summary of any significant problems encountered in project completion;
(5) A summary of the acceptance testing plan;
(6) A summary of the results of the acceptance testing plan;
(7) Photographs of the solar energy system;
(8) A set of reproducible design and installation drawings of the solar energy system, as constructed; and
(9) A statement setting forth the extent to which the Federal agency has complied with the criteria and standards set forth in § 436.76(b) (2) and (3);
(f) A statement showing the extent, if any, to which the project represents an innovative and diverse application and identifying its geographic location;
(g) A statement setting forth the location of project records; and
(h) An assurance that complete records maintained for review of project expenditures shall be available for inspection by the DOE at reasonable times.

**§ 436.75 Required general project information.**

(a) Each proposal submitted under this subpart shall list the Federal buildings in which projects are proposed to be implemented, distinguishing between existing Federal buildings and new Federal buildings;
(b) For each Federal building listed under paragraph (a) of this section, the agency shall provide the following general information—(1) The street address, if known;
(2) The city, county and state;
(3) The name, address and telephone number of the project contact person, located at or adjacent to the building site, who is responsible for a solar energy system proposed for installation under this subpart;
(4) A description of the Federal building in terms of its category;
(5) Photographs taken from the Federal building, or site, looking east, south and west;
(6) Estimated or actual, if available, number of building occupants;
(7) Number of visitors annually, if known;
(8) Type of transportation route from which the Federal building is clearly visible;
(9) Types of planned project publicity;
(10) Size and location of closest city or town;
(11) Planned or implemented energy-saving changes in operation and maintenance procedures and cost effective non-solar energy conservation measures; and
(12) Other relevant location or design factors.

**§ 436.76 Required technical project information.**

(a) With respect to each active and passive solar energy system proposed for a Federal building listed under § 436.75 and assuming, in the case of an existing Federal building, that energy-saving changes in operation and maintenance procedures and cost effective non-solar energy conservation measures are complete, the following technical information shall be provided—
(1) Either a completed design, ready for construction in an architectural and engineering report or basic building and solar energy system design information on forms provided by DOE, with an attached schematic rendering of the design;
(2) The method of calculation used or to be used in calculating the optimized solar collector area; and
(3) An assurance that the Federal agency will—(i) Perform and record the results of all design reviews prior to construction;
(ii) Maintain a current set of solar energy system design and installation drawings;
(iii) Obtain and implement an operation and maintenance manual suitable for use by maintenance personnel;
(iv) Obtain and implement an acceptance testing plan including data collection requirements to determine that—
(A) Each major component of the solar energy system is installed and operating as designed;
(B) The solar energy system is balanced to conform as closely as practicable to the design performance specifications; and
(C) Solar energy system data is recorded during acceptance testing, along with the date, time and individual(s) performing the test; and
(v) Provide three copies of the information referred to in § 436.76(a)(3) as soon as reasonably possible after it is obtained.
(b) With respect to each active solar energy system proposed for a Federal building, and assuming in the case of an existing Federal building, that energy-saving changes in operation and maintenance procedures and cost effective non-solar energy conservation measures are complete, the following technical information shall be provided—
(1) A statement setting forth whether the proposed solar collector type is flat plate, evacuated tube, concentrator, or other type, as well as any limiting design characteristics;
(2) An assurance that the system will be designed and constructed to comply with the *Interim Performance Criteria for Solar Heating and Cooling Systems in Commercial Buildings* (1187 NBS INT. REP (1976)), or, with the HUD *Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Systems,* (in residential buildings) (4930.2, HUD INT. MPS SUPP. (1977)), or an explanation of any reasons for exception from any part of these criteria or standards;
(3) An assurance that solar collectors will be selected taking into account—
(i) Solar collector thermal performance data collected under ASHRAE 93-77; and
(ii) Thirty-day no-flow solar collector degradation test data recorded in accordance with the procedures identified in 1305A (7.2) NBS INT. REP. (1978), or an explanation of any reasons for exception from these procedures; and
(4) An assurance that each proposed project will have—
(i) A one-year warranty from the installer, commencing with the date upon which installation is completed—
(A) Against failure of the solar energy system by a defect in materials, manufacture, or installation;
(B) Covering full costs of parts, labor, and replacement and installation at the site; and

(C) Providing for reasonable inspections on request, at no cost to the Federal agency, to investigation complaints, and take expeditious corrective action; and

(ii) A three-year warranty from the manufacturer, with respect to solar collectors, commencing with the date upon which installation is completed—

(A) Against defects in materials or manufacture and covering at least the costs of all parts delivered to the site; and

(B) Providing for reasonable inspections on request, at no cost to the Federal agency, to investigate complaints, and take expeditious corrective action.

**§ 436.77 Required project cost information.**

For each Federal building listed under § 436.75, and assuming, in the case of an existing Federal building, that energy-saving changes in operation and maintenance procedures and cost effective non-solar energy conservation measures are complete, the following cost information shall be provided on DOE forms or in architectural and engineering report.

(a) Estimated simple payback time, based on a comparison of the estimated costs of a proposed solar energy system with the estimated costs of a conventional non-solar energy system to determine the number of years required for the cumulative value of net differences in future energy cost savings to equal investment costs without regard to discount rates or future fuel price increases;

(b) Net savings, calculated in accordance with Subpart A of this part, based on a comparison of the estimated costs of a proposed solar energy system with the estimated costs of a conventional non-solar energy system;

(c) Total estimated costs to DOE, as designed; and

(d) Total costs of the solar energy system.

**§ 436.78 Evaluation procedures and criteria.**

(a) Each project proposal shall be reviewed preliminarily to determine whether it meets the requirements of § 436.72 and §§ 436.74 through 436.77, inclusive. If a proposal does not meet these requirements, the proposal may be returned with a written statement of deficiencies. If deemed appropriate, additional time to cure deficiencies may be allowed.

(b) Any project for which there is complete information under §§ 436.75–436.77 shall be rejected with a written statement of deficiencies if—(1) Adequate energy-saving changes in operation and maintenance procedures and cost effective non-solar energy conservation measures are neither implemented nor scheduled and budgeted;

(2) The design is infeasible;

(3) The cost estimates are unrealistic; or

(4) The project costs to be funded under this subpart exceed the following funding ceilings—

(i) $550,000 for an active solar space heating, cooling and hot water application;

(ii) $350,000 for an active solar space heating and hot water application;

(iii) $240,000 for an active solar hot water application;

(iv) $120,000 for any passive solar space heating, cooling, or hot water application and

(v) $1,000,000 for any solar process heat application; or

(5) The explanations of exceptions proposed under § 436.76(b)(2) and (b)(3) are deemed by DOE to be unreasonable.

(c) Selection among projects, which are not rejected under paragraphs (a) and (b) of this section, shall be based on the following criteria in accordance with the weight assigned to each—

(1) 20 points for cost effectiveness in comparison to other proposed similar projects and excess cost, if any, in comparison to the conventional non-solar energy system which minimizes the estimated life cycle cost of the Federal building;

(2) 20 points for the extent of cost sharing offered by the Federal agency;

(3) 15 points for the extent of replication;

(4) 15 points for the proximity to areas which have potential for development as a private sector market for solar energy equipment;

(5) 15 points for the extent to which the proposed project takes account of feasible opportunities to include passive solar applications;

(6) 5 points for the extent of visibility and accessibility to the public;

(7) 5 points for the extent to which the proposed project represents an innovative and diverse application; and

(8) 5 points for the geographical location in regard to other proposed projects.

(d) Each evaluation under paragraphs (b) and (c) of this section shall be in writing and shall be made available to the proposing Federal agency, or the public upon request.

**§ 436.79 Transfer of funds.**

(a) When a project is selected under § 436.78, the Federal agency shall be notified in writing of such selection, and funds shall be transferred, pursuant to interagency agreement or a memorandum of agreement, solely for design costs in the amount of approximately 6 to 20 percent of the total estimated solar energy system costs as determined by DOE.

(b) Upon substantial completion of a design review acceptable to DOE, total estimated costs for acquisition, construction, and installation shall be transferred pursuant to interagency agreement or memorandum of agreement.

(c) Prior to transfer of funds under paragraph (b) of this section, projects which are determined to be substantially inconsistent with the data contained in the initial proposal or are determined to be otherwise infeasible are subject ot cancellation by DOE.

(d) Except as provided in paragraphs (e) and (f) of this section, DOE shall not provide any funds for a project in excess of the funds transferred under paragraphs (a) and (b) of this section.

(e) Subsequent to bid opening by a Federal agency, and prior to contract award, DOE may in its discretion commit to transfer or transfer supplemental funds upon notification by the Federal agency that the lowest acceptable bid received by the time of bid opening exceeds the amount of funds transferred under paragraph (b) of this section. In no event shall DOE transfer supplemental funds under this subsection in excess of 25% of the funds transferred under paragraph (b). A complete record of the bid opening shall be maintained by the Federal agency, and made available for review by DOE upon request, prior to the transfer of supplemental funds under this paragraph. If the supplemental funds necessary to award a contract are not provided by the DOE, the Federal agency shall either fund the excess from its budget, or reformulate the design of the project in a manner acceptable to DOE, or cancel the project and transfer back to DOE the funds transferred under paragraph (b) of this section, as well as any unexpended funds transferred under paragraph (a) of this section. Any interagency agreement or memorandum of agreement transferring funds under these rules shall specifically provide for compliance with this subsection.

(f) Subsequent to the award of a construction contract, DOE may in its discretion transfer additional supplemental funds if it has received a timely written application for such funds signed by an assistant secretary, assistant administrator, or other senior policymaking official of the Federal agency and a written report of an audit acceptable to DOE showing that there is

a need for additional funding which was caused by extraordinary circumstances beyond the control of the Federal agency and which could not reasonably have been foreseen.

**§ 436.80 Operation and maintenance reports.**

Commencing within 60 days of completion of the acceptance testing plan, and continuing on a quarterly basis for the first year of operation and on an annual basis thereafter for a total of three operating years, the Federal agency shall submit on a project by project basis, the following information—

(a) Data recorded on a monthly basis from installed instrumentation for—

(1) The total amount of solar generated Btu's transferred into storage, where applicable;

(2) The total amounts of solar generated Btu's consumed in each building for hot water, heating, or cooling, respectively; and

(3) The estimated, or actual, if available, energy savings by fuel type and costs savings for hot water, heating, or heating and cooling; and

(b) Solar energy system data and information for—

(1) All operating and maintenance actions performed which have a potential significant impact on the cost, performance, or safety of the solar energy system or components, or are indicative of operating or maintenance problems which might affect the performance and operation of other solar energy systems. Information submitted must include—

(i) A complete description of the action performed;

(ii) The solar energy equipment and component involved;

(iii) The resulting cost; and

(iv) The corrective action taken; and

(2) Monthly cost estimates of all normal and significant operating and maintenance actions required to keep the solar energy system in operating condition. Specific routine actions need only be reported based on a monthly accumulation of their actual or estimated costs.

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Friday
October 19, 1979

Part VIII

# Council on Wage and Price Stability

Data Requests

## COUNCIL ON WAGE AND PRICE STABILITY

### 6 CFR Part 707

### Data Requests

**AGENCY:** Council on Wage and Price Stability.

**ACTION:** Interim Final Rule on Data Requests, with comments requested.

**SUMMARY:** The Council is combining all present data requests and specifications, previously included in other parts of this Chapter, into a new Part 707, titled Data Requests. Part 707 relates and refers to Part 705, "Anti-Inflationary Pay and Price Standards," and Part 706, "Procedural Rules," which have recently been published in the Federal Register as interim final standards and rules, with comments requested (44 FR 56900–16). The period for public comment on Parts 705 and 706 does not close until October 17, 1979. Any changes in Parts 705 and 706 as a result of the public comments will result in corresponding changes in this Part.

**DATES:** The effective date of the Part 707 is October 19, 1979. Comments on this interim final rule on data requests must be received on or before November 12, 1979.

