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Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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 August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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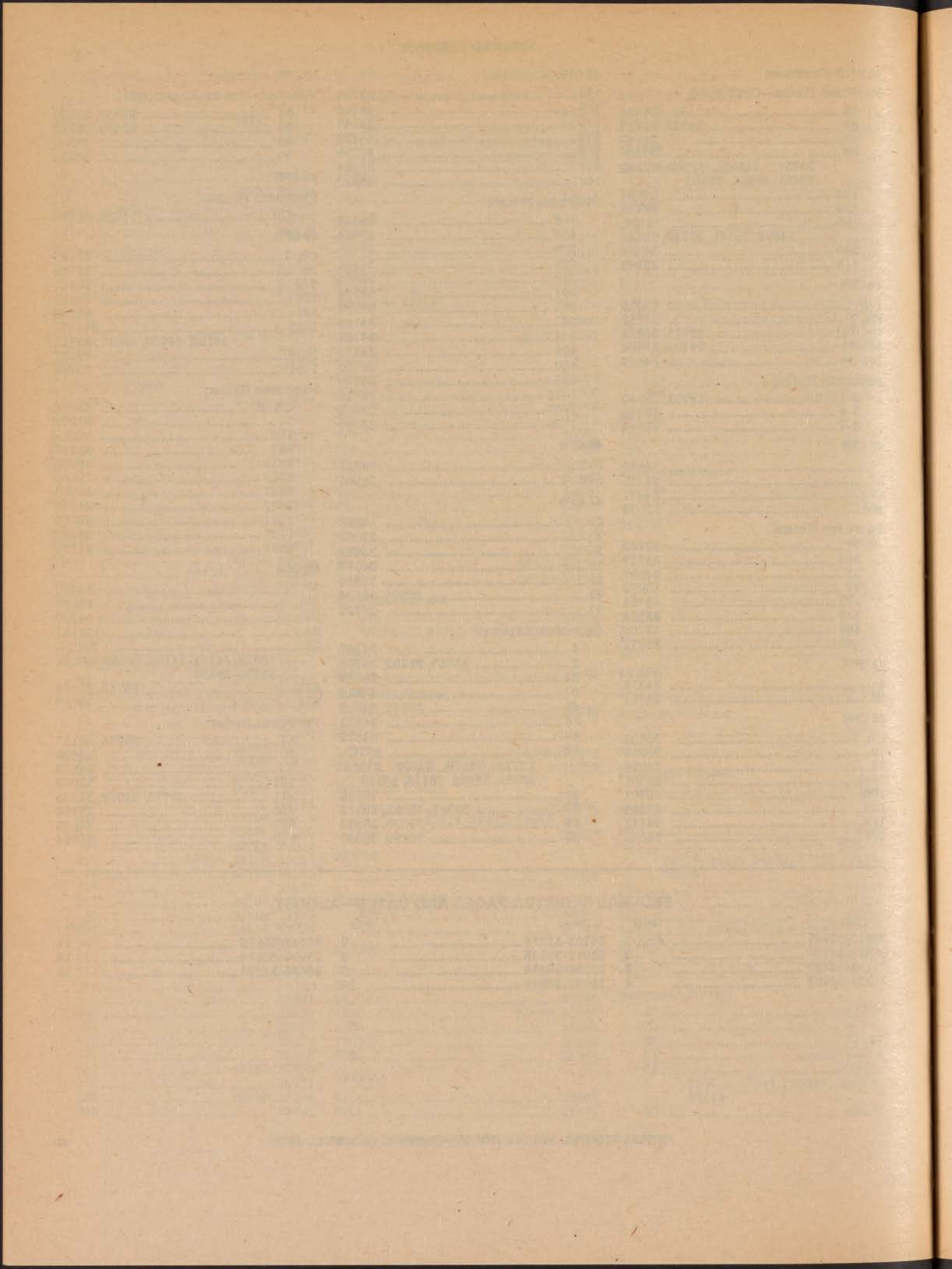
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[3195-01]

Title 3—The President

REORGANIZATION PLAN NO. 2 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.¹

PART I. Office of Personnel Management

Section 101. Establishment of the Office of Personnel Management and its Director and Other Matters. There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

Section 102. Transfer of Functions. Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105 are hereby transferred to the Director of the Office of Personnel Management.

Section 103. Deputy Director and Associate Directors.

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule.

Section 104. Functions of the Director. The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and

¹As amended July 11, 1978.

regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

Section 105. Authority to Delegate Functions. The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. Merit Systems Protection Board

Section 201. Merit Systems Protection Board.

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

Section 202. Functions of the Merit Systems Protection Board and Related Matters.

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

- (i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701 and 8347(d);
- (ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104(a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the FEDERAL REGISTER.

Section 203. Savings Provision. The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

Section 204. The Special Counsel.

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule.

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary

action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the FEDERAL REGISTER.

(h) The Special Counsel shall not issue advisory opinions.

PART III. Federal Labor Relations Authority

Section 301. Establishment of the Federal Labor Relations Authority.

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule.

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

Section 302. Establishment of the General Counsel of the Authority. There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel. The Federal Service Impasses Panel, established under Executive Order 11491, as amended, (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

Section 304. Functions. Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended;

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those

functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

Section 305. Authority Decisions. The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other Provisions. Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

Section 307. Savings Provision. All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. General Provisions

Section 401. Incidental Transfer. So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

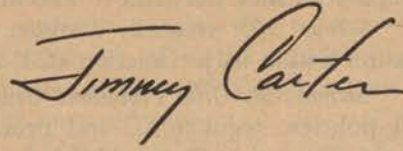
Section 402. Interim Officers.

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

Section 403. Effective Date. The provisions of this Reorganization Plan shall

become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.



[FR Doc. 78-22962 Filed 8-14-78; 10:29 am]

LEGISLATIVE HISTORY:

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 21: May 23, Presidential message transmitting Reorganization Plan No. 2 of 1978 to Congress. (Also printed as House Document No. 95-341.)

Vol. 14, No. 28: July 11, Presidential message transmitting an amendment to Reorganization Plan No. 2 of 1978 to Congress. (Also printed as House Document No. 95-369.)

HOUSE REPORT No. 95-1396 accompanying H. Res. 1201 (Comm. on Government Operations).

SENATE REPORT No. 95-1049 accompanying S. Res. 464 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 124(1978):

May 23, 24, H. Res. 1200 and H. Res. 1201, resolutions of disapproval, introduced in House and referred to Committee on Government Operations.

S. Res. 462 and S. Res. 464, resolutions of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.

H. Res. 1201 rejected by House.

rules and regulations

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

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Correction of final rule.

SUMMARY: This corrects the headline of § 213.3316(k) which appeared incorrectly in the FEDERAL REGISTER of July 11, 1978, on page 29763.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3316(k) is corrected to read as follows:

§ 213.3316 Department of Health, Education, and Welfare.

(k) *Office of the Assistant Secretary for Planning and Evaluation.*

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-22604 Filed 8-14-78; 8:45 am]

[3410-34]

Title 7—Agriculture

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Gypsy Moth and Browntail Moth

LIST OF HAZARDOUS MOBILE HOME PARKS AND RECREATIONAL SITES

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the supplemental regulation which describes those mobile home parks and recreational sites subject to the Federal gypsy moth and browntail moth quarantine and regulations. It designates as hazardous, due to gypsy moth infestation, recreational sites not previously so designated in Clinton, Orange, Sullivan, and Warren Counties in New York. All recreational vehicles moving from a designated hazardous site to destinations outside of the gypsy moth regulated area will require inspection and/or treatment and certification in order to prevent the spread of the gypsy moth. This amendment is necessitated by information obtained from the most recent gypsy moth surveys conducted in these areas.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

E. E. Crooks, 301-436-8249.

SUPPLEMENTARY INFORMATION: Continual surveys for gypsy moth life stages are conducted by inspectors of this Department in order to determine the degree of infestation in and around recreational sites in the gypsy moth regulated area. These surveys have revealed that gypsy moth larvae have migrated, because of population pressure and scarcity of food, into certain recreational sites in search of food material. These larvae and other life stages of the pest may be easily transported into uninfested areas beyond the perimeters of the regulated area aboard recreational vehicles. The sites which are determined by inspectors to be so infested with the pest as to present a potential source for spreading the gypsy moth into currently uninfested areas must be designated as hazardous in § 301.45-2c of the regulations (7 CFR 301.45-2c). All recreational vehicles moving from designated hazardous recreational sites to destinations outside of the gypsy moth regulated area require inspection, and/or treatment, and certification.

This document designates certain recreational sites in Clinton, Orange, Sullivan, and Warren Counties in New York, as hazardous.

The Deputy Administrator of the Plant Protection and Quarantine Pro-

grams has determined that the gypsy moth has been found in the recreational sites listed below, or there is reason to believe that gypsy moth is present in them, or that there is a risk of infestation to these areas by the gypsy moth because of their proximity to infestations of the gypsy moth.

Therefore, the supplemental regulation designating hazardous mobile home parks and recreational sites, 7 CFR 301.45-2c, is hereby amended as follows:

1. In § 301.45-2c(a), under hazardous recreational sites, a new listing for the State of New York is added at the end thereof to read as follows:

§ 301.45-2c List of hazardous mobile home parks and recreational sites.

• • • • •
(a) Hazardous recreational sites.

• • • • •

NEW YORK

CLINTON COUNTY

Ausable: Ausable River Campground.
Peru: Twin Ponds Campgrounds.

ORANGE COUNTY

Crawford: Winding Hill Campground.

SULLIVAN COUNTY

Bethel: Swan Lake Campground.
Mamaking: KOA Campground.
Wawarsing: Skyway Campground.

WARREN COUNTY

Hauge: Rogers Rock Campground

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 37 FR 28464, 28477, as amended; 38 FR 19141, 7 CFR 301.45-2c, 38 FR 8659.)

This document imposes restrictions that are necessary to prevent the spread of the gypsy moth. They should be made effective promptly in order to accomplish their purpose, since the gypsy moth life stages may currently be transported into noninfested areas aboard recreational vehicles. Furthermore, it does not appear that public participation in this rule-making proceeding would make additional information available to the Department. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice of rulemaking

and other public procedure with respect to these amendments are unnecessary and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 10th day of August 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821, as amended, and OMB Circular A-107.

J. F. SPEARS,
Acting Deputy Administrator,
Plant Protection and Quarantine
Programs, Animal and
Plant Health Inspection Service.

[FR Doc. 78-22732 Filed 8-14-78; 8:45 am]

[3410-05]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 9]

PART 725—FLUE-CURED TOBACCO

Subpart—Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973-74, and Subsequent Marketing Years

1977-78 AVERAGE MARKET PRICE AND 1978-79 PENALTY RATE

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

ACTION: Final rule.

SUMMARY: This rule contains the average market price received by producers for the 1977-78 marketings and the penalty rate for excess tobacco for the 1978-79 marketing year. The penalty rate is 75 percent of the previous year market average, as required by section 314 of the Agricultural Adjustment Act of 1938, as amended.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Maurice Reddick, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-7935.

SUPPLEMENTARY INFORMATION: Since the 1977-78 average market price producers received for Flue-cured tobacco and the rate of penalty reflect mathematical computations rather than substantive changes, it is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable, unnecessary, and contrary to the public interest.

FINAL RULE

Accordingly, 7 CFR Part 725 is amended by revising section 725.92(b) to read as follows:

§ 725.92 Rate of penalty.

(b)(1) *Average market price.* The average market prices as determined by the Crop Reporting Board for the marketing year specified was:

<i>Average market price</i>	
Marketing year	Cents per pound
1972-73	85.3
1973-74	88.1
1974-75	105.0
1975-76	99.8
1976-77	110.4
1977-78	117.6

(2) *Rate of penalty per pound.* The penalty per pound for marketings of excess tobacco subject to marketing quotas during the marketing years specified shall be:

<i>Rate of penalty</i>	
Marketing year	Cents per pound
1973-74	64
1974-75	66
1975-76	79
1976-77	75
1977-78	83
1978-79	88

(Secs. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended; 47, as amended; 48, as amended; 75 Stat. 469, as amended; 79 Stat. 66, 52 Stat. 63, as amended; 65-66, as amended; 72 Stat. 995; sec. 401, 63 Stat. 1504, as amended; secs. 106, 122, 125, 70 Stat. 191, 195, 198, as amended; sec. 16(e) 76 Stat. 606 (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836) (16 U.S.C. 590p(e)).)

Signed at Washington, D.C., on August 7, 1978.

STEWART N. SMITH,
Acting Administrator, Agricultural
Stabilization and Conservation
Service.

[FR Doc. 78-22688 Filed 8-14-78; 8:45 am]

[3410-02]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 991—HOPS OF DOMESTIC PRODUCTION

Expenses of the Hop Administrative Committee, and Rate of Assessment for the 1978-79 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1978-79 marketing year, to be collected from handlers to support activities of the Committee which locally administers the Federal marketing order covering hops of domestic production.

DATES: Effective August 1, 1978, through July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION:

FINDINGS

Pursuant to marketing order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Committee, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

§ 991.313 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Hop Administrative Committee during the 1978-79 marketing year, will amount to \$196,847.

(b) The rate of assessment for said year payable by each handler in accordance with §991.56 is fixed at 0.3 cent per pound of salable hops.

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), as the order requires that the rate of assessment for a particular marketing year shall apply to all assessable hops handled from the beginning of such year which began August 1, 1978. To enable the Committee to meet marketing year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

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

Dated: August 10, 1978.

FLOYD F. HEDLUND,
Director,
Fruit and Vegetable Division.

[FR Doc. 78-22686 Filed 8-14-78; 8:45 am]

[3410-02]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK)

[Milk Order No. 40]

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA,

ACTION: Suspension of rule.

SUMMARY: This order suspends some provisions of the order affecting the regulatory status of milk supply plants. The action was requested by a cooperative association that represents a substantial proportion of the producers supplying the market. It would reduce the proportion of milk receipts at a supply plant that must be shipped to pool distributing plants during a month to qualify the supply plant for pooling. The suspension would be for the period of October 1978 through March 1979.

DATE: Effective October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Mar-

keting Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION:

Prior document in this proceeding: Notice of proposed suspension—issued June 19, 1978, published June 23, 1978 (43 FR 27195).

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

Notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 27195) concerning a proposed suspension of certain provisions of the order. The public had an opportunity to comment on the proposed suspension in writing. Three cooperative associations supported the suspension in comments filed. No comments were filed opposing the suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is found and determined that for the months of October 1978 through March 1979 the following provisions of the order do not tend to accomplish the declared policy of the Act:

In the first sentence of §1040.7(b)(1), the words "40 percent" and "for each of the months of April through September".

As suspended, that portion of the first sentence would read: " * * * not less than 30 percent of the total quantity * * * "

STATEMENT OF CONSIDERATION

The suspension will reduce for 6 months the proportion of milk receipts at a supply plant that must be shipped to pool distributing plants to qualify the supply plant as a pool plant. Presently, a supply plant must ship not less than 40 percent of the total quantity of grade A milk received at the plant from producers or cooperative associations, or diverted from it to nonpool plants, to qualify as a pool plant during the months of October through March. The suspension reduces the proportion to 30 percent, the level which now applies during the months of April through September.

The suspension was requested by Michigan Milk Producers Association. The cooperative has had to make uneconomic shipments of milk to maintain pool status for supplyification responsibility through unit pooling. This has resulted because substantial quantities of milk that normally are received direct from farms at pool distributing plants are having to be shipped at considerable expense to

nonpool plants for manufacturing. This is necessary to make room at pool distributing plants for qualifying shipments from supply plants.

The change in the method normally used by the cooperative to pool supply plants has resulted from increased milk supplies and lower class I sales over the past 2 years. In the 6 months of October 1977 through March 1978, total milk deliveries to the southern Michigan market were 2.05 billion pounds compared with 1.93 billion pounds for the same 6-month period of October 1975 through March 1976. This represented an increase of 6.2 percent. Class I sales during October 1977 through March 1978 decreased 2.4 percent from the October 1975 through March 1976 period.

A further complication in supply plant pooling is expected to develop prior to the next period of October 1978 through March 1979 when the higher shipping requirement applies. A major customer of the cooperative association is expected to distribute from its plant under another order a portion of the class I sales now distributed from its order 40 pool distributing plant. The cooperative expects to continue to sell milk to the customer from an order 40 supply plant, but under the pooling provisions of the order such sales to plants under other Federal orders do not count toward meeting the required shipments to pool distributing plants.

The suspension was supported by two other cooperative associations that supply milk to the market. One of the cooperatives supported the suspension on the grounds that without it a needless expenditure of money would be required for the transportations of milk to qualify it for pooling during the period of October 1978 through March 1979.

The other cooperative operates two supply plants that are qualified under the unit pooling provisions of the order. While the association does not have a qualifying problem at present, it fully appreciates the problems that proponents of the suspension are experiencing.

The cooperative also supports the suspension because of the possibility of unstable marketing conditions that would prevail absent the suspension. It indicated that the result would be that some producers would not participate in the southern Michigan pool, which would promote disorderly and unstable marketing conditions.

The suspension is necessary because it will enable a major supplier of milk to the market, and any others similarly situated, to maintain the continued pooling of supply plants that have regularly supplied the fluid milk needs of the market. The need for the suspension is temporary because the market-

ing conditions that require it are expected to adjust to a more normal pattern.

Therefore, good cause exists for making this order effective October 1, 1978.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of October 1978 through March 1979.

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

Effective date: October 1, 1978.

Signed at Washington, D.C. on August 10, 1978.

P. R. "BOBBY" SMITH,
Assistant Secretary for
Marketing Services.

[FR Doc. 78-22731 Filed 8-14-78; 8:45 am]

[3410-05]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

Subchapter B—Loans, Purchases, and Other Operations

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1978 and Subsequent Crops Rice Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the general provisions under which producers may obtain price support on their 1978 and subsequent crops of rice. This rule deletes the requirement that producers be notified of their share of eligibility, provides that producers may designate eligibility to a cooperative on a form CCC-822, Certificate of Eligibility, and changes the definition of an eligible producer. This rule is needed in order to advise producers of program provisions.

EFFECTIVE DATE: August 15, 1978.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3752 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Dalton Ustynik, ASCS, 202-447-6611.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the FEDERAL REGISTER on April 26, 1978, 43 FR 17964, stating that the Department of Agriculture proposed to make determinations and

issue regulations relative to a loan and purchase program for 1978 crop rice. Such determinations were to include operational provisions needed to carry out the program. No comments were received concerning the operational provisions. However, it has been determined that the definition of a cooperator will be changed to conform with the definition contained in the Food and Agriculture Act of 1977, that producers do not have to be notified of the quantity of their rice eligibility, that producers must present a CCC-822, Certificate of Eligibility, to their cooperative before the cooperative may pledge the producers rice for loan. Therefore, the general regulations governing price support for 1978 and subsequent crops are supplemented as stated herein for the 1978 and subsequent crops of rice. The material previously appearing in this subpart remains in full force and effect as to the crops to which it was applicable. Accordingly, the regulations in § 1421.300 through § 1421.313 and the title of the subpart are revised to read as follows:

Subpart—1978 and Subsequent Crops Rice Loan and Purchase Programs

Sec.	Purpose.
1421.300	Purpose.
1421.301	Definitions.
1421.302	Availability.
1421.303	Eligible rice.
1421.304	Compliance requirements.
1421.305	Determination of quality.
1421.306	Determination of quantity.
1421.307	Warehouse receipts.
1421.308	Warehouse charges.
1421.309	Fees and charges.
1421.310	Inspection certificates.
1421.311	Settlement.
1421.312	Maturity of loans.
1421.313	Support rates.

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c); secs. 101, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421); sec. 102, 90 Stat. 183 (7 U.S.C. 1441); sec. 702, 91 Stat. 940 (7 U.S.C. 1441).

§ 1421.300 Purpose.

This supplement contains program provisions which together with (a) the annual crop year supplement, (b) the general regulations governing price support for the 1978 and subsequent crops, (c) the Cooperative Marketing Association eligibility requirements for price support regulations in part 1425 of this chapter, and (d) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1978 and subsequent crops of rice.

§ 1421.301 Definitions.

(a) *Farm operator.* A farm operator is a producer in a farm allotment area who has general control of the farming operations on the farm.

(b) *Rice operator.* A rice operator is a producer in a producer allotment area who carries out or arranges for the actual planting, cultivation, harvesting, and marketing of a specific acreage of rice on a farm and to whom zero allotment or a specific allotment acreage is attributed.

§ 1421.302 Availability.

A producer desiring price support must request a loan on or notify the ASCS county office of his intention to sell his eligible rice no later than the date(s) set forth in the applicable annual crop supplement to the regulations in this part.

§ 1421.303 Eligible rice.

(a) *General.* To be eligible for loans and purchases, rice must meet the requirements of this section in addition to the other eligibility requirements of the program.

(1) *Eligible producer.* The rice must have been produced by an eligible producer.

(2) *Classes.* The rice must be one of the classes specified in: (i) the applicable annual crop year supplement or (ii) the official standards of the United States for rough rice other than "mixed rough rice."

(3) *Contamination and poisonous substances.* Rice must not be contaminated by rodents, birds, insects, or other vermin or contain mercurial compounds, toxin producing molds, or other substances poisonous to man or animals.

(b) *Grade requirements for loans.* In addition to the requirements of paragraph (a) of this section, rice at the time it is placed under loan must:

(1) Grade U.S. No. 5 or better (rice of special grades, shall not be eligible), and (2) contain not more than 14 percent moisture.

(c) *Quantity eligible for loan and purchase.* (1) *Loans and purchases.* Loans and purchases shall be available to eligible producers on a farm with respect to a quantity of rice produced on the farm determined by multiplying the farm allotment by the established yield for the farm or, in the producer allotment areas, by multiplying the allotment allocated to the farm by each rice operator by the yield established for the rice operator.

(2) *Farm allotment areas.* In a farm allotment area, if there is more than one eligible producer on a farm on which there is an acreage allotment, each producer's share of the eligible rice produced on the farm shall be the quantity furnished to the county ASCS office by the farm operator. If any farm operator fails to furnish such information by August 1 of the crop year or such later date as may be approved by the county office, the county office will determine each pro-

ducer's share, based on leasing arrangements and other available information. Each producer may obtain information as to price support eligibility by contacting the county office. The farm operator may, with the concurrence of the county office, reallocate shares on the farm anytime after the original allocation is made: *Provided*, That such reallocation shall not affect the eligibility of rice previously tendered for loan or purchase hereunder.

(3) *Producer allotment areas.* In a producer allotment area, if there is more than one eligible producer on a farm to which one or more rice operators have allocated allotments, each producer's share of the eligible rice produced on each such allotment shall be the quantity furnished to the county office by the rice operator who allocated such allotment to the farm. If any rice operator fails to furnish such information by August 1 of the crop year or such later date as may be approved by the county office, the county office will determine each producer's share, based on leasing arrangements and other available information. Each producer may obtain information as to price support eligibility by contacting the county office. The rice operator may, with the concurrence of the county office, reallocate shares within an individual allotment on a farm after the original allocation is made: *Provided*, That such reallocation shall not affect the eligibility of rice previously tendered for loan or purchase hereunder.

(4) *Designation of eligibility.* If an eligible producer is a member of an approved cooperative and delivers a quantity of rice produced on a farm to the cooperative for marketing, such rice shall not be deemed to be eligible rice unless the producer has furnished a CCC-822, Certificate of Eligibility, to the cooperative showing the quantity which the producer has designated to be delivered to the cooperative. The producer may cancel such designation in whole or in part at any time prior to delivery of the rice to the cooperative.

§1421.304 Eligible producer.

An eligible producer is a rice producer who is a cooperator, who shares in the production of rice on a farm on which there is an acreage allotment or to which a producer allotment has been allocated, whose production of rice is attributable to the acreage allotment, and who has complied with the set-aside and normal crop acreage requirements, if any, as prescribed in parts 718, 722, 728, 730, 775, and 791 of this title and any amendments thereto. A producer, for loan and purchase eligibility purposes, shall be considered as a rice producer when he actively participates in the farming oper-

ations necessary to produce and harvest a crop of rice on the farm and shares in the rice crop by virtue of furnishing all or part of the land on which the rice is being produced or the labor, water, or equipment necessary to produce and harvest the crop.

§1421.305 Determination of quality.

(a) *Quality.* The class, grade, grading factors, milling yield, and all other quality factors shall be determined in accordance with the official standards of the United States for rough rice, whether or not such determinations are made on the basis of an official inspection.

(b) *Loans and purchases.* In the case of rice stored commingled in an approved warehouse, loans and purchases will be made on the basis of the quality shown on the warehouse receipts or supplemental certificate, if applicable. In the case of rice stored modified commingled or identity preserved, loans and purchases will be made on the basis of the quality shown on the Federal or Federal-State sample inspection certificate, based on a representative sample of each lot of rice taken as authorized by the county office. Loans and purchases on farm stored rice will be based on the rate specified in the annual crop year supplement.

§1421.306 Determination of quantity.

(a) *In warehouse—(1) Commingled.* The amount of a loan on the quantity of eligible rice stored commingled in an approved warehouse shall be based on the weight specified on the warehouse receipts representing such rice which is pledged as security for the loan, or on the supplemental certificate, if applicable.

(2) *Identity preserved or modified commingled.* The amount of a loan on the quantity of eligible rice stored identity preserved or modified commingled in an approved warehouse shall be based on a percentage, as determined by State committee, of the weight specified on the warehouse receipt representing such rice which is pledged as security for the loan, or on the supplemental certificate, if applicable. Such percentage shall not exceed 95 percent of the weight so specified. The State committee's determination shall be made on a statewide basis or for specified areas within the State. The county committee may lower such percentage on an individual basis when determined to be in the best interest of CCC. Weights determined on the basis of such percentages shall be expressed in terms of whole units of 100 pounds (round 49 pounds or less to the next lowest hundredweight and round 50 pounds or more to the next highest hundredweight).

(b) *On farm.* The quantity of rice placed under a farm storage loan shall be determined in accordance with §1421.17 and shall be expressed in whole units of 100 pounds.

(c) *Bagged or bulk.* In determining the quantity of bagged rice by weight, the gross weight, including bags, shall be used. When necessary to convert bagged rice to a bulk basis or bulk rice to a bagged basis, an adjustment of 0.6 pounds for each 100 pounds of gross weight shall be made as allowance for the weight of the bags.

§1421.307 Warehouse receipts.

(a) *General.* A warehouse receipt representing rice to be placed under a warehouse storage loan, delivered in satisfaction of a farm storage loan, or delivered for purchase must meet the requirements of this section and the general regulations governing price support for 1978 and subsequent crops, as amended or revised. A separate warehouse receipt must be submitted for each class by variety, grade, and milling yield of rice. Each warehouse receipt must carry an endorsement by the warehouse operator in substantially the following form: Warehouse charges through (applicable maturity date) including, but not limited to, receiving and loading out charges accrued or to accrue and all other charges incident to the acquisition of the rice by CCC on the rice represented by this warehouse receipt have been paid or otherwise provided for and a lien for such charges will not be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. If the rice represented by this warehouse receipt is to be loaded out in bags, the warehouseman agrees that any and all right, title, and interest which he has in such bags shall pass with the rice when such rice is acquired under the price support program or shall pass at the time the rice is loaded out if the rice is not in bags at the time of acquisition by CCC.

(b) *Entries.* Each warehouse receipt or supplemental certificate properly identified with the warehouse receipt must be issued in accordance with the Uniform Rice Storage Agreement. The following items must be shown on the warehouse receipt and/or supplemental certificate in the case of rice stored commingled, or on the warehouse receipt, supplemental certificate, or Federal or Federal-State inspection certificate in the case of rice stored identity preserved or modified commingled:

- (1) Whether the rice is stored in bulk or in bags;
- (2) Whether the rice is to be delivered in bulk or in bags;
- (3) Gross weight for bagged rice and net weight for bulk rice;

- (4) Class and variety;
- (5) Grade;
- (6) Grading factors;
- (7) Milling yield;
- (8) Moisture;
- (9) Method of storage (commingled, modified commingled, or identity preserved);
- (10) Manner by which rice was received (truck or rail).

(c) *Supplemental certificate.* When required, the supplemental certificate shall be executed by the warehouse operator for commingled rice, by the warehouse operator and producer for modified-commingled rice, and by the producer for identity-preserved rice.

§ 1421.308 Warehouse charges.

(a) *Farm-stored loans and purchases.* CCC will assume receiving and warehouse storage charges on rice delivered to an approved warehouse after loan maturity date and acquired by CCC (1) in satisfaction of a farm storage loan or (2) through purchase, except that warehouse storage charges will be assumed by CCC only from and after the date of completion of deposit of such rice in the warehouse.

(b) *Warehouse-stored loans and purchases.* CCC will assume receiving and warehouse storage charges accruing on and after the day following the loan maturity date on rice which is in approved warehouse storage under loan and is acquired by CCC and on rice which is in approved warehouse storage on the loan maturity date and is purchased by CCC.

(c) *Refund of prepaid handling charges.* The receiving or the receiving and loading out charges to be refunded on the rice referred to in paragraphs (a) and (b) of this section and § 1421.22(i) shall be at the rate charged the producer by the storing warehouse.

§ 1421.309 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11. In addition, a charge of \$13.45 for each lot sampled will be made in connection with each warehouse receipt serving as security for either a modified-commingled or identity-preserved warehouse-stored loan.

§ 1421.310 Inspection certificates.

Except in the case of a loan on rice stored commingled in an approved warehouse, settlement with the producer on rice acquired by CCC will be based on the quality shown on the Federal or Federal-State sample inspection certificates. Such inspection certificates shall be dated not earlier than 30 days prior to the maturity date. The cost of Federal or Federal-State inspections as required by this section and § 1421.311 shall be for the account of CCC.

§ 1421.311 Settlement.

Settlement for eligible rice acquired by CCC under loan or by purchase will be made with the producer as provided in § 1421.22, the annual crop year supplement and this section. Where rice is placed under a farm storage loan in an area where a location differential is in effect and is delivered to CCC in satisfaction of the loan in an area where no differential is applicable, settlement for rice acquired by CCC will be made on the basis of the support rate for the area where the rice is delivered. Deliveries of rice shall be in accordance with instructions issued by the county office.

(a) *Commingled warehouse storage.* Settlement for eligible rice stored commingled in an approved warehouse and acquired by CCC under a loan or by purchase shall be made on the basis of the class and the grade, quality, and quantity as shown on the warehouse receipt or supplemental certificate if applicable. Settlement shall also be made on such a basis: (1) Where an approved warehouse issues a commingled warehouse receipt for loan rice delivered into the warehouse from farm storage pursuant to instructions of the county, (2) Where an approved warehouse issues commingled warehouse receipts in exchange for warehouse receipts representing rice under identity preserved or modified commingled warehouse storage loan, and (3) Where CCC determines that the warehouse failed to maintain the identity of rice covered by an identity preserved warehouse storage loan or modified commingled warehouse storage loan. In such case, the warehouse shall issue a commingled warehouse receipt covering such rice. In the case of purchases, the producer shall, not later than the day following the maturity date specified in the annual crop year supplement, deliver to the county office warehouse receipts under which an approved warehouse guarantees the class and the grade, quality, and quantity of rice sold to CCC.

(b) *Modified commingled—(1) Loans.* Settlement for eligible rice stored modified commingled in an approved warehouse and acquired by CCC under a loan shall be made on the basis of the class, grade, and quality shown on Federal or Federal-State sample inspection certificates and on the basis of the quantity shown on the warehouse receipts or supplemental certificate, if applicable. The county office shall sample the rice for settlement purposes within 10 days after the maturity date.

(2) *Purchases.* Settlement for eligible rice stored modified commingled in an approved warehouse and acquired by CCC under a purchase shall be made on the basis of the class, grade, and quality shown on Federal or Federal-

State sample inspection certificates and on the basis of the quantity shown on the warehouse receipt or supplemental certificate, if applicable. The producer shall, within 5 days following the maturity date, deliver to the county office warehouse receipts representing rice stored modified commingled in an approved warehouse. The county office shall sample the rice for settlement purposes within 5 days of the time the producer delivers the warehouse receipt or 10 days after the maturity date, whichever is later.

(c) *Other storage.* Settlement for eligible rice acquired under loan or purchase not covered by paragraph (a) or (b) of this section shall be made on the basis of the class and of the grade and quality shown on Federal or Federal-State sample inspection certificate and on the basis of the quantity shown on official weight certificates. Certificates required by this paragraph (c) shall be dated not earlier than 30 days before the maturity date.

(1) *Loans.* In the case of rice stored identity preserved in approved warehouse storage and acquired by CCC under a loan, the county office shall obtain official weight certificates and sample the rice for quality determination within 10 days following the maturity date.

(2) *Purchases.* In the case of rice stored identity preserved in approved warehouse storage and acquired by CCC under purchase, the producer shall, within 5 days following the maturity date deliver to the county office warehouse receipts representing rice stored identity preserved in an approved warehouse. The county office shall obtain official weight certificates and sample the rice for settlement purposes within 5 days of the time the producer delivers the warehouse receipt or 10 days after the maturity date, whichever is later.

(d) *Weight Determination—(1) Farm storage.* The weight of farm-stored bulk rice acquired by CCC on which settlement will be made shall be the net weight of the rice. The weight of farm-stored bagged rice acquired by CCC on which settlement will be made shall be the combined net weight of the rice and the bags, and title to the bags will pass to CCC with the rice. CCC shall not otherwise pay any amount representing the value of the bags.

(2) *Warehouse-stored.* Rice in approved warehouse storage shall be acquired by CCC on a bagged or bulk basis in accordance with the manner in which the rice is to be loaded out by the warehouse as indicated on the warehouse receipt. The quantity for settlement purposes shall be the net weight of the rice when acquired in bulk and the combined net weight of the rice and the bags when acquired in

bags. Where the warehouse receipt indicates that rice will be loaded out in bags, title to the bags shall pass to CCC at the time of acquisition of the rice. CCC shall not otherwise pay any amount representing the value of the bags. In the event any person should successfully dispute the passing of title to the bags, the producer shall indemnify CCC for any loss sustained by reason thereof.

§ 1421.312 Maturity of loans.

Loans will mature on demand but not later than the date specified in the annual crop year supplement to the regulations in this part.

§ 1421.313 Support rates.

The basic support rate, premium and discounts, and the location differentials for use in making loans and purchases shall be set forth in the annual crop year supplement to the regulations in this part.

Signed at Washington, D.C. on August 8, 1978.

STEWART N. SMITH,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-22556 Filed 8-14-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 78—BRUCELLOSIS

Subpart D—Designation of Brucellosis Areas, Specifically Approved Stockyards, and Slaughtering Establishments

BRUCELLOSIS AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Animal and Plant Health Inspection Service is amending its brucellosis regulations. These amendments update the brucellosis regulations by providing the current status of various counties and States which have been designated certified brucellosis-free areas, modified certified brucellosis areas, or noncertified areas for purposes of interstate movement of cattle and bison from such areas. This action is required because of the change in the brucellosis status of the areas affected.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. A. D. Robb, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Room 805, Hyattsville, Md. 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION:

The amendments delete the following areas from the list of certified brucellosis-free areas in § 78.20 and add such areas to the list designated as modified certified brucellosis areas in § 78.21 because it has been determined that they now come within the definition of a modified certified brucellosis area in § 78.1(m): Johnson County in Arkansas; Page and Taylor Counties in Iowa, and Edmonson County in Kentucky.

The amendments delete the following areas from the list of modified certified brucellosis areas in § 78.21 and add such areas to the list designated as certified brucellosis-free areas in § 78.20 because it has been determined that they now come within the definition of a certified brucellosis-free area in § 78.1(1): De Baca, Guadalupe, and Union Counties in New Mexico.

Accordingly, §§ 78.20, 78.21, and 78.22 of Part 78, Title 9, Code of Federal Regulations, designating certified brucellosis-free areas, modified certified brucellosis areas, and noncertified areas, respectively, are amended to read as follows:

§ 78.20 Certified brucellosis-free areas.

The following States, or specified portions thereof, are hereby designated as certified brucellosis-free areas:

(a) *Entire States.* Arizona, California, Connecticut, Delaware, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington, West Virginia, Wisconsin, Virgin Islands.

(b) *Specific counties within States.*—*Alabama.* Dale, Geneva.

Arkansas. Baxter, Bradley, Carroll, Cleveland, Columbia, Dallas, Drew, Fulton, Garland, Jefferson, Marion, Monroe, Montgomery, Newton, Ouachita, Searcy, Sharp, Stone, Union.

Colorado. Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Larimer, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips,

Pitkin, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Weld, Yuma.

Florida. Baker, Bay, Citrus, Dixie, Escambia, Franklin, Holmes, Jackson, Leon, Liberty, Monroe, Okaloosa, Orange, Santa Rosa, Seminole, St. Johns, Taylor, Wakulla, Walton, Washington.

Georgia. Appling, Atkinson, Bacon, Banks, Brantley, Bryan, Bulloch, Burke, Butts, Camden, Candler, Charlton, Chatham, Chattahoochee, Clarke, Clayton, Cook, Crawford, De Kalb, Echols, Effingham, Evans, Fannin, Franklin, Glascock, Glynn, Greene, Habersham, Jeff Davis, Johnson, Lanier, Laurens, Liberty, Long, McIntosh, Monroe, Peach, Rabun, Richmond, Screven, Stephens, Taylor, Toombs, Treutlen, Twiggs, Upson, Ware, Wayne, Wheeler, White, Wilkinson.

Idaho. Ada, Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Valley, Washington.

Illinois. Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, De Witt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Jo Daviess, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Williamson, Winnebago, Woodford.

Iowa. Adair, Allamakee, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion,

Marshall, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Plymouth, Sac, Scott, Shelby, Sioux, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winneshago, Winneshiek, Woodbury, Worth, Wright.

Kansas. Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Coffey, Comanche, Decatur, Doniphan, Douglas, Edwards, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Johnson, Kearny, Kingman, Kiowa, Labette, Lane, Logan, Marion, Marshall, Meade, Mitchell, Ness, Norton, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Republic, Riley, Rooks, Rush, Saline, Scott, Shawnee, Sheridan, Sherman, Smith, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Wyandotte.