**ADDRESS:** Written comments should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street NW., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** For further information on—Pay, contact: Diane J. Mazur, 456–7100, Price (Subparts A, B, and C), contact:

*Industries, Contact Person, and Telephone Number*

Metals, Machinery & Equipment, Eugene Roberts, 456–7784.
Food, Agriculture & Trade, Steve Hiemstra, 456–7740.
Energy, Chemicals, Utilities, & Transportation, John Keith, 456–7747.
Construction & Building Materials, Joseph Lackey, 456–7156.
Health Insurance & Other Services, Arthur Corazzini, 456–7730.
Price (Subpart D), contact: Walter Leibowitz or David Wagner, 456–7733.

**SUPPLEMENTARY INFORMATION:** During the first year of the antiinflation program, data specifications and requests appeared throughout Parts 705 and 706, as well as in published Questions and Answers, and in the Council's Implementation Guide (44 FR 5339 (January 25, 1979)). When the Council published interim final standards and rules for the second program year, the descriptions of data requests were removed. The Council concluded that collecting all such materials in one part would assist the public by clarifying the types of data needed by the Council for its monitoring efforts. Part 707, then, supersedes the data requests and data specifications previously found in Parts 705 and 706 (as well as the Council's practices during the first year) and fills the poteritial void created by promulgating Parts 705 and 706 as interim final standards and rules.

Subpart A of Part 707, titled "Report of Company Organization and Statement of Assurance," relates to the reports by entities in the private and public sectors of company organization for purposes of compliance with the pay and price standards. Subpart B, titled "Periodic Data Reports," concerns data requested from compliance units, including government entities, for evaluating their compliance with the standards. Subpart C, titled "Data Submissions Supporting Variances from Intermediate and Margin Limitations," specifies the data necessary to justify excesses above the intermediate limits for increases in prices, profit margins, percentage gross margins, and gross margins. Subpart D, titled "Data Submissions Supporting Exception Requests," concerns the submission of data to support specific exception requests.

There are references in Part 707 to various data collections forms. These forms have been developed by the Council in response to public requests and Council needs for simplicity and conformity of data submissions. Forms PM–1 and PAY–1 have previously been approved by the Office of Management and Budget and are therefore not included in this document, even though the Council has or shortly will request approval for minor revisions of these forms. Two forms not previously approved—Form CO–1 (PAY) and Form CO–1 (Price) for reporting company reorganization—essentially reflect the data requests contained last year in Part 706. Another new form—PAY–2 for compliance reports by State and local governments—is a scaled-down version of Form PAY–1 that is designed for the public sector. All of these forms are attached to this document and included within the Council's request for public comments. These forms will be submitted shortly to the Office of Management and Budget for approval.

The Council is soliciting public comments not only on the language of proposed Part 707 and the attached forms, but also on the general subject of data requests by the Council.

Issued in Washington, D.C., October 15, 1979.

R. Robert Russell,

*Director, Council on Wage and Price Stability.*

Accordingly, Part 707, Title 6 CFR, is adopted on an interim basis to read as follows:

## PART 707—DATA REQUESTS

**Subpart A—Report on Company Organization and Statement of Assurance**

Sec.
707.1 Company Organization.
707.2 Statement of Assurance of Compliance by State and Local Governments.

**Subpart B—Periodic Data Reports**

707.10 Pay and Price Data Reports.

**Subpart C—Data Submissions Supporting Variances From Intermediate Price and Margin Limitations**

707.20 Intermediate Price Limitations.
707.21 Intermediate Profit Limitations.
707.22 Intermediate Percentage-Gross-Margin Limitations.
707.23 Intermediate Gross-Margin Limitations.

**Subpart D—Data Submissions Supporting Exception Requests**

707.30 General.
707.31 Tandem Pay-Rate Exceptions.
707.32 Productivity-Improving Work-Rule-Change Exceptions.
707.33 Acute-Labor-Shortage Exceptions.
707.34 Undue-Hardship and Gross-Inequity Exceptions.
707.35 Inability-To-Compute Exceptions.
707.36 Uncontrollable-Cost Exceptions.
707.37 Uncontrollable-Cost Exceptions to a Percentage-Gross-Margin Standard.
707.38 Uncontrollable-Cost Exceptions to a Gross-Margin Standard.

Authority: Council on Wage and Price Stability Act, P.L. 93–387 (August 14, 1974), as amended by P.L. 9478 (August 9, 1975), P.L. 95–121 (October 5, 1977), and P.L. 96–10 (May 10, 1979), 12 U.S.C. 1904 note; E.O. 12092 (November 3, 1978), E.O. 12161 (September 26, 1979).

## Subpart A—Report of Company Organization and Statement of Assurance

### § 707.1 Company organization.

Companies specified in § 706.21 should furnish to the Council:

(a) A completed Form CO–1 (Price); and/or

(b) A completed Form CO–1 (Pay) for each pay compliance unit, unless the compliance unit is part of a State or local government and elects to file under § 707.02.

§ 707.2 Statement of assurance of compliance by State and local governments.

A State or local government as specified in § 706.23 that does not file under § 707.01(b) should furnish to the Council a statement of assurance from the head of the government entity that the entity intends to comply with the pay standard.

## Subpart B—Periodic Data Reports

§ 707.10 Pay and price data reports.

Compliance units specified in § 706.22 should furnish to the Council:

(a) A completed Form PM–1, unless the compliance unit is a provider of medical or dental insurance subject to § 705.48 or a utility subject to § 705.45; and/or

(b) A completed Form PAY–1, unless the compliance unit is part of a State or local government, or

(c) A completed Form PAY–2 if the compliance unit is a State or local government as specified in § 706.23.

## Subpart C—Data Submissions Supporting Variances From Intermediate Price and Margin Limitations

§ 707.20 Intermediate price limitations.

A compliance unit that exceeds any of the intermediate price limitations in § 705.3(a) through (c) should prepare and/or furnish to the Council with its Form PM–1 (a) A demonstration that the increase in prices exceeding the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of price changes over the five years before the first program year),

(2) Historical business practice, or

(3) Unusual business conditions; and

(b) Projected price changes for the second program year, demonstrating that increases in prices exceeding the intermediate limit(s) are consistent with adherence to the two-year price limitation by the end of the program year.

§ 707.21 Intermediate profit limitations.

A compliance unit that exceeds any of the intermediate limits for the profit limitation in § 705.6(a)(1) should prepare and/or furnish to the Council with its Form PM–1 a demonstration that a profit margin in excess of the profit limitation is consistent with an explicit plan, based on reasonable projections of economic conditions, to achieve compliance with the profit limitation by the end of the second program year.

§ 707.22 Intermediate percentage-gross-margin limitations

A compliance unit in the wholesale/retail trade industries that exceeds any of the intermediate percentage-gross-margin limitations in § 705.42(d) should prepare and/or furnish to the Council with its Form PM–1:

(a) A demonstration that any increase in percentage gross margins in excess of the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of change in gross margins over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions; and

(b) Projected percentage-gross margins demonstrating that pricing actions are consistent with adherence to the percentage gross-margin standard by the end of the second program year.

§ 707.23 Intermediate gross-margin limitations.

A compliance unit subject to the gross-margin standard that exceeds any of the intermediate gross-margin limitations in § 705.43(d) or § 705.44(d) should prepare and/or furnish to the Council with its Form PM–1.

(a) A demonstration that any increase in gross margins in excess of the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of change in gross margins over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions; and

(b) Projected gross margins demonstrating that pricing actions are consistent with adherence to the gross-margin standard by the end of the second program year.

## Subpart D—Data Submissions Supporting Exception Requests

§ 707.30 General.

Each request for approval of exception should include: (a) The name and address of the compliance unit making the request, including the name(s), title(s), and phone number(s) of person(s) whom the Council may contact concerning the request, and the name and address of the company of which the unit is a part, if different from that of the compliance unit;

(b) The name(s), address(es), and phone number(s) of union representatives, if the request involves a collective-bargaining situation, or the name(s), address(es), and phone number(s) of relevant company officials if the request is made by an employee unit;

(c) A demonstration that the compliance unit or employee unit requesting the exception satisfies the criteria of § 706.31(a) or, if the request is submitted under § 706.31(b), a demonstration that there is good cause for the Council to entertain the request; and

(d) The particular provisions of the standards that are the subject of the request, a precise description of the exception request, and the pay and/or price action that the entity making the request proposes to take if the exception is granted.

§ 707.31 Tandem pay-rate exceptions.

For an exception to the pay standard based on tandem pay-rate changes (705B–9), a compliance unit should submit:

(a) Documentation of a clear leader/follower relationship between the two employee units;

(b) Documentation of the value and timing of past pay-rate increases of the two employee units over the prior six years; and

(c) An estimate of the effect that the exception would have on the compliance unit's pay rates.

§ 707.32 Productivity-improving work-rule-change exceptions.

For an exception to the pay standard based on pay-rate increases traded for productivity-improving work-rule changes (705B–10), a compliance unit should submit:

(a) An explanation of the work-rule change(s);

(b) An analysis of how the cost reduction will be generated by the work-rule change(s);

(c) An estimate of the effect that the exception would have on the compliance unit's pay rates; and

(d) Documentation that the cost reduction generated by the work-rule change(s) will be equal to or greater than the excess of the pay increase over the pay standard.

§ 707.33 Acute-labor-shortage exceptions.

For an exception to the pay standard based on pay-rate changes needed because of acute labor shortages (705B–11), a compliance unit should submit:

(a) Documentation that, for the particular job categories, the proportion of vacancies relative to the work force and the time or effort required to fill them have increased abnormally during the preceding quarter relative to the two prior years;

(b) Documentation that pay rates for employees in those job categories have

increased abnormally over the two prior years and that the requested pay rates for the shortage categories are comparable to pay rates in the relevant labor market;

(c) A statement that the applicant has sought the assistance of the local Employment Service Agency to obtain employees;

(d) Documentation of the proportion of the compliance unit's work force that would be affected; and

(e) An estimate of the effect that the exception would have on the compliance unit's pay rates.

**§ 707.34 Undue-hardship and gross-inequity exceptions.**

For an exception to the pay or price standard based on undue hardship or gross inequity (§ 705.6(b) or § 705B–12), a compliance unit should submit:

(a) A precise description of the hardship or inequity that would be created by application of the standard (including, with respect to hardship, a demonstration of the effect on the *company's*—as distinquished from the compliance unit's—financial viability);

(b) An explanation of how the requested exception would mitigate the hardship or inequity resulting from application of the standard; and

(c) If the request is for an exception to the pay standard, an estimate of the effect that the exception would have on the compliance unit's pay rates.

**§ 707.35 Inability-to-compute exceptions.**

For an exception to the price standard based on inability to compute a two-year change (§ 705.6(a)), a compliance unit should demonstrate that sampling is infeasible due to inadequate data or that sampling is unduly onerous or costly.

**§ 707.36 Uncontrollable-cost exceptions.**

For an exception to the price standard based on uncontrollable cost increases (§ 706.6(a)), a compliance unit should:

(a) Demonstrate that the two-year rate of increase in costs per unit of output since the base quarter exceeded the two-year price limitation and are expected to continue to do so by an amount that would result in a significant erosion of the profit margin of the compliance unit if it were held to the two-year price limitation;

(b) Demonstrate that the cost increases are substantially uncontrollable (this requires, at a minimum, quantification of the shares of total cost increases accounted for by each significant cost increase that is wholly and demonstrably uncontrollable); and

(c) Account for the degree to which such increases are offset by normal gains in the efficiency of using inputs (productivity).

**§ 707.37 Uncontrollable-cost exceptions to a percentage-gross-margin standard.**

For an exception to the percentage-gross-margin standard (§ 705.42) based on uncontrollable cost increases, a compliance unit should demonstrate that total costs excluding those subtracted from revenues when calculating gross margin, as defined in § 705.42(b)(1), and excluding those items included in the definition of profit, as defined in § 705.77(a), divided by revenues have risen since the base quarter at an annual rate in excess of the percentage-gross-margin trend or zero, whichever is greater, and are expected to continue to do so by an amount that would result in a signficant erosion of the profit margin of the compliance unit if it were held to the gross-margin standard. The compliance unit should also satisfy § 707.36 (b) and (c).

**§ 707.38 Uncontrollable-cost exceptions to a gross-margin standard.**

For an exception to a gross-margin standard (§ 705.43, § 705.44, or § 705.45) based on uncontrollable cost increases, a compliance unit should demonstrate that total costs excluding those subtracted from revenues when calculating gross margins, as defined in § 705.43(b)(1), §705.44(3), or § 705.45(b), and excluding those items included in the definition of profit, as defined in § 705.77(a), have risen since the base quarter at an annual rate in excess of the sum of 6.5 percent and the annual rate of growth of physical volume and are expected to continue to do so by an amount that would result in a significant erosion of the profit margin of the compliance unit if it were held to the gross-margin standard. The compliance unit should also satisfy § 707.36 (b) and (c).

Form CO–1 (Instructions)
(10–10–79)

PROPOSED

**Executive Office of the President, Council on Wage and Price Stability**

*Instructions for Preparation of Report of Company Organization*

Form CO–1 (Price)

A. *Purpose of Form CO–1 (Price).* The Council on Wage and Price Stability has developed a form for reporting on company organization, Form CO–1 (Price), to help the Council monitor compliance with the voluntary price standard. During the first program year, companies were asked to report to the Council on their organization for compliance with the standards, but no form was provided. Most companies submitted lengthy reports. It is expected that Form CO–1 (Price) will greatly reduce the reporting burden on companies. In general, the Council wishes to obtain these data needed to monitor compliance with the voluntary standards while placing a minimum burden on companies.

B. *Authority for Form CO–1 (Price).* The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorized the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. *Publication of the Revised Standards.* The revised price standard was published in the Federal Register at 44 FR 56904 to 56910 on October 2, 1979. *Please note:* all of the terms used on Form CO–1 (Price) as well as the referenced Sections are as defined or set forth in the revised standard.

D. *Confidentiality of Information.* All information furnished the council on Form CO–1 (Price) will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act 12 U.S.C. Section 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 2, 1979).

E. *Who Should File*

(1) Any company or compliance unit specifically requested by the Council to do so.

(2) Any other company, as defined in 705.63, with at least $250 million in net sales or revenues (from domestic operations only) in its last complete fiscal year before October 2, 1979, unless the entire company is a financial institution subject to 705.50 or an insurance company subject to 705.48 or 705.49.

F. *Choice of Organization for Compliance.* A company may be divided into two or more compliance units if the conditions in 705.64 are satisfied. Companies need not adopt the same organizational structure as in the first program year. Also, the organizational structure adopted for compliance with the price standard need not be the same structure as that adopted for compliance with the pay standard.

BILLING CODE 3510-22-M

# PROPOSED

FORM CO-1
(10-9-79)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY

## REPORT OF COMPANY ORGANIZATION FOR THE SECOND PROGRAM YEAR

### PARENT COMPANY REPORT

NOTICE – All information furnished to the Council on Form CO-1 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 FR 59166 (October 12, 1979)

*PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT*

Send this form with relevant attachments to:

Office of Price Monitoring
Council on Wage and Price Stability
Winder Building
600 17th Street, NW.
Washington, D.C. 20506

NOTE: Please indicate "Submission of Form CO-1 (Price)" in the lower left hand corner of the envelope.

What were the total consolidated net sales or revenues of this company in its last complete fiscal year prior to October 2, 1979?

| Bil. | Mil. | Thou. |
|---|---|---|
| | | |

**Certification**

| | |
|---|---|
| a. Name of Chief Executive Officer or authorized designee | Title |
| b. Name of Company | Telephone (*Area code, No., Ext.*) |
| c. Name of person to contact regarding this report | Telephone (*Area code, No., Ext.*) |
| d. Address (*If different from mailing label*) | |

To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702 , 44 FR 59166 (October 12, 1979).

| | |
|---|---|
| e. Signature | Date |

# PROPOSED

LIST OF COMPLIANCE UNITS

| (a) Name of Compliance Unit | (b) Principal Line of Business | (c) SIC No. 1/ | (d) Same Compliance Unit as First Program Year? | (e) Standard Followed (Circle Choices) 2/ | (f) CWPS Use Only |
|---|---|---|---|---|---|
| 1. | | | Yes No | A B C D F I M P U | |
| 2. | | | Yes No | A B C D F I M P U | |
| 3. | | | Yes No | A B C D F I M P U | |
| 4. | | | Yes No | A B C D F I M P U | |
| 5. | | | Yes No | A B C D F I M P U | |
| 6. | | | Yes No | A B C D F I M P U | |
| 7. | | | Yes No | A B C D F I M P U | |
| 8. | | | Yes No | A B C D F I M P U | |
| 9. | | | Yes No | A B C D F I M P U | |
| 10. | | | Yes No | A B C D F I M P U | |
| Total Company | | | | | |

1/ Four-digit 1972 Standard Industrial Classification Code
2/ Code for Standards Followed:

A - Price Limitation.
B - Percentage-Gross-Margin Standard for Wholesale and Retail Trade
C - Gross-Margin Standard for Food Manufacturing and Processing
D - Gross-Margin Standard for Petroleum-Refinery Operations
F - Standard for Financial Institutions
I - Price Standard for Insurance Providers
M - Price Standard for Medical and Dental Insurance Providers
P - Profit Limitation
U - Gross-Margin Standard for Electric, Gas and Water Utilities

# PROPOSED

Attach continuation sheets if necessary

SALES OR REVENUES FOR THE FIRST PROGRAM YEAR

| Compliance Unit No. | (g) Total Sales or Revenues | | | (h) Non-Arms Length Transactions 705.4 (a) (8) | | | (i) New or Discontinued Products 705.4 (a) (9) | | | (j) Custom Products 705.4 (a) (10) | | | (k) Deliveries at Present Prices 705.4 (b) | | | (l) Covered Sales or Revenues 3/ (after exclusions) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Bil. | Mil. | Thou. | Bil. | Mil. | Thou. | Bil. | Mil. | Thou. | Bil. | Mil. | Thou. | Bil. | Mil. | Thou. | Bil. | Mil. | Thou. |
| 1. | | | | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | | | | |
| 4. | | | | | | | | | | | | | | | | | | |
| 5. | | | | | | | | | | | | | | | | | | |
| 6. | | | | | | | | | | | | | | | | | | |
| 7. | | | | | | | | | | | | | | | | | | |
| 8. | | | | | | | | | | | | | | | | | | |
| 9. | | | | | | | | | | | | | | | | | | |
| 10. | | | | | | | | | | | | | | | | | | |

3/ Show covered sales after all exclusions under 705.4

BILLING CODE 3510-22-C

Form CO–1 (Instructions)
(10–10–79)
PROPOSED

**Executive Office of the President, Council on Wage and Price Stability**

*Instructions for Preparation of Report of Company Organization*

Form CO–1 (Pay)

A. *Purpose of Form CO–1 (Pay).* The Council on Wage and Price Stability has developed a form for reporting on company organization, Form CO–1 (Pay), to help the Council monitor compliance with the voluntary pay standard. Companies with 5,000 or more employees are requested to report their organization for compliance with the pay standard for the second program year. The Council wishes to obtain that information needed to monitor compliance with the voluntary standards while placing a minimum burden on companies. It is expected that Form CO–1 (Pay) will help achieve these objectives.

B. *Authority for Form CO–1 (Pay).* The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorized the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. *Publication of the Pay Standard.* The first-year pay standard, published in the Federal Register at 44 FR 60772 (December 28, 1978); 44 FR 9582 (February 13, 1979); and 44 FR 17910 (March 23, 1979) remain in effect during the second program year until the Council acts on the recommendations of the Pay Advisory Committee. All of the terms used on Form CO–1 (Pay) as well as the referenced sections are as defined or set forth in the standard.

D. *Confidentiality of Information.* All information furnished to the Council on Form CO–1 (Pay) will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act 12 U.S.C. Section 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

E. *Who Should File.*

(1) Any company or compliance unit specifically requested by the Council to do so.

(2) Any other company, as defined in 705.63, with 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979.

F. *Choice of Organization for Compliance.* A company may be divided into two or more compliance units if the conditions in 705.64 are satisfied. Companies need not adopt the same organizational structure as in the first program year. Also, the organizational structure adopted for compliance with the pay standard need not be the same as that adopted for compliance with the price standard.

BILLING CODE 3510-22-M

# PROPOSED

FORM CO-1
(10-9-79)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY

## REPORT OF COMPANY ORGANIZATION FOR THE SECOND PROGRAM YEAR

PARENT COMPANY REPORT

NOTICE – All information furnished to the Council on Form CO-1 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 FR 59166 (October 12, 1979)

*PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT*

Send this form with relevant attachments to:

Office of Pay Monitoring
Council on Wage and Price Stability
Winder Building
600 17th Street, NW.
Washington, D.C. 20506 (PAY)

NOTE: Please indicate "Submission of Form CO-1" in the lower left hand corner of the envelope.

Certification

| | |
|---|---|
| a. Name of Chief Executive Officer or authorized designee | Title |
| b. Name of Company | Telephone (*Area code, No., Ext.*) |
| c. Name of person to contact regarding this report | Telephone (*Area code, No., Ext.*) |
| d. Address (*If different from mailing label*) | |

To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702 , 44 FR 59166 (October 12, 1979).

| | |
|---|---|
| e. Signature | Date |

LIST OF COMPLIANCE UNITS

| (a) Name of Compliance Unit | (b) Principal Line of Business | (c) SIC No. 1/ | (d) Beginning Date of Second Program Year | (e) Employees 2/ | (f) CWPS Use Only |
|---|---|---|---|---|---|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |
| 7. | | | | | |
| 8. | | | | | |
| 9. | | | | | |
| 10. | | | | | |

1/ Four-digit 1972 Standard Industrial Classification Code

2/ Show the number of employees at the beginning date of the second program year

BILLING CODE 3510-22-C

Form Pay-2 (Instructions)
(10/15/79)
Proposed

Executive Office of the President, Council on Wage and Price Stability

*Instructions for the Preparation of Form Pay-2, Report on Compliance With the Pay Standard for State, County and City Governments*

I. *General Instructions*

A. *Purpose of Form Pay-2.* Form Pay-2 is used by the Council on Wage and Price Stability as a means for collecting data from State and local governments. The information requested will allow the Council to meet two objectives. First, the data will be used to determine the extent to which governments have complied with the voluntary standard on pay-rate increases. Second, governments are asked to report actual pay-rate increases, as well as those chargeable under the Pay Standard, to enable the Council to determine the effect of the "exclusions" on total pay rates and measure the inflationary impact of actual labor costs. The submission of data on Form Pay-2 is voluntary. However, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standard.

B. *Authority for Form Pay-2.* The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorizes the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. *Confidentiality of Information.* All information furnished to the Council on Form Pay-2 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C., 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

D. *Who Should File.* All states, counties, and cities with 5,000 or more employees and any other governments designated by the Council are requested to file.

E. *What to File.* Each reporting government is requested to submit a separate Pay-2 (one copy) for its individual employee units as defined in Section 705B-2 of the Pay Standard. However, regarding collective-bargaining units, governments are requested to file reports only for collective-bargaining contracts negotiated during the program year (and not considered exempt as specified in Section 705B-3(e) of the Pay Standard). Governments should report base-period pay rates (column a) and projected pay rates for the end of the program year (column b).

F. *Where to File.* Form Pay-2 should be sent to: Office of Pay Monitoring, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

II. *Specific Instructions*

A. *Publication of Pay Standard and Definitions of Terms.* All of the terms used on Form Pay-2 as well as the referenced sections are as defined or set forth in the standard. The first year pay standard was published in the Federal Register at 44 FR 60772 (December 28, 1978); 44 FR 9582 (February 13, 1979); and 44 FR 17910 (March 23, 1979). The standard is further explained in the "Pay and Price Standards—Implementation Guide" at 44 FR 5339 (January 25, 1979) and by the questions and answers appearing with these publications. Additional questions and answers appear at 44 FR 32338 (June 25, 1979). Special Procedural Rules for complying with the standard appear at 44 FR 1340 (January 4, 1979); 44 FR 5337 (January 25, 1979); 44 FR 9585 (February 13, 1979); 44 FR 17916 (March 23, 1979); and 44 FR 23777 (April 20, 1979).