Kentucky. Bell, Breathitt, Campbell, Clay, Floyd, Harlan, Johnson, Kenton, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, McCreary, Menifee, Morgan, Owsley, Pendleton, Perry, Pike, Robertson, Trimble, Withley, Wolfe.

Mississippi. Alcorn, Hancock, Harrison, Jackson, Stone, Tishomingo.

Missouri. Audrain, Dunklin, Gasconade, Hickory, Lewis, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

Nebraska. Banner, Box Butte, Cheyenne, Dakota, Deuel, Dodge, Douglas, Perkins, Thurston.

New Mexico. Catron, Colfax, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Otero, Rio Arriba, Sandoval, San Juan, Santa Fe, Sierra, Socorro, Taos, Torrance, Union.

South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codrington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washabaugh, Yankton, Ziebach.

Tennessee. Anderson, Blount, Campbell, Carter, Claiborne, Davidson, Fentress, Grainger, Greene, Hamblen, Hancock, Jefferson, Johnson, Knox, Lake, Lewis, Meigs, Morgan, Perry, Polk, Roane, Robertson, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren.

Texas. Armstrong, Bandera, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Gray, Hansford, Hartley, Hemphill, Hudspeth, Hutchinson, Irion, Jeff Davis, Kendall, Kerr, Kimble, Lipscomb, Llano, Loving, Martin, Mason, Menard, Midland, Moore, Newton, Ochiltree, Pecos, Presidio, Reagan, Real, Roberts, Schleicher, Sherman, Sterling, Sutton, Terrell, Val Verde, Ward, Winkler, Yoakum.

Utah. Beaver, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

Vermont. Bennington, Caledonia, Essex, Grand Isle, Lamolle, Orange, Rutland, Washington, Windham, Windsor.

Wyoming. Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

Puerto Rico. Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Canovanas (Loiza), Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guaynabo, Guayanilla, Hormigueros, Humacao, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Penuelas Ponce, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, Yauco.

§ 78.21 Modified certified brucellosis areas.

The following States, or specified portions thereof, are hereby designated as modified certified brucellosis areas:

(a) *Entire States.* Alaska, Louisiana, Oklahoma.

(b) *Specific counties within States.*
Alabama. Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Elmore, Etowah, Escambia, Fayette, Franklin, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry,

Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Arkansas. Arkansas, Ashley, Benton, Boone, Calhoun, Chicot, Clark, Clay, Cleburne, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Faulkner, Franklin, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Nevada, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, Washington, White, Woodruff, Yell.

Colorado. Mesa.

Florida. Alachua, Bradford, Brevard, Broward, Calhoun, Charlotte, Clay, Collier, Columbia, Dade, De Soto, Duval, Flagler, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Lucie, Sarasota, Sumter, Suwanee, Union, Volusia.

Georgia. Baker, Baldwin, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Dawson, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Elbert, Emanuel, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Jones, Lamar, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Randolph, Rockdale, Schley, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Telfair, Terrell, Thomas, Tift, Towns, Troup, Turner, Union, Walker, Walton, Warren, Washington, Webster, Whitfield, Wilcox, Wilkes, Worth.

Idaho. Bannock, Bonneville, Cassia, Elmore, Franklin, Fremont, Gooding, Jefferson, Jerome, Lincoln, Madison, Oneida, Teton, Twin Falls.

Illinois. Massac.

Iowa. Adams, Appanoose, Guthrie, Mills, Page, Ringgold, Taylor, Wayne.
Kansas. Allen, Atchison, Barton, Butler, Cloud, Cowley, Crawford, Dickinson, Elk, Ellis, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Jefferson, Leavenworth, Lincoln, Linn, Lyon, McPherson, Miami, Montgomery, Morris, Morton, Nemaha, Neosho, Osage, Osborne, Ottawa, Reno, Rice,

Russell, Sedgwick, Seward, Stafford, Sumner, Wabaunsee, Wilson, Woodson.

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Larue, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, Wayne, Webster, Woodford.

Mississippi. Adams, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

Missouri. Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, De Kalb, Dent, Douglas, Franklin, Gentry, Greene, Grundy, Harrison, Henry, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Monroe, Morgan, New Madrid, Newton, Nodaway, Oregon, Osage, Ozark, Pemiscot, Pettis, Phelps, Pike, Polk, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, Saline, Scotland, Scott, Shannon, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wavne, Webster, Worth, Wright.

Nebraska. Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Redwillow, Richardson, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Valley, Washington, Wayne, Webster, Wheeler, York.

New Mexico. Bernalillo, Chaves, Curry, Eddy, Lea, Mora, Quay, Roosevelt, San Miguel, Valencia.

South Dakota. Jones, Stanley.

Tennessee. Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Cheatham, Chester, Clay, Cocke, Coffee, Crockett, Cumberland, Decatur, DeKalb, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Grundy, Hamilton, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lauderdale, Lawrence, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Pickett, Putnam, Rhea, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

Texas. Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Lubbock,

Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Matagorda, Maverick, Medina, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Young, Zapata, Zavala.

Utah. Box Elder.

Vermont. Addison, Chittenden, Franklin, Orleans.

Wyoming. Lincoln.

Puerto Rico. Arecibo, Camuy, Carolina, Gurabo, Hatillo, Isabela, Las Piedras, Naguabo, Quebradillas, San Sebastian.

§ 78.22 Noncertified areas.

The following States, or specified portions thereof, are hereby designated as noncertified brucellosis areas:

(a) *Entire States.* Yellowstone National Park.

(b) *Specific counties within States.—Florida.* Okeechobee.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132, 21 U.S.C. 111-113, 114a-1, 115, 117, 120, 121, 125, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141, 9 CFR 78.25.)

The amendments impose certain restrictions necessary to prevent the spread of brucellosis in cattle and relieve certain restrictions presently imposed. They should be made effective promptly in order to accomplish their purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of August.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-22698 Filed 8-14-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE
SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF
THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0152]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s): Correction.

SUMMARY: This notice corrects a previous FEDERAL REGISTER document published on August 8, 1978 (43 FR 35025).

FOR FURTHER INFORMATION CONTACT:

Anne Geary, Chief Staff Attorney, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2761.

SUPPLEMENTARY INFORMATION: The official staff interpretation(s) published in FR Doc. 78-21944 beginning at page 35025 of the issue for Tuesday, August 8, 1978, has two corrections on page 35026. In the first column, the tenth line from the bottom, and the second column, the second line from the top; the figures in parentheses should read (\$164.16×400=\$65,664) and (\$170.46×400=\$68,184), respectively.

Board of Governors of the Federal Reserve System, August 10, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary
of the Board.

[FR Doc. 78-22715 Filed 8-14-78; 8:45 am]

[6705-01]

CHAPTER VI—FARM CREDIT
ADMINISTRATION

PART 615—FUNDING AND FISCAL
AFFAIRS

Banks for Cooperatives

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration by its Federal Farm Credit Board, took final action to amend its regulations covering the funding and fiscal affairs of the banks for cooperatives. This revision is deemed desirable in view of the changing financial posture of the banks for cooperatives and authorizes FCA to permit a bank for cooperatives to maintain surplus less than 25 percent of its capital stock.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578, 202-755-2181.

SUPPLEMENTARY INFORMATION: By notice published in the FEDERAL REGISTER on June 27, 1978, interested persons were afforded the opportunity to file written comments or suggestions on this proposed amendment. One comment was received and was in favor of the revision. The proposed amendment was adopted by the Federal Farm Credit Board as written.

Farm Credit Administration regulations covering the funding and fiscal affairs of the banks for cooperatives have required each bank to maintain in surplus an amount not less than 25 percent of all capital stock outstanding. The amendment permits the Farm Credit Administration, as authorized by the Farm Credit Act of 1971, to allow a bank for cooperatives to maintain in surplus an amount less than 25 percent of capital stock outstanding. This change is necessary in certain cases because of the limitation in the Farm Credit Act of 1971 on the amount of net earnings that can be transferred to allocated surplus, and the greater proportion of each bank's net worth being generated from direct stock purchase in order to allow total net worth to keep pace with loan growth. This authority by FCA will be exercised in those cases where the banks have made all reasonable business efforts to maintain a 25 percent minimum surplus/stock relationship.

Chapter VI of title 12 of the Code of Federal Regulations is amended by revising § 615.5330(a) as follows:

§ 615.5330 Banks for cooperatives.

(a) Surplus. "Surplus" is defined as the net accumulation of net savings which has not been appropriated by the board of directors for a specific purpose and has not been distributed as a patronage dividend in the form of class C stock or cash. Amounts therein may be allocated to patrons or unallocated. Amounts not allocated shall not be distributed as patronage refunds. Each bank shall maintain in surplus an amount not less than 25 percent of all capital stock outstanding unless otherwise approved by Farm Credit Administration.

(Secs. 5.9, 5.12, 5.18, 85 Stat. 619, 620, 621.)

C. T. FREDRICKSON,
Acting Governor,
Farm Credit Administration.

[FR Doc. 78-22690 Filed 8-14-78; 8:45 am]

[8025-01]

Title 13—Business Credit and
Assistance

CHAPTER I—SMALL BUSINESS
ADMINISTRATION

[Revision 13, Amdt. 24]

PART 121—SMALL BUSINESS SIZE
STANDARD

Definition of Construction and Service
Contractors for Purpose of Surety
Bond Guarantee

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule establishes a new size standard for all (general and special trade) construction contractors as well as service contractors who wish to receive SBA's surety bond guarantee assistance. This change is necessary because there now are separate size standards for general and special trade construction contractors. This new rule is intended to establish one eligibility criterion for all small construction firms and service industry concerns seeking SBA's surety bond guarantee assistance.

EFFECTIVE DATE: August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Danny J. Gibb, Chief Underwriter, Surety Bond Guarantee, 202-653-6117.

SUPPLEMENTARY INFORMATION: On May 19, 1978 (FR 43 21689) the SBA published a proposed rule in the FEDERAL REGISTER to establish a new, small business size standard for all general and special trade construction

contractors at \$3.5 million in annual receipts, either for the contractor's last fiscal year or as averaged over his last 3 fiscal years. In addition, special trade construction contractors, who are already receiving surety bond guarantee assistance and now have annual receipts in excess of \$3.5 million, will be eligible so long as their annual receipts do not exceed their old size standard of \$5 million. Furthermore, the Agency proposed that the \$3.5 million size standard be applied within the surety bond guarantee program to service contractors needing the program's assistance.

Since that time, the Agency has received three comments. Two of these favored, the other was against, the proposed size standard change. The negative comment was received from the Associated General Contractors of America which stated that: "The increase in the limit would permit more small firms, which lack the necessary expertise to secure bonding on the open market, to go into direct competition, buttressed with this SBA-created advantage, with self-sustaining contracting firms of similar size."

The SBA's position is that the increased size standard (1) provides a uniform measure as to what size of construction contractors are eligible for surety bond guarantee assistance; and, (2) the program provides the opportunity for many contractors, including minority contractors, to bid and (in many cases) obtain contracts, whereas before the SBA program's advent, they were totally excluded. The economic and social benefits of aiding the small business sector in general, and construction industry, individual contractors, small surety companies, and minorities in particular, weigh heavily in reflecting the overall soundness of the program. It is noted, also, that no objections to this proposal were received from any individual contractors, sureties, or any surety industry trade associations.

Accordingly, 13 CFR, part 121, is amended as follows:

§ 121.3-15 Definition of small business for the purpose of surety bond guarantee assistance.

A small business concern for the purpose of surety bond guarantee assistance is a concern that qualifies as a small business under § 121.3-10, with the following exceptions:

(a) *Construction.* Any construction concern (general and special trade) is small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding three fiscal years do not exceed \$3.5 million. Provided, that those special trade contractors now receiving surety bond guarantee assistance and having annual receipts in excess of \$3.5 million, will be

permitted to continue receiving surety bond guarantee assistance until such time as their annual receipts (or as averaged over the contractor's last 3 fiscal years) exceed \$5 million.

(b) *Service.* Any concern performing a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is classified as small if its annual receipts for its preceding fiscal year or its average annual receipts for its preceding 3 fiscal years do not exceed \$3.5 million.

(Catalog of Federal Domestic Assistance Program No. 59.016, Bond Guarantees for Surety Companies.)

Dated: August 4, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-22685 Filed 8-14-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

[EDR-190C, PSDR-27C, Docket 22630, Dated: August 8, 1978]

PART 221—CONSTRUCTION, PUBLICATIONS, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

PART 399—STATEMENTS OF GENERAL POLICY

Rules Pertaining to Group Fares on Scheduled Services; Notice of Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking in docket 22630; EDR-190, PSDR-27.

SUMMARY: The Civil Aeronautics Board is terminating an inactive rulemaking proceeding involving amendments to the conditions relating to affinity group fares. This action is being taken on the Board's initiative, to close this inactive proceeding.

DATES: Adopted: August 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Daniel Prywes, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5437.

SUPPLEMENTAL INFORMATION: In EDR-183, May 8, 1970, docket 22174, the Board proposed substantial revisions and extensions of its charter regulations aimed at preventing practices which had allegedly undermined

the charter concept. Objections were made that unless affinity group fares were brought under the same set of regulations as affinity charters, adoption of the proposals in EDR-183 would result in a substantial shift of affinity charter passengers to affinity group fare services provided by the scheduled carriers. In order to prevent an undue competitive advantage for the route carriers, the Board initiated the rulemaking in EDR-190, PSDR-27, October 6, 1970, docket 22630,¹ which would have provided that the conditions relating to affinity group fares should conform to the Board's regulations governing pro rata charters.

However, in ER-659, adopted January 29, 1971, the Board decided to defer action on the restrictive proposals in EDR-183 dealing with affinity charters. Since the Board failed to make the affinity charter regulations more restrictive, as had been anticipated, the need for preventing a competitive imbalance has disappeared.

Because the underlying basis for EDR-190 no longer exists, the Board is formally terminating this inactive proceeding.

Accordingly, the Civil Aeronautics Board terminates the proceeding in docket 22630; EDR-190, PSDR-27.

(Sections 204(a), 401, 402, and 403 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 (as amended by 76 Stat. 143), 757 and 758 (as amended by 74 Stat. 445); 49 U.S.C. 1324, 1371, 1372, 1373; 5 U.S.C. 552.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-22717 Filed 8-14-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

PART 801—COVERAGE RULES

PART 802—EXEMPTION RULES

PART 803—TRANSMITTAL RULES

Premerger Notification; Reporting and Waiting Period Requirements; Corrections

AGENCY: Federal Trade Commission.

ACTION: Final rules corrections.

SUMMARY: The Commission's rules on premerger notification, reporting

¹The Board explained its purposes in order 70-7-117, July 23, 1970.

and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 were published in the FEDERAL REGISTER of July 31, 1978 at page 33450. The appendix to the rules, the Antitrust Improvements Act notification and report form for certain mergers and acquisitions, was republished in the FEDERAL REGISTER of August 4, 1978, at page 34443. The Commission corrects both documents because they contain certain typographical and other errors which may tend to mislead or confuse the reader.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, telephone 202-523-3894.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-20466 appearing in part II at page 33450 of the FEDERAL REGISTER of July 31, 1978, and at page 34443 of the FEDERAL REGISTER of August 4, 1978, certain typographical and other errors may tend to mislead or otherwise confuse the reader. These errors are corrected and are printed below.

The corrections in the FEDERAL REGISTER of July 31, 1978, beginning at page 33450 follow:

1. On page 33450, in column 2, on line 45 the dollar figure is corrected to read "\$100,000,000."
2. On page 33452, in column 3, on line 34, the Federal Reports Act citation is corrected to read "44 U.S.C. 3512", and on line 46, the FEDERAL REGISTER page number is corrected to read "33450".
3. On page 33453, in column 2, on line 35, the rule citation is corrected to read "§ 801.1(c)."
4. On page 33457, in column 1, on line 14, the rules citation is corrected to read "Section 801.1(b);" in column 2, on line 41, the word "from" is inserted after the third word.
5. On page 33462, in column 2, on line 51, the rules citation is corrected to read "§ 801.32;" in column 3, on line 39 the year is corrected to read "1976."
6. On page 33463, in column 2, on line 29 and in column 3, on line 9, the rules citations are corrected to read "801.1(f)(3)."
7. On page 33464, in column 3, on line 46, the statutory citation is corrected to read "section 7A (a)(1) and (a)(2)."
8. On page 33465, in column 2, on line 46, the rules citation is corrected to read "Section 801.1(i)(1)."
9. On page 33485, in column 1, on line 65 the last word is corrected to read "an."

10. On page 33489, in column 1, on line 41, the rules citation is corrected to read "§ 802.6."

11. On page 33498, in column 1, on line 66, the rule citation is corrected to read "§ 801.1(i)(2)."

12. On page 33524, in column 3, on line 13, the citation is corrected to read "14D-1."

13. On page 33535, in column 2, on lines 26 and 27 and in column 3 on lines 8 and 7, the comment period dates are corrected to read "Dec. 20, 1976-Feb. 18, 1977;" in column 3, on line 68 the comment date is corrected to read "1-11-77," and on line 89, the comment date is corrected to read "2-15-77."

14. On page 33536, in column 1, on lines 6 and 7 and in column 2, on lines 6 and 7, the comment period dates are corrected to read "Dec. 20, 1976-Feb. 18, 1977;" in column 3, on lines 49 and 78, the numbers at the end of the lines are deleted; on line 50, the comment number "1033" is inserted, and on line 79, the comment number "1049" is inserted.

15. On page 33537, in column 3, line 5 is corrected to read "§ 801.32 Conversion an acquisition."

16. On page 33539, in column 3, on line 18, the third word is corrected to read "any."

17. On page 33541, in column 1, on line 8, and on line 64, the semicolons and the words "and" are deleted.

18. On page 33543, in column 1, on line 13 the first word is corrected to read "than."

19. On page 33545, in column 3, on line 61, the third word is corrected to read "20th," on line 64, the fourth word and on line 74, the second word is corrected to read "30th."

20. On page 33548, in column 1 on line 49, the citation is corrected to read "Sec. 7A(d)," and on line 50, the citation is corrected to read "15 U.S.C. 18A(d)."

21. On page 33549, in column 3, on line 34, the sixth word is corrected to read "30th."

22. On page 33550, in column 1, a second example to 803.10(c) was deleted. That example is inserted and follows:

2. In an acquisition other than a tender offer, assume that requests for additional information are issued to both the acquiring and acquired persons on the 26th day of the waiting period. One person submits the additional information on the 35th day, while the other responds on the 44th day. Under this section, the waiting period expires twenty days following the last receipt of additional information, that is, it expires on the 64th day.

The corrections in the FEDERAL REGISTER of August 4, 1978, beginning at page 34443 follow:

1. On page 34445, item 2, parts (a) through (d)(ii) are out of sequence and

should appear after item 1(f) and before item 2(e).

2. On page 34447, the number "3" was deleted from the beginning of item 3 and is corrected to read:

"3 Holdings of acquiring persons."

3. On page 34448, line 8 of item 5(b)(i) is corrected to read:

"Dollar revenues derived in 1972 by entities or assets acquired since that time..."

Dated: August 7, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-22683 Filed 8-14-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

**CHAPTER I—U.S. CUSTOMS SERVICE,
DEPARTMENT OF THE TREASURY**

[T.D. 78-273]

**PART 12—SPECIAL CLASSES OF
MERCHANDISE**

Importation of Pre-Columbian Art

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

ACTION: Final rule.

SUMMARY: This document amends the Customs regulations to clarify that unless specifically permitted, no pre-Columbian monumental or architectural sculpture or mural exported from its country of origin, whether or not the exportation is directly to the United States, may be imported into the United States. The purpose of the amendment, which will conform the regulations to the statute which prohibits importation of these articles, is to make clear that these articles may not be imported into the United States even if entered from a country other than the country of origin.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Andrew N. Bernstein, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5765.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Sections 12.105 through 12.109, Customs regulations (19 CFR 12.105-12.109), relate to the importation into the United States of pre-Columbian monumental or architectural sculpture or murals.

Pub. L. 92-587 (19 U.S.C. 2091-2095) defines "pre-Columbian monumental or architectural sculpture or mural" to

include, among other things, any stone carving or wall art which is the product of a pre-Columbian Indian culture of Mexico, Central or South America, or the Caribbean Islands, and which is subject to export control by the country of origin.

Section 12.105(a), Customs regulations, identifies countries of origin by applying the term "pre-Columbian monumental or architectural sculpture or mural" to certain specified articles of a pre-Columbian Indian culture of Bolivia, British Honduras, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela.

Section 12.106, Customs regulations, provides that with certain limited exceptions provided in § 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported from its country of origin may be imported into the United States.

It has come to Customs attention that § 12.106 recently has been misinterpreted to mean that a pre-Columbian monumental or architectural sculpture or mural may be imported into the United States if it is entered from a country other than the country of origin.

Such an interpretation clearly is contrary to the language of the statute prohibiting the importation of pre-Columbian art. Section 202, title II, Pub. L. 92-587, October 27, 1972, 86 Stat. 1297 (19 U.S.C. 2092), provides that no pre-Columbian monumental or architectural sculpture or mural "which is exported (whether or not such exportation is to the United States) from the country of origin", may be imported into the United States.

To avoid any possible misinterpretation, section 12.106 is being amended to clarify that unless specifically permitted, no pre-Columbian monumental or architectural sculpture or mural which is exported from its country of origin may be imported into the United States whether imported directly or indirectly from its country of origin.

Section 12.106 also is being amended to substitute "June 1, 1973", the date T.D. 73-119, which incorporated sections 12.105 through 12.109 into the regulations, became effective, for "(the effective date of this regulation)".

INAPPLICABILITY OF PUBLIC NOTICE REQUIREMENT AND DELAYED EFFECTIVE DATE

Because this amendment merely clarifies an existing regulation that implements a statutory requirement, notice and public procedure are unnecessary, and good cause exists for dis-

persing with the delayed effective date provisions of 5 U.S.C. 553.

AMENDMENT TO THE REGULATIONS

Section 12.106 of the Customs regulations (19 CFR 12.106) is amended to read as follows:

§ 12.106 Importation prohibited.

Except as provided in section 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the United States) from its country of origin after June 1, 1973, may be imported into the United States.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 204, 86 Stat. 1297 (19 U.S.C. 66, 1624, 2094).)

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: August 4, 1978.

R. E. CHASEN,
Commissioner of Customs.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-22728 Filed 8-14-78; 8:45 am]

[4810-22]

[T.D. 78-272]

PART 101—GENERAL PROVISIONS

Changes in the Field Organization of the Customs Service

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by changing the status of Point Roberts, Wash., from a customs station under the supervision of the port of Blaine, Wash., to a new port of entry in the Seattle, Wash., customs district. This change is needed because of administrative problems resulting from the unique geographical location of Point Roberts.

This document also revokes the designation of Hogansburg, Morristown, and Waddington, N.Y., as customs stations in the Ogdensburg, N.Y., customs district. Due to minimal customs transactions at these stations, they have not been staffed for several years. The areas they once served are

adequately covered by the ports of entry at Massena and Ogdensburg, N.Y.

EFFECTIVE DATE: These changes will become effective on September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The customs station of Point Roberts, Wash., is located at the tip of a peninsula just south of the 49th parallel which is part of the boundary between the United States and Canada. It is almost entirely surrounded by the Strait of Georgia and Boundary Bay. Due to its location, Point Roberts is isolated from the port of Blaine, Wash., its supervising customs port. Customs officers from Blaine must either cross Boundary Bay by vessel or go north into Canada, proceed westerly and then southerly down the peninsula into Whatcom County, Wash., to reach Point Roberts. This isolation causes many administrative problems for the customs station of Point Roberts and the port of entry at Blaine.

Therefore, on May 26, 1978, a notice of a proposal to create a new port of entry at Point Roberts was published in the FEDERAL REGISTER (43 FR 22752) which would allow Customs to provide better on-site port administration and supervision of the border crossing station and would facilitate the entry and clearance of yachts at Point Roberts.

The notice also proposed to revoke the designation of Hogansburg, Morristown, and Waddington, N.Y., as customs stations in the customs district of Ogdensburg, N.Y. (Region I). Due to minimal customs transactions at these stations, they have not been staffed for several years. The areas they once served are adequately covered by the ports of entry at Massena and Ogdensburg, N.Y.

These field organization changes were proposed by the Customs Service as part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the public.

Interested parties were given until June 26, 1978, to submit comments regarding both proposals. No comments were received.

Accordingly, the status of Point Roberts is changed from a customs station to a port of entry in the customs district of Seattle, Wash. (Region VIII). The port limits are the same as

the present station limits, that is, all the land below the 49th parallel and constituting the peninsula known as Point Roberts, Whatcom County, Wash. Also, the designation of Hogansburg, Morristown, and Waddington, N.Y., as customs stations, is revoked.

AMENDMENTS TO THE CUSTOMS REGULATIONS

To reflect these changes, part 101 of the customs regulations (19 CFR part 101) is amended in the following manner:

§ 101.3 [Amended]

1. The table in § 101.3(b) is amended by inserting "Point Roberts, including the territory described in T.D. 78-272," directly below "Oroville (E.O. 5206, Oct. 11, 1929)." in the column headed "Ports of entry" in the Seattle, Wash., customs district (Region VIII).

§ 101.4 [Amended]

2. The table in § 101.4(c) is amended by making the following changes:

a. "Seattle, Wash.—" is deleted from the column headed "District", "Point Roberts, Wash.—" is deleted from the column headed "Customs stations", and "Blaine." is deleted from the column headed "Port of entry having supervision".

b. "Hogansburg, N.Y.—" is deleted from the column headed "Customs stations", and the corresponding reference to "Massena." is deleted from the column headed "Port of entry having supervision".

c. "Morristown, N.Y.—" is deleted from the column headed "Customs stations", and the corresponding reference to "Ogdensburg." is deleted from the column headed "Port of entry having supervision".

d. "Waddington, N.Y.—" is deleted from the column headed "Customs stations", and the corresponding reference "Do." (indicating "Ogdensburg") is deleted from the column headed "Port of entry having supervision".

AUTHORITY

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (CFR, 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 15 (43 FR 11884).

DRAFTING INFORMATION

The principal author of this document was Teresa M. Polino, Regulations and Legal Publications Division, Office of Regulations and Rulings,

U.S. Customs Service. However, personnel from other customs offices participated in its development.

Dated: August 3, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.
[FR Doc. 78-22724 Filed 8-14-78; 8:45 am]

[4810-22]

[T.D. 78-275]

PART 101—GENERAL PROVISIONS

Preclearance Offices in Foreign Countries

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

ACTION: Final rule.

SUMMARY: The Customs Service, the Immigration and Naturalization Service and the Animal and Plant Health Inspection Service, have established preclearance facilities in Freeport, The Bahamas, and Calgary, Alberta, Canada, to provide customs and other necessary clearances for United States-bound airline passengers. This document amends the Customs regulations to reflect the opening of these new facilities and the transfer of supervision over the Customs preclearance office in Winnipeg, Manitoba, Canada, to the Regional Commissioner of Customs, Chicago, Ill. In addition, all preclearance facilities are being listed in alphabetical order, together with the Customs officer having supervision.

EFFECTIVE DATE: The preclearance facility in Freeport, The Bahamas, was established on January 8, 1978, and the preclearance facility in Calgary, Alberta, Canada, was established on March 15, 1978. Supervision over Customs activities at the Winnipeg, Manitoba, Canada, office was transferred to the Regional Commissioner, Chicago, Ill., on November 20, 1977.

FOR FURTHER INFORMATION CONTACT:

Arnold L. Sarasky, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5607.

SUPPLEMENTARY INFORMATION:

BACKGROUND

To assist airlines and the traveling public, officers of the Customs Service, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service are stationed at selected airports in foreign countries to provide customs and other necessary clearances to airline

passengers on direct flights to the United States. The purpose of this procedure is to provide quicker and more efficient service to international travelers by clearing passengers before departure from the foreign country instead of at the point of first entry into the United States. Preclearance of passengers and their baggage enables inspecting officers to carry out their responsibilities while helping to prevent delays, minimize inconvenience to travelers, and reduce baggage handling.

As a part of a continuing effort to improve service to the international traveling public, Customs, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service have expanded the preclearance program by establishing preclearance facilities in Freeport, The Bahamas, effective January 8, 1978, and in Calgary, Alberta, Canada, effective March 15, 1978.

In addition, after a review of its operations, Customs transferred supervision over its Winnipeg, Manitoba, Canada, preclearance office from the District Director, Pembina, N. Dak., to the Regional Commissioner, Chicago, Ill. (region IX), effective November 20, 1977. This change was designed to provide more efficient managerial control under the line authority of the Regional Director, Inspection and Control Division, region IX, and to enhance administrative support for the office.

CHANGE IN EXISTING REGULATIONS

Section 101.5, Customs regulations (19 CFR 101.5) lists seven preclearance facilities in foreign countries where Customs officers are stationed and the Customs officer having supervision. It is necessary to amend section 101.5 to reflect the opening of the offices at Freeport and Calgary and the change in supervision over the Winnipeg office. The section also is being revised to list all preclearance offices alphabetically, together with the Customs officer having supervision over each.

NOTICE AND PUBLIC PROCEDURE UNNECESSARY

Because this amendment involves matters relating only to agency organization and administration and does not impose any additional affirmative duty on the public, notice and public procedure thereon are unnecessary, and under 5 U.S.C. 553 good cause exists for dispensing with a delayed effective date.

DRAFTING INFORMATION

The principal author of this document was Teresa M. Polino, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, other

Customs personnel participated in its development.

AMENDMENT TO THE REGULATIONS

Section 101.5 of the Customs regulations (19 CFR 101.5) is revised to read as follows:

§ 101.5 Customs preclearance offices in foreign countries.

Listed below are the preclearance offices in foreign countries where United States Customs officers are stationed and the Customs officers under whose supervision they function:

Country	Customs office	Customs officer having supervision
The Bahamas.....	Freeport	District director, Miami, Fla.
	Nassau.....	Do.
Bermuda	Kindley Field.....	Area director, Kennedy Airport area, Jamaica, N.Y.
Canada	Calgary, Alberta.....	District director, Great Falls, Mont.
	Montreal, Quebec.....	District director, St. Albans, Vt.
	Prince Rupert, British Columbia.....	District director, Anchorage, Alaska.
	Toronto, Ontario.....	District director, Buffalo, N.Y.
	Vancouver, British Columbia.....	District director, Seattle, Wash.
	Winnipeg, Manitoba.....	Regional Commissioner, Chicago, Ill.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 80 Stat. 379 (5 U.S.C. 301, 19 U.S.C. 66, 1624).)

Approved: August 3, 1978.

R. E. CHASEN,
Commissioner of Customs.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.
[FR Doc. 78-22730 Filed 8-14-78; 8:45 am]

[4810-22]

[T.D. 78-274]

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

Clarification of Bond Requirements for Licensing of Cartmen and Lightermen

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs regulations to clarify that a bond filed by a carrier or freight forwarder for the transportation of merchandise in Customs custody, the lading and unlading of merchandise, and the cartage or lighterage of merchandise satisfies the bond requirement for a cartman's or lighterman's license.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Margaret McKenna, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5865.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Merchandise imported into the United States may be entered for consumption (that is, for immediate use) or placed in a Customs bonded warehouse to be withdrawn for use at a later date. Imported merchandise also may be designated for examination by Customs or, if unclaimed, taken into Customs custody.

Under section 565 of the Tariff Act of 1930, as amended (19 U.S.C. 1565), the cartage (transportation) of merchandise entered for warehousing must be done by cartmen appointed and licensed by Customs. The cartmen must file a bond to protect the Government against any loss of, or damage to, the merchandise during the cartage operation. Cartage of merchandise designated for Customs examination or taken into Customs custody because it is unclaimed must be done by persons designated by Customs under regulations protecting the owners of the merchandise and the revenue of the United States.

Part 112 of the Customs regulations (19 CFR Part 112) requires the licensing of cartmen and lightermen for the cartage of merchandise entered for warehouse, designated for examination by Customs, or taken into Customs custody because it is unclaimed. As defined in section 112.1, a "cartman" undertakes to transport goods or merchandise within the limits of a port, and a "lighterman" transports goods or merchandise on a barge, scow, or other small vessel to or from a vessel within the port, or from place to place within a port.

Section 112.22 sets out general requirements to be met by the applicant

for a Customs cartage or lighterage license and provides that a bond on Customs form 3855 must be filed with the district director of Customs for the district in which the cartman or lighterman proposes to conduct business.

Section 112.25 provides that upon compliance with § 112.22, a carrier or freight forwarder who has filed a carrier's bond on Customs form 3587 or 3588 may be appointed or licensed as a cartman or lighterman. Although not specifically stated, a bond on Customs form 3587 or 3588 satisfies the bond requirement of § 112.22(a)(1) for a cartmen's or lightermen's license. To avoid any confusion in this regard, the Customs Service has determined that it would be helpful to amend §§ 112.22 and 112.25.

Because this amendment merely clarifies a statutory requirement, notice and public procedure are unnecessary and good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553.

AMENDMENT TO THE REGULATIONS

Section 112.22(a)(1) is amended to read as follows:

§ 112.22 Application for license.

(a) *General requirements.* * * *

(1) A bond on Customs form 3855 is a sum specified by the district director unless a bond on Customs form 3587 or 3588, as provided for in § 112.25, has been filed previously.

Section 112.25 is amended to read as follows:

§ 112.25 Bonded carriers.

A carrier or freight forwarder who has filed a carrier's bond, Customs form 3587, or a carrier who has filed a private carrier's bond, Customs form 3588, may be appointed or licensed as a Customs cartman or lighterman for a port for which such bond provides coverage, upon compliance with § 112.22. If a carrier's bond has been filed, the carrier or freight forwarder need not file a bond on Customs form 3855 to satisfy the requirements of § 112.22(a)(1). Investigation pursuant to § 112.23 may apply.

(R.S. 251, as amended, secs. 551, 565, 623, as amended, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 66, 1551, 1565, 1623, 1624).)

DRAFTING INFORMATION

The principal author of this document was Suellen M. Ferguson, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

R. E. CHASEN,
Commissioner of Customs.

Approved: August 3, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the
Treasury.

[FR Doc. 78-22729 Filed 8-14-78; 8:45 am]

[4510-30]

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 620—HOUSING FOR AGRICULTURAL WORKERS

Temporary Housing for Agricultural Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Republication/Clarification.

SUMMARY: On December 9, 1977 at 42 FR 62133 the Employment and Training Administration of the Department of Labor (ETA) rescinded its temporary agricultural housing regulations at 20 CFR part 620 and adopted the temporary housing standards of the Occupational Safety and Health Administration of the Department of Labor at 29 CFR 1910.142. The purpose of rescinding the ETA regulations was to achieve a single set of housing standards for all temporary housing. Certain employers whose housing was built or altered to meet the ETA criteria, however, may still follow the applicable regulations at 20 CFR 620.3-620.17. For the convenience of these employers, the Department of Labor hereby republishes the applicable ETA regulations at 620.3-620.17.

EFFECTIVE DATE: August 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William B. Lewis, Administrator, U.S. Employment Service, Room 8000, 601 D Street NW., Washington, D.C. 20213, Telephone 202-376-6289.

Accordingly, 20 CFR Chapter V is amended as follows:

Part 620 is added to read as follows:

Sec.
620.3 Variations.

HOUSING STANDARDS

- 620.4 Housing site.
- 620.5 Water supply.
- 620.6 Excreta and liquid waste disposal.
- 620.7 Housing.
- 620.8 Screening.
- 620.9 Heating.
- 620.10 Electricity and lighting.
- 620.11 Toilets.
- 620.12 Bathing, laundry, and handwashing.
- 620.13 Cooking and eating facilities.
- 620.14 Garbage and other refuse.
- 620.15 Insect and rodent control.
- 620.16 Sleeping facilities.
- 620.17 Fire, safety, and first aid.

AUTHORITY: The provisions of this part 620 issued under 29 U.S.C. 49k 41 Op. A.G. 406 (1959).

§ 620.3 Variations.

(a) An employer may apply for a variance from specific housing standards in this Part by filing with the State employment service office serving the area in which the housing is located a written application for such a variance. The application must:

- (1) Clearly specify the desired variance,
- (2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship, and
- (3) Clearly set forth the appropriate alternative measures which the employer has taken to protect the health and safety of the employees, and adequately show that such alternative measures have achieved the same result as the requirements from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local employment service office, serving the area in which the housing is located, shall send the request to the Regional Administrator, Employment and Training Administration (RA). The RA shall review the matter and may grant the request. Every authorization granted shall be in writing.

(c) If the RA does not grant the request, the RA shall notify in writing both the employer and the appropriate local employment service office, stating the reasons for the denial. If the RA grants a request, the RA shall send the authorization to the appropriate local employment service office with a copy to the employer. The local State employment service office shall attach copies of authorizations to the job orders placed into interstate clearance.

(d) The procedures of paragraphs (a) through (c) of this section shall only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the standards of §§ 620.4-620.17 of this Part.

HOUSING STANDARDS

§ 620.4 Housing site.

(a) Housing sites shall be well drained and free from depressions in which water may stagnate. They shall be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing shall not be subject to, or in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site shall be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site shall provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

§ 620.5 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority shall be provided.

(b) A cold water tap shall be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

(c) Common drinking cups shall not be permitted.

§ 620.6 Excreta and liquid waste disposal.

(a) Facilities shall be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes shall be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets shall be provided. Any requirements of the State health authority shall be complied with.

§ 620.7 Housing.

(a) Housing shall be structurally sound, in good repair, in a sanitary condition and shall provide protection to the occupants against the elements.

(b) Housing shall have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements shall be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less

than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age shall have a room or partitioned sleeping area for the husband and wife. The partition shall be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations shall be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family shall be provided.

(g) At least one-half of the floor area in each living unit shall have a minimum ceiling height of 7 feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) shall have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, shall equal at least 10 percent of the usable floor area. The total openable area shall equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 620.8 Screening.

(a) All outside openings shall be protected with screening of not less than 16 mesh.

(b) All screen doors shall be tight fitting, in good repair, and equipped with self-closing devices.

§ 620.9 Heating.

(a) All living quarters and service rooms shall be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68° F. if during the period of normal occupancy the temperature in such quarters falls below 68°.