B. *Note on Calculations of Pay Rates.* For compliance with the standard, pay excludes all wages and benefits to workers earning straight-time wages of four dollars per hour or less as of October 1, 1978, as well as wages and benefits for workers hired during the program year at a straight-time wage of four dollars per hour or less. Also, pay excludes deferred compensation paid in the base period but earned in an earlier period. Pay includes deferred compensation earned in the program period but not paid in the program period.

All pay rates should be calculated as pay per straight-time hour worked. When paid leave hours are incurred irregularly, these hours should be calculated according to the leave practices in effect at the end of the base quarter and at the end of the program year as though they were incurred evenly over time. Governments may use a straight-time hours-paid-for basis (e.g., for salaried workers) where paid leave is included in straight-time wage and salary pay and only changes to paid leave practices are reported as a benefit. Increases/decreases in paid leave hours during the program period affect the straight-time hours and correspondingly will increase/decrease the cost of all benefits. The Council does not expect governments to make inordinate calculations to complete this form; a good faith estimate should be made when data are not available.

C. *Instructions on Some Specific Items on Form Pay-2.*

Item 3—The compliance unit may use either the base quarter (program quarter) or the last pay period within the respective quarter.

Part II—*Pay-Rate Data*

Item A—Straight-time wages should include cost-of-living adjustments (COLAs), longevity/merit increments, and qualification increments. Check the appropriate box indicating the items included in this category. For multi-year agreements, enter the pay rate at the end of the old contract in *column a* and the pay rate at the end of the new contract in *column b.* The projected pay rate to be in effect at the end of each year of the multi-year agreement should be reported in Section G.

Item B—Benefits include, where applicable, employer contributions or costs for the items listed in Section B. (See also 705D definition of "Pay").

Item D—The pay standard provides exceptions, exclusions, and special treatment of some pay. Use this item to enter the amounts of pay which may be subtracted from the actual pay rate to give the chargeable pay rate under the pay standard. All amounts should be calculated as pay divided by straight-time hours.

Item D4—For an unaltered pay-related pension plan, governments may exclude the entire pension costs from both the base period and the program period.

Item D5—Enter on this line the amounts of pay exceptions whether granted by the Council or self-administered. Exceptions are made for tandem pay-rate changes (TA), pay-rate increases traded for productivity-improving work-rule changes in union agreements (WR), pay-rate increases attributable to acute labor shortages (LS), and undue hardship or gross inequity cases (WH). Check each type of exception next to the appropriate exception code.

BILLING CODE 3510-22-M

# PROPOSED

Form Pay-2
(10/15/79)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY

REPORT ON COMPLIANCE WITH THE PAY STANDARD FOR STATE, COUNTY AND CITY GOVERNMENTS

NOTICE — All information furnished to the Council on Form Pay-2 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 FR 59166 (October 12, 1979)

PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT

Send this form with relevant attachments to:
Office of Pay Monitoring
Council on Wage and Price Stability
Winder Building
600 17th Street, NW.
Washington, D.C. 20506

NOTE: Please indicate "Submission of Form Pay-2" in lower left hand corner of the envelope.

1. Certification

| Head of government or authorized designee | Title |
|---|---|
| b. Name of government | Telephone (Area code, No., Ext.) |
| c. Name of person to contact regarding this report | Telephone (Area code, No., Ext.) |
| d. Address (If different from mailing label) | |

To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702 , 44 FR 59166 (October 12, 1979).

| e. Signature | Date |
|---|---|
| | |

2. Total number of employees in unit (low wage employees should be excluded)

Type of employee unit (See 705B-2): (check one)

☐ Collective bargaining ☐ Management ☐ All other

3. Compliance Comparison Periods:

(a) Base quarter (See 705D) or last pay period (mo., day, yr.)
From: __ / __ / __ To __ / __ / __

(b) Program quarter (see 705D) or last pay period (mo., day, yr.)
From: __ / __ / __ To __ / __ / __

4. Method of Computation: (Check one)

☐ (CB) Collective bargaining (705B-3) ☐ (UA) Unit average (snapshot) (705B-4a)

☐ (FP) Fixed population (705B-4b) ☐ (WA) Weighted average (705B-4e)

Note this choice determines the method of calculating columns (a) and (b) below

# PROPOSED

Part II - Pay-Rate Data (Fill in only those items that apply to the method of calculation chosen).

| | (a) Base-Quarter Pay Rate | (b) Program-Quarter Pay Rate |
|---|---|---|
| A. Straight-Time Wage and Salary (including cost of living adjustment ☐, longevity increment ☐, and/or qualification increment ☐). | | |
| B. Benefits<br>1. Pay for time not worked | | |
| 2. Health Benefits | | |
| 3. Pension Benefits | | |
| 4. Other | | |
| C. Total Pay Rate (Sum of A and B1 through B4) | | |
| D. Adjustments<br>1. Amount over the 6% COLA assumption (See 705B-3) | | |
| 2. Qualification increments (See Q10, 44 FR 5363, II D, Q10) | | |
| 3. Maintenance of health benefits (See 705B-6) | | |
| 4. Pension benefits (See 705B-7) | | |
| 5. Pay exceptions<br>Type (TA ☐ LS ☐ WR ☐ WH ☐) | | |
| 6. Other (Attach description) | | |
| 7. Adjustment totals (sum of D1 through D6) | | |
| E. Adjusted Pay Rate (difference between C and D-7) | | |
| F. Summary | | Percent |
| 1. Percentage change in actual pay rate from base quarter to program quarter | | % |
| 2. Percentage change in adjusted pay rate from base quarter to program quarter | | % |
| G. Yearly Percentage Changes in Adjusted Pay Rates for Multi-Year Agreements (See the Implementation Guide)<br>1. End of the first year | | % |
| 2. End of the second year | | % |
| 3. End of the third year | | % |
| 4. Over the contract period | | % |

H. Explain any circumstances that have caused the adjusted pay-rate change in F-2 above to exceed 7 percent

[FR Doc. 79-32403 Filed 10-18-79; 8:45 am]
BILLING CODE 3510-22-C

Friday
October 19, 1979

Federal Register

## Part IX

# Department of Energy

### Economic Regulatory Administration

### Powerplant and Industrial Fuel Use Act of 1978; Transitional Facilities

DEPARTMENT OF ENERGY

10 CFR Part 515

[Docket No. ERA-R-78-21]

# Powerplant and Industrial Fuel Use Act of 1978; Transitional Facilities

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy is issuing this Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities for purposes of implementing the provisions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or the "Act"). This Final Rule amends certain provisions of the previously issued Revised Interim Rule (44 FR 17464, March 21, 1979).

The Final Rule automatically classifies powerplants and boilers which are major fuel burning installations ("MFBIs" or "installations") as "existing" if they were "operational" on or before April 20, 1977. In addition, the rule automatically classifies facilities for which a contract was signed prior to November 9, 1978 as "existing" on the basis that they have a design capability of consuming fuel at a fuel heat input rate which is less than 100 million Btu's per hour. The Final Rule also provides for existing facility classification upon certification, and in some cases a minimal reporting requirement, provided certain milestones are met by certain key dates. Moreover, powerplants and MFBIs, for which a contract for construction or acquisition was signed before November 9, 1978, will be classified as "existing" if they can demonstrate that construction or acquisition of their facility can not be cancelled, rescheduled or modified without incurring a substantial financial penalty, an adverse effect on electric system reliability (if a powerplant) or significant operational detriment (if an installation).

**DATES:** Effective date: November 30, 1979.

**FOR FURTHER INFORMATION CONTACT:**

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

Daniel T. Ruge, Regulations and Emergency Planning, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 2130, Washington, D.C. 20461 (202) 254-3987.

Robert L. Davies, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128, Washington, D.C. 20461 (202) 254-7442.

G. Randolph Comstock, Office of General Counsel, Department of Energy, 1000 Independence Avenue, N.W., Room 6G-087, Washington, D.C. 20585 (202) 252-2967.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Significant comments
III. Procedural matters

## I. Background

Title II of the Act prohibits "new" powerplants and "new" boilers which are installations from using oil or natural gas as a primary energy source unless granted a specific exemption from this prohibition by ERA. It also prohibits "new" powerplants from being constructed without the capability to use coal or any other alternate fuel as a primary energy source. The Act classifies all powerplants and installations for which construction or acquisition began after April 20, 1977, as "new" unless otherwise classified by ERA as "existing" pursuant to ERA regulations. If classified as "existing," a powerplant or installation is subject to the provisions of Title III rather than Title II of the Act.

## II. Significant Comments

### *A. Eligibility*

In response to comments ERA received on the Revised Interim Rule concerning the eligibility criteria for both powerplants and major fuel burning installations (MFBI's), ERA has decided to change the Revised Interim Rule and is now issuing this Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Final Rule). Powerplants and installations which were "operational" on or before April 20, 1977, are still automatically classified as "existing" and need not request classification under Part 515. In addition, the regulations still provide that a facility which was operational on or before May 8, 1979 shall be automatically classified as "existing" upon proper certification.

In response to comments, ERA has revised the regulations to provide for automatic "existing" facility status, with a minimal filing requirement, for powerplants where the prefabricated packaged boiler or combustion turbine was shipped by the manufacturer by November 9, 1978, or in the case of a field-erected unit, the main steam drum was in place by November 9, 1978. This criteria previously applied solely to MFBI's.

ERA received several comments suggesting that receipt of a so-called "closed-out" letter under the Energy Supply and Environmental Coordination Act (ESECA) should suffice to establish "existing" facility status under FUA. As was previously discussed in the preamble to the Revised Interim Rule, ERA believes that Congress viewed the implementation of FUA separately from the implementation of ESECA, except where it expressly provided otherwise (44 FR at 17465, March 21, 1979). In Section 103 of FUA, Congress established criteria which permit ERA to determine a facility's status as "new" or "existing" that are different than the "early planning process" criteria employed in the ESECA regulations. Therefore, ERA believes that it would contravene the intent of Congress to accord any special consideration to a facility under FUA based on the mere receipt of an ESECA "close-out" letter.

Several of these commenters further stated that recipients of "close-out" letters who placed good faith reliance on these letters and proceeded with their construction plans should be automatically classified as "existing". ERA believes that in those instances where construction proceeded as originally scheduled, the facility will receive equitable treatment under the provisions of these regulations. Nevertheless, transitional facilities which received a "closed-out" letter or did not receive a notice of intention to issue a construction order under ESECA, must file for classification under this part unless they were operational on or before April 20, 1977.

ERA has also amended the Revised Interim Rule to provide that, upon filing the necessary information, a facility which was completed and ownership of the unit was transferred from the manufacturer to a purchaser on or before April 20, 1977 will be classified as existing.

Several commenters stated that ERA's position in the Revised Interim Rule that a facility must be "operational" on or before April 20, 1977, before it will be automatically considered "existing" contravenes the intent of Congress. They stated that under FUA, an "existing" powerplant or MFBI means a facility other than a "new" one, and a "new" facility is one for which construction or acquisition commenced after April 20, 1977. Therefore, the commenters argued that notwithstanding the language in Section 103(a)(13)(B)(ii), in a case where construction or acquisition commenced prior to April 20, 1977, the facility must be considered "existing" regardless of

whether it was operational by that date. ERA does not agree with that interpretation of FUA. The term "construction or acquisition began" as used in FUA is a term of art that does not always have precise or identical applicability to all transitional facilities. The legislative history cited by the commenters and the additional history ERA has reviewed fails to provide a precise definition nor do any of the comments ERA has received. Therefore, ERA has, of necessity, resorted to a case-by-case analysis to make this determination. We have established a test which, in general, provides that any facility which was not operational on or before April 20, 1977, but for which a contract had been signed prior to November 9, 1978, must file a written request for classification and ERA will make its determination on a case-by-case basis. Pursuant to Section 103(a)(13)(B)(ii) of FUA, ERA can make a determination whether construction or acquisition which may have been contracted for prior to April 20, 1977, could nevertheless be cancelled, rescheduled or modified without imposing a substantial financial penalty, and in the case of a powerplant without adversely affecting electric system reliability and in the case of an MFBI without incurring a significant operational detriment. Many of the comments received would negate this provision of FUA.

Several comments suggested that if the unit was operational on November 9, 1978, a request for classification need not be filed. ERA recognizes that such a facility is "existing" and has provided for only a minimum reporting requirement which ERA feels is necessary to properly meet its responsibility under the Act.

ERA received one comment suggesting that eligibility should not be limited to an executed contract for the unit itself. Sections 515.3 and 515.10 of the regulations clearly provide that the contract need only be for "the construction or acquisition" of the unit. Section 515.20(c)(6) further provides that the legally binding agreement must be for "substantial onsite construction or reconstruction, or for the purchase or rental of significant equipment or appurtenances required for the construction or operation of a powerplant or MFBI, *including, but not necessarily limited to, the boiler, and its major components, * * *"* (emphasis added). ERA has also amended the regulations to clarify that the contract, which must have been signed by November 9, 1978 to establish eligibility to request classification, need not have been signed by the person requesting classification but may have been signed by a previous purchaser.

*B. Substantial Financial Penalty*

ERA received several comments that the 25% test established in the Revised Interim Rule was too rigorous and that other factors need to be considered. ERA has established the 25% test because it is confident that in all instances where this criterion is met there will be a "substantial financial penalty". However, ERA clearly provides in §§ 515.6(a) and 515.13(a) that the failure to meet this criterion will not preclude an ultimate classification as "existing" on financial grounds. In this regard ERA received a comment questioning whether ERA is required by the regulation to consider the additional factors submitted in a request for classification. Sections 515.6(a) and 515.13(a) specifically state that "ERA will take into consideration any financially-related factor which you consider appropriate in reaching its determination. . ."

Several comments suggested that ERA should not base its determination on whether a firm is independent or a member of a large corporate family. It is argued that most subsidiaries operate as though they are financially independent from their corporate parent and their economic viability is determined solely by their separate performance. One commenter additionally suggested we were placing too much emphasis on the statement in the Conference Report accompanying the Act that the effect on the parent company should be considered and that this economic test could foreseeably become one of imminent bankruptcy of the parent company. As the commenter correctly pointed out, the Conference Report clearly provides that ERA is to consider the financial impact of cancelling, rescheduling or modifying the project on the parent company (S. Rep. No. 95-988, 95th Cong., 2nd Sess., p. 70, October 10, 1978). The emphasis placed on the parent company in these regulations is identical to the emphasis asserted in the Conference Report. Furthermore, ERA does not intend this to be a "bankruptcy test" for either the parent company or the subsidiary.

ERA received one comment which suggested that ERA should include as a non-recoverable expenditure any expense made after November 9, 1978, which was necessary to preserve or enhance the salvage value of the unit or for health, environmental or safety reasons. ERA believes that there is merit to this suggestion and feels that if the expenses referred to above were of an involuntary nature and not merely spent to complete the project, they should be considered. This assessment will necessarily have to be made on a case-by-case basis, however. Persons submitting requests for classification should identify these expenditures separately and provide justification as to why they should be considered.

*C. Adverse Effect on Electric System Reliability*

Several persons commented that ERA's focusing on regional reliability as opposed to the utility's or system's reliability is inappropriate. In addition they felt that a reliability evaluation should include an assessment of other factors such as firmness of purchase power contracts, fuel supply reliability and quantity, federal and state input and environmental considerations. Pursuant to Part 515, ERA will evaluate each powerplant's request claiming an adverse impact on reliability on a case-by-case basis and will allow the submission of whatever evidence the requestor deems appropriate. While the 20% reserve margin test pertains to the electric region, the other evidence you may submit which ERA will consider is not limited to evidence which pertains only to the electric region.

*D. Definitions*

ERA received several comments suggesting that refinery process heaters should be excluded from the regulations since Congress never intended such units to be within the coverage of the Act. As ERA previously stated in the preamble to Part 501 (Definitions), refinery process heaters normally do not fall within the categories statutorily designated as MFBIs, that is, boilers and certain nonboilers, and as such are exempt from the provisions of FUA (44 FR at 28532, May 15, 1979). To the extent that a refinery process heater functions as a boiler, it will be subject to the provisions of the Act.

Several persons commented that ERA improperly excluded the nonboiler categories in the definition of an "MFBI". The commenters felt this leaves owners and operators of nonboiler MFBI's without the opportunity to seek "existing" facility classification. What the commenters failed to recognize was that Section 202(b)(3) of the Act provides that a prohibition to a new nonboiler only applies to an installation for which construction or acquisition began on or after the date of the publication of the proposed rule or order establishing the prohibition. Section 202(b)(3) further provides that any installation not subject to a prohibition due to the previous sentence is

considered to be "existing". Therefore any classification that ERA would provide at this time for a nonboiler MFBI would be premature since no proposed prohibitions have been established with respect to such facilities.

One commenter suggested that ERA's definition of "operational" was too stringent and does not accurately reflect whether a unit is truly operational. ERA has amended this definition to provide that a unit is "operational" if it is "used and useful, has completed its testing phase and is *capable of* producing a product or providing a service on a continuing basis" (emphasis added). ERA believes that to provide any more latitude in this regard would not serve the purposes of the Act.

*E. Administrative*

ERA received several comments that the administrative procedures established for Part 515 fail to meet the requirements of Section 701 of FUA, the Administrative Procedures Act (APA) and the fundamental protections of the Constitution. The commenters believe ERA must, as a matter of law, provide an opportunity for a public hearing on the record and issue a proposed decision accompanied by specific findings and a statement of the reasons for ERA's determination.

ERA is aware that the administrative procedures contained in Part 515 are not the same as those required by Section 701 of FUA. ERA believes that the informal administrative procedures provided in Part 515 properly advance the purposes of FUA by allowing an expeditious determination with respect to a facility's status under the Act. Moreover, ERA believes that the Part 515 administrative procedures conform to the pertinent provisions of the APA and that they provide the appropriate due process of law protections.

The decisions which ERA expects to reach pursuant to the rules contained in Part 515 are subject to the requirements of Section 553 of the APA unless more formal procedures are otherwise required by statute. ERA does not agree with those comments which assert that the provisions of Section 701 of FUA constitute the statutory requirement for more formal procedures mentioned in the APA.

Section 701(d) of the FUA specifically provides a hearing opportunity for interested persons in the case of any "proposed rule or order . . . imposing a prohibition" or where ERA accepts ". . . any petition for any order granting an exemption. . . ." Although the opportunity for a hearing is mandated by Section 701, the agency actions to which these provisions apply are explicitly restricted to those quoted above. Congress could have applied the provisons of Section 701(d) to all ERA actions taken under FUA, but it did not do so. Indeed, the classification decisions contemplated by Section 103 of FUA are not addressed in Section 701(d).

ERA also disagrees with commenters who assert that denial of a request for classification as an existing unit under the provisions of Part 515 amounts to imposing a prohibition. Denial of a request for classification as an existing unit does not impose any additional prohibition. The Act presumes all powerplants and installations to which Part 515 applies are new unless otherwise classified as existing by ERA pursuant to rules prescribed by ERA. Part 515 describes the manner by which the presumption of status as a new facility may be rebutted. In the event that a requesting person successfully carries the burden of demonstrating the facts required by Part 515, the unit will be classified as existing and thereby relieved of the presumption of "new" status as well as the pertinent prohibitions applicable to new facilities. In the event the requesting person fails to carry his burden, then the statutory presumption and prohibitions remain unaffected.

ERA believes that the public notice and comment provisions of Part 515 are in accord with the requirements of the APA and therefore meet appropriate due process of law requirements without providing an opportunity for oral presentations.

ERA also disagrees with suggestions that the APA and other pertinent provisions of law require ERA to publish a proposed decision in connection with consideration of requests for classification under Part 515.

These final regulations have been amended to provide that requests for classification must be filed within 30 days of the effective date of this Final Rule although § 515.32 provides for an extension of time to file a request upon a showing of good cause. If you file your request before this Final Rule becomes effective, ERA will apply the regulation which results in the more favorable disposition of your request. For requests filed after this Final Rule is effective, ERA will apply the provisions of this Final Rule to your request.

III. Procedural Matters

A regulatory analysis of this Final Rule set forth below, as contemplated by Executive Order No. 12044, is contained within the draft regulatory analysis of the regulation regarding new facilities proposed on November 9, 1978, 43 FR 53974. A final Environmental Impact Statement (FEIS) has been prepared pursuant to the National Environmental Policy Act (NEPA). Both the draft regulatory analysis and the FEIS may be obtained from ERA, 2000 M St., N.W., Washington, D.C. 20461, (202) 634-2170.

This Final Rule has been submitted to the Office of Management and Budget (OMB) for clearance under the provisions of the Federal Reports Act. Any compliance with the data collections provisions of this Final Rule may require revisions or additions as a result of OMB's action.

Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et. seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); E.O. 12009, (42 FR 46267, September 15, 1977).

In consideration of the foregoing, Part 515, Subchapter E, of Chapter II, Title 10 of the Code of Federal Regulations is amended and adopted as a Final Rule effective November 30, 1979.

Issued in Washington, D.C., October 12, 1979.

David J. Bardin,
*Administrator, Economic Regulatory Administration.*

## Subchapter E—Alternate Fuels

## PART 515—TRANSITIONAL FACILITIES

### Subpart A—General Provisions

Sec.
515.1 Policy.
515.2 Purpose and scope.

### Subpart B—Electric Powerplants

515.3 Eligibility.
515.4 Powerplants automatically classified as "new".
515.5 Powerplants automatically classified as "existing".
515.6 Powerplants which ERA will classify as "existing".
515.7 Evidence required in support of a request for classification.

### Subpart C—Major Fuel-Burning Installations

515.10 Eligibility.
515.11 Installations automatically considered to be "new".
515.12 Installations automatically considered to be "existing".
515.13 Installations which ERA will classify as "existing".
515.15 Evidence required in support of a request for classification.

### Subpart D—Definitions

515.20 Definitions.

### Subpart E—Administrative Provisions

515.25 Purpose and scope.
515.26 Notice and public comment.

515.27 Conferences.
515.28 Appearance before ERA.
515.29 Computation of time.
515.30 Service.
515.31 General filing requirements.
515.32 Extension of time.
515.33 Effective date of decision.
515.34 Order of precedence.
515.35 Addresses for filing documents with the ERA.
515.36 Office of Public Information.

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); E.O. 12009, 42 FR 4267.

Transitional Facilities

## Subpart A—General Provisions

### § 515.1 Policy.

(a) The Economic Regulatory Administration (ERA) intends to administer the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) relating to transitional facilities in a firm but fair and practical manner. A transitional facility is one which was not operational on April 20, 1977, but for which a contract for its construction or acquisition was signed prior to November 9, 1978, the date of FUA's enactment. ERA will not classify as "existing," transitional facilities which are in the early stages of planning and construction, and which would not incur a substantial financial penalty, an adverse effect upon electric system reliability (for powerplants), or a significant operational detriment (for major fuel-burning installations). These facilities will therefore be considered to be "new." As new facilities, they will be subject to the statutory prohibitions of Title II of FUA, but will have the opportunity to petition ERA for an exemption from those prohibitions. Where a person requesting classification of a transitional facility as "existing" can demonstrate that the facility is in a more advanced stage of construction and would sustain any of the penalties, adverse effects, or detriments identified above, ERA will classify the facility as "existing" in order to avoid disruptive impacts on the facility as well as on the economy at large.