(b) Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity shall be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18

inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe shall be of fireproof material. A vented metal collar shall be installed around a stovepipe, or vent passing through a wall, ceiling, floor or roof.

(d) When a heating system has automatic controls, the controls shall be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 620.10 Electricity and lighting.

(a) All housing sites shall be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: Laundry rooms, toilets, privies, hallways, stairways, etc., shall contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet shall be provided in each individual living room.

(c) Adequate lighting shall be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures shall be installed and maintained in a safe condition.

§ 620.11 Toilets.

(a) Toilets shall be constructed, located and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex shall be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women shall be provided. If toilet facilities for men and women are in the same building, they shall be separated by a solid wall from floor to roof or ceiling. Toilets shall be distinctly marked "men" and "women" in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, shall be furnished.

(f) Common use toilets and privies shall be well lighted and ventilated and shall be clean and sanitary.

(g) Toilet facilities shall be located within 200 feet of each living unit.

(h) Privies shall not be located closer than 50 feet from any living unit or

any facility where food is prepared or served.

(i) Privy structures and pits shall be fly tight. Privy pits shall have adequate capacity for the required seats.

§ 620.12 Bathing, laundry, and handwashing.

(a) Bathing and handwashing facilities, supplied with hot and cold water under pressure, shall be provided for the use of all occupants. These facilities shall be clean and sanitary and located within 200 feet of each living unit.

(b) There shall be a minimum of 1 showerhead per 15 persons. Showerheads shall be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space shall be provided in common use facilities. Shower floors shall be constructed of nonabsorbent, nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities shall be provided each sex. When common use shower facilities for both sexes are in the same building they shall be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and shall be plainly designated "men" or "women" in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units shall be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, shall be provided for the use of all occupants. Laundry trays or tubs shall be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons shall be provided in addition to the mechanical washers.

§ 620.13 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space shall be provided and equipped for cooking and eating. Such space shall be provided with: (1) A cookstove or hot plate with a minimum of two burners; and (2) adequate food storage shelves and a counter for food preparation; and (3) provisions for mechanical refrigeration of food at a temperature of not more than 45° F.; and (4) a table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and (5) adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities shall be provided for cooking

and eating. Such room or building shall be provided with: (1) Stoves or hot plates, with a minimum equivalent of two burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families; and (2) adequate food storage shelves and a counter for food preparation; and (3) mechanical refrigeration for food at a temperature of not more than 45° F.; and (4) tables and chairs or equivalent seating adequate for the intended use of the facility; and (5) adequate sinks with hot and cold water under pressure; and (6) adequate lighting and ventilation; and (7) floors shall be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall shall be in proper proportion to the capacity of the housing and shall be separate from the sleeping quarters. The physical facilities, equipment and operation shall be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas shall be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas shall be of fire-resistant material.

§ 620.14 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, shall be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers shall be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions shall be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, shall be in accordance with State and local law.

§ 620.15 Insect and rodent control.

Housing and facilities shall be free of insects, rodents, and other vermin.

§ 620.16 Sleeping facilities.

(a) Sleeping facilities shall be provided for each person. Such facilities shall consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator shall be clean and sanitary.

(c) Triple deck bunks shall not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk shall be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling shall be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 620.17 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat shall be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape shall be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24 x 24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms shall have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story shall have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story shall comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment shall be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment shall provide protection equal to a 2½ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities shall be provided and readily accessible for use at all time. Such facilities shall be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals shall not be stored in the housing area.

Signed at Washington, D.C., this 3rd day of August 1978.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

[FR Doc. 78-22735 Filed 8-14-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority from the Commissioner of Food and Drugs

BIOLOGICS

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations setting forth delegations of authority to certain officials in the Bureau of Biologics in order to change the title "Associate Director" to "Associate Director for Compliance." These amendments are editorial in nature and do not reflect a change in bureau operating policies or procedures.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him as "acting," or unless it is not legally permissible. Further redelegation of the authority delegated is not authorized.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and the Public Health Service Act (sec. 351, 58 Stat. 702 (42 U.S.C. 262)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 5 is amended as follows:

1. Section 5.30(b) is revised to read as follows:

§ 5.30 Hearings and review boards.

(b) The Director and Deputy Director of the Bureau of Biologics and the Associate Director for Compliance of

that Bureau are authorized to appoint review boards as provided by § 601.41 of this chapter.

2. Section 5.37(a)(5) is revised to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(5) The Director and Deputy Director of the Bureau of Biologics, and the Associate Director for Compliance and Director of the Division of Compliance of that Bureau.

3. Section 5.68 is revised to read as follows:

§ 5.68 Issuance and revocation of licenses for the propagation or manufacture and preparation of biological products.

The Director and Deputy Director of the Bureau of Biologics and the Associate Director for Compliance of that Bureau are authorized to issue licenses under section 351 of the Public Health Service Act (42 U.S.C. 262) for propagation or manufacture and preparation of biological products as specified in the act, and to revoke such licenses at the manufacturer's request.

4. Section 5.71(b) is revised to read as follows:

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings or in animals.

(b) The Director and Deputy Director of the Bureau of Biologics and the Associate Director for Compliance of that Bureau are authorized to perform all the functions of the Commissioner of Food and Drugs regarding the termination of exemptions for new drugs for investigational use in human beings under § 312.1 and in animals under § 312.9 of this chapter pertaining to nonradioactive biological products subject to the licensing provisions of section 351 of the Public Health Service Act (42 U.S.C. 262), nonradioactive urokinase products, and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components.

5. Section 5.80(b) is revised to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

(b) The Director and Deputy Director of the Bureau of Biologics and the Associate Director for Compliance of that Bureau are authorized to perform all the functions of the Commissioner of Food and Drugs regarding the approval of new drug applications and supplements thereto submitted under section 505 of the Federal Food, Drug, and Cosmetic Act that are for drugs for human use pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components.

6. Section 5.82(b) is amended to read as follows:

§ 5.82 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.

(b) The Director and Deputy Director of the Bureau of Biologics and the Associate Director for Compliance of that Bureau are authorized to issue notices of opportunity for hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto, submitted under section 505 of the Federal Food, Drug, and Cosmetic Act and §§ 314.1 and 314.8 of this chapter, that are for drugs for human use pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components, and to issue notices refusing or withdrawing approval when opportunity for hearing has been waived.

Effective date. This regulation shall be effective August 15, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: August 8, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[FR Doc. 78-22653 Filed 8-14-78; 8:45 am]

[4110-03]

[Docket No. 77C-0208]

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Ferric Ferrocyanide (Iron Blue)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document restores ferric ferrocyanide (iron blue) to the color additive provisional list under § 81.1(g) (21 CFR 81.1(g)) until November 30, 1978, for use in externally applied cosmetics, including those used in the area of the eye. This action is in partial response to two citizen petitions filed by Mearl Corp. (CAP's 8CP0138 and 8CP0139). This reinstatement will permit the marketing of cosmetics containing ferric ferrocyanide (iron blue) as a color additive.

DATE: Effective August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Ferric ferrocyanide (iron blue) was provisionally listed under § 81.1(g) (21 CFR 81.1(g)) for use in cosmetics on the basis of its use in cosmetics before 1960. A notice published in the FEDERAL REGISTER of August 6, 1973 (38 FR 21200), stated that a petition (CAP 8C0082) for the permanent listing of ferric ferrocyanide as a color additive for use in externally applied cosmetics, including those for use in the area of the eye, had been filed by the Cosmetic, Toiletary & Fragrance Association, Inc. (1133 15th Street NW., Washington, D.C. 20005), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, Va. 22046. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376). A notice published in the FEDERAL REGISTER of June 17, 1977 (42 FR 30893) amended the filing of this petition to include the additional use of ferric ferrocyanide in externally applied drugs, including those intended for use in the area of the eye.

On the basis of CAP 8C0082, the Food and Drug Administration (FDA) published a regulation on July 29, 1977 (42 FR 38562), permanently listing ferric ammonium ferrocyanide for use in externally applied drugs and cosmetics, including those drugs and cosmetics intended for use in the area of the eye. The same document removed ferric ferrocyanide (iron blue) from the provisional list of color additives on the basis that provisional listing of ferric ferrocyanide became obsolete with the permanent listing of ferric ammonium ferrocyanide. The permanent listing of the color additive as ferric ammonium ferrocyanide in lieu of ferric ferrocyanide was based on the description of the color additive contained in CAP 8C0082. The removal from provisional listing was based on the fact that with completion of action on the petition for ferric ammo-

mium ferrocyanide, there were no petitions or indications of studies being conducted to support listing of ferric ferrocyanide (iron blue). This is a basic requirement for provisional listing.

Two objections to the listing of the color additive as ferric ammonium ferrocyanide instead of ferric ferrocyanide were received. One of these was sent after expiration of the objection period for the order. Receipt of these objections was the first indication to FDA that an iron blue color other than ferric ammonium ferrocyanide was being used in cosmetics. These objections were dismissed in the confirmation of effective date notice for ferric ammonium ferrocyanide which published in the FEDERAL REGISTER of February 17, 1978 (43 FR 6938). The basis for rejection of the objections was that the manufacturers did not submit the data about iron blue when requested during the petition review process. The data in the petition had described the compound ferric ammonium ferrocyanide as being the color that should be listed. Although similar, ferric ferrocyanide is a different chemical compound that is manufactured by a different method. In the February 17, 1978, order, the manufacturers were advised to submit petitions to amend the listing to include their products.

On March 17, 1978, Kleinfeld, Kaplan & Becker filed citizen petitions on behalf of Mearl Corp. to stay the confirmation of effective date order (CAP 8CP0139) and to request that the Commissioner of Food and Drugs reconsider the rejection of the objections published on February 17, 1978 (43 FR 6938) (CAP 8CP0138). CAP 8CP0138 specifically requested that the Commissioner: (1) Reinstate the color ferric ferrocyanide (iron blue) as a provisionally listed color; (2) recognize the "objections" filed by Mearl to the regulation published on July 29, 1977, as what they legally were, a request for hearing, and grant Mearl a hearing in accordance with section 701(e) of the act on the issues of fact raised by Mearl's objections; and (3) modify the permanent listing of "ferric ammonium ferrocyanide" to change the specification for soluble cyanide to 10 ppm.

The Commissioner has reevaluated the decision to confirm the effective date of the listing of ferric ammonium ferrocyanide and to remove ferric ferrocyanide (iron blue) from the provisional list of color additives. On the basis of this review of the objections

as supplemented by the citizen petitions, the Commissioner concludes that the petitions are meritorious.

Regarding 8CP0139, the Commissioner sees no basis for staying the existing regulation for ferric ammonium ferrocyanide. Reinstatement of ferric ferrocyanide (iron blue) to the provisional list of color additives will accomplish the objective sought in the petition for a stay of the permanent listing of ferric ammonium ferrocyanide.

Regarding the three actions requested in 8CP0138, the Commissioner comments as follows:

1. *Reinstate the color ferric ferrocyanide (iron blue) to the provisional list.* This document accomplishes the requested action on the following basis:

The Food and Drug Administration records show that the identity of the color additive that had previously been provisionally listed as ferric ferrocyanide (iron blue) is ambiguous, and, therefore, a basis for restoring ferric ferrocyanide (iron blue) to the provisional list exists without the additional burden of establishing prior use history by a manufacturer for its particular iron blue pigment. The Commissioner has reviewed the data on hand that indicates that ferric ammonium ferrocyanide and ferric ferrocyanide are simply different salts of the same compound and would be expected to have similar structures. With the submission of additional information regarding the manufacturing processes used for ferric ferrocyanide and analytical data establishing specifications for ferric ferrocyanide, the data on hand would most likely be sufficient to list ferric ferrocyanide for use in externally applied drugs and cosmetics, including those intended for use in the area of the eye.

Under the provisions of title II of the Color Additive Amendments of 1960 (sec. 203(a)(2), Pub. L. 86-618, 74 Stat. 404 (21 U.S.C. 376 note)) and under authority delegated to him (21 CFR 12.38), the Commissioner is authorized to postpone the closing date of a provisional listing of a color additive on his own initiative or upon application by an interested person. He is also authorized to promulgate and keep current a list or lists of the color additives and of their particular uses, whenever in his judgment such action is consistent with the protection of the public health. The citizen petitions submitted by Mearl Corp. are requests by an interested person to reinstate

ferric ferrocyanide (iron blue) to the provisional list.

The Commissioner finds that restoration to the provisional list of ferric ferrocyanide (iron blue) for use in externally applied cosmetics, including those intended for use in the area of the eye, for the short period of time required to provide the necessary data to support permanent listing is consistent with the protection of the public health.

The new closing date for ferric ferrocyanide (iron blue) will be November 30, 1978. The necessary manufacturing and chemistry data are required to be submitted to FDA by September 14, 1978. This is a short time period, but because relatively little data is required, the petitioner should be able to comply with the deadline. In addition, the petitioner and the Cosmetic, Toiletry and Fragrance Association have already been advised of the type of data that would be necessary. In a letter of August 23, 1977, Mearl Corp. stated that it would obtain any additional data necessary to support permanent listing of ferric ferrocyanide.

2. *Recognize Mearl's objections as a request for a hearing and grant Mearl a hearing.* No purpose would be served by holding such a hearing. The restoration of ferric ferrocyanide (iron blue) to the provisional list responds to the petitioner's stated concerns and obviates the need for a hearing. Furthermore, the Commissioner disagrees with the petitioner's contention that an objection is implicitly a request for hearing. Section 12.22(a)(4) of FDA's regulations (21 CFR 12.22(a)(4)) clearly requires a specific statement requesting a hearing to be submitted along with each objection if a hearing is desired on the issue.

3. *Modify the permanent listing for ferric ammonium ferrocyanide to change the specification for soluble cyanide to 10 parts per million (ppm).* A proposed rule is published elsewhere in this issue of the FEDERAL REGISTER concerning specifications for water soluble cyanide and cobalt and nickel.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 203 (a)(2) and (d)(1), Pub. L. 86-618; 74 Stat. 404-405 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 12.38), part 81 of the color additive regulations is amended as follows:

1. In § 81.1(g) by alphabetically inserting "ferric ferrocyanide (iron blue)" in the list of substances in the table to read as follows:

§ 81.1 Provisional lists of color additives.

(g) . . .

Color additive	Closing date	Restrictions
Ferric ferrocyanide (iron blue)	Nov. 30, 1978	External use only, including use in area of the eye.

2. In § 81.27 by revising paragraph (c) to read as follows:

[4110-03]

§ 81.27 Conditions of provisional listing of additives.

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0311]

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Bile Salts and Ox Bile Extract

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency affirms the generally recognized as safe (GRAS) status of ox bile extract as a direct human food ingredient and removes cholic acid, desoxycholic acid, glycocholic acid, taurocholic acid, and the sodium salt of taurocholic acid from GRAS status. The safety of these ingredients has been evaluated under the agency's comprehensive safety review of substances considered to be GRAS or subject to a prior sanction.

EFFECTIVE DATE: September 14, 1978.

ADDRESS: Written objections to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION:

In the FEDERAL REGISTER of January 31, 1978 (43 FR 4062), the Commissioner of Food and Drugs proposed to affirm the GRAS status of ox bile extract for use as a direct human food ingredient and to remove the bile salts cholic acid desoxycholic acid, glycocholic acid, taurocholic acid and the sodium salt of taurocholic acid from GRAS status. The proposal was based on safety information developed by the select committee on GRAS substances and was published as part of the Food and Drug Administration (FDA) review of the safety of GRAS and Prior-sanctioned food ingredients. Under § 170.35 (21 CFR 170.35), re-

lating to the affirmation of GRAS food ingredients, copies of the Scientific Literature Review on cholic acid and derivatives and the report of the select committee on GRAS substances on bile salts and ox bile extract have been made available for public review in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of ox bile extract, the Commissioner advised in the January 1978 proposal that he was unaware of any prior-sanctioned food ingredient use for this ingredient other than for the proposed conditions of use. Persons asserting additional or extended uses under approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of such sanctions so that the safety of prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of bile salts or ox bile extract approved by issuing appropriate regulations under part 181—Prior-Sanctioned Food Ingredients (21 CFR part 181), provided prior-sanctioned use could be affirmed as safe on the basis of currently available data. Notice was also given that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert sanction at any future time.

No reports of a prior-sanctioned use for bile salts or ox bile extract were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for use of bile salts and ox bile extract under conditions different from those set forth in this regulation has been waived.

No comments were received in response to the Commissioner's proposal and supporting data and information on bile salts and ox bile extract. The Commissioner therefore concludes that no change in the proposal to affirm the GRAS status of ox bile extract is warranted, and it is being promulgated without change. Additionally, no information was received in opposition to the proposal to remove the bile salts from GRAS status and, accordingly, they are removed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21

(c) The closing date for D&C Red No. 6, D&C Red No. 7, and D&C Red No. 30 is postponed until October 31, 1978, and for ferric ferrocyanide (iron blue) until November 30, 1978, while chemistry data and analytical methods to establish specifications are developed and evaluated and subject to compliance with the requirements of this paragraph.

(1) At least one petitioner for D&C Red No. 6, D&C Red No. 7, and D&C Red No. 30 shall agree in writing by March 7, 1977, to undertake and develop the necessary chemistry data and analytical methods for the color additives.

(2) The required chemistry data and analytical methods shall be submitted to the Division of Food and Color Additives, Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, by July 31, 1978, for D&C Red No. 6, D&C Red No. 7, and D&C Red No. 30 and by September 14, 1978, for ferric ferrocyanide (iron blue).

(3) The petitioners undertaking the studies shall immediately notify the Division of Food and Color Additives of any findings that indicate a potential for the color additive to cause adverse effects.

Notice and public procedure and delayed effective date are not prerequisites to the promulgation of this order, since section 203(a)(2) of Pub. L. 86-618 provides for this issuance.

Effective date: This regulation shall be effective August 15, 1978.

(Sec. 203 (a)(2) and (d)(1), Pub. L. 86-618, 74 Stat. 404-405 (21 U.S.C. 376 note).)

Dated: August 8, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[FR Doc. 78-22656 Filed 8-14-78; 8:45 am]

CFR 5.1), chapter I of title 21 of the Code of Federal Regulations is amended as follows:

1. In part 182:

§ 182.4029 [Deleted]

a. By deleting § 182.4029 Cholic acid.
§ 182.4037 [Deleted]

b. By deleting § 182.4037 Desoxycholic acid.

§ 182.4053 [Deleted]

c. By deleting § 182.4053 Glycocholic acid.

§ 182.4105 [Deleted]

d. By deleting § 182.4105 Taurocholic acid.

§ 182.4560 [Deleted]

e. By deleting § 182.4560 Ox bile extract.

2. In Part 184, by adding new § 184.4560 to read as follows:

§ 184.4560 Ox bile extract.

(a) Ox bile extract (CAS Reg. No. MX 8008-63-7), also known as purified oxgall or sodium choleate, is a yellowish green, soft solid, with a partly sweet, partly bitter, disagreeable taste. It is the purified portion of the bile of an ox obtained by evaporating the alcohol extract of concentrated bile.

(b) Food-grade ox bile extract shall meet the specifications of the U.S. Pharmacopeia (USP), XIV, 1950, p. 410.¹

(c) The ingredient is used as a surfactant as defined in § 170.3 (o)(29) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 0.002 percent for cheese as defined in § 170.3(n)(5) of this chapter.

(e) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective September 14, 1978.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: August 2, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[FR Doc. 78-22654 Filed 8-14-78; 8:45 am]

¹ Copies may be obtained from: U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Md. 20852.

[3210-01]

Title 22—Foreign Relations

CHAPTER VII—OVERSEAS PRIVATE INVESTMENT CORPORATION

PART 709—FOREIGN CORRUPT PRACTICES ACT OF 1977

Promulgation of Regulations

AGENCY: Overseas Private Investment Corporation.

ACTION: Final regulations.

SUMMARY: The purpose of these regulations is to prescribe the procedure and conditions under which individuals and companies may be disqualified from receiving the services of the Overseas Private Investment Corporation ("OPIC") because of their conviction under the Foreign Corrupt Practices Act of 1977. These regulations establish the criteria that will be followed in deciding whether an individual or company will be suspended from eligibility for OPIC services. Finally, the regulations outline the effect that a suspension will have on an individual or company and how such a suspension can be voided. These regulations implement provisions of section 237(1) of the Foreign Assistance Act of 1961, as amended.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Cecil Hunt, Acting General Counsel, Overseas Private Investment Corporation, 1129 20th Street NW., Washington, D.C. 20527, telephone 202-632-1766.

SUPPLEMENTARY INFORMATION: Legislation enacted April 24, 1978, requires OPIC to adopt regulations prescribing the procedure under which individuals and corporations may be disqualified from eligibility for OPIC services. The new section 237(1) of the Foreign Assistance Act of 1961, as amended by Pub. L. 95-268, requires that by August 22, 1978 regulations be adopted providing for suspension of certain persons convicted under the Foreign Corrupt Practices Act of 1977.

Accordingly, title 22, chapter VII of the Code of Federal Regulations is amended by the addition of a part 709 as set forth below.

Adopted by the Overseas Private Investment Corporation at its offices in Washington, D.C. on August 8, 1978.

RUTHERFORD M. POATS,
Acting President.

Title 22 is amended by adding Part 709 as follows:

Sec.

709.1 Authority and purpose.

709.2 Applicability.

709.3 Definitions.

709.4 Cause for suspension of entities from eligibility.

709.5 Procedure.

709.6 Suspension duration criteria.

709.7 Effect of suspension.

709.8 Procedure for voiding suspensions.

AUTHORITY: Section 237(1) of the Foreign Assistance Act of 1961, added by Pub. L. 95-268.

§ 709.1 Authority and purpose.

(a) These regulations are issued under the general powers of the Overseas Private Investment Corporation ("OPIC") and pursuant to section 237(1) of the Foreign Assistance Act of 1961, added by Pub. L. 95-268.* The Board of Directors of OPIC has authorized the President of OPIC to issue these regulations and to amend them as the President shall deem appropriate.

(b) These regulations prescribe the procedure under which individuals and companies may be suspended, as mandated by section 237(1) of the Foreign Assistance Act of 1961, as amended, from eligibility for OPIC services because of conviction under the Foreign Corrupt Practices Act of 1977 (Pub. L. 95-213) of an offense related to an OPIC-supported project.

(c) The purposes of the suspensions provided herein are to carry out the statutory requirements of Section 237(1) of the Foreign Assistance Act of 1961, as amended, to protect the interest of the United States and to foster full and free competition in international commerce.

(d) The specific provisions of law under which OPIC operates and the general powers conferred on OPIC give OPIC broad discretion in the conduct of its programs. The issuance of these regulations is not to be con-

*Section 237(1) of that Act states:

(1) No payment may be made under any insurance or reinsurance which is issued under this title on or after the date of enactment of this subsection for any loss occurring with respect to a project, if the preponderant cause of such loss was an act by the investor seeking payment under this title, by a person possessing majority ownership and control of the investor at the time of the act, or by any agent of such investor or controlling person, and a court of the United States has entered a final judgment that such act constituted a violation under the Foreign Corrupt Practices Act of 1977.

(2) Not later than 120 days after the date of enactment of this subsection, the Corporation shall adopt regulations setting forth appropriate conditions under which any person convicted under the Foreign Corrupt Practices Act of 1977 for an offense related to a project insured or otherwise supported by the Corporation shall be suspended, for a period of not more than 5 years, from eligibility to receive any insurance, reinsurance, guaranty, loan or other financial support authorized by this title.

strued as in any way limiting or derogating from the discretion of OPIC to determine whether or not to support the investment of a particular entity in a particular case.

§ 709.2 Applicability.

These regulations take effect on the date of publication in the FEDERAL REGISTER and govern eligibility for OPIC services for which OPIC has not previously obligated itself.

§ 709.3 Definitions

(a) The "Act" means the Foreign Corrupt Practices Act of 1977.

(b) "Entity" means any individual, association, company, corporation, concern, partnership, or person.

(c) "Offense" means any act or omission to act which has been found by a United States court of competent jurisdiction to constitute, with respect to a particular entity, a violation of the Act, of sections 13(b)(2), 13(b)(3) or 30A of the Securities Exchange Act of 1934 (which were added in 1977 by the Act), or of any other provision of law derived from the Act.

(d) "Suspension" means the designation of an entity as ineligible to receive OPIC services through a suspension determination.

(e) "Suspension determination" means a determination by the President of OPIC pursuant to these regulations that an entity is ineligible to receive OPIC services.

§ 709.4 Cause for suspension of entities from eligibility.

Any entity which has been convicted of an offense related to a project insured or otherwise supported by OPIC may be suspended from eligibility for additional OPIC services for a period of not more than 5 years pursuant to a suspension determination.

§ 709.5 Procedure.

(a) Upon receipt of an application for OPIC services from any entity which OPIC has reason to believe may have been convicted under the Act the OPIC General Counsel shall ascertain whether a conviction has been entered against such entity under the Act and, if so, whether it was entered for an offense related to a project insured or otherwise supported by OPIC. If such an offense is found, the General Counsel shall advise the President of such finding and any known circumstances indicating that suspension would not be in the national interest of the United States. If, after reviewing the submission from the General Counsel, the President determines that national interest considerations are not great enough to preclude suspension, OPIC shall furnish the subject entity with a written notice (1) specifying the offense and stating that suspension for

the maximum duration is being considered and (2) inviting the subject entity to submit to OPIC any evidence of facts or circumstances which it deems appropriate to indicate that a suspension should not be imposed or that the duration of the suspension should be less than the maximum. Such notice shall further state that the subject entity must provide such evidence within 30 days of the date of such written notice or any extension of time granted in writing by OPIC. The General Counsel shall promptly review any evidence submitted by the subject entity and report his findings and recommendations to the President. The President shall determine whether the subject entity shall be suspended and, if so, the President shall issue a suspension determination specifying the duration of such suspension. Notice of such suspension determination shall be forwarded by registered mail to the subject entity and any entity so notified shall be advised that such suspension may be reduced as provided in section 5(b) or voided as provided in section 8.

(b) The duration of any suspension may be reduced by the President at any time for good cause, including the submission by the suspended entity of an application for relief, supported by evidence and setting forth appropriate grounds for granting such relief, such as the institution of measures designed to preclude the recurrence of the actions with respect to which the suspension was initially imposed. Notice of each such reduction shall be forwarded to the suspended entity by registered mail.

(c) The duration of any suspension may be increased by the President at any time for good cause, subject to providing the subject entity with notice and opportunity to submit evidence in accordance with section 5(a). In no event shall any such increase result in a period of suspension exceeding 5 years with respect to any single conviction.

§ 709.6 Suspension duration criteria.

Factors which the President may consider in setting or amending the duration of any suspension imposed pursuant to these regulations include, but are not limited to, the following:

(a) Whether the offense with respect to which suspension has been imposed or is being considered was committed with the knowledge or consent of the board of directors or other group or officer or individual responsible for the overall management of the subject entity;

(b) Whether or not such offense was committed under pressure of extortion, political intervention, or other duress exerted by the government, or any official of the government, of the

country in which such offense was committed;

(c) Quantitative factors relating to the seriousness of the offense, such as the amounts of any improper payments and the frequency with which, and period of time over which, they were made;

(d) The purpose of any such offense;

(e) Whether such offense violated the laws of the country in which it was committed;

(f) The extent to which the offense was related to the establishment or operation of a project supported by OPIC; and

(g) Any factors relating to the effect of suspension on the national interest of the United States.

§ 709.7 Effect of suspension.

(a) Any entity suspended pursuant to a suspension determination shall not, for the duration of such suspension, and subject to the provisions of section 7(b), be eligible to receive any additional insurance, reinsurance, guaranty, loan, or other financial support from OPIC.

(b) Suspended entities:

(1) May be retained on the OPIC mailing list only for the purpose of receiving informational mailings;

(2) May register projects with OPIC but may not submit project applications to OPIC;

(3) May continue to deal with OPIC with respect to agreements entered with OPIC prior to the suspension and may amend or be granted modifications of such agreements, including loan reschedulings and refinancings;

(4) May not be invited to participate in OPIC-sponsored investment missions or other similar activities; and

(5) May not receive indirectly, or beneficially, whether through the purchase of project participations, the use of intermediary entities or other such devices, any OPIC services which they would not be entitled to receive directly, and may not be the beneficiary of financial support advanced by a third party where such support, in turn, is guaranteed or insured by OPIC; provided, however that such suspended entity shall be entitled to all benefits and payments accruing to holders of negotiable instruments guaranteed by OPIC and acquired by such suspended entity pursuant to a public offering thereof by the original or any subsequent holder thereof.

§ 709.8 Procedure for voiding suspensions.

Upon receipt by OPIC from the subject entity of notice of the entry of a final judgment of reversal of the conviction or convictions on which a suspension was based, and subject to verification thereof by the General Counsel and to a finding by the General Counsel that no other convictions

under the act are outstanding, the President shall void such suspension.
[FR Doc. 78-22707 Filed 8-14-78; 8:45 am]

[4210-01]

**Title 24—Housing and Urban
Development**

**CHAPTER X—FEDERAL INSURANCE
ADMINISTRATION, DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT**

**SUBCHAPTER B—NATIONAL FLOOD
INSURANCE PROGRAM**

[Docket No. FI 4374]

**PART 1914—AREAS ELIGIBLE FOR
THE SALE OF INSURANCE**

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.
FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so

that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since publication of a flood insurance map. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Date ¹
California	Alameda	Berkeley, city of	06004-A	Oct. 22, 1971, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Dec. 7, 1973	Sept. 1, 1978.
Do	Orange	Newport Beach, city of	060227-B	May 12, 1972, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Mar. 15, 1974 July 9, 1976	Do.
Colorado	Douglas	Castle Rock, town of	080050-B	Apr. 22, 1975, emergency, Aug. 15, 1978, regular, Sept. 1, 1978, suspended.	Mar. 29, 1974	Do.
Do	Larimer	Loveland, city of	080103-B	Sept. 18, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Mar. 1, 1974 Dec. 17, 1976	Do.
Do	San Juan	Unincorporated areas	080267-A	Oct. 25, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Sept. 1, 1978	Do.
Do	do	Silverton, town of	080165-B	Nov. 7, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 14, 1974 May 28, 1976	Do.
Delaware	Sussex	Millsboro, town of	100043-B	May 28, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 21, 1974	Do.
Florida	Levy	Yankeetown, town of	120147-A	Nov. 13, 1970, emergency, Nov. 13, 1970, regular, Sept. 15, 1972, suspended, June 30, 1975, reinstated, Sept. 1, 1978, suspended.	Aug. 20, 1971 Feb. 27, 1976	Do.
Kansas	Barton	Ellinwood, city of	200018-B	July 29, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Mar. 15, 1974 Oct. 24, 1975	Do.
Do	Allen	Humboldt, city of	200002-B	Dec. 24, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Dec. 7, 1973 Sept. 5, 1975	Do.
Louisiana	St. Mary	Morgan City, city of	220196-A	Mar. 23, 1973, emergency, Aug. 15, 1978, regular, Sept. 1, 1978, suspended.	Oct. 5, 1973	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Date ¹
Maryland	Allegheny	Cumberland, city of	240003-B	Jan. 23, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	July 26, 1974 Feb. 27, 1976	Do.
Massachusetts	Hampden	Longmeadow, town of	250143-B	Aug. 8, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Mar. 11, 1977	Do.
Michigan	Bay	Bay City, city of	260020-B	Mar. 30, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 3, 1974 June 4, 1976	Do.
Do	St. Clair	China, township of	260203-B	Aug. 16, 1974, emergency, Aug. 1, 1978, regular, Sept. 1, 1978, suspended.	Aug. 16, 1974 Mar. 25, 1977	Do.
Do	Monroe	Erie, township of	260145-C	Jan. 26, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 28, 1974 Aug. 22, 1975	Do.
Do	Bay	Essexville, city of	260021-B	Mar. 30, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 7, 1974 Dec. 21, 1976	Do.
Do	Macomb	New Baltimore, city of	260125-B	Jan. 12, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Apr. 12, 1974 June 18, 1976	Do.
Do	Iosco	Oscoda, township of	260101-B	May 15, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Aug. 2, 1974 Aug. 6, 1976	Do.
Do	Bay	Pinconning, township of	260025-B	Mar. 30, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 7, 1974 July 9, 1976	Do.
Minnesota	Ramsey	New Brighton, city of	270380-B	Apr. 5, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 31, 1974	Do.
Mississippi	Bolivar	Cleveland, city of	280016-B	May 18, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 10, 1974 Aug. 27, 1976	Do.
Missouri	St. Louis	Bridgeton, city of	290339-B	Dec. 10, 1972, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Feb. 8, 1974 Dec. 13, 1974	Do.
Do	Greene	Springfield, city of	290149-A	Apr. 12, 1974, emergency, July 3, 1978, regular, Sept. 4, 1978, suspended.	Oct. 25, 1974	Do.
New Jersey	Somerset	Bernards, township of	340428-A	Feb. 4, 1972, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Jan. 9, 1974	Do.
Do	Morris	Bonton, township of	340336-B	Feb. 11, 1972, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 31, 1974 Jan. 9, 1976	Do.
Do	Camden	Lawnside, borough of	340502-B	Jan. 15, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Nov. 12, 1976	Do.
Do	Camden	Voorhees, township of	340538-A	Aug. 2, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Feb. 21, 1975	Do.
New York	Dutchess	Wappinger Falls, village of	360223-B	Apr. 18, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 31, 1974 Nov. 21, 1975	Do.
North Carolina	Carteret	Beaufort, town of	375346-B	Dec. 3, 1971, emergency, Dec. 1, 1972, regular, Sept. 1, 1978, suspended.	Dec. 2, 1972	Do.
Ohio	Cuyahoga	Cleveland, city of	390104-B	July 20, 1973, emergency, Aug. 1, 1978, regular, Sept. 1, 1978, suspended.	June 7, 1974 June 18, 1976	Do.
Do	Clermont, Warren, and Hamilton	Loveland, city of	390068-B	Nov. 15, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Feb. 1, 1974 May 28, 1976	Do.
Do	Warren	South Lebanon, city of	390563-B	Jan. 23, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 24, 1974	Do.
Pennsylvania	Mifflin	Derry, township of	421168-A	Apr. 26, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Dec. 20, 1974	Do.
Do	Alleghany	Etna, borough of	421062-B	Mar. 27, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	July 26, 1974 Oct. 24, 1975	Do.
Do	Tioga	Gaines, township of	421005-B	Jan. 15, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 14, 1974 July 30, 1976	Do.
Do	Beaver	Harmony, township of	421038-B	Feb. 6, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Mar. 22, 1974 May 28, 1976	Do.
Do	Tioga	Jackson, township of	420820-B	July 27, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Dec. 28, 1973 Dec. 17, 1976	Do.
Do	Westmoreland	Ligonier, township of	420884-B	Sept. 6, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Sept. 6, 1974 July 23, 1976	Do.
Rhode Island	Providence	Johnston, town of	440018-B	Aug. 1, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Nov. 22, 1977	Do.
Vermont	Windsor	Ludlow, town of	500150-B	Oct. 11, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Mar. 11, 1977	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Date ¹
Do	do	Lidlow, village of	500204-B	Oct. 11, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Nov. 15, 1974 July 30, 1976	Do.
Do	Rutland	Pawlet, town of	500097-B	June 11, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 28, 1974 Mar. 4, 1977	Do.
Do	do	Shrewsbury, town of	500102-B	June 25, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 28, 1974 Feb. 10, 1976	Do.
Virginia		Clifton Forge, city of	510038-B	Feb. 1, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Feb. 8, 1974 May 21, 1976	Do.
Do	Prince Edward and Cumberland	and Farmville, town of	510118-B	Nov. 9, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Apr. 5, 1974 Nov. 28, 1975	Do.
Do		Lynchburg, city of	510093-B	Sept. 18, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Aug. 9, 1974 Aug. 6, 1976	Do.
Do	Prince William	Occoquan, town of	510124-B	Sept. 27, 1973, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	July 19, 1974 Sept. 12, 1975	Do.
Do	Prince Edward	Unincorporated areas	510239-A	Apr. 11, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Jan. 10, 1975	Do.
Do	Patrick	Stuart, town of	510111-B	Aug. 6, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 31, 1974 Apr. 23, 1976	Do.
Wisconsin	Dane	DeForest, village of	550082-B	Apr. 16, 1975, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Dec. 7, 1973 May 21, 1976	Do.
Do	Rusk	Ladysmith, city of	550375-B	Feb. 14, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	June 28, 1974	Do.
Do	Taylor	Medford, city of	550435-B	Mar. 8, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Dec. 28, 1973 June 25, 1976	Do.
Wyoming	Fremont	Lander, city of	560020-C	Aug. 23, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	May 3, 1974 May 7, 1976	Do.
Do	Sheridan	Sheridan, city of	560044-B	Nov. 29, 1974, emergency, Sept. 1, 1978, regular, Sept. 1, 1978, suspended.	Jan. 16, 1974 Oct. 1, 1976	Do.

¹ Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: August 8, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-22546 Filed 8-14-78; 8:45 am]

[4410-01]

Title 28—Judicial Administration
CHAPTER I—DEPARTMENT OF JUSTICE

[Directive No. 16-78]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Delegation of Authority

AGENCY: Land and Natural Resources Division, Department of Justice.

ACTION: Final rule.

SUMMARY: Order No. 781-78, signed by the Attorney General on May 8, 1978 (43 FR 20793), increased the authority of the various Assistant Attorneys General to settle claims filed in behalf of and against the United States. The same order authorized the Assistant Attorneys General to redelegate any of this authority to subordinate officials and to U.S. attorneys. This order, accordingly, relegates to officials of the Land and Natural Resources Division, and U.S. attorneys,

increased authority, as specifically set forth, to initiate and to settle litigation conducted under the supervision of the Assistant Attorney General in charge of the Land and Natural Resources Division.

EFFECTIVE DATE: August 15, 1978.
FOR FURTHER INFORMATION CONTACT:

James W. Moorman, Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, 202-739-2701.

LAND AND NATURAL RESOURCES
DIVISION

[Directive No. 16-78]

REDELEGATION OF AUTHORITY TO INITIATE AND TO COMPROMISE LAND AND NATURAL RESOURCES DIVISION CASES

JULY 26, 1978.

By virtue of the authority vested in me by part O of title 28 of the Code of Federal Regulations, and particularly §§ 0.65, 0.160, 0.162, 0.164, 0.166, and 0.168 thereof, I hereby amend and revise Land and Natural Resources Division directive No. 7-76, as set forth in appendix to subpart Y, 28 CFR pp. 69 through 72, (1) to conform the delegations to the U.S. attorneys of authority to initiate environmental cases to the provisions of the memorandum of understanding between the Department of Justice and the Environmental Protection Agency (42 FR 48942) signed by the Attorney General and the Administrator of the Environmental Protection Agency, (2) to delegate to the U.S. attorneys increased authority to initiate actions for monetary claims, and (3) to delegate to the Deputy Assistant Attorney General and the Section Chiefs of the Land and Natural Resources Division, and the U.S. attorneys, increased authority to accept offers in compromise of monetary claims.

A. Paragraph 1 of part A of section I of Division directive No. 7-76 is hereby amended by the substitution of the figure \$100,000 for the figure \$40,000, wherever the figure \$40,000 appears.

B. Paragraph 2 of part A of section I of Division directive No. 7-76 is hereby amended to read as follows:

2. *Environmental cases.* Pursuant to paragraph 10 of the memorandum of understanding between the Department of Justice and the Environmental Protection Agency (42 FR 48942) with respect to the handling of litigation to which the Environmental Protection Agency is a party, all requests of the Environmental Protection Agency for litigation must be submitted by the Agency through its General Counsel or its Assistant Administrator for Enforcement to the Assistant Attorney General, except that matters requiring an immediate temporary restraining order may be submitted by regional Administrators of the Environmental Protection Agency simultaneously to a U.S. attorney and the Assistant Attorney General. Consequently, except for matters requiring an immediate temporary restraining order, U.S. attorneys are not authorized to accept on a direct reference basis any matters or cases originating in any office of the Environmental Protection Agency.

U.S. attorneys are authorized to act, without prior authorization from the Land and Natural Resources Division, on behalf of Federal departments or agencies other than the Environmental Protection Agency, in response to a direct request in writing from an authorized field officer of the department or agency concerned, in the following environmental cases:

(a) Civil or criminal actions involving the filling or the deposit of dredged or fill material upon, or the alteration of the channels of, the waters of the United States, in violation of section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403), or of section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344), or of both statutes;

(b) Civil or criminal actions involving the discharge of refuse into the navigable waters of the United States, and, in certain cases, their tributaries, in violation of section 13 of the Act of March 3, 1899 (33 U.S.C. 407), except for

(i) In rem actions against vessels, which actions shall continue to be handled in the manner set forth in departmental memorandums 374 and 376, dated June 3, 1964, and shall continue to be under the jurisdiction of the Civil Division; and

(ii) Criminal actions involving the discharge either of oil or of hazardous substances, for which discharge a government agency either has imposed a civil penalty pursuant to section 311(b)(6) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1321(b)(6)), or has under consideration the imposition of such a penalty.

C. Part A of section II of division directive No. 7-76 is hereby amended by the substitution of the figure \$250,000 for the figure \$100,000, wherever that figure appears.

D. Part B. of section II of division directive No. 7-76 is hereby amended by the substitution of the figure \$200,000 for the figure \$75,000, wherever that figure appears.

E. Paragraph 1 of part C of section II of division directive No. 7-76 is hereby amended to read as follows:

1. *Compromise of land cases.* Subject to the limitations imposed by paragraph D of this section, U.S. attorneys are authorized, without the prior approval of the Land and Natural Resources Division, to accept or reject offers in compromise in the direct referral land cases listed in subparagraph A-1 of section I, and in claims against the United States in which the amount of the proposed settlement does not exceed \$100,000, if the authorized field officer of the interested agency concurs in writing, except that where the United States is a plaintiff, a U.S. attorney may accept an offer without the concurrence of the field officer if the acceptance is based solely upon the financial circumstances of the debtor.

F. Paragraph 2 of part C of section II of division directive No. 7-76 is hereby amended to read as follows:

2. *Compromise of environmental cases.* Prior delegations of authority to the U.S. attorneys to settle any type of case in which the Department of Justice represents the Environmental Protection Agency, or the Administrator or any other official of that Agency, are hereby revoked; all offers in compromise of such cases shall be submitted to the Assistant Attorney General of the Land and Natural Resources Division, for appropriate action.

G. Paragraph 3(i) of part C of section II of division directive No. 7-76 is

hereby amended by the substitution of the figure \$100,000 for the figure \$40,000.

H. This directive shall be effective August 15, 1978, and the U.S. Attorneys' Manual will thereafter be revised accordingly.

JAMES W. MOORMAN,
Assistant Attorney General,
Land and Natural Resources
Division.

Approved:

MICHAEL J. EGAN,
Associate Attorney General,
Department of Justice.

[FR Doc. 78-22700 Filed 8-14-78; 8:45 am]

[9510-26]

Title 29—Labor

Subtitle A—Office of the Secretary of
Labor

PART 70a—PROTECTION OF
INDIVIDUAL PRIVACY IN RECORDS

Supplemental Privacy Act Exemption

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: This regulation provides for an exemption of a system of records, DOL/OSHA-1 (41 FR 5476) from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Privacy Act of 1974 (5 U.S.C. 552a). Under this exemption, the above-mentioned files compiled in connection with investigations of discrimination complaints under section 11(c) of the Occupational Safety and Health Act, will not be subject to disclosure under the Privacy Act.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION
CONTACT:

Zoltan Bagdy, Chief, Division of 11(c) Program, Office of Field Coordination, Room N-3603, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-523-7763.

SUPPLEMENTARY INFORMATION:

On July 5, 1978, a proposal to adopt an exemption pursuant to section (k)(2) of the Privacy Act for DOL/OSHA-1 was published in the FEDERAL REGISTER (43 FR 29042). Interested parties were given an opportunity to submit, not later than August 4, 1978, data, views and arguments regarding the proposed exemption. No comments with respect to the proposed exemption were received.

DOL/OSHA-1 Discrimination Complaint File is a system of records compiled in connection with investigations

of discrimination complaints pursuant to section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)). The files are retrievable by complainant's name or case identification number.

Section (k)(2) of the Privacy Act provides for an exemption of any system of records within an agency from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of the act for investigatory material compiled for law enforcement purposes. An exemption is necessary for DOL/OSHA-1 files because disclosure of information contained in this file could threaten investigators, witnesses, informants and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and would discourage those contacted in future investigations from cooperating with investigators.

Accordingly, pursuant to 5 U.S.C. 552a(k), 5 U.S.C. 553(b), and 29 CFR 70a.13, the DOL/OSHA-1 Discrimination Complaint File is exempted from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a. A new paragraph (d)(11), reflecting this exemption, is added to 29 CFR 70a.13 to read as follows:

§ 70a.13 Exemptions.

(d) * * *

(11) OSHA-1, Discrimination Complaint File is exempt under paragraph (k)(2) of the Privacy Act from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses, informants and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and would discourage those contacted in future investigations from cooperating with investigators.

(5 U.S.C. 552a(k), 5 U.S.C. 553, 29 CFR 70a.13.)

Signed this 11th day of August, 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-22947 Filed 8-14-78; 8:45 am]

[3810-71]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER B—NAVIGATION

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) has determined that U.S.S. *Birmingham* (SSN 695) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine, and (2) has found that U.S.S. *Birmingham* (SSN 695) is a member of the SSN 688 class of ships, exemptions for which have previously been granted under 72 COLREGS Rule 38. The intended effect of this rule is to warn mariners in waters where the 72 COLREGS apply.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Lt. Comdr. M. D. Seiders, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, Washington, D.C., telephone 202-694-5188.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in Executive Order 11964 and 33 U.S.C. § 1605, the Department of the Navy amends 32 CFR Part 706. This amendment to Part 706 provides notice that the Secretary of the Navy has certified that U.S.S. *Birmingham* (SSN 695) is a vessel of the Navy which, due

to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c) regarding the arc of visibility and location of the stern light; annex I, section 2(a)(1) regarding the height of the masthead light; annex I, section 2(k) regarding the height and relative positions of the anchor lights; and annex I, section 3(b) regarding the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special function of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that U.S.S. *Birmingham* (SSN 695) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to U.S.S. *Birmingham*. Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military function. Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 Certifications of the Secretary of the Navy under 33 U.S.C. 360 and 1052. [Amended]

1. The third table 1 of § 706.2 is amended as follows to indicate certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height; § 2(a)(1) annex I
U.S.S. Groton	SSN-694	3.49
U.S.S. Birmingham	SSN-695	

2. The fourth table 3 of § 706.2 is amended as follows to indicate certifications issued by the Secretary of the Navy:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Sidelights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Sidelights, arc distance inboard of ship's sides in meters; § 3(b), annex I	Stern light, distance in meters; rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), annex I
U.S.S. Groton.....	SSN-694 * * *							
U.S.S. Birmingham.....	SSN-695			209*	4.3	6.1	3.4	1.7 below.

Effective date: The effective date of this amendment will be August-4, 1978.

Dated: August 4, 1978.

R. JAMES WOOLSEY,
Under Secretary
of the Navy.

[FR Doc. 78-22658 Filed 8-14-78; 8:45 am]

[3910-01]

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

**SUBCHAPTER I—MILITARY PERSONNEL
PART 888—ENLISTMENT IN THE UNITED STATES AIR FORCE**

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This rule is revised to include a new preservice drug abuse policy. It updates enlistment procedures for oversea applicants, to simplify instructions for oversea personnel offices to enlist applicants, and updates references and addresses.

EFFECTIVE DATE: October 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. R. B. Simmons, Directorate of Personnel Procurement, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, Tex. 78148, phone: 512-625-2102.

SUPPLEMENTARY INFORMATION: The provisions of this part are issued under authority of 10 U.S.C. 8012 and 10 U.S.C. 511(a).

Part 888 is revised to include a new preservice drug abuse policy which revises the enlistment marijuana criteria (6 months abstinence required, versus previous number of times used) and deletes reference to casual supplier. Under enlistment options, revises 6-year enlistment to specify that enlist-

ees are promoted to the grade of E-2 on completion of basic training, and E-3 on completion of 6 months' time in grade unless they render themselves ineligible for promotion. Revises rule governing applicants whose last period of service was in officer status to require nonregular officers on active duty to submit application to the officers' parent major command or separate operating agency Director or Deputy Director of Personnel for review and endorsement. Applications for officers separated from active duty are now forwarded directly to Headquarters, AFMPC/DPMMI, Prequalification of applicant is revised to add a Physical Standards List Reference Guide. Enlistment procedures for oversea applicants are updated. Additionally, some Air Force forms were revised to conform with changes in enlistment options and procedures, DOD directed enlistment programs and criteria in support of the all volunteer force environment.

This part implements DOD Instructions 1304.2, March 14, 1975; 1145.2, June 23, 1965; DOD Directives 1145.1, September 13, 1967; 1304.11, October 30, 1967 and 1205.14, November 22, 1974.

The revised part will read as follows:

- Sec.
- 888.1 Purpose.
- 888.2 Qualifications for enlistment in the regular Air Force.
- 888.3 Regular Air Force nonprior service (NPS) programs.
- 888.4 Regular Air Force prior service (PS) and special category enlistment programs.
- 888.5 Enlistment in the delayed enlistment program (DEP).
- 888.6 Processing actions for enlistment in the regular Air Force.
- 888.7 Preparation of application for enlistment and USAF enlistment agreement documents.
- 888.8 Enlistment procedures for oversea nonprior service (NPS) applicants.
- 888.9 and 888.10 [Reserved]
- 888.11 Uniform guidelists for typical offenses.
- 888.12 Minimum mental requirements (USAF).

- 888.13 Conditions which make applicants ineligible to enlist.
- 888.14 Processing applicants with moral disqualifications.
- 888.15 Authorized specialties for guaranteed training enlistee program (GTEP).
- 888.16 Place of enlistment, NPS applicants.
- 888.17 Grade determination for NPS enlistees.
- 888.18 Verification of previous military service.
- 888.19 Acceptability of applicants with previous military service.
- 888.20 Grade determination for PS enlistees (USAF).
- 888.21 Enlistment of airmen removed from TDRL.
- 888.22 Documents forwarded to AFEEES.
- 888.23 Separation other than to enlist in the regular Air Force.
- 888.24 Documents forwarded to enlistment activity (USAF).
- 888.25 Documents forwarded to HQ AFMPC/DPMDRR.
- 888.26 Documents forwarded to AFMTC or servicing CBPO.
- 888.27 Definition of enlistment options for ADN assignments.
- 888.28 ADNs to be assigned Regular Air Force enlistees.
- 888.29 Sample transmittal letter for oversea NPS applicants.
- 888.30 Sample special order published by AFEEES or USAFE CBPOs for discharge from DEP and enlistment in Regular Air Force.
- 888.31 Sample special order published by AFEEES for Reserve enlistment and order to EAD.
- 888.32 Extracts of sample special orders required for enlistment in the Regular Air Force.
- 888.33 Sample, CONUS DDA assignment.
- 888.34 Sample, oversea assignment.
- 888.35 Sample, prior service, OJT training.
- 888.36 Sample, tech school assignment (for courses, 20 weeks or less).
- 888.37 Sample, tech school assignment (for courses, 20 weeks or more).
- 888.38 Sample special order, OTS.
- 888.39 Completion of Department of Defense standardized enlistment forms.
- 888.40 Completion of DD Form 1966, Application for enlistment—Armed Forces of the United States.
- 888.41 Entries and coding instructions for completion of DD Form 1966, Application for Enlistment—Armed Forces of the United States.
- 888.42 Enlistment activity and home of record state codes.

Sec.

888.43 Instructions for completing DD Form 4, Enlistment or Reenlistment Agreement—Armed Forces of the United States.

888.44 Instructions for completing DD Form 4c, Enlistment or Re-enlistment Agreement (continuation sheet).

888.45 Physical standards list reference guide.

AUTHORITY: 10 U.S.C. 8012 and 10 U.S.C. 511(a).

NOTE: Part 888 is derived from Air Force Regulation 33-3, October 14, 1977, including Change 1, January 16, 1978. Copies of the forms and tables referenced herein which have been filed with the original document may be obtained by writing to the Chief, Central Base Administration, of the nearest Air Force installation, and requesting a copy of AFR 33-3.

§ 888.1 Purpose.

This part prescribes the eligibility requirements and administrative procedures for enlistment in the Regular Air Force and the United States Air Force Reserve (Delayed Enlistment Program). It applies to all enlistment activities. It implements DOD Instructions 1304.2, 14 March 1975, 1145.2, 23 June 1965; DOD Directives 1145.1, 13 September 1967, 1304.11, 30 October 1967, 1205.14, 22 November 1974, and 10 U.S.C. 511(a).

§ 888.2 Qualifications for enlistment in the Regular Air Force.

(a) *Citizenship requirements.* Applicant must be a U.S. citizen or have a

valid INS Form I-151, Immigration and Naturalization Service Alien Registration Receipt Cards, as evidence of lawful entry into the U.S. or permanent residence, for AD enlistment. Aliens may be enlisted into the Delayed Enlistment Program (DEP) if they have a certified (raised seal) INS Form G-641. A valid INS Form I-151 or I-551 must be received before AD enlistment. Do not reproduce any INS form.

(b) *Physical standards.* (1) Male NPS applicants must meet the physical standards of AR 40-501, Medical Service Standards of Medical Fitness, chapter 2, regardless of examining location. Exception: Weight tables in AFR 160-43 are used instead of those in AR 40-501 for all enlistees entering any component of the U.S. Air Force. USAF Armed Forces Examining and Entrance Station (AFEES) liaison NCOs temporarily disqualify any male applicant whose weight is over AFR 160-43 standards. However, HQ ATC/RS may authorize recruiting group commanders to enlist exceptionally well-qualified applicants who exceed the AFR 160-43 standard but who are within the AR 40-501 standard. Air Force liaison NCOs complete the weight statement on AF Form 3007.

(2) Applicants other than male NPS must meet the physical standards for enlistment in AFR 160-43. (This includes female, prior service and officer training school (OTS) applicants.) The medical officer conducting the exami-

nation may accept as valid for enlistment up to a period of one year:

(i) Report of physical examination given at AFEES.

(ii) Report of Armed Forces separation physical.

(iii) Report of physical examination given by a military medical facility.

(3) The only acceptable documents for verification of physical qualifications are SF 88, Report of Medical Examination, and SF 93, Report of Medical History.

(4) Applicants enlisting for any AFSC requiring an electronics aptitude area or the mechanical aptitude area, which requires M-60 or above, must have normal color vision. Normal color vision must be indicated in SF 88, item 64. All enlistees must have minimum "X" factor rating of "3" and at least the specific rating required for GTEP skill shown in § 888.15.

(5) If an applicant is found medically disqualified and the medical examiner's opinion is that the examinee is capable of performing worldwide duty without compromising health or safety, a request for medical waiver may be submitted according to AFR 160-43, paragraph 3-5. Persons underweight by not more than 10 percent may be considered under the Medical Remedial Enlistment Program (MREP). Forward the report of medical examination and allied medical documents in original and one copy to HQ ATC/SGPAA, Randolph AFB, Tex. 78148, for final action.

(c) *Age requirements.* All applicants, except those specified in § 888.5, must meet the following standards:

AGE REQUIREMENTS FOR ENLISTMENT (USAF)			
R U L E	A	B	C
		If applicant is	then the minimum age is attainment of the (see note 1)	and the maximum age limit is less than
1	NPS	18th birthday	the 28th birthday.
2	PS		28, when reduced by total active service shown on DD Form 214 (see note 2).

NOTES: 1. Minimum age for enlistment is 17 when Parental/Guardian Consent for Enlistment of a Minor in the US Armed Forces has been properly executed by parents or legal guardians in Section VI, DD Form 1966. Parental consent is not

required for a married 17-year-old applicant.

2. Applicants over 35 years of age must have at least 3 months' prior service in the US Air Force.

(d) *Mental and educational requirements:*

(1) *Mental testing:*

(i) *Passing Scores.* All applicants must have passing scores as set by § 888.12, and also qualify as outlined in (d)(1)(ii) of this section.

(ii) *Additional Qualifications and Restrictions on Enlistments.* Applicants enlisting for a specific aptitude area or AFSC must have the passing score listed in AFR 35-1 for that aptitude area. In addition, applicants must be able to speak, read, write, and understand the English language well enough to satisfactorily absorb required Air Force military and technical training. A minimum entry qualifying score on the ASVAB usually is valid evidence that the applicant reads and understands English.

(iii) *Testing Guidelines:*

(a) Administer the ASVAB to applicants before the medical examination.

(b) Do not administer the ASVAB to:

(1) Any applicant who is on active duty.

(2) A HS student, unless he or she is scheduled to graduate during the current school year, or is tested under the HS Testing Program.

(iv) *Retesting:*

(a) Retests with ASVAB 6 or 7 may be made 6 months after the initial test with ASVAB 5, 6, or 7. Exceptions may be made (no earlier than 30 calendar days after the initial test) when the recruiting commander who is a major or above, personally determines that the initial test scores may not reflect the true capability of an applicant. However, additional retests cannot be authorized until 6 months after the latest retest accomplished by AFEES.

(b) Only the scores on the latest test are valid for enlistment.

(2) *Minimum educational requirements for enlistment.* Refer to § 888.12 for mental requirements and educational level.

(i) State certification is required for enlistment as a HS graduate equivalent.

(ii) Applicants with a certificate of proficiency issued by the California State Board of Education are considered HS graduates.

(iii) HS diplomas issued by schools authorized to grant such diplomas in the Virgin Islands, Canal Zone, Guam, and American Samoa should be recognized as valid.

(iv) Applicants educated in schools not in the American Educational System must be evaluated before enlistment. They may submit an application to the Credentials Evaluation

Service of the International Education Research Foundation, P.O. Box 24679, Los Angeles CA 90024. Payment of the evaluation fee (\$25) is the applicant's responsibility. As an alternative, such applicants may choose to apply for the State-certified GED equivalence.

(e) *Conditions which make applicants ineligible to enlist.* See § 888.13 for a summary of conditions that can make an applicant ineligible to enlist in the Regular Air Force or U.S. Air Force Reserve (Delayed Enlistment Program (DEP)).

(f) *Exceptions for obtaining specific authority for enlistment.* The USAF Recruiting Service sends requests for waivers of applicants to enlist to HQ AFMPC/DPMMI, Randolph AFB TX 78148.

(1) *General information:*

(i) An additional review may be made of those applicants whose eligibility for enlistment is doubtful because of:

(a) Reason for last separation from the Armed Forces, or

(b) Possible moral disqualification.

(ii) When a request for specific authority to enlist an applicant is disapproved, the applicant is then ineligible to enlist. Applicants who require specific authority to enlist must be told that the processing completed to determine eligibility does not obligate the Air Force. They must also be told that they should not stop their present employment or dispose of any personal property.

(iii) Statutory requirements for enlistment cannot be waived.

(2) *Authorization required.* HQ ATC/Rs may submit to HQ AFMPC/DPMMI, fully justified requests to enlist an applicant who was:

(i) Separated and charged with time lost under 10 U.S.C. 972.

(ii) Separated with honorable discharge but whose DD Form 214, Report of Separation From Active Duty, or DD Form 215, Correction to DD Form 214, contains an RE code that bars enlistment. Discharge must not have been due to punitive or administrative actions that involve bad character traits or poor duty performance. Recruiting detachments make an evaluation using the whole-person concept, and send a request for waiver on only those applicants who meet all requirements of the NPS or PS programs (age, active service, mental, moral and skills requirements). Defer the physical examination until waiver processing is completed.

(iii) Separated due to incomplete enlistment agreement. Requests for waiver may not be processed until 12

months after date of separation (DOS).

(iv) Separated for hardship reasons. Requests for waiver may not be processed until 12 months after DOS. The burden of furnishing proof that the conditions at the time of discharge have changed is on the applicant. Include the following, in duplicate, with request:

(a) Affidavit or sworn statement of applicant that the hardship or dependency is permanently terminated.

(b) Proof in the form of affidavits or sworn statements that the hardship or dependency condition has ended. These statements may be made by the applicant and other members of the community familiar with the home conditions involved.

(v) Separated with insufficient AFSC skill level for grade held at time of separation. Requests for waiver may be processed if individual has proof of having held an appropriate skill level which was downgraded, or AFSC removed for reasons other than lack of proficiency (change in physical profile, AFSC conversion, or lack of sufficient time to achieve skill in another AFSC before separation).

(vi) Separated under the Palace Chase program. Waivers may not be processed until 12 months after date of release from active duty. Waiver for enlistment in the USAFR is not required. Application for waiver from National Guard personnel requires the concurrence of their State Adjutants General.

(3) *Authorizations required from HQ ATC/RS.* Applicants convicted or judged guilty of an offense in § 888.14 are ineligible to enlist without waiver. On request of applicant, the recruiter submits a documented application for waiver to HQ ATC/RS.

(4) *Uniform guideline for typical offenses.* See § 888.11.

(5) *Illegal drug usage:*

(i) Enlistment. An applicant is ineligible for enlistment if he or she has:

(a) Used marijuana within the last 6 months, or ever been arrested by the police for marijuana usage, possession, or

(b) Ever used LSD, or

(c) Ever illegally used narcotics or dangerous drugs, or

(d) Illegally been a supplier of any drugs as defined in AFR 30-2, paragraph 4-2.

(ii) Officer training or commissioning programs. An applicant is ineligible for appointment or enlistment for an officer training program if he or she has ever illegally used or been a

supplier of marihuana, dangerous drugs, LSD, or narcotics.

(iii) Waivers. Specific instructions on granting waivers for preservice drug abuse is in For Official Use Only correspondence provided to procurement commands.

(6) Enlistment of personnel last separated because of existed prior to service physical disability. Applicants previously discharged for failure to meet physical standards at time of enlistment may request an enlistment waiver only if they furnish medical evidence that the physical defect responsible for the separation no longer exists. If the AFEEES Medical Officer determines an applicant is physically qualified for enlistment, applicable Recruiting Detachment sends medical examination results and requests evaluation and enlistment approval from HQ ATC/SGPAA Randolph AFB, Tex. 78148. Evaluation request must include:

- (i) Detailed description of physical defect responsible for discharge.
- (ii) Occupation since discharge.

§ 888.3 Regular Air Force Nonprior Service (NPS) programs.

(a) *Applicability for enlistment.* This section applies to all personnel who wish to apply for enlistment in the Regular Air Force. They must have less than 180 continuous days of active military service.

(b) *Place of enlistment and initial assignment.* See § 888.16.

(c) *Enlistment grade and date of rank:*

- (1) Enlistment grade. See § 888.17.
- (2) Date of rank. The date of rank for all NPS enlistees is the date when they enlist in the Regular Air Force.

(d) *Enlistment Options.* The Air Force has some enlistment options that are made to meet the desires of the individual and the needs of the Air Force.

(1) Term of enlistment. All applicants must enlist for a term of 4 or 6 years.

(2) Aptitude index (AI) enlistment program. Applicant may enlist and will be assigned to an Air Force Specialty (AFS) that requires a Mechanical, Administrative, General, Electronic (M, A, G, E) score or a combination of such scores. All applicants who enlist must do so without any promise of a specific AFS. They must be assigned an AFS while in basic military training based on the needs of the Air Force, the individual's aptitude, and preferences.

(iii) Changes in employment and reasons for change.

(iv) A copy of Veterans Administration medical records, if applicable.

(7) Waiver action by HQ ATC/SGPAA:

(i) If approved, return to USAFRS/RSOPA who obtains an RE code waiver for Regular Air Force applicants from HQ AFMPC/DPMMI, Randolph AFB, Tex. 78148.

(ii) If disapproved, return all documents to sender.

(g) *Applicants with dependents.* Each applicant with dependents must be thoroughly counseled according to instructions on AF Form 3010, Statement of Understanding (Dependency)—U.S. Air Force.

(3) Guaranteed training enlistment program (GTEP). Any qualified applicant may enlist for a skill in § 888.15. Under this program, if qualified, they are assured of either formal or on-the-job training in the AFS selected. If unable to successfully complete training through no fault of the enlistee, excluding academic deficiency, the enlistee may complete the term of enlistment in another AFS for which qualified and requirements are available, or will be separated. There is no guarantee of tenure in the AFS, although it is not the intent of the Air Force to change the individual's AFS without valid reason.

(4) Base of choice enlistment option. Qualified applicants may be accepted on a 4-year term of enlistment when a requirement exists in the GTEP AFSC selected at one of the bases available under this program.

(i) Quotas are listed by base and controlled by USAFRS/RSS. This program guarantees initial assignment at the initial base of choice.

(ii) This option is available to all enlistees in selected AFSCs as announced by USAFRS/RSS.

(5) Six-year enlistment program. Applicants scoring 31 or higher on the mental portion of the ASVAB, and enlisting an AFSC authorized for 6-year enlistment as shown in § 888.15 may enlist for a 6-year term of enlistment. In return, the enlistees are promoted to the grade of E-2 on completion of basic training and E-3 on completion of 6 months time in grade unless, through misconduct, they make themselves ineligible for promotion.

(6) Buddy enlistment options. Qualified applicants of the same sex are permitted to attend basic military training as members of the same training flight. The option is voided if either individual fails to progress in training at the same rate as the other.

(7) Air Force Reserve and Air National Guard applicants must qualify as prescribed in chapter 2. For enlistment processing and assignment procedures, see paragraph 4-5e.

(8) Air Force Band. Qualified musicians may enlist for assignment to a U.S. Air Force band, if a successful audition has been completed. Enlistments must not be more than the cur-

rent Trained Personnel Requirement (TPR) for band members.

(i) All expenses for preenlistment auditioning are paid by the applicant.

(ii) Applicant may volunteer for assignment to a specific Air Force band or any Air Force band, except the U.S. Air Force Band, Bolling AFB DC 20332.

(iii) The band director auditions applicants according to AFR 190-21. If found qualified in the instrumental performance test for the 3-skill level, applicants are processed as outlined below. Applicants for the USAF Band, Bolling AFB DC, must audition at Bolling AFB.

(iv) Processing:

(a) After auditioning the applicant, and finding him or her qualified, the band director prepares original AF Form 485, Application for Enlistment—U.S. Air Force Band, and forwards it to USAFRS/RSOP, Randolph AFB TX 78148.

(b) USAFRS/RSOP completes AF Form 485, section IV, makes and distributes copies as follows:

(1) Original to applicant, who must enlist within 210 calendar days of date of approved application.

(2) Two copies to the Recruiting Service detachment concerned.

(3) One copy to the Band Director.

(4) One copy to SAF/OICE, Wash DC 20330.

(c) On receipt of approved applications, the recruiting detachment sends one copy to the recruiter. On enlistment or declination, recruiter completes AF Form 485, section V, and immediately notifies USAFRS/RSOP.

(d) On enlistment, a copy of approved AF Form 485 is attached to AF Form 3007, if applicable.

(v) An applicant enlisted for the band is reported by Air Force Military Training Center (AFMTC) as a bypassed specialist. This exempts applicant from taking the 3-level Specialty Knowledge Test required by AFR 190-21.

§ 888.4 Regular Air Force Prior Service (PS) and special category enlistment programs.

(a) *Applicability for enlistment.* This section applies to all personnel applying for enlistment in the Regular Air Force who have 180 days or more of continuous active military service.

(b) *Documentary proof.* A PS applicant must give documentary proof of PS before enlistment. The DD Form 214 covering the applicant's last period of service is the document used to determine eligibility. See § 888.18

(1) If reason and authority for separation are not shown on the DD Form 214, refer to § 888.19. Also use § 888.18 to determine applicant's eligibility to reenter the Armed Forces.

(2) See § 888.2(f) for special waiver exceptions.

(c) *Enlistment grade and date of rank.* Except as noted within each category, enlistment grade is specified by § 888.20. The date of rank, unless otherwise indicated, is the date of enlistment into the Regular Air Force.

(d) *PS program.* This paragraph applies to the enlistment of former service enlisted personnel, except those covered in (e), (f), (g) and (h) of this section. Enlistment of PS applicants in overseas areas is not authorized.

(1) Skill determination. PS applicants must have a Primary Air Force Specialty Code (PAFSC) (shown on DD Form 214/215) that is on the PS required skills list and have the specified TAFMS required for that skill. If applicant is not qualified by these criteria, two options are available:

(i) Enlistment in a second AFSC reflected on applicant's DD Form 214 or 215 if the AFSC is on the PS required skills list, or

(ii) Enlistment to retrain either through technical or on-the-job training into a needed skill.

(2) Enlistment for a skill shown on the PS Required Skills List. Once the applicant has been determined to be qualified and has a skill in an applicable year-group shown on the PS required skills list, the recruiter checks with the Accession Control Center for assignment and specific enlistment authorization.

(3) Enlistment for formal training. Applicant must:

(i) Not have an AFSC, or job skill, which converts to an AFSC on the PS Required Skills List.

(ii) Meet all prerequisites for airman basic resident course according to AFM 50-5.

(iii) Agree in writing to accept results of retention action if he or she fails to successfully complete the technical training course.

(4) Enlisting for on-the-job retraining (former Air Force members only). Applicant may enlist for on-the-job retraining in a category B or C skill if he or she:

(i) Meets TAFMS for skill in which retraining.

(ii) Retrains into a skill shown on the PS Required Skills List.

(iii) Accepts assignment to a unit that has a requirement for the AFSC in which enlisting.

(5) Enlistment in former AFSC. A PS applicant qualified to enlist in his or her former AFSC may select a base of assignment from those made available by Recruiting Service. This option also may be taken by an airman attending technical training school in a temporary duty status. If the technical training school is to be attended in a Permanent Change of Station (PCS) status, the airman is not authorized to

elect a base of assignment; he or she is in the same status as other students of the same school.

(6) Advance Travel Allowance. Each PS enlistee may get an advance of travel funds to first duty station. (Travel at Government expense to a military installation to get funds is not authorized.) Air Force accounting and finance officers (AFOs) make advance travel payments without ID card on presentation of the DD Form 4, Enlistment or Reenlistment Agreement-Armed Forces of the United States, and Travel (Enlistment) Orders, if the enlistee has other means of identification.

(7) Assignment instructions. Follow procedures furnished by HQ ATC/RS. An applicant enlisted for an overseas assignment goes direct from AFEES to the nearest Air Force installation for overseas processing, and may not take leave until processing has been completed. When early reporting is not authorized, applicant is required to delay enlistment or take advance leave.

(e) *National Guard and Reserve members of the Armed Forces not on EAD:*

(1) Do not ask personnel of any Reserve component to enlist in the Regular Air Force. On request, recruiters furnish members with full information concerning enlistment in the Regular Air Force.

(2) Air National Guard (ANG) and Air Force Reserve personnel whose total active service consists of an initial tour of ADT may enlist under the NPS program even though their total active service is more than 6 months. To be eligible for enlistment in the Regular Air Force, ANG or Air Force Reserve members must have served in active Reserve status twice as long as the time spent in basic military training (BMT) and formal training. (Example: A member who spent 7 months in BMT and technical training is required to serve at least 14 months in the ANG or Air Force Reserve unit after release from IADT.) This requirement may be waived only if elimination of position, or movement of individual to an area where active participation is not feasible. Requests for waiver must be fully documented. Reserve Forces CBPO sends them to HQ AFRES/DPAA or NGB/DPMA, as applicable, for final action.

(3) The recruiter must inform applicants that airmen are not authorized to hold a Reserve commission or warrant in an Armed Force other than the Air Force. Advise applicants to contact the nearest Air Force Reserve unit to obtain information on procedures for transfers to the Air Force Reserve. Action must be completed before enlistment, as all commissions and warrants are revoked automatically as of the date of enlistment.

(4) DD form 368, Request for Discharge or Clearance From Reserve Component, is required for all members of the Reserve components unless in Army or Air Force Reserves as non-unit members (those not in a pay status). Recruiters send DD Form 368 to Reserve Unit address provided by applicant. Processing is held in abeyance pending receipt of a positive response from the individual's Reserve component. If clearance is not received within 21 days, the recruiter contacts the Headquarters of the Reserve component. If the applicant is being processed as a nonprior service enlistee, the recruiter will request verification of test scores (AFQT, AQE, ACT, or ASVAB), PAFSC and skill level, Security Investigation information, and TAFMS from the applicant's Reserve unit. After receipt of this data, the recruiter will determine preliminary qualifications and send applicant to AFEES for enlistment physical and mental testing, if necessary. AFEES will use letter from the Reserve unit as source document for data verification. If applicant is medically disqualified for enlistment, the AFEES LNCO will return the DD Form 368 and a copy of the enlistment physical to the Reserve unit.

(5) The following procedures apply to applicants assigned to an active AF Reserve or National Guard unit. Although a nonprior service applicant by definition, enlistment, and assignment procedures are similar to that of a prior service applicant.

(i) Enlistment grade. See § 888.17.

(ii) Date of rank. See § 888.3(c)(2).

(iii) Term of enlistment. All applicants are enlisted for 4 years.

(iv) Enlistment will be in applicant's PAFSC and skill level currently possessed in the Reserve unit as long as a requirement exists. Determination of vacancies is made by Recruiting Service Accession Control Center (AAC). If a vacancy does not exist, the applicant is authorized to retrain into a GTEP AFSC offered by the ACC. If retraining is required, individual will retrain the PAFSC possessed while in the Reserve unit as an awarded AFSC. (In no case will skill level be higher than 5.) Retraining is not authorized, if requirements exist in Reserve PAFSC.

(v) Assignment procedures. Initial base of assignment is furnished to the LNCO by the ACC after ACC coordination with HQ AFMPC/DPMRA. Assignment may be to an overseas unit, in cases where the applicant has had at least 12 continuous weeks of active duty, or a CONUS unit. Applicants are processed for assignment in the same manner as prior service enlistees. After receipt of assignment instructions from ACC, the LNCO submits Request for Special Orders to AFEES. AFEES will use appropriate prior serv-

ice special order format as shown in § 888.30.

(vi) Date of enlistment. Applicants enlisting for Direct Duty Assignments (DDA) are enlisted on date mutually agreed to by the individual, LNCO, and ACC. Insure allowance for travel time to initial duty assignment. Applicants enlisting for Technical Training are enlisted to allow for travel time in order to arrive at Technical Training Center 5 workdays prior to class start date. Mode of transportation will determine amount of travel time authorized. Advance leave is not authorized in either case (DDA or Technical School).

(f) *National Guard and Reserve members of the Air Force on EAD (including Mobilized Personnel):*

(1) General. A reservist of the Air Force who is serving on EAD may request discharge for the purpose of immediate enlistment in the Regular Air Force if he or she is qualified according to this paragraph.

(2) Qualifications:

(i) Airman must have served on current EAD tour for 12 months or for a longer period, and must be serving in grade E-3 through E-7.

(ii) Applicant must first be screened and selected for enlistment by special boards appointed by wing or base commander. The decision of the appointing authority is final.

(iii) Applicant must meet TAFMS and Control Air Force Specialty Code (CAFSC) criteria in U.S. Air Force Retraining Advisory.

(a) For airmen (E-5 or below) with less than 3 years' TAFMS, the retraining advisory must reflect a shortage in column A.

(b) For airmen (E-5 or below) with more than 3 years but less than 4 years' TAFMS, retraining advisory must reflect a shortage in column B.

(c) For airmen (E-5 or below) with over 4 years' TAFMS, the retraining advisory must reflect a shortage or balance in the appropriate year group.

(d) Comply with "grade" column in retraining advisory for airmen (E-6 or above). The appropriate column must reflect a shortage or balance.

(iv) Maximum age must be less than 28 when reduced by total active service in the Armed Forces. § 888.2(c), rule 2 applies.

(3) Primary factors in selection:

(i) Airman's performance to date of consideration.

(ii) Commander's and immediate superior's recommendation for promotion to the next higher grade. When an airman is not recommended for enlistment, the commander and immediate supervisor provide the selection board with a summary of reasons for the recommendation.

(4) Other factors to consider:

(i) Grade and skill level:

(a) Grades E-3 through E-7.

(b) Possession of an awarded AFSC at the 5-skill level (3 when the 5 level does not exist in a particular AFSC) or higher skill level.

(ii) Aptitudes. Exhibit a potential for retraining and normal career progression.

(iii) Education. See § 888.12.