(b) You are eligible to request that ERA classify your transitional facility as "existing" if a contract for the facility's construction or acquisition was signed prior to November 9, 1978. Moreover, you are also eligible to request that ERA classify your transitional facility as "existing" if a contract was signed prior to November 9, 1978, for the reconstruction of your facility (including refurbishment of or addition to the facility) to the extent that the reconstruction equals or exceeds 50 percent of the price of a replacement unit. We base these criteria for eligibility as a transitional facility on the principle that a contract constitutes a commitment, after which time any cancellation, rescheduling, or modification may result in a substantial financial penalty, a significant operational detriment, or an adverse effect on electric system reliability.

(c) We have established milestones whereby facilities will automatically be considered "new" or "existing" without contacting ERA. Where no contract for construction or acquisition of a facility was signed prior to November 9, 1978, the facility is clearly "new." Facilities which were operational, as defined in these regulations, on or before April 20, 1977, are automatically deemed "existing." Individual transitional facilities with a design capability of consuming any fuel at a heat input rate which does not equal or exceed 100 million BTU's per hour, are automatically deemed "existing."

(d) To further facilitate the processing of requests for classification of transitional facilities and to reduce the administrative burden on persons requesting classification and ERA alike, facilities which were completed and title transferred, operational or at a certain stage of construction by designated dates will be classified as "existing" upon certification to ERA and, in some cases, the submission of minimal documentation. Under this approach, powerplants and MFBIs which were completed on or before April 20, 1977 and for which title was transferred to the purchaser on or before April 20, 1977, will be classified as "existing" by ERA. In addition, units which were operational on May 8, 1979 (the effective date of FUA) will be classified as "existing" by ERA. Moreover, MFBIs which are prefabricated boilers and powerplants which are prefabricated boilers or combustion turbines which had been shipped by the manufacturer, or which had their main steam drum in place (for field-erected boilers) by November 9, 1978, will similarly be classified as "existing."

(e) ERA believes that a powerplant or MFBI will incur a "substantial financial penalty" where 25 percent or more of the total projected project cost has been expended or irrevocably committed as of November 9, 1978. In assessing the expenditures or committed costs, however, ERA will exclude outlays which can be used toward the construction of an alternate fuel-fired facility or which may be cancelled. The limitation to nonrecoverable outlays follows from the definitions of new powerplants and MFBIs in Section 103 of the Act. These definitions recognize the extra costs that are incurred in building an alternate fuel-fired plant by cancelling, rescheduling or modifying a partially completed oil or gas-fired plant.

(f) Where these nonrecoverable outlays do not reach 25 percent of the total projected project cost, ERA may consider other financially-related factors presented on a case-by-case basis. The purpose of these additional case-by-case evaluations, where facilities have not expended beyond 25 percent of their total projected project cost, in to permit persons requesting classification to present ERA with full explanations of the financial penalties they believe they may incur, but which are otherwise not properly included in computing the 25 percent test.

(g) If your transitional facility is a powerplant, one of the considerations ERA will employ in reaching a determination applicable to an adverse effect on electric system reliability is whether the cancellation, rescheduling or modification of your proposed powerplant would result in your electric region's reserve margin falling below 20 percent during the 12-month period after you expect your proposed powerplant to begin operation. You may present whatever evidence you deem appropriate to ERA's reaching a determination on your claim of an adverse effect on electric system reliability.

(h) If your transitional facility is a major fuel-burning installation, your unit will be designated "existing" if you demonstrate to ERA that you would incur a significant operational detriment as a result of cancelling, rescheduling, or modifying your facility. In light of the complexity and variety of operational requirements in the MFBI sector, ERA will review these requests for classification on a case-by-case basis.

### § 515.2 Purpose and scope.

(a) *Purpose.* These rules govern requests for classification of transitional facilities by ERA as "existing" facilities subject to the provisions of Title III of FUA, rather than as "new" facilities subject to the provisions of Title II of FUA.

(b) *Application.* This Part applies to all transitional facilities. You are eligible to submit a request to have your transitional powerplant or major fuel-burning installation classified as an "existing" facility, pursuant to this Part, if a contract for the construction or acquisition of your facility was signed

prior to November 9, 1978, the date of enactment of FUA.

(c) *ERA determinations.* Based upon the criteria set forth below, and after thorough consideration of the entire administrative record of your formal request, ERA will publish in the Federal Register a formal decision either: (1) granting the request, having determined that your installation or powerplant is "existing," or (2) denying the request, having determined that your installation or powerplant is "new." ERA determinations on requests that are received by ERA on or before the effective date of this Final Rule, will be made on the basis of the provisions set forth in the Revised Interim Rule or this Final Rule, whichever would result in a more favorable disposition of your request. Determinations on requests received after the effective date of this Final Rule, will be made on the basis of this Final Rule. These determinations are final Departmental actions.

## Subpart B—Electric Powerplants

### § 515.3 Eligibility.

You are eligible to submit a request to ERA to have your transitional facility classified as "existing" if you can demonstrate to the satisfaction of ERA that a contract for the construction or acquisition of the powerplant was signed prior to November 9, 1978.

### § 515.4 Powerplants automatically classified as "new."

If a contract for the construction or acquisition of the powerplant was not signed prior to November 9, 1978, the powerplant is automatically classified as "new" and subject to the provisions of Title II of the Act.

### § 515.5 Powerplants automatically classified as "existing."

(a) Any powerplant which was operational on or before April 20, 1977, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(b) Any powerplant for which a contract for construction or acquisition was signed prior to November 9, 1978, and which does not have a design capability to consume any fuel at a fuel heat input of 100 million BTU's per hour or greater, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(c) Any powerplant for which a contract for construction or acquisition was signed before November 9, 1978, and which was operational on or before May 8, 1979, is automatically classified as "existing" and subject to the provisions of Title III of the Act upon filing with ERA of a certification. This certification must be made by a duly authorized officer of the electric utility which owns, operates or controls the powerplant. This filing will not be deemed by ERA to be a formal request for classification under this Part.

(d) Any powerplant which was completed and for which ownership of the unit was transferred from the manufacturer to a purchaser on or before April 20, 1977 shall be automatically classified as "existing" and subject to the provisions of Title III of the Act upon the submission of the evidence required by § 515.7(a)(3).

(e) Any powerplant for which a contract for construction or acquisition was signed prior to November 9, 1978 and which is:

(1) A prefabricated packaged boiler or a combustion turbine that was shipped by the manufacturer to the user by November 9, 1978 is automatically classified as "existing" upon the submission of a certification to such effect by a duly authorized officer of the electric utility that owns, operates or controls your powerplant and the evidence required by § 515.7(a)(4).

(ii) A field-erected unit, the main stream drum of which was in place by November 9, 1978, is automatically classified as existing upon the submission of a certification to such effect by a duly authorized officer of the electric utility that owns, operates or controls your powerplant and the evidence required by § 515.7(a)(5).

### § 515.6 Powerplants which ERA will classify as "existing."

ERA will classify an eligible powerplant as "existing" if you demonstrate to the satisfaction of ERA that the cancellation, rescheduling or modification of the construction or acquisition of your powerplant would result in a substantial financial penalty or an adverse effect on the electric system reliability.

(a) *Substantial financial penalty.* (1) ERA will take into consideration any financially-related factor which you consider appropriate in reaching a determination on substantial financial penalty. If you demonstrate to the satisfaction of ERA that, as of November 9, 1978, you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." In computing the 25 percent expenditure, you must include only nonrecoverable outlays expended as of November 9, 1978.

Example: You are constructing a facility which can use either petroleum or coal, and the following outlays have been made and are projected:

| | Outlays | |
|---|---|---|
| | As of 11/9/78 | Total projected project cost |
| Oil handling equipment, including storage | $1,000,000 | $2,000,000 |
| Boiler and other equipment | 4,000,000 | 7,000,000 |

In general, ERA would define a maximum of $1,000,000 as a non-recoverable outlay (oil handling equipment, oil storage) and could probably reduce this amount since certain items would be retained in an alternate fuel-firing system which used oil for startup and ignition. Outlays for the boiler are deemed recoverable, since they could be used in a coal facility, even though you would be required to spend an additional amount for pollution control and coal handling and storage facilities. (You may indicate your assessment of the impact of this additional amount by addressing subparagraph (2)(iii) of this section in your request.)

(2) If you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." If you have expended less than 25 percent under the test set forth above, you may still request classification from ERA. Your request for classification may address, among others, the following factors:

(i) The nonrecoverable outlays you would incur by cancelling, rescheduling, or modifying your current proposed powerplant in order to burn an alternate fuel or fuel mixture;

(ii) The total projected project cost and percentage of completion of the project at November 9, 1978;

(iii) The impact that cancelling, rescheduling, or modifying your present powerplant would have upon your rate base and your ability to continue in business as a sound and financially viable public utility;

(iv) The site at which the facility is located; and

(v) An alternate use for the facility under construction.

(b) *Adversely affecting electric system reliability.*

(1) ERA will make its determination applicable to electric system reliability on a case-by-case basis, after consultation with FERC and the appropriate state authority.

(2) One of the considerations ERA will employ is whether the reserve margin of the electric region in which you propose to locate your powerplant would be reduced to less than 20 percent during the 12-month period after you expect your proposed powerplant to begin operation, assuming your proposed powerplant is not completed. Firm

purchases and sales to or from the electric region will be included in ERA's evaluation. The reserve margin percentage is computed by subtracting the normal peak load expected during the 12-month period from the system's total capacity, including the additional capacity that will be available through interconnection, and dividing the result by the projected normal peak load during the delay.

(3) Notwithstanding paragraph (2) above, if you wish to demonstrate that your own electric utility's ability to provide reliable service will be adversely affected during this period, regardless of circumstances pertaining to your electric region, you may present whatever evidence you deem appropriate.

**§ 515.7 Evidence required in support of a request for classification.**

(a)(1) You must submit a separate request for classification for each facility at a single site. Each request must be in writing, and must be signed by the duly authorized officer of the company that owns, operates or controls the powerplant. Your request must include:

(i) A complete description of the transitional facility;

(ii) A statement of the date on which the contract for the construction or acquisition of the powerplant was signed and a description of the components or services contracted for; and

(iii) A statement of the date on which your powerplant became or is scheduled to become operational.

(2) ERA may request that you submit copies of any contracts concerned with the construction or acquisition of the powerplant.

(3) If your request is made pursuant to § 515.5(d), to document that the unit was completed prior to April 20, 1977, you must submit a certification from a duly authorized officer of the manufacturer to that effect. To document that ownership was transferred prior to April 20, 1977, you must submit evidence which clearly demonstrates the transfer of ownership.

(4) If your request is made pursuant to § 515.5(e)(1), to document that the unit was shipped by November 9, 1978, you must submit a statement of the date it was shipped by the manufacturer and either a copy of the bill of lading from the shipment of the prefabricated boiler or combustion turbine or a dated photograph of the prefabricated boiler or combustion turbine after it has been set in place.

(5) If your request is made pursuant to § 515.5(e)(2), to document that the main steam drum was in place by November 9, 1978, you must submit a statement of the date it was in place and either a copy of the bill of lading for the shipment of the main steam drum or a dated photograph of the main steam drum after it has been set in place.

(b)(1) If you wish to show that you will incur a substantial financial penalty, your request for classification must include the information listed below:

(i) A statement of the total projected project cost of your transitional facility projected as of November 9, 1978;

(ii) An itemized list of the project expenditures as of November 9, 1978;

(iii) An itemized list of any financial penalties you will incur by cancelling or terminating contracts signed as of November 9, 1978, for the project;

(iv) An itemized list of your recoverable expenditures for the project;

(v) An itemized list of the nonrecoverable outlays for the project; and/or

(vi) Any other relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.8(a), above.

(2) You should provide sufficient detail to enable ERA to evaluate your claim of substantial financial penalty. When providing itemized lists, you may aggregate costs of minor items in a reasonable manner, but ERA may require you to specify these costs if the cost categories are too vague or the costs are substantial.

(3) ERA may request that you submit copies of the sections of the engineering design plan and copies of environmental analyses or their summaries which describe in detail the design specifications, the construction schedule and the estimated engineering and contingency costs of the transitional facility.