(iv) Self-Improvement efforts. Record of job-related Extension Courses Institute (ECI) courses completed; enrollment in off-duty college courses, Career Development Courses (CDCs); and Air Force Institute of Technology (AFIT) courses completed, etc.

(v) Training. Technical school training received, OJT completion, etc.

(vi) Physical condition.

(vii) History of humanitarian or personal problems.

(viii) Other related information which could have a bearing on the selection or nonselection for enlistment.

(5) Place of enlistment and assignment:

(i) Enlist applicant at the CBPO having custody of the airman's records.

(ii) Initial assignment is the same as held by enlistee while on EAD.

(6) CBPO processing:

(i) Process applicant the same as a reenlistee and assure input of Transaction Identification Code (TIC) 478 and update service component.

(a) DD Form 214 must be prepared to release individual from current EAD. Send copy to the appropriate ANG or AFRES headquarters.

(b) Reservists on EAD who have applied for enlistment in the Regular Air Force are not required to have a Career Job Reservation (CJR).

(ii) Complete all actions for enlistment within 15 calendar days of final approval. Schedule enlistment of applicant under this subparagraph far enough before the last day of EAD to make sure that individuals not enlisted arrive home no later than the last day of the contract term of EAD. Place particular emphasis on this in oversea areas. In no case enlist an airman if such enlistment is not effected at least 15 calendar days before date on which term of EAD as a reservist normally would expire.

(iii) Enlisting officers must advise applicant that travel pay and payments for accrued leave are deferred until the new enlistment is completed.

(7) Grade and date of rank. Grade and date of rank on enlistment are the same as those held at time of discharge.

(g) *Applicants whose last period of service was in officer status:*

(1) Only former Air Force officers may enlist in the Regular Air Force, and each requires specific authorization from HQ AFMPC/DPMMI.

(i) Non-Regular officers on AD submit applications to their parent MAJCOM or Separate Operating Agency (SOA) Director or Deputy Director of Personnel for review and endorsement. Endorsed applications should be received by HQ AFMPC/DPMMI no later than 30 calendar days before the officer's projected date of separation. Applications from officers separated from AD are sent direct to HQ AFMPC/DPMMI, Randolph AFB, Tex. 78148. Approval letters of authorization must have grade entitlement.

(ii) Regular officers who wish to resign and enlist are processed according to AFR 36-12.

(2) Former Reserve officers previously enlisted in the Regular Air Force:

(i) To qualify for enlistment an applicant must:

(a) Have been a former enlisted member of the Regular Air Force who has served on AD as a Reserve officer of the Air Force, or have been discharged as an enlisted member to accept a temporary appointment as an officer.

(b) Not have had a break in service more than 6 months after last date of separation as an officer. Earlier breaks in service as an officer exceeding 6 months are not a disqualifying factor.

(c) Not be an officer relieved from AD to await appellate review of sentence involving dismissal or dishonorable discharge.

(d) Have been separated with honorable discharge.

(e) Have approval from the Secretary of the Air Force to enlist if separated with general discharge.

(ii) Authorized enlistment grade is determined as follows:

(a) Enlisted grade held in the Regular Air Force at time of discharge or separation from last period of enlisted service.

(b) Sergeant (E-4) if not qualified for a higher grade.

(iii) Date of rank is established according to AFR 35-54.

(iv) Applicant is not required to meet the PS program criteria as outlined in this section, if he or she is not otherwise ineligible for enlistment as specified in § 888.13, and is processed without regard to age, physical disqualification incurred in line of duty while on active military service, or existing vacancy.

(3) Other former Air Force officers, not ineligible to enlist under 6 below, who enlist within 90 calendar days from date of separation, are:

(i) Not required to meet the PS program criteria, if they are not otherwise ineligible for enlistment according to § 888.13.

(ii) Entitled to date of rank according to AFR 35-54.

(iii) Authorized enlistment grade of sergeant (E-4).

(4) Place of enlistment is any Air Force CBPO with reenlistment processing capability according to AFR 35-16, volume I.

(5) For terms of enlistment, see AFR 35-16, volume I, table 6-6.

(6) Other former Air Force officers ineligible to enlist are those who:

(i) Were discharged with severance pay.

(ii) Were separated or released from EAD for cause by the Secretary of the Air Force or in lieu of such action (including cases initiated under AFR 35-62, 36-2, or 36-3), unless granted a waiver to enlist by the Secretary.

(iii) Were separated with other than an honorable discharge certificate (DD form 256AF) or released from EAD with entry of other than "Honorable" on DD form 214, except for applicants covered by (g)(2)(i)(e) of this section.

(iv) Were separated because of failure of selection for permanent promotion during the 3-year probationary period.

(v) Are eligible for retirement in officer status under any provision of law (applicants under (g)(2) of this section and AFR 36-12, paragraph 9c(2), are excluded from this restriction).

(vi) Have been separated for a period longer than specified in (g) (2) or (3) of this section.

(7) CBPO processing:

(i) Before enlistment, the CBPO contacts HQ AFMPC/DPMMAE to give the following information: name, SSAN, CAFSC, gaining personnel accounting symbol (PAS), date of enlistment (DOE), grade, date of rank (DOR), race, sex, term of enlistment (TOE), education level, ethnic group, category of enlistment, marital status, date of birth (DOB), AFQT score group, AFQT percentile, ASVAB scores (administrative, electronic, general, and mechanical), airman evaluation test identification (ID), and action officer's name, grade, and telephone number.

(ii) Enlistment is recorded on DD form 4 with accession designation number (ADN) 006. Send enlistment documents to HQ AFMPC/DPMDRR, Randolph AFB, Tex. 78148, on date of enlistment. Send duplicate copy of DD form 4 to ARPC, 7300 East First Avenue, Denver, Colo. 80280.

(iii) HQ AFMPC/DPMMAE gains enlistee to the strength of the Air Force.

(iv) Classification is accomplished by CBPO according to AFR 35-1, paragraph 5-5b.

(h) *Airmen removed from the temporary disability retired list (TDRL):*

(1) A former airman may enlist as prescribed in § 888.21 unless barred by § 888.13.

(2) Unless enlisting for immediate retirement according to AFM 35-7, member is allowed to enlist for terms of service. Individuals who are eligible for retirement and who normally would be restricted from enlistment due to age, grade, or length of service, are allowed a minimum 2-year term of enlistment.

(3) Applicants may enlist at any Air Force CBPO by presenting:

(i) Letter from HQ AFMPC/DPMARA authorizing enlistment.

(ii) Special order announcing removal from TDRL and discharge.

(iii) DD form 214 issued at the time of placement on TDRL.

(4) An airman who meets minimum requirements for voluntary retirement and who has recovered from the physical condition for which placed on TDRL, but who is unfit by reason of a condition incurred while on TDRL or 60 calendar days thereafter, may be enlisted with the understanding that retirement for length of service will be accomplished as soon as practicable. To qualify under this paragraph, discharge and removal from TDRL must have been without severance pay. Voluntary retirement must occur as soon as possible.

(5) Before enlistment, the CBPO must contact HQ AFMPC/DPMMAE to provide the name, SSAN, gaining PAS, DOE, grade, DOR, race, sex, TOE, education level, ethnic group, category of enlistment, marital status, DOB, AFQT score group, AFQT percentile, ASVAB scores (administrative, electronic, general, and mechanical), airman evaluation test ID, and action officer's name, grade, and telephone number.

(i) CBPO's record enlistment on DD form 4 with ADN 026. Send applicable enlistment documents to HQ AFMPC/DPMDRR, Randolph AFB, Tex. 74818, on date of enlistment.

(ii) HQ AFMPC/DPMMAE gains enlistee to the strength of the Air Force.

(i) *Restored Air Force prisoners:*

(1) Policy. Airmen who have committed infractions warranting administrative or disciplinary action are to be rehabilitated and returned to duty if in each case:

(i) The member is properly motivated for continued service,

(ii) The member is morally fit, and

(iii) Return or restoration to duty will not adversely affect the esprit de corps or maintenance of good order and discipline.

(2) Explanation of term "Restored Prisoner." A restored prisoner is a former member of the Air Force discharged from the Air Force with a dishonorable discharge or bad conduct discharge who is permitted to enlist in the Air Force according to policy expressed in (1) above. The authority for such enlistment is limited to com-

manders exercising general court-martial authority. In some individual cases special instructions are issued by HQ USAF. Approval of restoration by competent authority constitutes a waiver of existing disqualifications for enlistment.

(3) Enlistment. Enlist all restored prisoners for terms of 2 years only.

(j) *Enlisting selected applicants for OTS:*

(1) Individuals who have been notified in writing by ATC of selection to attend OTS are processed in most cases the same as regular enlistees.

(2) Applicant with a letter of selection may be enlisted if not disqualified by conditions which occurred or were discovered after selection.

(3) An official copy of the college transcript must be turned in on arrival at Lackland AFB, Tex.

(4) ATC issues instructions covering class assignment, reporting date, career field, and travel.

(k) *Selectees for the U.S. Air Force Academy Preparatory School.* Air Reserve Personnel Center (ARPC) notifies Air Force Reserve/CBPO, Regular Air Force, and Air Force Recruiting organization of individuals who have been selected to attend the AF Academy Preparatory School. The following actions are accomplished by the requested organization:

(1) To enlist individual, prepare DD form 4 according to instructions provided; administer oath of enlistment.

(2) Publish Reserve orders assigning individual as requested by ARPC.

(3) Forward completed documents to HQ ARPC/DPRP, 7300 East First Avenue, Denver, Colo. 80280.

§ 888.5 Enlistment in the Delayed Enlistment Program (DEP).

(a) *To whom this program applies.* The DEP is open to all NPS and OTS applicants who have been accepted for enlistment in the Regular Air Force, and have been granted approval to enlist with authorization in the form of a job reservation or assignment to an OTS class from the U.S. Air Force Recruiting Service. Applicants must enlist in the U.S. Air Force Reserve for a 6-year period and normally are required to be on EAD within 270 days from the date of enlistment in the U.S. Air Force Reserve. Those who enlist in the guaranteed training enlistee program (GTEP) may do so within 365 days.

(b) *Enlistment criteria.* Applicants must have all of the qualifications that are required for enlistment in the Regular Air Force (NPS or OTS) with the following exceptions:

(1) Enlistment in the DEP is authorized for:

(i) NPS applicants who are high school students and are within 270 calendar days to their graduation date.

GTEP enlistees may have up to 365 days.

(ii) OTS applicants who are college students and are in their senior year must enlist within 270 days of their graduation dates.

(2) Enlistment in the DEP is not authorized for:

(i) Members of a Reserve or National Guard component of any branch of the Armed Forces.

(ii) Applicants for enlistment in the PS program.

(c) *Category of enlistment.* Enlist applicant in one of the following categories:

(1) Regular DEP for NPS applicants with job reservation, scheduled to enter the Regular Air Force.

(2) OTS-DEP for applicants who have received official notice of selection for OTS.

(d) *Place of enlistment.* Enlistment is authorized only at AFEES.

(e) *Term of enlistment.* All DEP enlistments are for 6 years for subsequent 4- or 6-year AD enlistment.

(1) Applicants who enter AD in the Regular Air Force for 4 years are assigned to the inactive Air Force Reserve following AD separation for an additional 2 years, minus time spent in the DEP before entry on AD.

(2) Applicants who enter on AD in the Regular Air Force for 6 years have no further Reserve obligation after completing their initial enlistment.

(f) *Grade and date of rank.* Enlist applicants (NPS or OTS) in the grade authorized in § 888.17 with DOR as date of enlistment into DEP.

(g) *Duty status and assignment:*

(1) The enlistee is assigned to the ARPC Obligated Reserve Section (ORS) DEP until he or she does enlist in the Regular Air Force, enters on EAD, or is discharged from the DEP.

(2) The enlistee cannot be in any Reserve training while in the ORS DEP.

(3) Enlistees do not receive any pay or allowances while in the DEP. They or any of their dependents are not authorized the use of any military facility, such as the hospital, commissary, or exchange.

(4) All reserve time spent by the enlistee while in the DEP counts for longevity pay increases.

(h) *Responsibilities of U.S. Air Force recruiting service (USARFRS):*

(1) Maintain strength accounting on all personnel who enlist in the DEP, by category of enlistment and sex.

(2) Maintain enlistment documents until a reservist does enter on EAD, enlists in the Regular Air Force, or is discharged.

(i) *Processing at recruiting offices:*

(1) Comply with all processing procedures that are prescribed in this part and § 888.22.

(2) Advise applicants that they are to enter into a legal contract which

may only be terminated if they should become disqualified for enlistment, or if they apply and receive approval for discharge according to applicable directives. Obtain guidance and approval from USAFRS/RSOP, Randolph AFB Tex. 78148, if a DEP enlistee should object or declines either orally or in writing to enter the Regular Air Force or EAD in the USAFR. (If a reservist is disqualified for enlistment in the Regular Air Force, entry on EAD, or has approved request for discharge, send originals of DD Forms 1966 and 4, and AF Form 941, Statement of Understanding (USAF Delayed Enlistment Program) and copies of SFs 88 and 93 to ARPC, Denver Colo. 80280.

(3) Remind enlistees of their responsibility to inform their recruiter or liaison NCO of any change in status (illness, injury, dependency, marital status) which could affect their continued eligibility for Regular Air Force enlistment.

(j) *Processing at Armed Forces Examining and Entrance Stations (AFEES).* The AFEES processes each applicant according to this part and publishes enlistment and EAD orders as shown in samples of special orders (§ 888.30 through § 888.38).

(k) *Processing actions required after enlistment in the DEP:*

(1) USAF recruiting personnel give the reservist a copy of AF Form 941 and make sure that he or she understands its contents. If the original date for enlistment in the Regular Air Force must be changed, cancel current AF Form 941 and issue a new AF Form 941. File the original of the new AF Form 941 and the cancelled AF Form 941 with detachment's reserve enlistment records. Both AF Forms 941 become annexes and accompany DD Form 4 on Regular Air Force enlistment.

(2) When the reservist enlists in the Regular Air Force:

(i) The U.S. Air Force Recruiting Detachment returns DEP enlistment case file to AFEES for transmittal according to paragraph 6(f).

(ii) AFEES discharges reservist from the USAFR. See sample discharge order § 888.30 to be published by AFEES for discharge from DEP and enlistment in Regular Air Force.

(3) § 888.23 establishes procedures to discharge DEP members who have not yet entered on EAD when action is warranted.

(4) If the reservist enters on EAD or is directed to comply with EAD orders, the Armed Forces Examining and Entrance Station (AFEES):

(i) Sends applicable documents listed in § 888.25 to HQ AFMPC/DPMDOD, Randolph AFB Tex. 78148, by nonregistered first-class mail.

(ii) Sends applicable records listed in § 888.26 to the 3700 Personnel Process-

ing Group/CDCC, Lackland AFB Tex. 78236, or servicing CBPO by nonregistered first-class mail.

§ 888.6 Processing actions for enlistment in the Regular Air Force.

(a) *Processing procedures.* This chapter explains the procedures for processing and completing actions required for enlistment in the Regular Air Force. When Air Force activities are authorized to enlist applicants, the CBPO (except USAFE CPBO's) is responsible for taking all processing actions prescribed for Recruiting Service personnel and the AFEES, HQ USAF notifies the MAJCOM concerned of any discrepancies in enlistment actions taken by the CBPO.

(b) *Prequalification of applicant.* Use the procedures below to determine whether or not an applicant may be eligible for enlistment.

(1) Interview. Thoroughly investigate any facts which may disqualify applicant before continuing processing. Disqualify applicants with obvious physical defects (§ 888.45). Individuals enlisting under the GTEP must meet all mandatory requirements shown in AFR 39-1 for the AFSC selected.

(2) Proof of documents. Originals or duly signed and authenticated copies of all documents must be submitted. When the required information has been entered on the enlistment records, these documents are returned to the applicant.

(3) Proof of education. See § 888.2(d).

(4) Proof of citizenship. For applicant born:

(i) In the United States, its territories, or possessions, the document verifying age (paragraph (b)(5) of this section) is acceptable proof of citizenship.

(ii) Of American parent or parents outside the United States, citizenship must be proved by one of the following documents:

(a) Certificate of Citizenship or United States Citizenship ID Card (I-197) issued by the Immigration and Naturalization Service.

(b) Authenticated copy of Report of Birth Abroad of a Citizen of the United States of America (Foreign Service Form 240). This form is referred to as the Consular Report of Birth, and applicant may get a copy from the Authentication Officer, Department of State, Washington DC 20520.

(c) If none of the documents listed in (b)(4)(a) or (b) of this section can be produced, a personal US passport identifying the holder as a citizen may be used to verify citizenship.

(d) An alien must have Form I-151, Department of Immigration and Naturalization Service Alien Registration Receipt Card, for AD enlistment.

(5) Proof of Social Security Account Number. Each applicant for enlistment in the US Air Force must have an SSAN card, the only acceptable document for proof of the SSAN. Enter the SSAN, as shown on the SSAN card, on DD Form 1966, item 2. If the applicant does not have a card, refer him or her to the nearest SSA district office to submit IRS Form SS-5, Application for Social Security Number (or Replacement of Lost Card) under "expedited processing procedures." Applicant must have the SSAN card in his or her possession when reporting to AFEES for initial enlistment (DEP or RegAF).

(6) Proof of Age. The only acceptable documents for proof of age are:

(i) Birth certificate, including hospital or delayed birth certificate.

(ii) Statement by State registrar of vital statistics or similar state official.

(iii) DD Form 214, Report of Separation From Active Duty, for PS applicants. Accept date of birth recorded thereon as a verified date.

(iv) DD Form 372, Application for Verification of Birth for Official US Armed Forces Use Only. Only use this form to prove age when the applicant is unable to furnish one of the above documents.

(v) Form I-151 or I-551.

(vi) United States passports, naturalization papers, certificate of citizenship, and any other official US documents which reflect the applicant's full name and date of birth.

(7) Identify. Make sure that the applicant is the same person whose name is recorded on the documents as proof of his or her age; verify name with social security card, driver's license, and so forth. If the names do not correspond, request applicant furnish:

(i) A copy of court order changing name.

(ii) If there is a difference in the name of the individual's social security card and the name to be used for enlistment a Social Security Form OAAAN-7003 must be completed by the individual and presented to the enlisting activity for mailing to the nearest Social Security Administration District Office.

(8) Enlistees from the DEP, AFEES or USAFE CBPO's attach DEP documents to Regular Air Force enlistment documents after processing, and send to HQ AFMPC/DPMDRR, Randolph AFB TX 78148, for inclusion in the USAF master personnel record group.

(9) DD Form 369, Police Record Check:

(i) The use of DD Form 369 to obtain a police check as a prerequisite for enlistment is mandatory for all NPS and OTS applicants. Exception: those periods in the applicant's background when they resided in States, cities, or counties where release of in-

formation is specifically prohibited by statutes, and where the law enforcement agencies abide by those statutes and refuse to honor requests for police record checks.

(ii) Check applicant's background for at least 5 years or from date of first offense, whichever is the greater period. (For PS applicants consider only period since last separated from active duty.)

(iii) When authorities refuse to honor DD Form 369, rely on the information provided by the applicant on DD Form 1966 in determining applicant's eligibility.

(iv) Applicants whose records will not be released or are sealed or expunged should be advised to fully disclose all past offenses and disposition. Applicants must understand that investigators may have access to records, and that nondisclosure at the time of enlistment could later result in denial of a security clearance or, if the records were in fact "not sealed," disciplinary or administrative actions that could result in separation under other than honorable conditions that could affect future employment opportunities.

(v) Change the parenthetical phrase "(other than minor traffic violations)" to "(including minor traffic violations)." Send DD form 369 with a self-addressed return envelope to the Chief of Police, Sheriff, or juvenile agency where the applicant resides, has resided, attended school, was employed, and where the offense was committed. This includes all foreign countries where applicants have lived for 6 months or more.

(vi) When law enforcement agencies will not furnish the required information, annotate interview record accordingly and comply with (b)(9)(iii) of this section.

(vii) When a reply is not received from a law enforcement agency in 21 calendar days, indicate this in interview record and comply with (b)(9)(iii) of this section.

(viii) When admitted offenses require specific authority to enlist and a DD form 369 cannot be obtained, make every effort to verify applicant's status through other sources (juvenile or court records, and so forth). If not successful, process request for waiver based on data revealed by applicant.

(ix) If applicant reveals possible disqualifying offense(s), eligibility must be determined (that is, qualified or waiver obtained) before any further processing of ASVAB, physical, travel, meals, or lodging at Air Force expense is accomplished. Serious offenses admitted by an applicant are disqualifying offenses confirmed by law enforcement agencies. They must be thoroughly investigated and a waiver ob-

tained, if required, before applicant's eligibility can be confirmed.

(x) If applicant is disqualified by data obtained through police check, the recruiter records the Personnel Accounting Symbol (PAS) and destroys DD form 369 immediately.

(xi) If applicant is qualified at the AFEES, keep DD form 369 in the enlistment case file pending enlistment. After entry on AD, DD form 369 is filed at the AFEES. Destroy according to AFM 12-50. Destroy forms immediately for applicants who are found mentally or physically disqualified.

(xii) DD Form 370, Request for Report From (Employer), (School), (Personal Reference), may be used for all waiver actions requiring references. Submit at least three references with waiver request, one of which, if possible, should be from the appropriate law enforcement agency, court, juvenile or probation office, if applicant was confined, paroled, placed on probation, or supervision.

(10) Sealed juvenile record. Applicants may deny having ever been convicted of a juvenile offense. If the offense record has been sealed, applicants must understand that investigators may have access to records even though "sealed" by civil courts. All applicants should be advised that although not subject to punitive action based on denial of sealed record, they may later be discharged for the convenience of the Government if the record becomes known to the Air Force. If a sealed record becomes known to the Air Force, it may also be considered in granting or denying a security clearance or awarding specific AFSCs.

(11) Unsealed juvenile record. Applicants should be advised that offense and disposition records that have not been sealed should be fully disclosed. Nondisclosure of unsealed records could later result in denial of a security clearance, or disciplinary or administrative action that could result in separation under other than honorable conditions.

(12) Mental screening tests. The primary mental or aptitude test is the ASVAB. The recruiter should use the Enlistment Screening Test (EST) to screen out applicants who might not be able to successfully complete the ASVAB. Retesting on alternate versions of the EST after 30 calendar days is authorized; however, not more than two retests may be given in a 12-month period.

(c) *Processing of qualified applicant.* After the applicant has been found preliminary qualified, the recruiter will prepare the following forms and forward all documents listed in §888.24 to enlistment activity for further processing. Depending on local procedures, applicants may hand-carry

records to enlistment activity. See § 888.8, § 888.39, § 888.40 and § 888.41, for instructions to complete forms.

(1) DD Form 1966, Application for Enlistment—Armed Forces of the United States.

(2) AF Form 3006, Enlistment Agreement (Prior Service)—United States Air Force, or AF Form 3007, Enlistment Agreement (Nonprior Service)—United States Air Force, as appropriate. Attach letters of specific authorization required for enlistment or grade entitlements to the agreement form.

(3) Complete AF Form 2030, USAF Drug Abuse Certificate (Enlistment Only), and AF Form 2031, Drug Abuse Circumstances, when individual evaluation is requested on AF Form 2030. Prepare originals only.

(i) Thoroughly discuss these forms with the applicant, including the meaning of the terms used (see AFR 30-2). Insure that the applicant understands that willfully false and misleading statements, as well as omission of essential facts, on AF form 2030 may be the basis for administrative separation or punitive action after entry in the Air Force.

(ii) Applicants must initial all appropriate certification blocks and sign AF form 2030. If an applicant refuses to sign the form, tactfully advise that this refusal will bar enlistment.

(iii) If an applicant refuses to sign AF Form 2030 based on the grounds of never having used marihuana, line out the words "within the last six months" and have the applicant initial the appropriate blocks and sign the modified forms.

(iv) If an applicant cannot initial the first certification block on AF Form 2030 because he or she has been arrested for possession or use of marihuana, line out the word "never" (if appropriate also change the first part of the statement as outlined above) and have the applicant initial the appropriate blocks and sign the modified form.

(v) Recruiting personnel must make sure that the applicant fully understands the content and meaning of the modified statement. Also, they must advise the applicant that if he or she admits to or is found to have used marihuana within the mandatory abstinence period, the applicant is subject to review for fraudulent enlistment and could receive an undesirable discharge.

(vi) If the applicant requests an individual evaluation, the use of AF Form 2031 is required.

(vii) Applicant is required to complete AF Forms 2030 and 2031 before enlistment in the DEP. The Recertification Certificate on the reverse of AF Form 2030 must be completed no earlier than 7 calendar days before enlistment in the Regular Air Force. After

enlistment, the AF Form 2030 is filed in the unit personnel record group until the airman reenlists or is discharged.

(viii) AF Form 2031 is destroyed after completion of screening by the waiver authority.

(4) AF Form 3010, Statement of Understanding (Dependency). All applicants who are married or have dependents must certify their understanding of Air Force policy and procedures by completing AF Form 3010. Complete with typewriter or pen according to § 888.8.

(d) *Preenlistment security investigation:*

(1) A National Agency Check (NAC) must be initiated by AFEES at time of enlistment on PS applicants who have had a break in service of more than 1 year.

(i) Complete original and one copy of DD Form 1584, Department of Defense National Agency Check Request, and original only of FB Form 258, FBI Fingerprint Card, according to instructions in AFR 205-32. In the "Return Results To" block on DD Form 1584, enter:

(a) The address of the gaining base Chief, Security Police, if the individual will not be attending a technical training course or the technical training course is less than 20 weeks, or

(b) The address of the Chief, Security Police, of the base where the individual will be attending a technical training course of 20 weeks or longer duration.

(ii) On completion of NAC Processing, AFEES sends original DD Form 1584 with FD Form 258 attached to Personnel Investigation Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Md. 21203.

(2) AFEES initiates ENTNAC request on all NPS applicants when a scheduled date of enlistment is established.

(i) Complete original and two copies of DD Form 1584 and original only of DD Form 369. In the "Return Results To" block of DD Form 1584, enter: 350 Airman Classification Squadron, (DPKS 1), Lackland AFB, Tex. 78236.

(ii) On completion of ENTNAC processing, AFEES sends original DD Form 1584, with DD Form 369 attached, to Personnel Investigation Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Md. 21203.

(iii) The Air Force liaison NCO sends duplicate copy of DD Form 1584 to 3507 Airman Classification Squadron, (DPKS 1), Lackland AFB, Tex. 78236. Accomplish no later than 1 duty day after ENTNAC is initiated.

(iv) Send the third copy of DD Form 1584 to AFMTC, Lackland AFB, Tex. 78236, according to paragraph (f) of this section. Exception: When an individual becomes disqualified for enlist-

ment or does not enlist, indicate reason in the "Return Results To" block on the third copy of DD Form 1584 and send to 3507 Airman Classification Squadron, (DPKS 1), Lackland AFB, Tex. 78236. For example: "can not enlist—morally disqualified," "can not enlist—medically disqualified," "can not enlist—declined," "can not enlist—hardship."

(3) The commander, 3507 Airman Classification Squadron, Lackland AFB, Tex, reviews results and refers questionable cases to USAFRS/RSL, Randolph AFB, Tex. 78148, for Regular Air Force personnel and to HQ AFRES/RS, Robins AFB, Ga. 31098, for Air Force Reserve personnel, for further action.

(4) Send tracers on pending NAC's or ENTNAC's, as outlined in AFR 205-32, attachment 6 to Personnel Investigation Center/DO 840, Defense Investigative Service, P.O. Box 1211, Baltimore, Md. 21203.

(5) Applicants enlisting under the provisions of § 888.4(e)(5). The recruiter sends the security information, as furnished by the Reserve unit, to the AFEES for use as follows:

(1) If a NAC/ENTNAC has been completed within the last year, further processing is not required.

(2) If an NAC/ENTNAC has not been completed or was completed over 1 year ago, comply with instructions in (d)(1) (i) and (ii) of this section.

(e) *Processing at AFEES or other enlistment activity.* This subparagraph explains the processing actions to be accomplished.

(1) Review of documents. The AFEES Air Force liaison NCO must thoroughly review DD Form 1966 and USAF enlistment agreement documents to insure accuracy, completeness, and legibility.

(2) Responsibility of enlisting activity. Process applicants according to this regulation and, accomplish the following:

(i) Prepare and complete for each enlistee:

Form	Prepare IAW
DD Form 4, Enlistment or Reenlistment Agreement—Armed Forces of the United States.	Attachment 6.
DD Form 4c, Enlistment or Reenlistment Agreement—(Continuation Sheet).	Attachment 7.
DD Form 93, Record of Emergency Data.	AFR 35-38.
SF 88, Report of Medical Examination (see note 1).	AR 40-501 or AFR 160-43.
SF 93, Report of Medical History (see note 1).	AR 40-501 or AFR 160-43.
VA 29-8286, Servicemen's Group Life Insurance Election (see note 2).	.....
DD Form 2057, Contributory Educational Assistance Program—Statement of Understanding (see note 3).	.....

NOTES.—1. Prepare an extra copy of SF's 88 and 93 for an enlistee for the USAF Band and for PS personnel placed in a TDY status to a technical school. 2. Prepare if enlistee has an unusual family relationship and prefers to designate a beneficiary at time of enlistment. 3. Both applicant and witness complete part I as indicated. Part II is completed at BMT.

(ii) Information to applicant. Before applicant signs the DD form 4 and takes the oath of enlistment, the enlisting officer or designated representative must explain article 83, Uniform Code of Military Justice, stressing:

(a) The importance of making true statements and the penalties involved for giving erroneous, false, or misleading information.

(b) That personal data and fingerprints are checked with law enforcement agencies.

(c) That concealment of a criminal record may result in trial by court-martial for fraudulent enlistment or dismissal from the service with less than an honorable discharge.

(d) That disclosure of information that would bar enlistment before taking the oath of enlistment will result only in rejection of the applicant with no additional punitive action.

(iii) Review of enlistment forms. The SSAN must be verified by SSAN card at time of Regular Air Force enlistment. Make sure that all entries on enlistment forms are accurate and satisfactory to all concerned before obtaining any signatures. The applicant and enlisting officer must initial all corrections and erasures on DD form 4 before applicant takes the oath of enlistment.

(iv) Oath of enlistment. Administer the oath in a dignified manner in appropriate surroundings. Display the U.S. flag near the commissioned officer administering the oath.

(v) After enlistment. After applicant takes the oath of enlistment, the enlisting officer must:

(a) Explain articles 85 and 86, Uniform Code of Military Justice. (May be performed by a designated representative.)

(b) Make sure that the enlistee signs DD form 4, items 18 and 22. Item 20 is witnessed by USAF AFEES Liaison NCO.

(c) Sign DD form 4, item 25 (or 30 for ANG enlistee). If DD form 4c is applicable, applicant signs items 32 and 37, and the enlisting officer completes item 39 and signs in item 40.

(d) Destroy DD form 4, page extract, 1a (selective service copy).

(vi) Preparation and distribution of enlistment orders. Prepare all enlistment orders by using the applicable samples shown in attachment 1. The following additional instructions apply:

(a) HQ ATC/RS must furnish the fund citation for each fiscal year.

(b) For all enlistees except NPS, the U.S. Air Force Recruiting Service must furnish a request for orders for each enlistee.

(c) Distribute the Air Force enlistment orders as follows:

Copies provided to—	PS	NPS	OTS	Other
Individual	10	1	3	3
Original record	2	2	2	2
Duplicate record	6	2	6	2
Recruiting det	2	2	2	(¹)
Recruiting group	2	0	2	(¹)
USAFRS/RSOP				
Randolph AFB TX				
78148	1	0	0	(¹)
Unit of assignment	1	1	1	(¹)
Oversea unit of				
assignment	2	NA	NA	(¹)
Serving CBPO	2	2	2	(¹)
Orders publishing				
agency	(¹)	(¹)	(¹)	(¹)

¹As needed.

(f) Distribution of enlistment documents by enlistment activity:

(1) Assemble the documents listed in § 888.25 for Regular Air Force enlistees in order indicated from top to bottom. Staple them together in upper left corner, and send within 1 workday to HQ AFMPC/DPMDRR, Randolph AFB, Tex. 78148. Assemble the documents listed in § 888.26 and send to AFMTC, Lackland AFB, Tex. 78236, or the servicing CBPO. Send triplicate copy of DD forms 4, 4c, and 1966 with all annex(es) to Air Force Recruiting AFEES liaison office, and quadruplicate copies to enlistee.

(2) Place records listed in § 888.26 in a sealed envelope for disposition as follows:

(i) For NPS. Records on each Regular Air Force enlistee reassigned from the AFEES to Lackland AFB, Tex. are hand carried. Designate one enlistee to be responsible for delivery of the sealed envelope to the unit of assignment.

(ii) For PS. On date of enlistment, mail records to unit of assignment in preaddressed envelopes furnished by Recruiting Service. Do not mail records to TDY school location. If airman is placed on TDY to technical training school, give him or her a copy of SF's 88 and 93 to hand carry.

(iii) For OTS personnel. OTS personnel will hand carry their individual records, in a sealed envelope, to Building 156, Medina Annex, Lackland AFB, Tex.

(3) If rejected, return DD Form 1966 to USAF AFEES Liaison NCO.

(g) Special procedures for members of reserve components. The responsible recruiting group or the enlisting Air Force activity takes the following action when DD form 1966, item 26, indicates the enlistee in the Regular Air Force is still a member of the Reserve.

(1) Reproduce copies of DD form 4 and forward to:

(i) The Reserve unit shown in DD form 1966, item 26h.

(ii) ARPC, 7300 East First Avenue, Denver, Colo. 80280, or to the appropriate State Adjutant General.

(2) Request copy of the discharge order.

(3) Initiate followup action to make sure the enlistee is separated from the Reserve Component.

(h) General information on processing. (1) Applicants who decline or are found not qualified for enlistment:

(i) AF liaison NCO must orally inform applicants not qualified for enlistment due to failure to meet mental or physical qualifications of the reasons and give them an opportunity to ask questions.

(ii) For reservist found physically disqualified, send the complete examination results to the Reserve unit.

(iii) Do not enlist applicant who fails or refuses (after instructions) to complete DD form 1966, item 39. If document provides reason for belief that this enlistment may not be clearly consistent with the interest of national security, hold the enlistment in abeyance. Return the entire case to the Air Force recruiting detachment commander who forwards DD form 1966 and any other pertinent data to the Office of Special Investigations (OSI) district servicing the detachment for investigation and development of all information having a bearing on the questionable entry. HQ AFMPC/DPMRPP determines if the enlistment is in the interest of national security and advises the detachment. If reply is favorable, the recruiting detachment attaches pertinent document(s) to the DD form 1966 and sends applicant to AFEES for enlistment.

(2) Transportation and subsistence:

(i) Except outside the United States, transportation and subsistence at Government expense are authorized to place of enlistment. If found not qualified or required to await further orders, AF liaison NCO arranges to return applicants at Government expense. Do not return at Government expense applicants who intentionally conceal disqualifications.

(ii) Applicants not previously disqualified may be issued meal and lodging tickets for use at AFEES contract facilities for not more than 3 days, unless extension is authorized by the detachment commander.

(iii) Make travel arrangements for enlistees to depart the enlistment activity for the appropriate Air Force base on date of enlistment, except when transportation is not available. Schedule arrival at destination between 0800 and 2200 hours.

(iv) Make routing arrangements according to AFM 75-2 or AFR 75-25.

Make accommodations according to AFR 75-25.

(v) Enlistees ordered to a training center for basic training are authorized travel according to joint travel regulations (JTR), volume I. Enlistees assigned to a first-duty station, other than for BMT and OTS are authorized travel and transportation allowances according to JTR, volume I. Normally lower grade airmen enlisting with less than 2 years' service will not be authorized transportation for dependents and movement of household goods at Government expense. Each individual must pay dependents' expenses. Refer to JTR where appropriate.

(i) *Assignment of accession designation numbers (ADNS)*: (1) Definition of enlistment options for ADN assignments. See § 888.27.

(2) ADNS to be assigned enlistees. See § 888.28.

§ 888.7 Preparation of application for enlistment and USAF enlistment and USAF enlistment agreement documents.

(a) *Preparation of documents*: (1) This chapter prescribes preparation of the documents listed below. Only the entries prescribed herein or otherwise directed are authorized. Submit request for inclusion of other material to HQ AFMPC/DPMMR, Randolph AFB, Tex. 78148.

(i) DD Form 1966, Application for Enlistment—Armed Forces of the United States.

(ii) AF Form 3006, Enlistment Agreement (Prior Service/Active USAFR/ANG)—U.S. Air Force.

(iii) AF Form 3007, Enlistment Agreement (Nonprior Service)—U.S. Air Force.

(iv) AF Form 3009, Change to Enlistment Agreement—U.S. Air Force.

(v) AF Form 3010, Statement of Understanding (Dependency).

(vi) AF Form 883, Privacy Act Statement—U.S. Air Force Application Records.

(2) The enlistment activity prepares above forms except AF Form 883 and AF Form 3010, in four copies. Air Force forms become an annex to DD Form 4 at time of enlistment, and must be prepared in the same manner of copies as the DD Form 4. Complete with typewriter (preferably) or print using ballpoint pen with black or blue-black ink. Print firmly to make sure all copies are readable.

(3) Completed forms must not contain erasures, crossouts, or changes of any nature to the applicant's entries. Redo documents requiring changes or corrections to applicant's entries, before enlistment.

(4) Recruiters must inform and counsel each applicant on the following:

(i) Applicants are required to certify that the information given is complete and accurate to the best of their knowledge and belief.

(ii) Information given is subject to investigation by the Air Force, and that the penalty for making false statements could be applicant's discharge from the Air Force under other than honorable conditions.

(iii) The meaning of each entry and statement on DD Form 1966 (except section II), AF Form 2030 and, if applicable, AF Form 2031, AF Form 3006, or AF Form 3007.

(b) *DD Form 1966, Application for Enlistment—Armed Forces of the United States*. Complete according to §§ 888.40 and 888.42.

(c) *AF Form 3006, Enlistment Agreement (Prior Service/Active USAFR/ANG)—U.S. Air Force*. This document outlines the terms of the enlistment options granted to PS, Active USAFR/ANG enlistees.

(1) Recruiter explains each option in section II applicable to the enlistee. Enlistees initial in the first block to show their understanding; recruiter initials in the middle block to show that the entry has been explained. On the day of applicant's enlistment in the Regular Air Force, the AFEES liaison NCO reviews each applicable entry with the applicant and then initials the remaining block to show he or she has accomplished this responsibility. Particular emphasis is placed on making sure that applicant fully understands paragraphs B, H, and K.

(2) Recruiter and applicant sign at the end of section II, and their names and grades are typed or printed.

(3) Applicant completes section III on the date of enlistment in the Regular Air Force.

(4) AFEES liaison NCO completes section IV on the date of applicant's enlistment in the Regular Air Force.

(d) *AF Form 3007, Enlistment Agreement (Nonprior Service)—U.S. Air Force*. This document must be completed in the following manner:

(1) Recruiter explains each option in section II applicable to the applicant.

(2) Applicant initials each applicable block showing understanding.

(3) Recruiter then initials block "K" indicating entry was explained.

(4) Liaison NCO reviews each entry with applicant on the date of initial enlistment (DEP or Regular Air Force if not in DEP). Both applicant and liaison NCO then initial block "K."

(5) Applicant reviews AF form 3007 along with other enlistment documents and signs section II. USAF representative signs verification in section II.

(6) the liaison NCO confirms applicant's eligibility and makes final review with the applicant. Applicant

and liaison NCO sign sections III and IV, respectively.

(7) Sections III and IV are completed at the time of initial enlistment, whether DEP or Regular Air Force. The completed form becomes a permanent annex to the DD form 4, and no other entries can be made on it except to void it when a new form is prepared.

(8) For OTS selectees, the AF liaison NCO types the following in section II, paragraph M, remarks. Add continuation sheet, if required. Have applicant initial this block.

(i) For all OTS selectees: "I understand that if I am eliminated from training leading to an AF commission for other than medical or unsuitability reasons, I may elect in writing to complete my 4-year enlistment or to be immediately discharged."

(ii) For rated OTS selectees (in addition to (i) above): "I understand that if selected for flying training, should I become medically disqualified, or should I fail to successfully complete the flight screening program, the needs of the Air Force and the recommendation of OTS will determine if I am allowed to continue in another course of training. I also understand that the needs of the Air Force will determine whether or not I am allowed to remain on active duty in a commissioned status if I fail to complete the required course."

(9) For medical remedial enlistment, the AF liaison NCO types the following in section II, paragraph M, remarks: Medical Remedial Enlistment. I understand I am being accepted for enlistment into the U.S. Air Force because I have agreed to undergo surgical or other medical or therapeutic procedures needed to correct my physical defect which is (enter defect). I understand that I will be administratively discharged without entitlement to physical disability benefits, if I subsequently refuse to be treated." Have applicant initial this block.

(10) If the enlistee's status changes while in the DEP (for example: change in AFSC/AI; change from 4- to 6-year enlistment), a new AF form 3007 is required. The AF liaison NCO prepares the new form to show enlistment options effective for applicant's active duty enlistment as follows:

(i) Prepare complete new AF form 3007 indicating current enlistment status as of date of active duty enlistment. Enter the following statement in block M of the new form: "This form supersedes AF form 3007, dated — (enter the date sections III and IV of the old form were signed, which normally will be DEP enlistment date)."

(ii) After completion of the new AF form 3007, mark in large letters across the front of the old form—VOID—

with the liaison NCO's signature and date below the entry.

(iii) Make appropriate entries in block 31b of DD form 4c indicating the supersedure. The new form then becomes an additional annex to the DD form 4. Both AF forms 3007 are permanent annexes and must accompany the DD form 4 or 4c on enlistment.

(iv) If options are changed (an enlistee is rebooked) more than once while in the DEP, the only required AF forms 3007 at time of Regular Air Force enlistment are two; the one completed for DEP and the one completed for Regular Air Force enlistment.

(e) *AF Form 3009, Change to Enlistment Agreement—United States Air Force.* This document is required if, after enlistment, an individual is found to be ineligible for the GTEP AFSC in which enlisted. It is prepared by the CBPO responsible for the individual's field personnel record.

(1) Section I entries. Self-explanatory.

(2) Section II entries. Explain options and alternate skills available to enlistee. Enlistee selects applicable option and makes any other remarks in the space provided.

(3) Section III entries. The approving authority reviews the availability of the AFSC selected, the remarks made by the enlistee, and approves or disapproves the change requested if the new conditions are acceptable.

(4) Disposition of approved documents. Send original to HQ AFMPC/DPMDROD, Randolph AFB TX 78148, for inclusion in individual's master personnel record; file duplicate as part of AF Form 3007 in individual's field personnel record.

(f) *AF Form 3010, Statement of Understanding (Dependency).* This document is used to obtain further certification that personnel with dependents are fully aware of Air Force policies regarding Government quarters, pay and entitlements, assignment considerations, family separation, and entitlements for movement of household goods at Government expense. AF liaison NCO or recruiter prepares original and one copy.

(1) Section I and II entries. Self-explanatory.

(2) The recruiter carefully explains each statement in sections III, IV, V, and VI to applicant. The applicant then reviews each statement and certifies his or her understanding by signing section VII. Recruiter signs in section VII. These signatures are certification that each statement in items III, IV, V, and VI has been explained to applicant, as well as representing a witnessing signature.

(3) Items IX and X do not require completion unless applicant has no residing spouse.

(4) Applicant conducts final review before enlistment and on date of enlistment, signs in item XI.

(g) *AF Form 883, Privacy Act Statement—U.S. Air Force Application Records.*

(1) It is desirable (not mandatory) that all applicants sign the acknowledgment of receipt of a copy of AF form 883.

(2) The Air Force representative collecting the initial information required for enlistment or commissioning determination must provide clear instructions to make sure that applicant understands the content of AF form 883 before signing. AF form 883 is not a consent form. It merely indicates that the individual has been advised of information and its intended use.

(3) The signed copy is kept with application until case file is forwarded for enlistment or commissioning processing. On enlistment or commissioning, file in individual's Unit Personnel Record Group until individual's active duty status terminates, then destroy. Give a copy to the individual, if individual is being concurrently assigned to the Reserves or National Guard. AF form 883 remains in Unit Personnel Record Group until termination of status; then is destroyed. If applicant declines or is disqualified for enlistment, the signed copy is returned to the appropriate recruiter to attach to the applicant's personal interview record until destroyed.

§ 888.8 Enlistment procedures for oversea nonprior service (NPS) applicants.

(a) *Procedures for enlistment.* This chapter applies only to CBPOs authorized to enlist NPS applicants overseas where a representative from HQ USAF Recruiting Service is not present. Specific approval must be obtained from USAFRS/RSOP Randolph AFB, Tex. 78148, for each applicant. See § 888.15 for authorized AFSC. Use criteria outline in AFRs 39-1 and 35-1 to determine applicant's eligibility.

(b) *Processing of applicants:*

(1) Determination of Qualifications. Comply with § 888.2 and § 888.3.

(2) Completion of Forms. Comply with § 888.6 and § 888.7.

(3) Enlistment applications. Submit to USAFRS/RSOP and include:

(i) Letter of transmittal requesting enlistment authorization, with a statement certifying that applicant meets the mental, moral and physical prerequisite as outlined in this regulation (§ 888.29). If applicant answers "yes" to any questions on the DD form 1966, item 37, 39, or 40, they must be fully explained in item 40g or 41 (use appropriate item as indicated on DD form 1966). If, on review of these items and § 888.14, it is found that applicant re-

quires a waiver, include a completed DD form 369, AF form 2030 or 2031 (if applicable), at least three character references, and a detailed prepared statement in applicant's own handwriting explaining all offenses listed on the DD form 1966, item 40g or 41, and circumstances involved. If applicant was on probation, a statement from his or her probation officer or a court order indicating release from probation must be included. Requests for waiver are returned to the CBPO from USAFRS/RSOP either approved or disapproved. If request for waiver is disapproved, applicant is then ineligible for enlistment in the U.S. Air Force.

(ii) Provide current status of each applicant, that is: dependent of active duty member, retired member, U.S. Government employee, student, or other business purposes. Include date due to return to CONUS.

(iii) Submit completed work copy of DD form 1966 according to § 888.40

(iv) Original and one copy of SFs 88 and 93.

(v) AF form 2030 and AF form 2031, if applicable. Refer to (b)(3)(i) of this section and § 888.6(c)(3).

(b) *Enlistment options:*

(1) Enlistment in an aptitude area. Applicants who are interested in this option should show at least three aptitude areas of preference, M, A, G, or E. They should select the aptitude area in which they are best qualified.

(2) Guaranteed Training Enlistee Program. See § 888.3(d). Applicants who choose this option should list three or more AFSCs in order of preference. Applicants who want to enlist under the GTEP option should ask for an assignment which will match their ability.

(3) Six-year enlistment option. See § 888.3(d)(3). Mental Category—IV applicants are not eligible for this option.

(4) All applicants for enlistment must be told:

(i) Of a possible enlistment delay of from 2 to 6 months due to programmed training schedules.

(ii) That if they are enlisting for 871XX career field, they must be auditioned and processed according to § 888.3(d)(7).

(iii) That some technical training courses are subject to discontinuance with changes in location and course lengths. Applicants should not be promised technical school training for any AFSC. Advise GTEP applicants that they will get on-the-job training or technical school training.

(c) *Enlistment approval:*

(1) USAFRS/RSOP gives enlistment authorization by letter or message to the oversea CBPO which shows the option approved and date applicant is to be at Lackland AFB, Tex. Applicant

is contacted and a determination must be made that the enlistment desires are satisfied. At that time, CBPO and applicant must complete AF form 3007. Also, the CBPO must initiate an Entrance National Agency Check (ENTNAC) according to § 888.6- (d)(2). Schedule enlistment and transportation to permit the enlistee to arrive at Lackland AFB, Tex. on or before date specified in enlistment approval letter or message. Enlistees enter travel status within 24 hours of enlistment.

(2) If applicant is dissatisfied with enlistment option offered, and oversea CBPO cannot eliminate dissatisfaction, send a routine message (use mail during MINIMIZE) to USAFRS/

RSOP, Randolph AFB, Tex. identifying authorization and requesting cancellation of enlistment reservation. Once this action has been taken, a new application must be submitted.

(d) *Reverification of enlistment eligibility before enlistment:*

(1) Base medical sections do physical rechecks within the 72 hours before enlistment for all applicants. Special emphasis must be placed on weight standards to make sure that individuals are not overweight at time of enlistment.

(2) Review and recertify enlistment forms.

(e) *Confirming enlistment.* On completion of enlistment action, CBPO

sends message to USAFRS/RSOP, Randolph AFB, Tex. and gives enlistee's name, SSAN, date of enlistment, enlistment approval authority, and estimated arrival time at AFMPC. Send copy of DD form 4, DD form 1966 (pages 1 through 6), and AF form 3007 on DOE to USAFRS/RSOP, Randolph AFB, Tex. 78148.

§§ 888.9-888.10 [Reserved]

§ 888.11 Uniform guidelists for typical offenses.

Filed as part of the original document.

§ 888.12 Minimum mental requirements (USAF).

RULE	A	B	C	D
	If enlistment category is	then minimum enlistment aptitude score required is	and mental score required is	and minimum education required is
1	NPS	composite 170 plus G-45 plus 40 in enlistment aptitude area	65-100	HS.
2				nonHS.
3			21-64	HS.
4			21-99	HS Senior (see note).
5	PS	minimum G-45 plus qualifying score for enlistment AFSC	31-100	HS.

NOTE: May enlist in the DEP, however, rule 1, 2, or 3 applies for active duty enlistment.

§ 888.13 Conditions which make applicants ineligible to enlist.

Filed as part of the original document.

§ 888.14 Processing applicants with moral disqualifications.

Filed as part of the original document.

§ 888.15 Authorized specialities for guaranteed training enlistee program (GTEP).

Filed as part of the original document.

§ 888.16 Place of enlistment, NPS applicants.

R U L E	A	B	C
		If applicant is	and wishes to enlist	then place of enlistment is
1	a US citizen	in the United States or Puerto Rico	the AFEES through USAF Recruiting Service.
2		in the Canal Zone or Guam (see note 1)	the CBPO Albrook AFB CZ or Anderson AFB GU.
3		in other oversea areas (see notes 1 and 2)	the CBPO when no Recruiting Service facilities are available (applicant NOT authorized travel to point of enlistment at Government expense).
4	an alien	outside the continental US	applicant is ineligible to enlist.

NOTES: 1. Process applicants according to chapter 8.
 2. Applicant must be without concurrent status as a national of the country where the enlistment occurs, provided also that the

enlistment does not conflict with the law of such country or with any intergovernmental agreement between the US and such country.

§ 888.17 Grade determination for NPS enlistees.

R U L E	A	B
		If applicant	then grade authorized is
1	was credited with over 90 days' active duty service and last separated in pay grade E-2 or higher	E-2 (see note 1).
2	presents General Billy Mitchell Award Certificate; letter from CAP-USA, Maxwell AFB AL; or a letter from CAP unit commander showing successful completion of the CAP Training Program	
3	has completed 2 or more years of college ROTC and possesses a letter of recommendation from the Professor of the appropriate Army, Navy, or Air Force ROTC unit	
4	has satisfactorily completed the entire HS Junior ROTC Program (3 years or more), is a HS graduate, and presents official certificate of completion issued by the Armed Force conducting the program	
5	is a Service Academy ex-cadet with over 90 days' service (see note 2)	
6	is none of the above	E-1.

NOTES: 1. Documents presented after completion of basic training may not be used as a basis for changing the authorized enlistment grade except through application to the Air Force Board of Correction of Military Records.

2. Forward copy of DD Form 214 and statement from individual regarding reason for disenrollment to HQ AFMPC/DPMMI, Randolph AFB TX 78148, for enlistment authorization.

§ 888.18 to § 888.45

Filed as parts of the original document.

FRANKIE S. ESTEP,
Air Force Federal
Register Liaison Officer.

[FR Doc. 78-22567 Filed 8-14-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

**CHAPTER I—FEDERAL
COMMUNICATIONS COMMISSION**

[CC Docket No. 78-144; FCC 78-594]

**PART 0—COMMISSION
ORGANIZATION**

PART 1—PRACTICE AND PROCEDURE

**Regulating Cable Television Pole
Attachments**

AGENCY: Federal Communications Commission.

ACTION: Adoption of pole attachment rules.

SUMMARY: On May 9, 1978 the Commission released a notice of proposed rulemaking in response to section 224(b)(2) of the Communications Act Amendments of 1978, by which the Commission is required to promulgate rules to carry out the regulation of cable television pole attachments. The First Report and Order below sets forth an initial set of rules that establish procedures for resolving cable pole attachment complaints.

DATES: Effective Date: August 20, 1978.

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

FOR FURTHER INFORMATION CONTACT:

James M. Talens, Tariff Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, 202-632-4887.

SUPPLEMENTARY INFORMATION:

Adopted: August 8, 1978.

Released: August 11, 1978.

In the matter of adoption of rules for the regulation of cable television pole attachments; *First Report and Order*; CC Docket 78-144.

By the Commission: Commissioner Lee not participating; Commissioner Washburn absent.

1. On May 9, 1978 we issued a notice of proposed rulemaking (NPRM), 43 FR 19886, in response to the mandate of section 224(b)(2) of the Communications Act Amendments of 1978, Pub. L. 95-234, by which the Commission is required to promulgate rules to carry out the regulation of cable television pole attachments.

2. Section 224 specifically directs the Commission to regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable. Congress reacted to an apparent need in the cable television industry to resolve conflicts between CATV systems and utility pole, duct, and conduit owners over the charges exacted for use of such facilities. Section 224, however, does not give the Commission jurisdiction to consider attachment complaints where a State regulatory agency¹ regulates the rates, terms, and conditions for pole attachment or where the utility owning or controlling poles, ducts, conduits, or rights of way is a railroad, is cooperatively organized, or is owned by a government entity. In order to qualify, the State must certify to the Commission that (1) it regulates such rates, terms, and conditions, and (2) in so regulating it has the authority to consider and does consider the interests of the subscriber of cable television services, as well as the interest of the consumers of the utility services.² Currently only five States appear to have asserted such jurisdiction.³

3. Our NPRM set forth proposed procedures to hear and resolve complaints concerning pole attachments, rates, terms, and conditions.⁴ It invited comment on the general structure and the specific provisions of the proposed rules, as well as on the usefulness of adopting any additional rules. It also requested comment on the adoption of substantive guidelines which might provide direction to utilities and cable television system operators, encourage

settlements, and help to resolve complaints fairly and expeditiously.

4. Comments were filed by 30 parties: American Telephone and Telegraph Co., on behalf of itself and its associated companies (Bell); Arkansas Power and Light Co. (Arkansas); CATV of Colorado, Inc. (Colorado); Colony Communications, Inc., Comcast Corp., Cox Cable Communications, Inc., Florida Cable Television Association, Inc., News Channels Corp. (collectively Colony); Consumers Power Co. (Consumers); Dayton Power and Light Co. (Dayton); Duquesne Light Co. (Duquesne); Edison Electric Institute (Edison); Florida Power and Light Co. (Florida); GTE Service Co., Inc. (GTE); Metropolitan Edison Co. (MetroEd); Mississippi Power Co. (Mississippi); National Association of Regulatory Commissioners (NARUC); National Cable Television Association, Inc. (NCTA); New England Cable Television Association (NECTA); New York State Cable Television Association (NYCTA); Pennsylvania Cable Television Association (Penn Cable); Pennsylvania Electric Association (Pennela); Pennsylvania Electric Co. (Pennco); Philadelphia Electric Co. (Philel); Southwestern Public Service Co. (Southwestern); Teleservice Corporation of America (Teleservice); Texas Electric Service Co. (Texas); The Cleveland Electric Illuminating Co. (Cleveland); Toledo Edison Co. (Toledo); Union Electric Co. (Union); United States Independent Telephone Association (USITA); West Penn Power Co. (West Penn); Marshall M. Bandy, Sr. on behalf of Wilmington [Georgia] Cablevision (Bandy); and Wisconsin Electric Power Co. (Wisconsin).⁵ Reply comments were received from Bell, Colony, Edison, NARUC, NCTA, Teleservice and West Penn.

5. The comments provided us with considerable variation in opinion. Several of our proposed procedural sections, for example, drew acute critical reaction from electric utility companies, while others found more favorable response from both the utilities and cable operators. As we had anticipated, however, full analysis of all sub-

¹Section 224(a) defines State as " * * * any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof."

²Sections 224(c) (1) and (2).

³Alaska, Connecticut, New Jersey, North Carolina, and Puerto Rico.

⁴Section 224(b)(1).

⁵The comments filed by Arkansas, Colorado, Texas and Bandy were informal. Arkansas, Consumers, Dusquene, Mississippi, Pennela, Philel, Union and West Penn filed late, but we will consider their pleadings because they are new to Commission filing procedures and their comments were received only 1 business day late.

stantive issues contained in our NPRM or raised by the parties was not possible within the time constraints of section 224(b)(2) of the Act. By this First Report and Order (Order), based on our proposed rules and the comments, we will adopt an initial set of rules that establish procedures for resolving cable attachment complaints. We anticipate issuing a Second Report and Order within the next several months dealing with matters that we have been unable to resolve in this Order due to time pressures. Among these other matters will be cost methodologies for determining "additional costs," "operating expenses and actual capital costs of the utility," and substantive guidelines for terms and conditions. In the following paragraphs we discuss the more important aspects of the various proposals and the comments made. Numerous suggestions and proposals involving less substantial matters were also considered and incorporated into the rules. In considering these rules some section numbers were changed. Therefore, in discussing the rules we refer to the section number as identified in the NPRM but follow that with a reference to the new section number where appropriate.

TEMPORARY ORDERS

6. We invited comment on the adoption of a rule providing specific authority for ordering a stay of rate increases or service termination, or for other temporary orders.⁶ The parties responding were divided on the issue; the utilities generally opposed stay orders either because they felt the Commission does not have the statutory authority or because the rules will stabilize matters and avoid the need for such relief; the CATV operators were particularly concerned about termination of service and invocation of substantially higher rates. Concerning its authority, the Commission has been provided broad discretion in promulgating rules to carry out section 224 of the Act. Moreover, section 4(i) of the Act, 47 USC 154(i), defining the duties and powers of the Commission, states that "The Commission may perform any and all acts, make such rules and regulations, * * * as may be necessary in the execution of its functions." The adoption of complaint procedures is in no way constrained by the Act. To the contrary, the intent of the pole attachment regulation is that the Commission develop "a flexible program * * *" that includes such rules as it " * * * deems appropriate to the conduct of the complaint procedure."⁷

7. While it is clear that the Commission was directed to institute a "simple

and expeditious" program,⁸ it would be inconsistent with the intent of Congress to conclude that the Commission has no power to protect cable television operators from irreparable injury pending resolution of facially supportable complaints. One party, Teleservice, suggested we adopt rules for appropriate interim relief pendente lite following the criteria set forth by Judge Leventhal in *Washington Metropolitan Area Transit Commission v. Holiday Tours*.⁹ While these criteria do not appear fully applicable to pole attachment problems, we do believe something similar, but more closely tailored, to the requirements of this program would be appropriate.

8. In a situation where a utility is about to take some action that is likely to cause irreparable harm to the CATV operator which could adversely affect the viability of CATV service, we believe the CATV operator should have access to some form of temporary relief pending resolution by the Commission of the underlying dispute. Rather than grant an automatic stay of such action, which would create additional procedural complications, we are adopting a new section 1.1403 that requires a utility to provide 60 days notice to a CATV operator (1) prior to removal of the CATV facilities from poles or termination of service, or maintenance, etc.,¹¹ and (2) prior to an increase in pole attachment rates. We believe that this notice, which may already be standard practice in many cases, will permit a CATV operator adequate notice and an opportunity to file a "Petition for Temporary Stay" (Petition) with the Commission setting forth the reasons, in concise but well supported fashion, for the relief sought. We do not intend that each notice of an increase in rates should be cause for the filing of a Petition. Indeed, we anticipate that such a Petition should be filed only in those exceptional circumstances where the Commission's authority to order a refund or other corrective action after

a final determination on the lawfulness of a rate increase or other change would not make the CATV operator whole. It must be clearly demonstrated in the Petition that the increase or modification of terms or conditions is such that it will likely cause irreparable harm and likely cessation of service and a preliminary indication of the unlawful nature of the change.¹² We expect to adhere to a strict threshold showing where such a claim is asserted, and we will not hesitate to dismiss where inadequate support is provided. If such Petition is to be considered by the Commission prior to the effective date of the change, it must be filed a minimum of 45 days in advance thereof. The utility will be permitted 7 days for response.¹³ No further filings will be considered unless requested or authorized by the Commission, nor will extensions of time be granted unless justified pursuant to Rule Section 1.46, 47 CFR § 1.46. A decision will be issued by letter under authority delegated to the Common Carrier Bureau pursuant to Rule Section 0.291, 47 CFR § 0.291. We believe this procedure will enable the CATV system and its subscribers an expeditious remedy that does not unfairly burden the utility, but which may prevent irreparable harm to the CATV operator.

ACCESS

9. Colony, Edison, NCTA, NECTA, Toledo, and USITA commented on the Commission's role in regulating access to utility poles.¹⁴ There was general agreement that such a role was not *per se* supported by the legislative history, but only Colony and NCTA offered comment on the discontinuance of pole attachment space by a utility to avoid Commission jurisdiction. Colony suggested that the " * * * burden should be on the utility to justify refusal to access since the presumption is to permit attachment." NCTA wanted the Commission to " * * * clearly state that the refusal of a utility to provide access to poles because of its dissatisfaction with regulation is an unreasonable practice and not an access issue."

10. We believe a rule provision that formally recognizes refusal of access to avoid Commission jurisdiction,

¹²Due to the time sensitive nature of such a Petition, we do not expect the CATV operator to make a prima facie case of unlawfulness as he would have to in filing a complaint. However, we do expect a reasonable explanation of why the change is believed unlawful with firm support therefor.

¹³Although we have couched our discussion here in terms of the CATV system filing the petition for stay, we do not rule out the remote possibility that there may be some unusual circumstance which may warrant the filing of a petition by the utility. We do not mean to rule out such a filing, nor those of other interested parties.

¹⁴See paragraph 26 of the NPRM.

⁸Id., at p. 21: "The Committee desires that the Commission institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation."

⁹559 F. 2d 841 (D.C. Cir. 1977): The court set forth the following criteria:

1. Has the movant made a substantial case on the merits?
2. Has the petitioner shown that without such relief it will be irreparably injured?
3. Would the issuance of a stay substantially harm other parties interested in the proceedings?
4. Where lies the public interest?

¹¹While Congress did not intend to guarantee access to utility poles, there would be little purpose to section 224 if the Commission were not able to prevent termination of access until adjudication of the underlying complaint.

⁶See para. 25 of the NPRM.
⁷S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 22 (1977).
⁸Id.

where attachment has previously been permitted, is not necessary at this time.¹⁵ (See the discussion in paragraph 34 below.) The legislative history indicated two conditions precedent to Commission jurisdiction over pole attachments:¹⁶

(1) That communication space be designated on the pole; and

(2) That a CATV system use the communication space, either alone or in conjunction with another communications entity. (Note that the signing of a contract between the utility pole owner and the CATV operator is legally sufficient.)¹⁷

11. Our proposed § 1.1405(a) [New § 1.1406(a)] provided for the dismissal of a complaint where " * * the utility does not use or control poles, ducts, or conduits used, in whole or in part, for wire communication," (the first criterion above) but did not include the failure to satisfy the second criterion as an alternate jurisdictional ground for dismissal. Even where there is currently no CATV attachment or agreement therefor, the Commission has jurisdiction if (1) there is communications space designated on the poles and (2) the utility has discontinued CATV attachment in order to avoid such Commission jurisdiction. We believe that, as revised, new § 1.1406(a), in conjunction with new § 1.1406(b), with regard to the completeness of the complaint, and § 1.1404(d)(2), concerning evidence of actual attachment, will fully comport with Congress' overall jurisdictional prescription, including the access aspect thereof.¹⁸

TERMS AND CONDITIONS

12. Colony, Edison, NCTA, NYCTA, Pennela, Penn Cable, Pennec Union and West Penn were among those who submitted comments with regard to "other" areas where substantive guidelines might be adopted.¹⁹ Colony urged that a further rulemaking proceeding be instituted "as soon as practicable to develop additional substantive guidelines applicable to the administration of this regulatory area." Union viewed our power to order termination of an unjust or unreasonable term or condition without specific standards as a fundamental defect of our proposed rules. NCTA disagreed, assuming that we should not " * * * advocate guidelines as rules at this time to deal with the non-rate issues * * *." Instead it argued that the Commission should "consider *ad hoc* complaints * * * and gain experience * * * through the complaint procedure." On a more spe-

cific note, Colony suggested that CATV operators be credited for repairs they perform on poles or cables, and claimed that inspections of poles, cables, guying and wire are frequently overcharged and should be regulated. Colony also complained about inequities involving the use of non-utility crews and unreasonable insurance requirements, and expressed a need for guying standards. NCTA alleged that utilities charge "excessive" rates for make-ready work and have even charged " * * * for the correction of pre-existing substandard separations between telephone and electric plant." It also claimed that security bonds ostensibly for costs of removal of pole attachments must still be posted in many cases, even though there is no justification for them. Further, it and Penn Cable complained that unnecessary inspections are frequently made and charged to CATV operators. Penn Cable proposed that the utility be limited to (1) pre- and post-attachment and (2) rebuilding or extending existing attachment inspections. NYCTA called "anticompetitive and arbitrary" many of the survey and make-ready, guying and anchoring, and inspection policies and procedures in agreements CATV operators in New York have with New York utilities.

13. In response to these and related matters, we quote from Senate Report 95-580, at page 21:

The bill as reported sets forth no specific guidelines to the Commission to determine whether any term or condition for CATV pole attachments is just and reasonable. Such terms and conditions usually include matters relating to inspections, extent and duration of license, lease revocation, and like matters. The committee believes that the open standard of "just and reasonable" is at the same time sufficiently precise and flexible to permit the Commission to make determinations when presented with specific contractual provisions alleged to be excessively onerous or unfair. In any event, the fairness of any term or condition of a CATV pole-leasing agreement will have to be judged in relation to other contract provisions, prevailing practices in the industries involved, and the particular pole rate charges, matters which cannot be precisely translated into statutory language.

We adopt herein few substantive guidelines with respect to non-rate related terms and conditions of pole attachment agreements.²⁰ Instead, we believe we should initially respond on a case-by-case basis to complaints containing such issues with a view toward adopting appropriate substantive guidelines after we have obtained more experience in the area.

14. Edison suggested that a utility should be permitted to file proposed rates with the Commission for approval. We believe that such a procedure

would not only impose additional burdens on the Commission staff but would lead to the kind of tariff regulatory proceeding sought to be avoided by Congress.²¹ We therefore reject the suggestion.

15. Somewhat more generally, Pennec expressed the feeling that it is "inequitable to ask the already burdened customers of the utilities, and especially the electric utilities to subsidize the customers of a cable company." And, in summary, said, " * * * we feel that imposing administrative costs for the benefit of another industry is not reasonable and should not be permitted. "The purpose of these rules, and of the legislation mandating their promulgation, is to more equitably distribute the contribution of the parties to expenses attendant to pole attachments. We believe that our rules achieve this purpose and go far to assure that the customers of CATV systems are not subsidized by electric or telephone company utilities or vice versa.

16. Finally several parties, including Pennela and West Penn, expressed the opinion that the Commission does not have the authority to abrogate or change an existing pole attachment contract. This view seems peculiar in that the invocation of Commission jurisdiction is predicated, according to legislative history, on the existence of a contractual agreement between the pole owner or controller and CATV operator.²² Without authority to alter unreasonable or unjust contractual rates, terms or conditions, the Commission would be powerless to act in accordance with its mandate. We believe section 224 is clear in giving the Commission such authority.

SPECIFIC RULE SECTIONS

17. *Proposed Section 1.1403(a)* [New § 1.1404(a)]. Most of the opposition to this subsection, which deals with the formal requirements of the complaint (e.g., name, address, signature etc.), was with regard to our proposal that more than one issue could be raised by two or more CATV operators in a jointly filed complaint. Nine utilities felt that such a broad rule of practice would be unfair and would detract from their ability to represent their case. We understand a utility will typically enter into comparable agreements with several CATV operators in its service area so that if there is troublesome language or a contentious provision in the agreement, the filings

¹⁵ See S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 16 (1977) for a discussion of access and Commission jurisdiction.

¹⁶ Id., 15-18; and 124 CONG. REC. S 967 (daily ed. Jan. 31, 1978).

¹⁷ Id.

¹⁸ See paragraph 27 of the NPRM.

¹⁹ See paragraph 29 of the NPRM.

²⁰ Also see paragraph 42 herein [New Sec. 1.1409(c)]

²¹ See for example, 47 U.S.C. § 204. Also, see S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 21 (1977)

²² 124 CONG. REC. S. 967 (daily ed. January 31, 1978). Also, see *Thorpe v. Housing Authority*, 393 U.S. 268, 89 S.Ct. 518, 21 L.Ed. 2d 474 (1969); *Permian Basin Rate Cases*, 390 U.S. 747 88 S.Ct. 1344, 20 L.Ed. 2d 312 (1968).

by affected CATV operators will likely focus on the same or similar contractual provisions. In order to simplify the process for handling such situations, we offered a provision that would permit aggrieved parties to initiate a consolidated multiple-issue complaint procedure. We fail to be persuaded that the filing of multiple complaints addressing the same issues would better serve the administrative process or be burdensome to the utility. Should the unlikely occasion arise whereby a utility would choose to file a complaint against more than one CATV operator, it is free to do so under § 1.1404(a). In any case, we expect that a complainant in any complaint proceeding should be a signatory or assignee of the agreement by which attachment has been authorized. Therefore, Section 1.1403(a) [New § 1.1404(a)] is adopted as proposed.

18. *Proposed § 1.1403(b)* [New § 1.1404(b)]. This subsection concerns certification of service of the complaint on the respondent and regulatory agencies. Several parties proposed minor language changes for reasons of clarity that we have adopted, such as changing "any" to "each" to assure complete service, and adding "any aspect of service provided by the" before "utility * * *" to avoid the possible interpretation that service of the complaint would be required on disinterested regulatory authorities. Southwestern and West Penn expressed the fear that "occupant" delivery would be inadequate and urged that there be a named recipient, preferably the party signing the contract, particularly in view of the possible legal effect of failure to respond.²³ We believe § 1.47 of the Rules, which fully applies to pole attachment procedures, adequately details service of documents and proof of service requirements.²⁴ Also, in order to avoid confusion with the provision of proposed § 1.1407(a) [New § 1.1408(a)] the final sentence of rule 1.1403(b) [New § 1.1404(b)] has been deleted.

19. *Proposed § 1.1403(c)* [New § 1.1404(c)]. This subsection requires the submission of a statement which would verify that the Commission has not been preempted by a State. Colony expressed the view that such a statement in the complaint that a State has not certified its jurisdiction is burdensome and unnecessary in view of the requirements of proposed § 1.1413(b) [New § 1.1414(b)], which requires the Commission to publish a listing of States that have provided

certification. We believe that such a statement attesting to our jurisdiction will assure the complainant's awareness of his State's status regarding certification and will serve as a check on our records. We do not view compliance with this subsection to be burdensome and adopt it as proposed.

20. *Proposed § 1.1403(d)* [New § 1.1404(d)]. This subsection requires the inclusion of a copy of the pole attachment agreement, if any, with the complaint. Southwestern suggested that "if any" in the first sentence necessarily implies that the Commission has jurisdiction where there is no agreement between the CATV operator and utility, contrary to the requirements set forth in the legislative history.²⁵ We envision the case where a CATV operator, by conduct or action that invokes an unjust or unreasonable condition in his agreement with the serving utility, causes termination of the attachment agreement. In such a case, there would be no remaining agreement and by Southwestern's interpretation the CATV operator would have no standing to claim before this Commission. We believe such a result was hardly intended by Congress.²⁶ The statements and explanations that are required by this subsection in the absence of an agreement should enable us to resolve most jurisdictional issues without difficulty. For more complex circumstances involving, for example, a substantial hiatus between the termination of the agreement and the filing of a complaint by the affected CATV operator, further information may be solicited. In view of the modifications made to this section which are discussed below, we choose not to alter the language of the first sentence.

21. Colony took issue with our choice of the word "used" in the second sentence, preferring "used or useful" to address the situation where no poles currently being used for wire communications exist. Bell would reword the language of proposed § 1.1403(d) to require a complaint to contain a "statement that the utility has indicated a willingness to enter into an agreement if reasonable agreement can be reached." The legislative history makes it clear that space need only be "designated" for communications use to satisfy the first precondition for Commission jurisdiction. Therefore, we have clarified the subsection by adding language which will convey this intent. Moreover, in order to more clearly implement Congress' expressed precondition to Commission jurisdic-

tion, we have bifurcated the submission requirement where there is no present pole attachment agreement by adding a subsection 1.1404(d)(2) which requires a statement detailing the extent to which the CATV operator does in fact occupy the utility's communications space. As discussed in paragraph 20, this also permits an opportunity for explanation where the CATV operator's lines or attachments have been recently removed.

22. *Section 1.1403(f)* [New § 1.1404(g)]. This section concerns the data and information required to be submitted in support of certain complaints. As indicated previously, we do not yet have the experience to develop pervasive substantive guidelines in all aspects of pole attachments regulation. Until we develop expertise in methods of cost accounting used by electric utility companies, for example, we expect to place considerable reliance on industry experience. This subsection contains a list of data that we believe will be useful in determining the costs incurred by a utility to install pole plant. MetroEd, joined by Pennela, took issue with requirements (1), (5) and (7)²⁷ in that they claim the "identical burden" for information is not placed on the CATV operator when he is the respondent. As a practical matter, it is unlikely that the CATV operator will be the respondent in a pole attachment rate complaint proceeding, but even in that event we believe the utility would be in the best position to supply the information required.

23. Bell wanted "where available from existing records" added to the first paragraph, apparently to limit the utility's responsibility for supplying information. As we indicate in paragraph 30, below, we are confident that the required information will generally be available from existing records, but we do not wish to imply that the utility may not have to collate information for purposes of this section. If for some reason the required information cannot be made available we will expect an explanation to that effect.

24. In order to reduce complaints, Edison asked that we include a section to permit justification for a single utility to charge different rates to different CATV operators. We do not believe it was intended for us to judge rates simply on the basis that they vary within a region or that they differ from a single utility. Thus, a difference in rates is not alone a proper basis for a complaint unless there is an attendant unjust or unreasonable

²³See proposed § 1.1406(d) [New § 1.1407(d)].

²⁴Section 1.4 provides, inter alia, that documents may be served on a party, his attorney or agent by delivery or mail to the last known address and that service by mail is complete upon mailing.

²⁵S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 15-16 (1977); 124 Cong. Rec. S-967 (daily ed., January 31, 1977).

²⁶The only two cases the legislative history specifically exempts from the Commission's jurisdiction are access to poles and right of way over land.

²⁷In the proposed rules, the specific requirements were listed by parenthetical Arabic numbers. In the final rules, they are listed by small Roman numerals. Reference to the proposed rules may aid the reader.

term or condition. Moreover, we believe it more appropriate to consider the issue of discrimination within the context of the facts and circumstances in which it is alleged than to prepare a rule purporting to deal with it. Accordingly, we deny Edison's request.

25. Edison, joined in part by Consumers, suggested we allow the use of the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts for Public Utilities (Account 364) for determining the costs required under this subsection. While we would prefer that Account 241 be used,²⁵ we recognize that many utilities use other accounting systems, such as FERC's Account 364, or variations thereof. As expressed in our NPRM, we will accept whatever accounting method is utilized by the utility's regulatory authority, if it is not reasonably possible to supply original costs and segment the data in accordance with the requirements of new subsection 1.1404(g). In this regard, Edison suggested that depreciation reserve "has no place in the determination of the investment base but is of use only in computing the carrying charge to which a utility is entitled." Edison posited that this is probably the reason Account 364 does not include depreciation,²⁶ but tracks current pole line investment instead. If a utility, in accordance with acceptable practice before its regulatory body, does not include depreciation in its figures, we will not require its inclusion, though we may exercise our discretion to apply a suitable estimate thereof. The utility should accompany such a nonconforming response with a short explanation.