(c)(1) If you wish to show an adverse effect on electric system reliability, your request for classification must include:

(i) A description of your own service area and its interconnection with other utilities;

(ii) Projections of peakload for your service area during the period of the delay that would be caused by the cancellation or redesign of the transitional facility;

(iii) The net dependable electrical capacity and peak loads for this service area for the 12 months following the expected operational date of the facility, including interconnections (if you are claiming an adverse impact on reliability during a period after the 12 months, you must provide this data for the period commensurate with the time of your anticipated reliability difficulties);

(iv) Your service area's reserve margin during the 1-year period after you expect your proposed powerplant to begin operation; and

(v) Any other relevant information you feel ERA should consider in reaching its determination.

(2) You should provide sufficient detail to enable ERA to evaluate your claim of an adverse effect on electric system reliability.

(3) ERA will conduct the required regional reliability analysis for your electric region. You are invited to assist ERA by providing the additional projected regional load and generation data needed to evaluate the reliability of your electric region. ERA will utilize its own generation and load projection data base if you do not provide the necessary data.

## Subpart C—Major Fuel-Burning Installations

**§ 515.10 Eligibility.**

You are eligible to submit a request to ERA to have your transitional facility classified as "existing" if you can demonstrate to the satisfaction of ERA that a contract for the construction or acquisition of the installation was signed prior to November 9, 1978.

**§ 515.11 Installations automatically considered to be "existing."**

(a) Any installation which was operational on or before April 20, 1977, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(b) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which does not have a design capability to consume any fuel at a fuel heat input rate of 100 million BTU's per hour, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(c) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which was operational on or before May 8, 1979, is automatically classified as "existing" and subject to the provisions of Title III of the Act upon filing with ERA of a certification. This certification must be made by a duly authorized officer of the installation. This filing will not be deemed by ERA to be a formal request for classification under this Part.

(d) Any installation which was completed and for which ownership was transferred from the manufacturer to a purchaser prior to April 20, 1977, shall

be automatically classified as "existing" and subject to the provisions of Title III of the Act upon the submission of the evidence required by § 515.15(a)(3).

(e) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978 and which is:

(1) A prefabricated packaged boiler that was shipped by the manufacturer to the user by November 9, 1978, is automatically classified as "existing" upon the submission of a certification to such effect by a duly authorized officer of the company that owns, operates or controls your installation and the evidence required by § 515.15(a)(4).

(2) A field-erected unit, the main steam drum of which was in place by November 9, 1978, is automatically classified as existing upon the submission of a certification to such effect by a duly authorized officer of the company that owns, operates or controls your installation and the evidence required by § 515.15(a)(5).

**§ 515.13 Installations which ERA will classify as "existing."**

ERA will classify an eligible installation as "existing" if you demonstrate to the satisfaction of ERA that the cancellation, rescheduling, or modification of the construction or acquisition of your installation would result in a substantial financial penalty or a significant operational detriment.

(a) *Substantial financial penalty.* (1) ERA will take into consideration any financially-related factor which you consider appropriate in reaching its determination on substantial financial penalty. If you demonstrate to the satisfaction of ERA that you have expended at least 25 percent of the total projected project cost as of November 9, 1978, ERA will classify your installation as "existing." In computing the 25 percent expenditures, you must include only nonrecoverable outlays expended as of November 9, 1978.

Example: You are constructing a facility which can use either petroleum or coal, and the following outlays have been made and are projected:

| | Outlays | |
|---|---|---|
| | As of 11/9/78 | Total projected project cost |
| Oil handling equipment, including storage | $1,000,000 | $2,000,000 |
| Boiler | 4,000,000 | 7,000,000 |

In general, ERA would define a maximum of $1,000,000 as a nonrecoverable outlay (oil handling equipment & oil storage) and would probably reduce this amount since certain items would be retained in an alternate fuel-firing system which used oil for startup and ignition. Outlays for the boiler are deemed recoverable, since they could be used in a coal fired facility, even though you would be required to spend an additional amount for pollution control and coal handling and storage facilities. [You may indicate your assessment of the impact of this additional amount by addressing subparagraph (2)(iii) of this section in your request.]

(2) If you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." If you have expended less than 25 percent under the test set forth above, you may still request classification from ERA. Your request for classification may address, among others, the following factors:

(i) The nonrecoverable outlays you would incur by cancelling, rescheduling or modifying your current proposed installation in order to burn an alternate fuel or fuel mixture;

(ii) The total projected project cost and percentage of completion of the project at November 9, 1978; and

(iii) The impact that cancelling, rescheduling, or modifying your proposed installation would have upon your ability to continue in business as a sound and financially viable entity. (In the case of a subsidiary company, ERA intends to review the financial effect on the parent company unless you can demonstrate to ERA why this would not be justified).

(b) *Significant operational detriment.* ERA will make its determination under this subsection on a case-by-case basis; however, you should indicate the operational detriment you would have incurred if you had cancelled, rescheduled, or modified your installation to burn an alternate fuel or fuel mixture at November 9, 1978. Your request for classification should address the following factors:

(1) The extent of construction and anticipated start-up date;

(2) The potential impact of the loss of production which could not be rescheduled elsewhere;

(3) The potential impact on employment, including the number and type of jobs lost, excluding those that may be absorbed elsewhere within your parent company; and

(4) The anticipated annual capacity utilization factor of the unit, as well as seasonal or other variations in use.

**§ 515.15 Evidence required in support of a request for classification.**

(a)(1) You must submit a separate request for classification for each facility at a single site. Each request must be in writing and must be signed by the duly authorized officer of the company that owns, operates or controls the installation. Your request for classification must include:

(i) A complete description of the transitional facility;

(ii) A statement of the date on which a contract for the construction or acquisition of the installation was signed, and a description of the components or services contracted for; and

(iii) A statement of the date on which your installation became or is scheduled to become operational.

(2) ERA may request that you submit copies of any contracts concerned with the construction or acquisition of the installation.

(3) If your request is made pursuant to § 515.12(d), to document that the unit was completed prior to April 20, 1977, you must submit a certification from a duly authorized officer of the manufacturer to that effect. To document that ownership was transferred prior to April 20, 1977, you must submit evidence which clearly demonstrates the transfer of ownership.

(4) If your request is made pursuant to § 515.12(e)(1), to document that the unit was shipped by November 9, 1978, you must submit a statement of the date it was shipped by the manufacturer and either a copy of the bill of lading for the shipment of the prefabricated boiler or a dated photograph of the prefabricated boiler after it has been set in place.

(5) If your request is made pursuant to § 515.12(e)(2), to document that the main steam drum was in place by November 9, 1978, you must submit a statement of the date it was in place and either a copy of the bill of lading for the shipment of the main steam drum or a dated photograph of the main steam drum after it has been set in place.

(b)(1) If you wish to show that you will incur a substantial financial penalty, your request for classification must include:

(i) A statement of the total projected project cost of your transitional facility projected as of November 9, 1978;

(ii) An itemized list of the project expenditures as of November 9, 1978;

(iii) An itemized list of any financial penalties you will incur by cancelling or terminating contracts for the project signed as of November 9, 1978;

(iv) An itemized list of your recoverable expenditures for the project;

(v) An itemized list of the nonrecoverable outlays for the project; and/or

(vi) Any other relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.13(a), above.

(2) You should provide sufficient detail to enable ERA to evaluate your claim of substantial financial penalty. When providing itemized lists, you may aggregate costs of minor items in a reasonable manner, but ERA may require you to specify these costs if the cost categories are too vague or the costs are substantial.

(3) ERA may request that you submit copies of the sections of the engineering design plan and copies of environmental analyses or their summaries which describe in detail the design specifications, the construction schedule and the estimated engineering and contingency costs of the transitional facility.

(c) If you wish to show that you will incur a significant operation detriment, your request for classification should include any relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.13(b), above. You should provide sufficient detail to enable ERA to evaluate your claim of significant operational detriment.

(d) ERA may request any additional evidence it deems necessary to adequately review your request for classification.

## Subpart D—Definitions

### § 515.20 Definitions.

(a) All terms defined in this subpart shall apply only to Part 515, Transitional Facilities. These definitions are not applicable to and may differ from the definitions promulgated or to be promulgated under other regulations implementing FUA.

(b) Throughout this Part, the "Act" or "FUA" means the Powerplant and Industrial Fuel Use Act of 1978.

(c) Unless otherwise expressly provided; for purposes of this Part of these regulations, the term:

(1) "Alternate fuel" means electricity or any fuel, other than natural gas or petroleum. The term includes—

(i) Coal;

(ii) Solar energy;

(iii) Petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood and renewable and geothermal energy sources;

(iv) Liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity;

(v) Any fuel derived from an alternate fuel; and

(vi) Waste gases from industrial operations.

(2) "Btu" means British thermal unit.

(3) "Coal" means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

(4) "Conference" means an informal meeting, incident to any proceeding, between ERA and any interested person.

(5) "Construction" means substantial construction in terms of an actual and meaningful commitment to building the powerplant or MFBI, and includes more than merely clearing a site or putting in foundation pilings for the unit.

(6) "Contract for construction or acquisition" means a legally-binding agreement or agreements for substantial onsite construction or reconstruction, or for the purchase or rental of significant equipment or appurtenances required for the construction or operation of a powerplant or MFBI, including, but not necessarily limited to, the boiler and its major components, fuel-handling equipment and pollution control equipment. This term shall not include contracts for the purchase of land, site clearance or preparation, or the installation of foundation pilings.

(7) "Duly authorized officer" means the Chief Executive Officer or his designee of a company that owns, operates or controls a facility.

(8) "Duly authorized representative" means a person who has been designated to appear before ERA in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. The appearance may consist of the submission of applications, requests, statements, memoranda of law, other documents, or of a personal appearance, oral communication, or any other participation in the proceeding.

(9) "Electric powerplant" means any stationary electric generating unit, consisting of a boiler, a combustion turbine unit, a generator or a combined cycle unit, which produces electric power for purposes of sale or exchange, and—

(i) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater.

(ii) As used herein, the term "electric generating unit" does not include—

(A) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(B) Any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale.

(10) "Electric region"—The following is a list of electric regions for use with regard to this Part. The regions are identified by FERC Power Supply areas as authorized by section 202(a) of the Federal Power Act except where noted.

(i) Each grouping meets one or more of the following criteria:

A. Existing centrally-dispatched pools and hourly power brokers;

(B) Systems with joint planning and construction agreements;

(C) Systems with coordination agreements in the areas of—

(1) Generation reserve and system reliability criteria

(2) Capacity and energy exchange policies

(3) Maintenance scheduling

(4) Emergency procedures for dealing with Capacity or fuel shortages;

(D) Systems within the same National Electric Council (NERC) region with historical coordination policies.

(ii) The Power Supply Areas (PSA's), referred to in the definition of electric regions, were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. I, Pg. I-3-16. In cases where you find an ambiguity in a regional assignment, you shall consult with ERA for an official determination.

(iii) *Electric region groupings.*

| | DOE (FERC) power supply areas |
|---|---|
| (A) Allegheny Power System (APS) | 7, except Duquesne. |
| (B) American Electric Power System (AEP). | Entire AEP System. |
| (C) New England Planning Pool (NEPOOL). | 1, 2. |
| (D) New York Planning Pool (NYPP) | 3, 4. |
| (E) Pennsylvania-New Jersey-Maryland Interconnection (PJM). | 5, 6. |
| (F) Commonwealth Edison Company. | 14. |
| (G) Florida Coordination Group (FCG). | 24. |
| (H) Middle South Utilities | 25. |
| (I) Southern Company | 22, 23. |
| (J) Gulf States Group | 35. |
| (K) Tennessee Valley Authority (TVA). | 20. |
| (L) Virginia-Carolina Group (VACAR) | 18, 21. |
| (M) Central Area Power Coordination Group (CAPCO). | Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Duquesne Light Company. |
| (N) Cincinnati, Columbus, Dayton Group (CCD). | Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, Dayton Power and Light Company. |
| (O) Kentucky Group | 19. |
| (P) Indiana Group | Indiana Utilities except AEP. |

| | DOE (FERC) power supply areas |
|---|---|
| (Q) Illinois-Missouri Group (ILLMO) | 15, 40. |
| (R) Michigan Electric Coordinated Systems (MECS). | 11. |
| (S) Wisconsin-Upper Michigan Group (WUMS). | 13. |
| (T) Mid-Continent Area Power Pool | 16, 17, 26, 27, 28. |
| (U) Missouri-Kansas Group (MOKAN). | 29, 24. |
| (V) Oklahoma Group | 33, 36. |
| (W) Texas Interconnected Systems (TIS). | 37, 38. |
| (X) Rocky Mountain Power Pool (RMPP). | 31, 32. |
| (Y) Northwest Power Pool (NWPP) | 30, 42, 43, 44, 45. |
| (Z) Arizona-New Mexico Group | 39, 48 within Arizona. |
| (AA) Southern California-Nevada | 47, 48 in Nevada and California. |
| (BB) Northern California-Nevada | 46. |
| (CC) Alaska [non-interconnected systems to be considered separately]. | 49. |
| (DD) Idaho-Utah Group | 41. |

(11) "Electric utility" means any person, including any affiliate, or Federal agency, who sells electric power.