26. Edison, with reference to subsection (5) pertaining to the number of poles used by a utility, argued that "used" is a misnomer because a utility makes CATV agreements only for poles owned by it. We have amended the language to respond to this point and also to maintain consistency with earlier sections. Next, Edison stated that "cost of maintaining" the pole in (6) is too narrow and fails to include depreciation, administration, taxes, etc. We agree and adopt Edison's suggested "cost of owning." Edison also suggested that the second sentence of the last paragraph of the subsection, referring to jointly used poles, should be deleted because only one party actually owns (or controls) the pole. Clearly, where the telephone company does not keep cost data for poles it uses but does not own or control, this requirement will not apply. We have

²⁵Account 241 refers to Section 31.241 of our rules, entitled Pole Lines, which contains the items properly includible in the determination of cost of poles and associated materials.

²⁶Similarly, FCC Form M (Table 12 or 50) does not include depreciation.

modified the language of the sentence to more accurately reflect our intent that a telephone company maintaining cost records for poles it uses or controls should be responsible for compliance with this requirement.

27. Wisconsin thought that proposed § 1.1403(f) [New § 1.1404(g)] was deficient in that it neglected consideration of non-rate related complaints. Further, Wisconsin argued that there is an inconsistency in applying proposed § 1.1403(g), which excuses the complainant from providing rate related data any time the utility does not supply it to him on request, to non-rate related complaints. Since failure to submit the information required under proposed § 1.1403(f) could result in dismissal, we have added a new subsection (f), applicable to non-rate related complaints. As a practical matter, we expect that most complaints, even if primarily concerning terms or conditions, will require compliance with new (g) because of new (g)(2), which invokes the requirements for submission of the rate cost data when it is claimed that a term or condition is unjust or unreasonable, and examination of the associated rate is necessary. A complaint asserting that a condition unreasonably limits the CATV operator's access to attachments where the utility is charging the highest reasonable rates might require examination of the rate.²⁷ However, a term requiring the CATV operator to subscribe to a particular class of utility service completely unrelated to CATV service would not invoke (g)(2).

28. Section 1.1403(g) [New § 1.1404(h)]. Eight parties commented on this proposed subsection which provides the steps a complainant must take to avoid dismissal where he has not submitted the required support data yet has requested such data from the utility. GTE suggested that "reasonable request" replace "request" in the first sentence for purposes of consistency with the second sentence, a suggestion we adopt. Southwestern expressed concern " * * * as to how the decision will be made as to whether a request for information is reasonable" and West Penn advocated that such information should not be released to a CATV operator unless the utility is first paid " * * * its actual costs incurred * * *." Pennec viewed the entire subsection as a burden on the utility and its customers. However, no details were supplied to support this alleged burden. An unavoidable consequence of regulation in this area is that utilities must be expected to

²⁷S. Rep. 95-580, 95th Cong., 1st Sess., p. 19 (1977): "The level of pole attachment fees is intimately connected with the terms and conditions of pole space leasing agreements.

supply required information. As a general matter, we believe the information sought under § 1.1404(g) should be available without substantial research or preparation expenses by any party.²⁸ But the administration of any advocacy, even by a utility, may require some expenditure. Accordingly, absent quantitative substantiation to the contrary, we reject West Penn's suggestion. We also reject, for reasons discussed in paragraphs 5 and 8 of our NPRM, MetroEd's claim that putting the burden on supplying the information on the utility is discriminatory. In fact, we have decided to remove "complainant" from this subsection in order to insure CATV operators the right to obtain cost information if they are ever respondents in rate complaints filed by utilities.

29. Florida wanted a provision providing for the determination, prior to the filing of a complaint, of "the reasonableness of a data request and the timeliness of a response." Edison and Florida generally opposed requests for documents in advance of filing the complaint for fear of potential abuse. We believe the requirement of filing complaints prior to requests for information would lengthen the time necessary to resolve cases as well as standardize the filing of incomplete complaints. Nor would it be reasonable to require the filing of a complaint prior to a request for information since the cost information may indicate the rates are reasonable, thus persuading the CATV operator of the futility of filing a complaint. It would seem that once the data are prepared by a utility to support its rates in one case, it would not be a particular burden upon it to apply the methods used in that first case to prepare comparable information for its other cable users. We would, of course, be concerned about any apparent "run" on data requests in a particular area without follow-up complaints. The utilities, however, should anticipate a possible initial influx of requests for information shortly after these rules become effective. In conclusion, we are not convinced that a condition precedent to the request for information pursuant to new § 1.1404(g) should be the filing

²⁸We have not specified in our rules any particular length of time within which we believe it would be reasonable for a utility to respond to an information request by a CATV system. Obviously, such a time frame may vary considerably depending on a number of factors, such as the data requested, whether it is in readily accessible form, the number of other requests a utility may be responding to, etc. As we gain experience in handling these complaints, we may be able to develop more precise guidelines as to an appropriate period for utility response. Initially, we will assume 30 days is a reasonable time for response unless there is good reason given to support either a shorter or longer period of time.

of a complaint by a CATV operator. Moreover, to limit the burden on Commission staff, we do not believe at this time that a procedure should be adopted to consider the reasonableness of such requests for information.

30. Bell wanted "provided such information is available to the utility from existing records and such information is not otherwise available to the cable system operator" added to the end of the second sentence of the proposed section. We expect that the utility in most cases will have adequate information available from the data it maintains to support submissions required by local regulatory bodies. Moreover, as indicated earlier, we do not think that the preparation of such rate-support information to be an unreasonable burden on a utility. Where such information is reasonably available from public sources, either in finished form or unassembled but usable form, it is expected the CATV operator will arrange to obtain it from those sources.

31. New § 1.1404(h) sets forth the steps a complainant must take to avoid dismissal where he has not submitted the required support data required by new § 1.1404(g) because of inability to obtain it from the utility. To retain the important provisions regarding attempts at resolution and support of factual allegations, the last two sentences of proposed § 1.1403(g) have been recast as §§ 1.1404 (i) and (j). These new subsections requiring a summary of steps taken to resolve the underlying problem, and setting forth the requirement that factual allegations be properly supported, apply to all complaints, whether or not rate-related.

32. Section 1.1405(a) [new § 1.1406(a)]. Bell suggested the inclusion of "or action complained of" after "condition" in the first sentence of this subsection, which concerns dismissal of complaints, for clarity of reference. The Commission has no jurisdiction where a State has filed a certificate pursuant to new § 1.1413 [proposed § 1.1413]. There seems to be no sound purpose to expanding the criteria for jurisdictional preclusion in this rule to include an "action."

33. Colony again argued that "used" should be changed to "used and useful" in the last sentence of the proposed subsection to cover the situation where no poles are yet actually used in a community. Our reasons for not adopting this suggestion are adequately discussed in paragraphs 10, 11, 20 and 21 above. We have added "designated" to the last sentence of proposed § 1.1405(a) [new § 1.1406(a)] to permit dismissal of cases falling outside our jurisdictional ambit described in those paragraphs.

34. Section 1.1405(b) [new § 1.1406(b)]. Wisconsin and MetroEd took issue with our proposed use of "respondent utility" in this subsection, which concerns completeness of complaints, preferring just "respondent" to remove the unfair presumption that the respondent will necessarily be a utility. This language was intended to emphasize proposed § 1.1403(g) [new § 1.1404(h)] with regard to the failure of a utility to supply information requested under proposed § 1.1403(f) [new § 1.1404(g)]. If the complainant is a utility, these sections will not apply, since copies of support data will be served on the CATV respondent pursuant to new § 1.1404(b). Thus, we shall leave "respondent utility" in the subsection as proposed.

35. GTE expressed concern that "substantially all" in the first line of the subsection creates serious questions as what information is required to sustain a complaint and proposed two replacement provisions:

If the complaint does not contain the information required under section 1.1403 [new Section 1.1404], the Commission may require the complainant to file additional information.

If the information required under section 1.1403 [new section 1.1404] is not available from public records or from a respondent after reasonable investigation and inquiry by complainant, then complainant shall so state and the complaint shall not be dismissed.

GTE was of the view that requiring the complainant to affirm its representations, under oath would " * * * reduce spurious invocations of the Commission's process." We believe our proposed rules achieve the purposes intended by GTE, particularly with the addition of "after reasonable request" at the end of the subsection, for consistency with new § 1.1404(h). "Substantially" relates to the adequacy of the substance of a submission as well as merely the quantitative completeness thereof. The Commission, in order to fulfill its mandate, must retain sufficient discretion to decide the issues of compliance on both grounds. GTE's first proposal does not resolve the matter of substantive adequacy. "Substantially all," however, permits some degree of flexibility in the level of adequacy required and allows decisional response to attendant facts or circumstances. As we indicated in paragraph 30 above, in connection with new § 1.1404(h), it is expected that the CATV operator will make a reasonable effort to obtain § 1.1404(g) information from public sources before requesting it from the utility. In view of the foregoing, we have included "reasonably" in the last sentence of the revised subsection, but we reject GTE's proposed language.

36. Section 1.1406 [new § 1.1407]. This section, concerning response and

reply filing procedures, drew the largest uniform reaction from parties filing comments, largely prospective respondents. Suggestions for a more appropriate time in which to respond to complaints ranged from 60 days to 180 days, with 20 and 30 days sought for replies. It was generally claimed that 30 days was simply not enough time in which to prepare a response. We are particularly sensitive to procedures that may unduly protract cable television pole attachment proceedings. Indeed, it is the clear legislative intent to expedite such proceedings. We must therefore limit to the extent possible the number of pleadings filed and time in which resolutions can be achieved.

37. We believe, from experience in other areas, that 30 days should be adequate time for a party to respond to an attachment complaint, even in the case where the respondent is a utility and service of the complaint is accompanied by a request for rate support information pursuant to new § 1.1404(g). Since utilities will generally have had to supply the relevant information in advance under provisions of § 1.1404(g), it is reasonable to expect that they will be able to meet the 30 day deadline. We recognize, however, that some circumstances may require consideration of additional filings or extensions of time. For example, where multiple filings are involved, more time may be required. We are also aware that this is an untested area of regulation which newly subjects electric power utilities to FCC procedures. We will entertain requests for extensions of time pursuant to Rule § 1.46, although we emphasize that such extensions will be granted only where they are reasonably supported. The periods of time of file remain, therefore, as proposed. Other minor language changes were made to this section to maintain consistency with new §§ 1.1403 and 1.1404(j), and existing § 1.45(c).

38. Section 1.1408(a) [new § 1.1409(a)]. GTE proposed adding "and is in the form requested by the Commission" to the last sentence of this subsection, which permits the Commission to decide adversely to a party for failure to supply requested information readily available to it. GTE seeks to avoid automatic adverse decisions where information is readily available but not retrievable without effort. As we point out in paragraph 30 above, in connection with proposed § 1.1403(g) [new § 1.1404(h)], we expect the utilities to be able to prepare information in a suitable form upon request without great difficulty. Accordingly, we reject GTE's proposal.

39. Bell, joined in part by Edison, suggested we add "that are matters of public record, and which the respon-

dent has had ample opportunity to test by cross-examination when disputed facts are in issue" to the first sentence.³² Bell also recommended the use of "costs" in the last sentence instead of "the value of costs" and "the amounts." In order to avoid even the appearance of abridgement of a party's rights, we shall include the additional clause "subject to rebuttal" to the first sentence and strike "official" earlier therein.³³ Thus, publicly available information and Commission studies will be considered as all other evidence.³⁴ We have also adopted, in part, Bell's "costs" modification.

40. *Section 1.1408(b)* [new § 1.1409(b)]. The majority of interested parties commenting submitted views on this proposed subsection concerning the burden of proof. As a general proposition, the burden of proof in any action rests on the party going forward with an issue.³⁵ The burden is initially on the party filing the complaint to establish a prima facie case. The respondent then carries the burden of rebutting what, without such rebuttal, would be enough to result in judgment in favor of the complainant. The intent of the language of the proposed subsection was to draw procedural recognition of the utility's experience with pole attachment costs and its possession of most relevant information. However, on review of this and other sections, we believe it is unnecessary to specify burden beyond indicating that the complainant's initial responsibility is to establish a prima facie case. Thereafter, the response and reply carry their own weight in view of all submissions in the case. Therefore, we have eliminated the second sentence of the proposed rule.

41. *Section 1.1408(c)* [new § 1.1409(c)]. This rule provision, which

contains the range of pole attachment rates taken directly from section 224(d)(1) of the Act that we will accept as just and reasonable, evoked comment from six parties. MetroEd and Pennela, for example, suggested we include the termination language of section 224(e) of the Act.³⁶ The purpose of the condition subsequent of section 224(e) is to permit the Commission greater discretion in setting just and reasonable rate standards after it gains the experience necessary to regulate independently of the legislative guidance of section 224(d)(1). Apprising those referring to our rules of a termination date of the effectiveness of the subsection could cause some to erroneously conclude that in 5 years the Commission will no longer have the jurisdiction to set rate standards or that it must do away with the section 224(a)(1) standard. We don't believe an explanation appended to the subsection would adequately avoid this problem. More fundamentally, we think it untimely to incorporate section 224(e) of the Act in the rules. Accordingly, we reject the suggestion by MetroEd and Pennela.

42. Union expressed concern that the upper and lower limits imposed by this subsection are "mutually exclusive." They felt that under the proposed rule nonrecurring incremental costs would be assignable only to the calculation of the lower limit (additional or incremental costs) and not to the upper limit (operating expenses and actual capital costs or allocated costs). Union suggested modification of the rule to " * * * provide that all 'makeready' costs as well as a proper part of the annual carrying costs are reimbursable to the utility providing the space." We believe it is Congress' intent that this section offer guidance in what may constitute a "just and reasonable" rate. In order to determine whether a rate falls within the statutory limits, cost information must be provided so that the limits can be established. At this time, we are constrained to measure whatever rate is asserted by the statutory range—we do not view our mandate as requiring a utility to charge a CATV operator rates that are based solely upon either incremental or fully allocated costs. Thus, a rate that is comprised of both incremental and fully allocated components is not per se unreasonable or unjust, provided it falls within the circumscription of section 224(d)(1) and otherwise complies with our rules. A rate, though found to be just and reasonable, could be a factor in determining whether the terms and conditions

of an agreement are just and reasonable.

43. Cleveland pointed out that initial incremental costs, such as make-ready expenses, may exceed the allocated cost limit of section 224(d)(1) for the first year of attachment. The constraints of the language of section 224(d) would appear to forbid full recovery of such expenses, unless such expenses were exempt from the statutory calculations, or a "carryover" were permitted. We have little doubt that an exemption would be inappropriate, since initial make-ready expenses are exactly what Congress had in mind when it established its "additional cost" rate boundary.³⁷ If such costs exceed the limit for first year, utilities may recover them in subsequent years, provided all other terms and conditions are reasonable.³⁸ The effect of such a deferral of recovery by the utility incurs the extension of credit and we believe a reasonable interest charge may be included for the period of time charges are carried beyond the first year.

44. *Section 1.1409* [new § 1.1410]. This section, entitled Remedies, provides for Commission (1) termination, (2) substitution or (3) refund of an unjust or unreasonable rate, term or condition. GTE proposed the inclusion of "maximum" before the second "amount" and "reasonable rate range" instead of the second "rate" in proposed subsection (3) to reflect the upper rate boundary discussed in paragraph 14 of the NPRM,³⁹ with the apparent object of minimizing the refund due in the event such remedy is ordered against a utility. GTE would propose that the subsection read, "Refund, or payment, if appropriate. The refund or payment will be the difference between the unjust and/or unreasonable rate, term, or condition and the maximum amount that would have been paid under the reasonable rate range, term or condition established by the Commission." The Commission may prescribe a just and reasonable rate at or below the maximum statutory rate level, but no lower, of course, than the incremental

³² Bell would propose that the subsection read as follows: "In its consideration of the complaint, response, and reply, the Commission may take official notice of any information contained in publicly available filings made by the parties and of studies that it has conducted which are matters of public record, and which the respondent has had ample opportunity to test by cross-examination when disputed facts are in issue. The Commission may request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by these rules as requested to the Commission, as where costs are disputed, the Commission may estimate the costs it considers reasonable, and may decide adversely to a party who has failed to supply requested information which is readily available to it."

³³ We hardly anticipate the introduction of studies not previously available to public scrutiny, so we see no reason to add "that are a matter of public record," as suggested.

³⁴ See, for example, McCormick on Evidence (1972), pp. 774-5.

³⁵ Id., pp. 783-835.

³⁶ Section 224(e) reads: "Upon expiration of the 5-year period that begins on the date of enactment of this Act the provisions of subsection (d) of this section shall cease to have any effect." (This date would be Feb. 2, 1983.)

³⁷ See S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 19 (1977): "Within this category [of 'additional costs'] would fall such items as preconstruction survey costs and engineering makeready, and changeout costs incurred in preparing the utility pole for the CATV attachment."

³⁸ While treatment for tax purposes is not binding on regulatory bodies for ratemaking purposes, see section 172 of the Internal Revenue Code, which provides for carryover for tax purposes.

³⁹ "For a period of 5 years [the allocation formula of section 224(d)(1)] permits contracting parties and the Commission to find as just and reasonable pole attachment rates anywhere within the range bounded by additional costs and costs which we shall refer to as fully allocated costs. * * *

limit, and may, in prescribing such a rate, take into consideration attendant terms and conditions.⁴⁰ We therefore reject GTE's suggestions.

45. Colony urged we clarify the introductory clause to allow the Commission to issue "an order requiring the implementation of one or all of the actions enumerated." We believe the conjunction between subsections (2) and (3) accomplishes this purpose. Colony also suggested that a refund should be calculated from the date the unreasonable or unjust rate was first paid. NCTA, on the other hand, concurs with our proposal that " * * * refunds from the date of the complaint are entirely appropriate in a complainant form of regulation." In order to avoid abuse and encourage early filing when rates are considered objectionable by the CATV operator, we have modified this section as proposed by NCTA.

46. Section 1.1410 [new § 1.1411] With regard to this section on meetings and hearings, Southwestern suggested that " * * * it might be well to set out a procedure where a hearing examiner could come into the field as an intermediate step before a final full Commission hearing." Bell viewed section 224(b)(1) of the Act, " * * * shall adopt procedures necessary and appropriate to hear and resolve complaints concerning * * * rates, terms and conditions" as requiring a hearing when factual issues are in dispute, or when the reasonableness of rates are in issue.

47. We consider this section to set forth only the broad options that may be utilized to settle or consider a complaint and not as a detailed summary of the exact procedures to be used. For example, the section indicates that the Commission may order evidentiary procedures. Such a procedure would not be limited to a traditional evidentiary hearing before an administrative law judge (ALJ), but could include a "paper hearing", or a limited hearing before an ALJ only on certain facts in dispute with the factual findings certified to the Commission for a final hearing. We intend, consistent with the congressional intent, to utilize the procedures that we believe will result in the simplest and most expeditious treatment of a complaint considering the circumstances. If we believe that a complaint can be decided based upon the information and filings before us, we will so decide. We anticipate ordering evidentiary procedures only where issues raised warrant such action and in those cases we will order a "paper hearing," if practicable.

⁴⁰See S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 19 (1977): "The reasonableness of a utility's pole attachment practices must be judged with reference to the compensation that it receives * * *."

48. Sections 1.1411 and 1.1412 [new §§ 1.1412 and 1.1413]. Colony suggested that these sections, which concern enforcement of Commission orders by cease and desist order and forfeitures, should be supplemented by two additional subsections. The first, in essence, would authorize the Commission to order reimbursement of costs incurred by the complainant, including attorney fees and other related costs. The second subsection would state, "Nothing herein shall be construed to derogate, modify or otherwise affect the rights accorded under sections 401 and 407 of the Communications Act * * *"⁴¹ Colony expressed the view that even together proposed §§ 1.1411 and 1.1412 "do not * * * provide adequate remedial protection for the variety of injuries, delays and losses that can be occasioned by imposition of unjust pole rates, terms and practices" and stated its belief that " * * * the greater the specificity on the extent of responsibility that may be imposed in appropriate circumstances, the greater the chance that voluntary compliance will be achieved in most cases * * *"⁴² Colony's perspective seems to portray the typical utility as a generally uncooperative entity requiring substantial admonition to comply with our orders. We do not share this view. The near plenary authority of proposed § 1.1414 [new § 1.1415], which gives the Commission authority to "issue such orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice," in conjunction with the provisions of proposed §§ 1.1411 and 1.1412 [new §§ 1.1412 and 1.1413], should be adequate to efficiently administer and enforce our pole attachment rules and orders. With regard to the award of fees and costs, we are not convinced that such a provision is appropriate. We believe each party should pay its own costs, absent extraordinary circumstances. Therefore, Colony's suggested supplements are rejected.

49. Section 1.1413 [new § 1.1414]. This proposed rule regarding State certification drew comments from seven parties. GTE, MetroEd, West Penn, Pennela and Penn Cable suggested that the Commission include a specific rule provision providing for relinquishment of pending cases upon certification of cable television pole attachment jurisdiction by a State. We believe such a provision would accurately reflect our expected response to such an occurrence. Accordingly, we have included a new subsection (c) to that effect.

50. NCTA and Penn Cable were of the view that the State certification must be "a final and applicable order

⁴¹Sections 401 and 407 are enforcement sections of the Communications Act.

of the state regulatory body" or a legislative or constitutional provision. The legislative history states that "The FCC shall defer to any State regulatory program operating under color of State law, even if debate or litigation at the State level is in progress as to the authority of the State or local body to carry out a CATV pole attachment regulatory program. Thus, if a State is regulating, or is prepared to regulate, upon a proper request, the FCC is preempted. Litigation challenging the State's authority would not affect that preemption unless the reviewing court or other authority had imposed a stay of State regulation pending outcome of the litigation."⁴² There is clearly no support for the contention that the Commission may examine the authority of an official body asserting State preemption.

51. NECTA urged that we change "rebuttably presumed" to "conclusively presumed" in the last clause of subsection (a)(2) in order to avoid the intervention of State regulation where no proper State authority has been shown. As discussed in the previous paragraph, we believe that the term "rebuttably presumed" is more consistent with the plain meaning of the Act and with legislative history in that it permits preemption on the basis of any claim of State authority. It also facilitates the use of new subsection (c) where a State submits its certification pendente lite. NECTA's proposal is therefore rejected.

52. Proposed § 0.310 [new § 0.91(j)]. Rather than establish a new section to delegate authority to the Common Carrier Bureau for the implementation of pole attachment proceedings, we believe it would be more appropriate to add a new subsection to existing Section 0.91, which lists Common Carrier Bureau functions, and then rely on section 0.291 for actual delegation. This is a technical change only. It remains our intention to delegate authority to the Bureau to act on all phases of pole attachment complaints except where novel or unusual issues are involved.

CONCLUSIONS

53. We indicated at several points in this order that time constraints have not permitted us to adequately study the comments submitted in response to some of the substantive guidelines proposed in our NPRM. This impairment may in some fashion be reflected in our procedural rules, but as experience requires we remain prepared to alter these rules. We anticipate the early finalization of a second report and order that will include our analysis of the substantive issues and any further procedural rule adjustments

⁴²S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 17 (1977).

we find appropriate at that time. We believe the rules we adopt now will adequately serve the needs of both utilities and CATV operators pending our second report and order.

54. The Commission released its notice of proposed rulemaking on May 9, 1978, inviting comments and replies by June 9 and 29 respectively. Under the time constraints imposed by section 224(b)(2), the Commission Staff had very limited time in which to analyze over 600 pages of comments and replies, and prepare a report and order for our consideration at this time. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. § 553, normally requires publication of substantive rule changes a minimum of 30 days prior to their effective date. However, here we have a statutory mandate to have these rules effective by August 20, 1978. Moreover, the rules adopted do not deviate significantly from those proposed. Therefore, in view of these factors, we find that good cause is shown to provide 5 days of notice of the effective date of these rules, pursuant to 5 U.S.C. 553(d)(3) of the APA.

55. Accordingly, *it is hereby ordered*, That pursuant to the authority contained in sections 4(i) and 224(b)(2) of the Communications Act, 47 U.S.C. 154(i), 224(b)(2), Parts 0 and 1 of the Commission's rules and regulations are amended, as set forth below, effective August 20, 1978.

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

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Parts 0 and 1 of chapter 47 of the Code of Federal Regulations are amended to read as follows:

1. A new § 0.91(j) is added to read as follows:

§ 0.91 Functions of the Bureau.

(j) Acts upon complaints involving cable television pole attachments, except for final action on complaints raising novel or unusual issues.

2. A new subpart J is added to Part 1 to read as follows:

Subpart J—Pole Attachment Complaint
Procedures

Sec.
1.1401 Purpose.
1.1402 Definitions.
1.1403 Notice of removal and petition for temporary stay.
1.1404 Complaint.
1.1405 File number.
1.1406 Dismissal of complaints.
1.1407 Response and reply.

Sec.
1.1408 Number of copies and form of pleadings.
1.1409 Commission consideration of the complaint.
1.1410 Remedies.
1.1411 Meetings and hearings.
1.1412 Enforcement.
1.1413 Forfeiture.
1.1414 State certification.
1.1415 Other orders.

Subpart J—Pole Attachment
Complaint Procedures

§ 1.1401 Purpose.

The rules and regulations contained in subpart J of this part provide complaint and enforcement procedures to ensure that rates, terms and conditions for cable television pole attachments are just and reasonable.

§ 1.1402 Definitions.

(a) The term "utility" means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(b) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) The term "usable space" means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(d) The term "complaint" means a filing by either a cable television system operator or a utility alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term "complainant" means a cable television system operator or a utility who files a complaint.

(f) The term "respondent" means a cable television system operator or a utility against whom a complaint is filed.

(g) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

§ 1.1403 Notice of removal and petition for temporary stay.

(a) A utility shall provide a cable television system operator no less than 60 days written notice prior to (1) removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of a cable television pole attachment agreement, or

(2) any increase in pole attachment rates.

(b) A cable television system operator may file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to paragraph (a) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service, a copy of the notice, and certification of service as required by § 1.1404(b) of this Subpart. The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this Section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.

§ 1.1404 Complaint.

(a) The complaint shall contain the name and address of the complainant, the name and address of the respondent, and shall be signed and verified by the complainant, or officer thereof if complainant is a corporation, and shall include a statement showing the complainant's direct interest in the matter complained of. Complainants may join together to file a joint complaint.

(b) The complaint shall be accompanied by a certification of service on the named respondent and each State, Federal or local agency which regulates any aspect of service provided by the utility or cable television system named as either complainant or respondent.

(c) The complaint shall contain a statement that the State has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments, and that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable system operator and the utility. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts or conduits used or designated, in whole or in part, for wire communication and such statement shall be accompanied by evidence of such use or designation, or by an explanation of why such evidence cannot be provided; and

(2) A statement that the cable television operator currently has attachments on the poles and such statement shall be accompanied by evi-

dence of such attachment, or by an explanation of why such evidence cannot be provided.

(e) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable.

(f) In any case, where it is claimed that a term or condition is unjust or unreasonable, the claim shall specify all information and argument relied upon to justify said claim.

(g) In a case where it is claimed that (1) a rate is unjust or unreasonable; or (2) a term or condition is unjust or unreasonable and examination of the associated rate is necessary to resolve the claim or explain the term or condition, the claimant shall provide data and information in support of said claim. The data and information shall include, where applicable:

- (i) The gross investment by the utility for pole lines;
- (ii) Crossarm investment for pole lines;
- (iii) The depreciation reserve from the gross pole line investment;
- (iv) The depreciation reserve from the crossarm investment;
- (v) Total number of poles owned, controlled, and used by the utility;
- (vi) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment;
- (vii) Rate of return authorized for the utility;
- (viii) The number of poles containing pole attachments;
- (ix) The average amount of usable space per pole for those poles used for the pole attachments;

Data and information should be based upon historical cost or the Fully Distributed Cost-7 methodology and should use data reported on FCC Form M where available and applicable. Where the poles are used jointly by telephone and electric power utility companies, yet owned or controlled by the telephone company, Form M data or its equivalent, showing costs to the telephone company, shall be provided. Data and information showing costs derived from forms filed with State or other Federal regulatory agencies may be used, but should be in the form stated above and based upon historical costs, insofar as possible. Where the attachments involve ducts, conduits, or rights of way, in whole or in part, appropriate and equivalent data and information should be filed. The complaint shall also specify any other information and argument relied upon to show that a rate, term, or condition is not just and reasonable.

(h) If any of the information required in (g) of this section is not provided to the cable television operator by the utility upon reasonable request, the cable television operator shall in-

clude a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television operator shall be dismissed where the utility has failed to provide the information in (g) of this section after such reasonable request.

(i) The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing.

(j) Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the person who prepares them.

§ 1.1405 File number.

Each complaint which meets the requirements of § 1.1404 will be given a file number.

§ 1.1406 Dismissal of complaints.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to § 1.1414 of this Subpart. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of Section 1.1402(a) of this Subpart.

(b) If the complaint does not contain substantially all the information required under § 1.1404 the Commission may dismiss the complaint or may require the complainant to file additional information. The complaint shall not be dismissed if the information is not available from public records or from the respondent utility after reasonable request.

(c) Failure by the complainant to respond to official correspondence or a request for additional information will be cause for dismissal.

(d) Dismissal under the provisions of (b) of this section will be without prejudice unless the complaint has been dismissed previously. Dismissal under (a) or (c) of this section is with prejudice.

§ 1.1407 Response and reply.

(a) Respondent shall have 30 days from the date the complaint was filed within which to file a response. Complainant shall have 10 days from the date the response was filed within which to file a reply. Extensions of time to file are not contemplated unless justification is shown pursuant to § 1.46. Except as otherwise provided in § 1.1403, no other filings and no motions other than for extension of time will be considered unless requested or authorized by the Commission. The response should set forth justification for the rate, term, or condition alleged

in the complaint not to be just and reasonable. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts and exhibits shall be verified by the person who prepares them.

(b) The response shall be served on the complainant and all parties listed in complainant's certificate of service.

(c) The reply shall be served on the respondent and all parties listed in respondent's certificate of service.

(d) Failure to respond may be deemed an admission of the material factual allegations contained in the complaint.

§ 1.1408 Number of copies and form of pleadings.

(a) An original and three copies of the complaint, response, and reply shall be filed with the Commission.

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of §§ 1.49, 1.50 and 1.52.

§ 1.1409 Commission consideration of the complaint.

(a) In its consideration of the complaint, response, and reply, the Commission may take notice of any information contained in publicly available filings made by the parties and may accept, subject to rebuttal, studies that have been conducted. The Commission may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by these rules or requested by the Commission, or where costs, values or amounts are disputed, the Commission may estimate such costs, values or amounts if it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

(b) The complainant shall have the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable.

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this sub-paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(d) If the Commission determines that the complainant has not estab-

lished a prima facie case or that the rate, term, or condition complained of is just and reasonable, it shall deny the complaint.

§ 1.1410 Remedies.

If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may order the following:

(a) Termination of the unjust and unreasonable rate, term or condition;

(b) Substitution in the pole attachment agreement of the just and reasonable rate, term, or condition established by the Commission; and

(c) Refund, or payment, if appropriate. The refund or payment will be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, from the date that the complaint (meeting the requirements of § 1.1404) was filed, plus interest.

§ 1.1411 Meetings and hearings.

The Commission may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, order evidentiary procedures upon any issues it finds to have been raised by the filings.

§ 1.1412 Enforcement.

If the respondent fails to obey any order imposed under this subpart, the Commission on its own motion or by motion of the complainant may order the respondent to show cause why it should not cease and desist from violating the Commission's order.

§ 1.1413 Forfeiture.

(a) If any person willfully fails to obey any order imposed under this subpart, or any Commission rule, or

(b) If any person shall in any written response to Commission correspondence or inquiry or in any application, pleading, report, or any other written statement submitted to the Commission pursuant to this subpart make any misrepresentation bearing on any matter within the jurisdiction of the Commission, the Commission may, in addition to any other remedies, including criminal penalties under Section 1001 of Title 18 of the United States Code, impose a forfeiture pursuant to Section 503(b) of the Communications Act, 47 U.S.C. 503(b).

§ 1.1414 State certification.

(a) If the Commission does not receive certification from a State that:

(1) It regulates rates, terms, and conditions for pole attachments, and

(2) In so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services, it will be rebuttably presumed that the State is not regulating pole attachments.

(b) Upon receipt of such certification, the Commission shall give public notice. In addition, the Commission shall compile and publish from time to time, a listing of States which have provided certification.

(c) Upon receipt of such certification, the Commission shall forward any pending case thereby affected to the State regulatory authority, shall so notify the parties involved and shall give public notice thereof.

§ 1.1415 Other orders.

The Commission may issue such other orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

[FR Doc. 78-22722 Filed 8-14-78; 8:45 am]

[6712-01]

[Docket No. 21010; RM-2577; FCC 78-582]

PART 15—RADIO FREQUENCY DEVICES

UHF Television Receiver Noise Figures

AGENCY: Federal Communications Commission.

ACTION: Report and order in the UHF television receiver noise figure proceeding (docket No. 21010).

SUMMARY: This report and order mandates a reduction in the maximum noise figure from the present 18 dB down to 14 dB for all new models beginning October 1, 1979, and for all sets manufactured beginning October 1, 1981. The FCC will also require a further reduction to 12 dB effective October 1, 1982, for new models and October 1, 1984, for all sets manufactured. As explained in this document, the FCC will continue to study the reductions in the noise figure to 12 dB and below: and invites the manufacturing industry, broadcasters, consumer groups and others to assist it. As a result of this work, the FCC may choose to adjust the 12 dB timetable and possibly an additional schedule for implementation of a 10 dB figure.

EFFECTIVE DATE: September 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Paul J. Fox, Office of Plans and Policy, 202-632-6312.

SUPPLEMENTARY INFORMATION:

Adopted: August 1, 1978.

Released: August 4, 1978.

In the matter of UHF television receiver noise figures; report and order (43 FR 19893).

By the Commission: Commissioner Lee dissenting and issuing a statement; Commissioners Quello and Washburn issuing separate statements; Commissioner White dissenting in part and issuing a statement.

1. The Commission is mandating a future improvement in the UHF portion (channels 14-83) of nearly every new television set. This will reduce the amount of picture "snow" on a significant number of new home television receivers. To accomplish this, this decision will order manufacturers of television sets to meet a lower—and improved—maximum "noise figure" in the new receiver models which they introduce into the market beginning October 1, 1979. On October 1, 1981, we will further strengthen this improved standard by prohibiting the manufacture of any television sets which do not meet the new requirement. Finally, we will repeat this sequence for additional receiver improvements in late 1982 and 1984. This action is another in a long line of actions aimed at improving the ability of UHF television stations to reach as large an audience as possible with interference-free signals.

2. In addition to our lowering the UHF television receiver noise figure, we also wish to state our commitment to open new proceedings designed to improve other aspects of UHF television performance. These initiatives will provide us with the opportunity to review from television station studio to home video screen virtually all of the technical factors which influence quality of UHF home television reception. We believe that this is the best concentrated effort that we can undertake to help UHF television at this time.

3. In taking today's action, we have carefully considered a number of competing concerns which could, if not treated properly, result in a lessening

¹Noise figure is a technical measure of one of the factors which influences the amount of "snow" (a kind of visual interference) seen by television viewers on their home television receivers. A lower noise figure will mean less "snow" for a large number of viewers in many areas where the amount of "snow" is particularly heavy.

of UHF service to the public. We did not wish to jeopardize the possibility of adding additional UHF television stations by adopting technical standards for receivers which would make it difficult to receive high quality signals from these stations. Similarly, we have been careful to avoid unnecessary potential interference of television signals located near one another. We have also tried not to impose requirements on manufacturers which might retard innovation or lead to unreasonable increases in the consumer prices of television sets. Of particular concern is that we not hinder the growth of electronic ("push button") tuning, which permits viewers to tune more easily to UHF signals. We are confident that the decision we have reached is fair to all concerned and most of all, promotes the interests of a large portion of the public in receiving technically high quality television transmission.

4. Very briefly summarized, our action here mandates a reduction in the maximum noise figure from the present 18 dB down to 14 dB for all new models beginning October 1, 1979, and for all sets manufactured beginning October 1, 1981. We will also require at this time a further reduction to 12 dB effective October 1, 1982, for new models and October 1, 1984, for all sets manufactured. As explained later in this document, we will continue our study of reductions in the noise figure to 12 dB and below, and we invite the manufacturing industry, broadcasters, consumer groups and others to assist us. As a result of this work, we may choose to adjust the 12 dB timetable and possibly an additional schedule for implementation of a 10 dB figure.

BACKGROUND OF THIS PROCEEDING

5. The Commission initiated this proceeding on December 16, 1976, notice of inquiry and proposed rulemaking in docket 21010, 41 FR 56210 (1976), in response to a petition for rulemaking (RM-2577), filed on August 11, 1975, by the Council for UHF Broadcasting (CUB), a coalition of both commercial and public UHF broadcasters. The CUB petition sought a reduction in the present 18 dB maximum UHF television noise figure to 14 dB within 6 months, 12 dB within 18 months and 10 dB within 30 months. The Commission solicited information on the technical and economic effects of such reductions and scheduled a day of oral presentations from technical experts and others on May 10, 1978.² Written submissions in

connection with those presentations, along with the transcript of the May 10 sessions, have been made a part of the record in this proceeding. Some of the filings in connection with the May 10 sessions arrived after the deadline for those comments. Despite their lateness, we have fully considered all views and data received prior to May 19.

6. Parties favoring a reduction in the UHF television receiver noise figure included, among others, CUB, American Broadcasting Co., Inc. and National Broadcasting Co., Inc., and individual public and commercial broadcast stations, both VHF and UHF, as well as State educational commissions and universities who hold UHF licenses for public broadcasting stations. These parties stated in summary that:

A reduction of the UHF television receiver maximum noise figure below the present 18 dB requirement would be a significant step toward achieving VHF/UHF comparability.

Available solid state components make improved UHF television receiver noise figures technically feasible with only a small increase in receiver cost.