(12) "ERA" means the Economic Regulatory Administration of the Department of Energy.

(13) "Facility" means an electric powerplant or major fuel-burning installation.

(14) "FERC" means the Federal Energy Regulatory Commission.

(15) "Installation" means "major fuel-burning installation."

(16) "Fuel heat input rate" means the hourly fuel feed rate multiplied by the gross heating value of the fuel at 60 degrees F. The rate, expressed in millions of BTU's per hour, measures the maximum capacity of the unit and is not related to the rate of actual use. The fuel input rate also reflects the highest rate which can be attained in the unit among the various rates associated with the different fuel capabilities of the unit.

(17) "Main steam drum" means the drum in the boiler where the process of steam separation occurs.

(18) "Main steam drum in place" means that the main steam drum has been lifted to and hung on the field-erected boiler, so that the main steam drum is blocked or braced in place.

(19) "Major fuel-burning installation," means a stationary unit consisting of a boiler, which—

(i) Has a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 100 million BTU's per hour or greater.

(ii) "Major fuel-burning installation" does not include—

(A) Any electric powerplant; or

(B) Any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to ERA of such use.

(C) Steam generators for crude oil recovery.

(20) "MFBI" means "major fuel burning installation."

(21) "Mixture" when used in relation to fuels used in a unit, means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels used simultaneously or alternately in such unit.

(22) "Nonrecoverable outlays" are those expenditures you have made for your transitional facility, as of November 9, 1978, which could not be used in the construction or operation of a facility to burn an alternate fuel, including any expenditures you would be required to make as a result of cancelling contracts signed prior to November 9, 1978. In determining nonrecoverable outlays, you must select the method which results in the least amount of nonrecoverable outlays. The following items are to be excluded from nonrecoverable outlays:

(i) Reimbursements from selling or salvaging equipment or appurtenances associated with the petroleum/gas boiler system; and

(ii) Expenditures for equipment or appurtenances which can be used elsewhere by the owner or operator of the powerplant or installation.

(23) "Operational" means that a unit is used and useful, has completed its testing phase and is capable of producing a product or providing a service on a continuing basis.

(24) "Person" means—

(i) Any individual corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;

(ii) Any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States;

(iii) Any agency or instrumentality (including any municipality) thereof; or

(iv) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(25) "Powerplant" means "electric powerplant."

(26) "Reconstruction" means refurbishment or addition to a powerplant or major fuel-burning installation, since April 20, 1977, to the extent that the cost of such refurbishment or addition equals or exceeds 50 percent of the price of a replacement unit.

(27) "Recoverable outlays" are those expenditures you have made for your transitional facility, as of November 9, 1978, which could be used in the construction or operation of a facility to burn an alternate fuel. The following items are to be included as recoverable outlays:

(i) Reimbursements from selling or salvaging equipment or appurtenances associated with the petroleum/gas boiler system; and

(ii) Expenditures for equipment or appurtenances which can be used elsewhere by the owner or operator or the powerplant or installation.

(28) "Request for Classification" means the formal request for classification of a facility as "existing" made to ERA through submission of appropriate forms and other information pertaining to eligibility and evidentiary requirements as stated in these regulations under this Part.

(29) "Total projected project cost" means total expenditures, projected as of November 9, 1978, required to perform the feasibility study, engineering, and labor for the construction of your planned facility, as well as all expenditures required for the purchase of the boiler and/or nonboiler and all of its components, fuel-handling equipment, pollution control equipment, and other appurtenances necessary for the construction and operation of the facility. In calculating the total projected project cost, expenditures for marketing studies and land acquisition must be excluded.

(30) "Transitional Facility" means a facility which was not operational on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978.

(31) "Turbine generator or combustion turbine generator" means an electric power-generating unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of any fuel, with an electric power generator driven by the engine.

## Subpart E—Administrative Provisions

### § 515.25 Purpose and scope.

This subpart establishes the general procedures that are applicable to this Part.

### § 515.26 Notice and public comment.

When ERA receives your properly filed request for classification under this Part, it will publish a notice in the Federal Register. ERA will provide in the notice a period of no less than 21 days for interested persons to file written data, views or arguments. ERA will not provide an opportunity for a public hearing.

### § 515.27 Conferences.

(a) You may file a written request for a conference with ERA regarding your request for classification. The request must be filed at the address provided in

§ 515.35. ERA in its discretion will decide whether to hold a conference.

(b) Actual notice of the time, place, and nature of the conference will be provided to the person who requested the conference. ERA will determine who may attend a conference, but a conference will generally include only the representative of the person requesting the conference, government representatives, and other persons requested by the person requesting the conference.

(c) When ERA convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. You may submit documentary evidence at the conference. ERA will not normally have a transcript of the conference prepared but may do so at its discretion. However, a summary of major points discussed will be prepared by ERA and placed in the public record with confidential material deleted.

(d) Because a conference is solely for the exchange of views incident to a request for classification, ERA will not prepare a transcript, issue a final report or finding unless ERA in its discretion determines that it would be advisable.

**§ 515.28 Appearance before ERA.**

(a) A person may participate in any proceeding described in this Part on his own behalf or by a duly authorized representative. Any request for classification filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative. Falsification of the certification will subject the person to the sanctions stated in 18 U.S.C. 1001.

(b) ERA may deny, temporarily or permanently, the privilege of participating in conferences, including oral presentations, to any individual who is found by ERA:

(1) To have made false or misleading statements, either orally or in writing;

(2) To have filed false or materially altered documents, affidavits or writings;

(3) To lack the specific authority to represent the person seeking an ERA action; or

(4) To have disrupted or to be disrupting a proceeding.

**§ 515.29 Computation of time.**

(a) *Days.* (1) When ERA computes time in days under these regulations, ERA will not include the day of the act (or default) from which a period of time begins to run. ERA will include the last day of the period, unless it is a Saturday, Sunday or Federal legal holiday, in which case the period runs until the end of the next normal working day that is not a Federal legal holiday.

(2) ERA shall exclude Saturdays, Sundays or intervening Federal legal holidays from its computation of time when the period of time allowed or prescribed in the regulations is 7 days or less.

(b) *Additional time after service by mail.*

Whenever ERA serves by mail decision, notice, interpretation or other document, which may specify a time period for you to perform an act, refrain from performing an act, or commence a proceeding, you may add 3 days to the period prescribed.

**§ 515.30 Service.**

(a) ERA will serve all decisions personally or by certified mail unless otherwise provided in these regulations. All other documents will be sent by ERA by first class mail.

(b) ERA will consider service upon your duly authorized representative to be service upon you.

(c) Service by mail is effective upon mailing. ERA will consider official United States postal receipts from certified mailing as *prima facie* evidence of service.

**§ 515.31 General filing requirements.**

(a) *Where to submit.* You must file your request for classification with ERA at the address provided in Section 515.35.

(b) *When to submit.* Submit your request for classification under the provisions of this Part within 30 days after the effective date of this Final Rule.

(c) *Number of copies.* You should submit four copies of your request for classification.

(d) *Completed filing.* (1) Your request for classification is considered to be filed when you have submitted four copies of your request and any required supporting documentation, and it has been accepted by ERA. If for any reason your request for classification is not acceptable, ERA will notify you within 42 days (6 weeks) from the date of receipt of any deficiencies or defects contained in your request.

(2) If ERA requests other documents or additional information from you, these will be considered to be filed upon receipt unless ERA advises you to the contrary within a reasonable time.

(e) *Signing and attestation.* (1) If you file a request for classification under this Part on behalf of a company or corporation, a duly authorized official of that company or corporation must attest in writing as to the accuracy of all of the facts and statements contained in that request.

(2) If you file a request for classification under this Part on behalf of a subsidiary of a company or corporation, a duly authorized official of both the controlling or parent company or corporation and its subordinate or subsidiary company or corporation must attest in writing as to the accuracy of all facts and statements contained in that request.

(3) If you file a request for classification under this Part on behalf of an entity other than a company or corporation, a duly authorized official of that entity must attest in writing as to the accuracy of all of the facts and statements contained in that request.

(4) All requests, comments, attestations or other documents filed under this Part by a duly authorized representative, as defined by § 515.20(c)(8), must contain the written attestation by that person that he is a duly authorized representative and state the basis for his authority.

(f) *Labeling.* You should clearly label any request for classification or other document that you file with ERA, as "Request for Classification as an Existing Facility" both on the document and on the outside of the envelope in which the document is transmitted.

(g) *Obligation to supply information when you file a request for classification, and other documents relevant thereto.* You are under a continuing obligation during the proceeding to provide the ERA with any new or newly discovered information concerning significantly changed circumstances relevant to the facility.

(h) *Request for confidential treatment.* (1)(i) If you wish to file a document with ERA claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 as amended) or is otherwise exempt by law from public disclosure, and if you wish to request ERA not to disclose such information, you must comply with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004 (44 FR 1908, January 8, 1979).

(2) ERA retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by ERA to deny such claim, in whole or in part, and an opportunity to respond will be given to the person claiming confidentiality of information no less than 7 days prior to the public disclosure of such information.

(3) This subsection does not apply where information is being submitted on an ERA form which contains its own instructions as to requests for

confidential treatment of information provided.

(4) Each request for ERA action must be submitted as a separate document, even if the request deals with the same or a related issue, act or transaction, or is submitted in connection with the same proceeding.

**§ 515.32 Extension of time.**

ERA may, in its discretion, provide an extension of time to file a request for classification if you can show good cause for the extension. You should submit your request for an extension within 30 days after the effective date of this rule.

**§ 515.33 Effective date of decision.**

Any decision issued by ERA under this Part is effective on the date issued against all persons having actual notice of it. Such decision is deemed to be issued on the date it is signed by an authorized representative of ERA, unless the decision or other determination states otherwise.

**§ 515.34 Order of precedence.**

If there is any conflict or inconsistency between the provisions of this subpart and any other provision of this Part, the provisions of this subpart shall contol as it relates to classifications of Transitional Facilities. ERA determinations on requests for classification that are received by ERA on or before the effective date of this Final Rule shall be made on the basis of the Revised Interim Rule, or upon this Final Rule where the application of the Final Rule would result in a more favorable disposition of your request. For requests made after the effective date of this rule ERA shall apply the provisions of this Final Rule.

**§ 515.35 Addresses for filing documents with the ERA.**

All requests, reports, ERA forms, written communications or other documents are to be filed with the Assistant Administrator for Fuels Conversion, Economic Regulatory Administration, Attention: Office of Public Hearing Management, 2000 M Street, N.W., Washington, D.C., 20461.

**§ 515.36 Office of public information.**

The Office of Public Information (2000 M Street, N.W., Washington, D.C., Room B-110) is available for public inspection of documents and copying of the following information:

(a) A list of all persons who have filed a request for classification for designation as existing facilities.

(b) Each decision on a request for classification which will contain a statement setting forth the relevent facts and legal basis of each decision, with confidential information deleted, as well as written comments received from interested persons in connection with a request.

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