Although raising the transmitting power of UHF television stations can produce an equivalent improvement in UHF television picture quality, such action would place a large and continuing cost burden on UHF stations, especially UHF noncommercial educational stations with limited budgets whose facilities improvements are funded in large measure by taxpayer funds under the Educational Broadcast Facilities Act.

7. Among those opposing the CUB proposal were television tuner receiver manufacturers and the consumer electronics group of the Electronics Industries Association. The basic arguments they presented in opposition were that:

Reductions in the maximum UHF television receiver noise figure below the present 18 dB requirement will be difficult to implement and to maintain in manufacture.

Significant reductions in the maximum noise figure, i.e., more than 1-2 dB, would cause a significant increase in a television receiver's susceptibility to other forms of interference.

An increase in the transmitter power of UHF television stations is more cost effective in reducing UHF television receiver picture noise than is a decrease in the receiver maximum noise figure, with its resulting increase in the purchase price of new television receivers.

8. The Council on Wage and Price Stability also urged the Commission to explore carefully the cost effective-

ness question and presented a tentative analysis of the relative costs of receiver changes versus station power changes.

9. In addition to the parties which participated in the original round of comments, several other parties participated in the panel sessions. These included citizens groups, land mobile interests, and cable television industry representatives.³

THE COMMISSION'S PAST POLICIES FAVORING UHF DEVELOPMENT

10. This decision to lower the maximum UHF noise figure is consistent with our overall policy toward development of UHF television. Improvements in UHF transmission capabilities and receiver design, increase in the number of operating UHF stations, the growing strength of public broadcasting (which operates principally on UHF) and the greater financial viability of commercial UHF stations suggest that we are now at an important point in the development of this service.

11. The Communications Act of 1934 and the first amendment encourage us to foster diverse sources of television programming.⁴ For this reason, we have sought to create a fully competitive UHF service, operated by a variety of commercial and noncommercial licensees, able to provide diverse local and nonlocal programming to the public.

12. From the beginning, we have acknowledged that UHF television suffers from several significant technical limitations in comparison with VHF television. Because of this, we have tried to provide UHF licensees whatever reasonable means are possible to overcome competitive disadvantages where they exist. Although we have not favored UHF over all competing interests, we have given careful consideration to the impact of our decisions upon the development of UHF television.

13. Allocation of television assignments was our starting point in developing UHF policy. In 1952 we assigned commercial and noncommercial UHF channels in an intermixed VHF and UHF table of assignments. When it became apparent that the intermixed VHF-UHF system was not working, for a variety of reasons, we experimented with a policy of "selective deintermixture" assigning only VHF or UHF, not both, to individual communities. See, e.g., *Report and Order in Dockets 11238, et al.*, 41 FCC 739 (1955). But in the early 1960's, as part of the deliberations on the All Chan-

²Participants in the panel sessions are listed below.

⁴*Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969); *National Association of Independent Television Producers and Distributors v. F.C.C.*, 516 F. 2d 526 (2d Cir. 1975)

³In addition to the notice of inquiry and proposed rulemaking cited above the Commission also adopted a notice of panel presentation 43 FR 15744 (1978), to which the Commission attached a staff proposed deci-

sion, and a procedure for panel presentation, 43 FR 19893 (1978).

nel Receiver Act, we decided to continue our intermixture policy.

14. The number of operating UHF stations has risen since 1952 to 369, as of May 31, 1978. Of these, 210 are commercial (142 network affiliates, 68 independents) and 158 are noncommercial educational or public television stations. Over a third of all television stations and two-thirds of all public television stations operate in the UHF band. National UHF penetration (the percentage of U.S. households with UHF receivers) has increased from 7 percent in 1961 to 93 percent by 1977. Financially, over two-thirds of the commercial UHF stations reporting financial data in 1976 showed a profit, up from slightly over a third in 1969.

15. Our actions in almost every area of our jurisdiction affecting broadcasting have taken UHF development into account. We have been concerned with any changes in the 1952 table of assignments that might have an adverse impact on UHF television.⁵ We have been more lenient with UHF in construction of new stations and requested changes in the facilities of existing stations.⁶ We have been concerned with engineering changes by VHF stations that might have an adverse UHF impact⁷ and we have given special attention to UHF in deciding issues of station ownership⁸ and programming.⁹

⁵E.g., hyphenated assignments (TV Table of Assignments—Kerrville—Fredericksburg, Texas, 42 FCC 2d 278 (1978)), shared use of a VHF channel (TV Table of Assignments—Ogden, Utah, 26 FCC 2d 142 (1970)); and VHF drop-ins (VHF TV Top 100 Markets, 63 FCC 2d 840 (1977)).

⁶E.g., extension of time for UHF permits to complete construction (Onondaga UHF-TV, Inc. (WONH-TV), 65 FCC 2d 582 (1977)); assignment of UHF construction permits (In re: Application of Community Telecasters of Cleveland, Inc., 43 FCC 2d 540 (1973)); increases in permitted UHF transmitter power to 5 megawatts (Second Report on Deintermixture, 13 R.R. 1591 (1956)); use of circular or elliptical polarization (Antenna Polarization, 64 FCC 2d 518 (1977)). Also see generally, Second Report and Order No. 14229, 45 FCC 721 (1963).

⁷E.g., creation of joint tower arrangements among VHF licensees (South Carolina Educational Television Commission 56 FCC 2d 1082 (1975)); changes in CP's held by VHF licensees (Jefferson Pilot Broadcasting Co., 53 FCC 2d 262 (1975)); and moving transmitter and studio, increasing or decreasing antenna height and transmitter power (Daily Telegraph Printing Company, 56 FCC 2d 990 (1975)).

⁸Our multiple ownership rules were changed to the present 5 VHF and 2 UHF station limits to provide new investment in-

16. We continue to wrestle today with the financial impact of cable on UHF broadcasting. A strong cable industry may benefit UHF since cable carriage of local UHF signals is often of tremendous benefit because it gives them technical reception parity with local VHF signals. But local UHF stations have claimed audience fragmentation from distant television signals imported by a cable system into the community. The Commission recently focused on these competing trade-offs as they affect UHF in its Cable Economic Impact Inquiry, 65 FCC 2d 9 (1977). The Commission has also considered alleged discrimination against UHF stations in assignment of channel numbers on cable systems.¹⁰ We have promoted the use of UHF through television translators,¹¹ subscription or pay television,¹² and satellite developments.¹³

17. As a corollary to these actions, the Commission has long felt that UHF stations can provide full program service to their communities.¹⁴ This has included locally oriented service,¹⁵ non-commercial, service, and minority and special interest programming. UHF programming—both local and non-local—has in fact expanded considerably in recent years. Many commercial and public UHF stations now are able to present outstanding local program service to their communities, addressing and involving groups with limited or specialized interests and

centive for UHF (Report and Order in Docket No. 10822, 43 FCC 2799 (1954)). Multiple ownership issues involving UHF stations are considered on a case-by-case basis (e.g., Multiple Ownership Rules, 41 R.R. 2d 1525 (1977); Kingston Broadcasting Company, 42 R.R. 2d 521 (1978); Field Communications Corporation, 65 FCC 2d 959 (1977) (waiver of Top 50 Market Policy); Notice of Inquiry and Notice of Proposed Rulemaking in BC Docket No. 78-101, FCC 78-203 (adopted March 16, 1978)).

⁹E.g., syndicated program exclusivity (Cable Television Suppliers, 59 FCC 2d 1058 (1976)); requests to send network programs to stations across the U.S. border (American Broadcasting Cos., 35 FCC 2d 1 (1972)); efforts to obtain network programming for UHF stations (Limitations re: TV Network Programs, 28 FCC 2d 169 (1971)—§73.658(1) of the Rules); attempt to increase independent program sources (Network Television Broadcasting, 23 FCC 2d 382 (1970)).

¹⁰E.g., St. Johnsbury Community TV Corp., 52 FCC 2d 1039 (1975).

¹¹E.g., applications for UHF translators (Starr WTVQ-TV Inc., 55 FCC 2d 643 (1975)), and cancellation of VHF translator authorizations (West Michigan Telecasters, Inc., 32 FCC 2d 630 (1971)).

¹²E.g., First Report and Order (Docket 19554), 52 FCC 2d 1 (1975).

¹³E.g., Southern Satellite Systems, Inc., 62 FCC 2d 153 (1976).

¹⁴E.g., WUHQ-TV, 37 FCC 2d 670 (1972).

¹⁵E.g., State of New Jersey Television Service, 59 FCC 2d 1386 (1976).

concerns in education, culture, religion, politics, government, sports and entertainment. Several recent nationally syndicated commercial programming initiatives have relied on UHF independent stations for success.

18. Increased advertiser interest in commercial UHF stations and technological advances such as satellite distribution of programs for both commercial and public television stations have been key factors in these advances. These developments, although now only in their early stages, may result in significant increases in the diversity of non-local news, sports and entertainment programs available to stations around the country, and ultimately to the public. The more than 700 new UHF stations which our Table of Assignments already permits now offers one of the greatest opportunities for minority and other groups and interests to expand their ownership of and participation in the television medium.¹⁶

ALL CHANNEL RECEIVER ACT

19. In addition to all of the above actions which were taken in furtherance of our general mandate to promote diversity of program sources and of public access to such sources, we have taken a series of actions under a specific legislative mandate—the 1962 All Channel Receiver Act (47 U.S.C. 303(s), 330(b)). The act states in part (at §303(s)) that the Commission shall:

Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

20. The Commission has substantial discretionary authority to enforce the All Channel Receiver Act. While Congress has clearly chosen to require effective UHF signal reception, the statute leaves the Commission free to implement that mandate in a reasonable manner, weighing competing concerns and interests while seeking to improve UHF reception.

21. Under this Act we have taken a number of actions which have advanced the technical aspects of UHF home receiver reception. The Commission has required a permanent UHF antenna on any set equipped with a permanent VHF antenna (Television Broadcast Receiver Antennas, 62 FCC 2d 164 (1976)), and has ordered detent

¹⁶Nor does the present Table include all possible assignments allowed by the "UHF taboos" (47 CFR §73.698).

(click-stop) tuning as well as other improvements in UHF/VHF comparability (*All Channel Television Broadcast Receivers*, 21 FCC 2d 245 (1970)); *Television Tuning*, 32 FCC 2d 612 (1971); *Comparable Television Tuning*, 43 FCC 2d 395 (1973); *UHF Television Tuning*, 61 FCC 2d 962 (1976)). Last year, the Commission initiated Docket 21179, dealing with the question of whether UHF channel number displays should be more readable. 42 FR 18643 (FCC 77-221, March 24, 1977). The Commission also contracted in 1976 with Texas Instruments, Inc. to develop a high performance UHF receiver.¹⁷

THE PRESENT UHF NOISE FIGURE REGULATION

22. In addition to our other actions taken under the All Channel Receiver Act, we initially specified an 18 dB worst case noise figure for UHF television receivers. *First Report and Order in Docket No. 14769*, 24 R.R. 1585 (1962). This says that a manufacturer's worst channel on its worst set cannot exceed the maximum noise figure in the rule—47 CFR §15.67(a). As the filings show clearly, the noise figure on certain channels will be considerably worse than on others. Moreover, due to normal production line variations, the noise figures for individual channels on receivers of exactly the same design will vary from receiver to receiver.

23. The Notice in this proceeding asked for comments (Question 12(h)) on replacing the existing form of regulation—the absolute worst case UHF noise figure—with a mean UHF noise figure and standard deviation. While most of the comments in the original round of comments opposed any change in the form of the regulation, the panel sessions have convinced us that some change is required. CUB's original comments were typical in stating "the present scheme should be retained absent a strong showing by manufacturers as to why it has become impractical."¹⁸

24. The manufacturers' comments show that they use a statistical approach to monitor compliance. Further it is clear that setting an absolute worst case limit unduly complicates the issues since the actual limit must then be determined by what is appropriate for the worst case receivers-sets which manufacturers rarely produce.¹⁹

¹⁷ *Final Report, High Performance TV Receiver*, D. L. Ash and C. S. Hartman, Texas Instruments Inc.: FCC/OCE: CE 78-01 (March, 1978) NTIS No. PB 277186.

¹⁸ Comments of CUB in docket 21010, March 15, 1977, at 13 (footnote omitted).

¹⁹ It is also true that (in the absence of 100 percent testing) as a matter of technical statistics there will always be a certain number (albeit extremely small) of sets which will exceed any absolute limit regardless of how much higher it is than the average value.

We nonetheless continue to believe that applying the limit to the worst (UHF) channel of any receiver is appropriate. However, we have decided that a reasonable, rather than absolute, worst set limit is more appropriate. We will, therefore, require that 97½ percent of all sets within a model have maximum noise figures (worst channel) at or below our limit.²⁰

NOISE FIGURE PERFORMANCE OF CURRENT RECEIVERS

25. As a result of our request for the panel sessions, we received three systematic studies on noise figure performance of current television sets. The Consumer Electronics Group of the Electronics Industries Association (EIA/CEG) filed composite data derived from nine manufacturers. In addition RCA Corp. and Zenith Radio Corp. filed more detailed information on their own production.

26. While the overall tabulation of the EIA/CEG report shows that approximately 63 percent of the sets tested had a maximum noise figure (on the worst channel) of 14 dB or less, the same report also broke down the data by type of tuner used in the set. Within these categories, not a single one met a "reasonable" worst case limit of 14 dB. While the EIA/CEG data is more comprehensive, it has the disadvantage of combining different designs by different manufacturers. The Zenith and RCA data give better insight into what occurs between sets of essentially similar design. None of the Zenith categories (based on tuner design and set size) met a 14 dB "reasonable" worst case design. Among the five RCA categories (based on tuner design) only two met a "reasonable" worst case limit of 14 dB—and they just barely met it.²¹

27. An examination of this data, combined with the fact that manufacturers do not test the noise figure of every set on the production line, shows

²⁰ For those models whose distribution of maximum noise figures (worst channel) is normal, compliance with the 97½ percent level will be clearly achieved when the average maximum noise figure is two standard deviations below the limit. As an example, for a model with a standard deviation of about 1 dB, this would mean that the manufacturer would comply with a 14 dB reasonable worst set limit, if the average maximum noise figure was approximately 12 dB.

²¹ The two categories (and the noise figure at which "reasonable" compliance is achieved) are mechanical color tuners (13.93 dB) and open loop varactor tuners (13.91 dB). Obviously these two categories do not meet an absolute worst case limit of 14 dB. Given this narrow margin below 14 dB, it is likely that lowering the limit to 14 dB would cause some improvement in even these categories in order to insure compliance with the new rule. (The term "open loop" designates how the tuning oscillator is controlled.)

that improvements in noise figure will affect nearly every set of a particular model. The improvements needed to lower the noise figure of the worst sets will also improve the noise figure of the better sets.²²

28. An examination of the components used by the two tuner designs which met a reasonable worst case limit of 14 dB is revealing. The color mechanical set used a Schottky barrier ("hot carrier") diode for a mixer and a Metal Oxide Semiconductor Field Effect Transistor (MOSFET) in the first intermediate frequency stage. The open loop varactor uses a MOSFET in the radio frequency amplifier (whose performance is the equal of the Texas Instruments C3T225A²³ discussed extensively in the CUB filings) and a Schottky barrier diode mixer. These are precisely the components CUB recommended that the manufacturers utilize to achieve 10 dB noise figures.²⁴ Yet utilizing these components, the RCA sets barely achieve a 14 dB limit. While further improvements are clearly possible, this does indicate that improved noise figures—if they are not obtained at the expense of degraded selectivity—will not come easily, at least in the near future.

IMPORTANCE OF A 4dB NOISE FIGURE REDUCTION FOR UHF TELEVISION

29. The principal sources of picture "noise" for most UHF television viewers are: (1) noise generated in the input stages of their television receivers and (2) noise generated by equipment at the transmitting television station. While it is difficult to quantify the impact of noise on the quality

²² There are two key aspects to complying with a worst case limit. The first is the average maximum (worst channel) noise figure. The second is the "spread" of maximum noise figures, typically measured by the standard deviation. Hence to meet a lower worst noise figure limit, manufacturers can lower the average maximum noise figure, reduce the standard deviation, or use some combination of these. While conceptually it would be possible not to lower the average value (assuming it were below the new limit) by lowering only the standard deviation, the chances of this actually happening are remote. The smallest standard deviation was 0.68 dB but most were closer to 1 dB. Further, if this were to occur the reporting procedures we are implementing would quickly bring this improvement in production line variation to our attention. This improvement would then be incorporated into subsequent rule changes we will be undertaking.

²³ Based on comparing Fig. 1 of the RCA Panel Comments with the graph of the noise figure distribution of the C3T225A (attached to the document written by Sam Weaver) in the Texas Instrument Panel filing.

²⁴ CUB Panel Comments (May 5, 1978) at 15.

of reception,²⁵ one group—a panel of the Television Allocations Study Organization (TASO)—conducted studies which found that increasing the signal to noise ratio by 4 dB²⁶ would cause roughly one-third of all television viewers to raise their description of picture quality by one "TASO grade."²⁷ TASO grades are labeled "unusable," "inferior," "marginal," "passable," "fine," and "excellent." Stated differently, a full 4 dB reduction in a receiver's noise figure will produce the same improvement in picture quality (reduction in picture noise) as would a 2½ fold (4 dB) increase in radiated power by a UHF television station.²⁸ A 6 db improvement will yield even more improvement—approximately a full "TASO grade" to the average viewer.

30. Such an improvement in UHF picture quality will benefit both viewers and UHF stations. The viewer will have improved reception of UHF signals and may be able to view programming on these channels more enjoyably—and in some cases for the first time—with the reduced noise figure. Existing stations will benefit from being able to reach larger audiences. In addition, the improved reception of UHF generally may promote the prospects for new UHF stations.

31. Increased UHF audiences may help to stimulate an increase in the need for a greater amount—and possible variety—of programming available to the public. This increase in the development of programming sources may benefit the choices available to all television stations.

DISCUSSION AND CONCLUSIONS

32. We find that the benefits accruing from lowering the noise figure, coupled with a recognition of technical advances permitting such a reduction, justify a reduction of the reasonable worst case noise figure to 14 dB at

²⁵The technical literature on the subjective evaluation of television picture quality was reviewed in the report of Panel 2 of the Cable Television Technical Advisory Committee, Vol. II, May 1975, NTIS PB-247 808.

²⁶For viewers with a "snowy" picture, a 4 dB change in noise figure should result in a 4 dB change in the signal to noise ratio.

²⁷Charles E. Dean, "Measurements of the Subjective Effects of Interference in Television Reception," 48 Proceedings of the IRE 1042 (June 1960), figure 8. This estimate was obtained as follows. For each TASO grade the percentage of observers classifying a picture as that TASO grade was determined for ± 2 dB around the median observer. The differences were then averaged across all six TASO grades.

²⁸For those viewers who experience picture degradation from interference due to causes other than internal receiver noise, however, an increase in television station radiated power would usually produce greater benefits in improved picture quality than would this decrease in noise figure.

this time. We believe that this reduction will provide significant public benefits by setting a ceiling within the feasible state of the art, with minimal cost to consumers. This reduction will not result in significantly greater susceptibility to other forms of interference such as cross modulation and intermodulation. Furthermore, the reduction in noise figure will be reasonably cost effective regardless of whether UHF stations also increase their transmitting power.

33. Our staff originally raised three concerns as to why we should not lower the noise figure below 14 dB at this time; the impact this might have on our ability to reduce the UHF taboos; the impact on the use of electronic ("push button") tuners; and the cost inefficiency that would result if improvements were obtained solely by lowering the noise figure. The panel sessions and the associated written comments have convinced us that these concerns are valid. We have concluded that to mandate immediately a reasonable worst case noise figure lower than 14 dB would not be in the public interest. However, we have also concluded that further reductions in the noise figure beyond 14 dB are important and most likely obtainable without reducing receiver selectivity or abandoning electronic tuners. We believe that the technical advances generated by this and other related Commission actions will make this possible. Consequently, this decision will order the future lowering of the reasonable worst case noise figure to 12 dB.

34. We believe lowering the reasonable worst case noise figure to 12 dB can be done without imperiling our ability to reduce the UHF taboos or causing other serious impairments to the public interest. We are undertaking several actions in connection with this further step. First, we are instructing our staff to carefully monitor the results of the reduction to 14 dB and to conduct studies in this area. Secondly, we will institute a proceeding to impose immediate selectivity standards to prevent set manufacturers from simply obtaining the 12 dB noise figure by reducing a set's ability to reject undesired signals (selectivity). Third, we will keep this docket (21010) open to assess developments in this field. Since this action is essentially based on our forecast of future technical developments, the staff will continue to conduct studies relating to the timetable for noise figure reduction. While we now have no reason to question this forecast on which a reduction to 12 dB has been based, we might conclude modification of the timetable would be appropriate in light of further information coming to our attention in this docket. A more likely

outcome of our reassessment, however, is the conclusion that we can mandate an even further reduction in the worst case UHF noise figure to 10 dB instead of 12 dB.

35. Several forms of interference including crossmodulation and intermodulation are caused by the presence of interfering signals. These forms of interference can be reduced by lowering the level of the undesired signals by either reducing the amplification of all signals or by the use of more selective filters. Unfortunately, these actions, while increasing the selectivity of a receiver, also increase the noise figure. As a recent FCC laboratory report²⁹ showed there is always a possible tradeoff between noise figure and selectivity. Since the Commission does not currently have any rules on television receiver selectivity, any undue reduction in the noise figure may well come at the expense of increased selectivity.³⁰ There are other means available to reduce the noise figure including better transistors and less matching losses. However, there are limits as to how much can be achieved on a mass assembly line without unduly increasing costs by techniques which do not reduce selectivity. As noted above a reasonable 14 dB worst case level of performance is being obtained today only by using some of the best components available. While some improvements can be obtained by reducing matching losses, it is clear that lowering the maximum noise figure below 14 dB without reducing selectivity will require significant new engineering work. This new engineer-

²⁹*Relationship Between Noise Figures and Other Performance Characteristics of Contemporary UHF-TV Receivers*, L. C. Middle-Kamp et al, FCC/OCE LAB 78-02 (May, 1978).

³⁰CUB suggests in its panel comments that the Commission need not worry about this tradeoff between receiver selectivity and noise figure because the Intermodulation taboo is only 20 miles. In particular it cites studies which conclude that removing the Intermodulation taboo alone does not allow the assignment of additional stations to any significant degree. CUB, however, has overlooked some considerations. First, the tradeoffs involve more than just intermodulation, they also concern effects such as cross-modulation and spurious mixer responses. For example, in the Texas Instrument prototype receiver there is a spurious mixer response that is directly related to front end selectivity. Second, the Commission is concerned not only with the prospects for reducing the Intermodulation taboo alone but the effects when all or most of the taboos are eliminated. Hence considering the effects of the Intermodulation taboo in isolation is insufficient. Third, even if the Intermodulation taboo is not currently significant to the number of stations, it does limit flexibility in transmitter site location as the Corporation for Public Broadcasting pointed out in its comments in Docket 20845 (Reevaluation and Revision of the UHF TV "Taboo" Table), October 31, 1975.

ing work will require significant lead time before it can be implemented on all manufacturers' television sets.³¹

36. Because the electronic tuners³² which use varactor diodes have such high losses and poor selectivity, generally they have significantly less selectivity for comparable noise figures. This lowered level of selectivity degrades reception in certain reception areas. Hence, an undue lowering of the noise figure carries the risk of retarding the complete adoption of electronic tuning.

37. Our staff, in its earlier analysis,³³ has utilized the estimates provided by the Council on Wage and Price Stability (COWPS) as to the consumer cost of different reductions in the noise figure. COWPS had combined these estimates with estimates of the cost of increasing transmitter power made by the Corporation for Public Broadcasting.³⁴ The staff analysis indicated that while the cost of obtaining the first 4 dB of improvement is roughly the same regardless of whether it is obtained by lowering the noise figure or increasing transmitter power, the cost estimates of obtaining the second 4 dB from noise figure (i.e., reduction of the worst case noise figure from 14 to 10 dB) were significantly higher than the estimates for obtaining a first 4 dB improvement from transmitter power increases. Hence obtaining all of the im-

provement solely from lowering the noise figure was thought to pose a serious risk of imposing unnecessary costs on the American consumer. While the parties obviously disagreed over the precise costs of lowering the noise figure, the range of estimates basically confirmed the conclusion our staff had reached earlier—i.e., lowering the reasonable worst case noise figure to 10 dB at this time without any corresponding increase in transmitter powers poses serious cost efficiency questions.³⁵ Obviously, technical developments may well change this conclusion in the future.

LABELING

38. In 1962, we specified an 18 dB noise figure because it was readily achievable with then current technology. Sixteen years later, despite the significant improvements that have occurred in electronic technology, there has not been a corresponding improvement in overall noise figures. Poor consumer information may well be a contributing cause, as even for these sets which have shown significant improvement since 1962, the consumer has no convenient way of recognizing that improvement. We believe that consumers would benefit from a labeling program that would provide them with convenient information about a set's noise figure. We foresee two types of immediate benefits from such a program. First: Those viewers having a strong need for a low noise figure will be able readily to identify a set appropriate for their needs. Second: By making this information readily available to the consumer we anticipate that there will be increased competitive pressure to provide sets with reduced noise figure. This competitive pressure will be more successful (and cost effective) than further regulatory proceedings. As discussed below we will be instituting a future proceeding to implement such a labeling program.

MEASUREMENT

39. Section 15.75(b)(3) specifies that the Institute of Electrical and Electronics Engineers (IEEE) Standard 190 is considered an acceptable procedure for measuring the noise figure. This standard is over 18 years old. As the panel sessions indicated, there are serious problems implementing this procedure and it does not represent the state of the art. Contrary to the beliefs of some of the panelists, we have

³¹The major caveat on the conclusion is the CUB estimates as to the cost of achieving 10 dB (e.g., CUB Panel Comments, May 5, 1978, p. 15). As discussed above, the RCA data shows that the improvements contemplated by CUB are actually necessary to achieve 14 dB, not the 10 dB CUB anticipates.

never mandated the use of this IEEE standard. However, the panel sessions have indicated that the development of an improved measurement procedure is clearly warranted. We will soon institute a future proceeding in this area. In addition we believe that this proceeding would be the appropriate forum for considering improvements and refinements to our "reasonable" worst case limit including confidence standards and enforcement procedures.

TIMING

14 dB

40. Our staff originally proposed that all television sets manufactured after October 1, 1979, meet a 14dB maximum limit. The panel sessions have convinced us that adhering to this schedule would produce undue disruption to television set manufacturers³⁶ and hence a cost burden on consumers. However, we are also anxious not to delay the availability of sets with lower noise figure so that consumers with a particular need for improved noise performance can obtain it. We believe that the way to accomplish both objectives—avoiding unnecessary cost to consumers and insuring early availability—is found in the 3-year redesign cycle which the manufacturers stated they use. The 3-year phase-in period which we have adopted here will work in the following manner. Manufacturers will be expected to begin work immediately to improve the noise figure of their models. Starting October 1, 1979, any new model submitted for certification must meet a 14dB "reasonable" worst case limit. This will allow manufacturers to incorporate the design changes needed for lowered noise figure as part of their normal redesigns.

41. We expect that roughly one-third of all models will be redesigned in each of the 3 years prior to October 1, 1981. While we are not imposing this schedule as a requirement, competitive pressure should produce comparable results. First: The labeling program we are hoping to institute should increase consumer pressure for models with lower noise figure. Second: Manufacturers will be unable, after October 1, 1979, to introduce any new product improvements requiring certification without also incorporating improved noise figure perform-

³⁶Two factors have heavily influenced this decision. The panel sessions showed that the many models will need extensive redesign to meet a reasonable 14 dB worst case limit. An example is the RCA black and white mechanical tuner (with bipolar RF) where the basic active components must be replaced causing extensive redesign of the tuner. The second factor is that manufacturers have already fixed designs for 1979 production and in some cases already placed orders for these designs.

³¹The responses to our question in the Notice about oscillator radiation (Question 12(b)) clearly indicate that a reduction in the reasonable worst case UHF noise figure to 14 dB at this time will not have any adverse impact on oscillator radiation. The question of requiring different types of receivers for strong and weak signal areas (Question 12(g)) is most appropriately dealt with in a new inquiry.

In addition, we note that the Engineering Statement attached to Reply Comments of the Iowa State Educational Radio and Television Facility Board recommends that we initiate a proceeding to amend sections 73.683(a) and 73.685(a) of our Rules (the definitions of principal community, grade A and grade B contours). This is not the appropriate proceeding to deal with this proposal. If parties believe this proposal has merit, it should be filed as a separate petition for rule making.

³²Electronic tuners bring important public benefits. They permit direct viewer access to all 82 broadcast channels, provide "push button" channel selection and provide digital channel number display. These are all characteristics which help to equalize the public's access to UHF and VHF channels. Because of this, the Commission will not take any action today which would threaten the use of these devices, which may be a very significant boost to viewer usage of existing UHF stations.

³³Appendix III of the staff proposed decision found at 43 FR 15751 (1978).

³⁴A Quantitative Comparison of the Relative Performance of VHF and UHF Broadcast Systems, Philip A. Rubin, et al., Corporation for Public Broadcasting, Technical Monograph Number One (June 1974).

ance. Because a failure by a manufacturer to meet a 14 dB reasonable worst case noise figure by October 1, 1979, only means that new models cannot be sold, we will not—barring the most unusual of circumstances—grant any waivers of this rule. Manufacturers who are unable to meet a 14 dB reasonable case noise figure will simply be required to continue manufacturing existing models already certified.

42. Since it will be possible to continue manufacturing a model certified before October 1, 1979, with noise figures above 14 dB, we will also include a complete cutoff of higher noise figure sets. Hence, after October 1, 1981, all models manufactured must meet a reasonable 14 dB worst case limit.

12 dB

43. As discussed above, we have concluded that advances in technology stimulated by this and related proceedings will most likely make 12 dB feasible without imperiling our ability to reduce the taboos. Hence we have decided to lower the noise figure to 12 dB under the circumstances outlined above. In considering a date for implementing a 12 dB worst case noise figure, two considerations have been important. The first is the need for significant technical improvements to reach 12 dB. Because of the extensive time needed to implement a given design on an assembly line, the actual time available for new design work is limited. Further, the actual experience with producing 14 dB reasonable worst case receivers will be very valuable in implementing 12 dB or an even lower limit. The second consideration is the 3-year design cycle used by television manufacturers.

44. Given our desire to allow sufficient time for the engineering redesign needed to meet 12 dB and the manufacturers' 3-year redesign cycle, we are requiring that all new models certified after October 1, 1982,³⁷ must meet at least a 12 dB "reasonable" worst case limit and that all sets manufactured after October 1, 1984, must meet at least a 12 dB limit. If future developments in this and related proceedings or our own research shows that this is not in the public interest, which we believe is unlikely, we will reconsider this timetable. We are hopeful, however, that we will be able to require even greater improvement.

NEED FOR ADDITIONAL DATA

45. Because of our change from an absolute to a "reasonable" worst case

³⁷ According to the manufacturers' submissions, models redesigned in 1979 would also be redesigned in 1982. Hence any redesign needed to achieve both the 14 and 12 dB noise figures can be done as part of the normal manufacturers' redesign cycle.

limit and the forthcoming proceedings on improved UHF reception (discussed below), there is a clear need for more data on the noise figure performance of receiver models. Hence we will require that all applications for certification of receiver models filed after October 1, 1979, must include information on this subject. Each application must show the basis upon which the applicant expects to meet the "reasonable" worst case limit. Following that, the applicant must, on an annual basis, file a report giving the actual noise figure performance of that model during the preceding year.³⁸

FUTURE UHF PROCEEDINGS

46. This report and order cannot be viewed as the final conclusions of our investigation into UHF reception or even the UHF noise figure alone. Instead it must be viewed as the beginning of what we believe will be one of the most important undertakings this Commission has embarked upon—a fundamental reassessment of television reception. The results of the high performance television receiver (Texas Instrument's) project,³⁹ the growing public concern, as exemplified by this proceeding, for improved UHF reception, and the increased desire of many to see increased diversity in television programming all combine to make this an extremely important undertaking.

47. We are planning to undertake a comprehensive effort to examine all issues relating to television reception. In this effort we will consider a wide range of issues related to television re-

³⁸ Each report must include the mean of the maximum (worst channel) noise figure and the basis relied upon to insure compliance. If this is a statistical technique, the distributional form used, estimated values of the principal parameters, sampling technique, sample size, and an uncertainty estimate(s) must all be provided.

³⁹ *Final Report, High Performance TV Receiver*, D. L. Ash and C. S. Hartmann, Texas Instruments Inc., FCC/OCE/CE 78-01 (March 1978) NTIS No. PB 277186; *A Study of the Characteristics of the FCC Prototype TV Receiver Relative to Conventional Receiver UHF Taboos*, L. C. Middlekamp et al., FCC/OCE LAB 78-01 (February 1978) NTIS No. PB 277187. The Texas Instrument receiver has an actual UHF noise figure ranging from 13.0 to over 16 dB depending on the amount of manual adjustment performed. Texas Instruments projects, with various planned improvements, that this could be reduced to 9-11.5 dB. The wide range of these numbers emphasizes two key points. First: There is no such number as the noise figure of the Texas Instruments receiver. Second: This range confirms that this receiver is an "engineering" model with many aspects still needing testing and evaluation. In addition, none of these noise figures include an allowance for manufacturing variations. Without further study of these reports, contemplated in our new effort, we cannot use these findings as a basis for lowering the maximum noise figure below 14 dB at this time.

ception including improved receivers, ancillary services, grading of other receiving equipment such as antennas and lead-in wires and transmitter operations associated with reception.⁴⁰ Improved UHF reception quality and increased spectrum efficiency will be the major focus of this effort. We anticipate that this process will "spawn" a series of individual proceedings as these areas are appropriate for individual consideration. Using this procedure, we believe this noise figure docket has demonstrated that several areas need the focus provided by separate proceedings. These are immediate selectivity requirements for receivers, labeling of receivers, measurement and enforcement of noise figure. In addition we will keep this docket open to provide a focus for our continuing efforts with regard to the noise figure.

48. Authority for this rule amendment is contained in sections 4(i), 303(r), 303(s), and 330 of the Communications Act of 1934, as amended.

49. Accordingly, it is ordered, Effective September 15, 1978, that part 15 of the Commission's rules is amended in the manner set forth below. It is further ordered, That this proceeding shall remain open.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, sec. 330, 2, 76 Stat. 151; 47 U.S.C. 154, 303, 330.)

FEDERAL COMMUNICATIONS COMMISSION,⁴¹

WILLIAM J. TRICARICO,
Secretary.

PARTICIPANTS IN PANEL SESSIONS HELD MAY 10, 1978

FIRST PANEL

- Dr. Jay J. Brandinger, Vice President, TV Engineering, Consumer Electronics Division, RCA Corp.
Douglass D. Cromble, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration.
William Detweiler, President, Helper Instruments Co.
Clinton S. Hartmann, Manager, Surface Wave Device Technology Branch, Advanced Technology Laboratory, Texas Instruments, Inc.
Serkes Tarzian, Chairman of the Board, Serkes Tarzian, Inc.
Daniel R. Wells, Senior Vice President, Engineering and Operations, Public Broadcasting Service.
Walter S. Wydro, Cable Television Engineering Consultant.

⁴⁰ *A Study of the Characteristics of the FCC Prototype TV Receiver Relative to Conventional Receiver UHF Taboos*, L. C. Middlekamp et al., FCC/OCE LAB 78-01 (February 1978) NTIS No. PB 277187 at 9 raises the possibility that alternative measurement techniques for receiver's low signal strength reception characteristics may be preferable. This, too, will be examined as part of this new effort.

⁴¹ See attached statements of Commissioner Lee, Commissioner Quello, Commissioner Washburn, and Commissioner White.

SECOND PANEL

George Bartlett, Vice President, Engineering, National Association of Broadcasters.
 Isaac S. Blonder, Chairman of the Board, Blonder-Tongue Laboratories, Inc.
 Leonard Dietch, Vice President, Product Development, Zenith Radio Corp.
 Clinton S. Hartmann, Manager, Surface Wave Device Technology Branch, Advanced Technology Laboratory, Texas Instruments, Inc.
 Norman Parker, Paul Galvin Fellow, Motorola, Inc.
 William E. Pastore, Product Line Manager of Noise Products, AILTECH.
 Dr. Phillip A. Rubin, Director of Engineering Research and Development, the Corporation for Public Broadcasting.
 Alfred Sfreddo, Vice President, Tuner Engineering, F. W. Sickles Division, General Instrument Corp.

AFTERNOON SESSION

UHF Station Interests

Harold L. Green, Vice President for Operations and Engineering, Field Communications.
 Jonathan D. Blake, Counsel for the Association of Maximum Service Telecasters, Inc., Richard C. Block, Chairman of C.U.B., and Hartford N. Gunn, Jr., Vice Chairman, Public Broadcasting Service on behalf of Council for UHF Broadcasting.

Citizens Groups

Curly Smith, Attorney, Citizens Communications Center.
 Steve Miller, member, D.C. Media Task Force.

Land Mobile Interest

Emmet B. Klitchen, Vice President and General Manager, National Association of Business and Educational Radio on behalf of Land Mobile Communications Council.

Government

Milton Kafoglis, Senior Economist, and Roy A. Nierenberg, Assistant General Counsel, Counsel on Wage and Price Stability.

Part 15 of chapter I of title 47 of the Code of Federal Regulations is revised as follows:

1. Paragraph (a) of § 15.65 is amended by deleting the opening exception and adding references to §§ 15.65(b) and 15.66 in the last sentence. As amended § 15.65(a) reads as follows:

§ 15.65 All-channel television broadcast reception: General requirement; and antennas.

(a) All television broadcast receivers manufactured after April 30, 1964, and shipped in interstate commerce or imported from any foreign country into the United States, for sale or resale to the public, shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service. A television broadcast receiver is capable of adequately receiving all channels if it meets the requirements of §§ 15.65(b),

15.66, 15.67, and 15.68 in effect on the day of manufacture.

2. Add a new § 15.66 to read as follows:

§ 15.66 All-channel television broadcast reception: Noise figure.

(a) *Noise figure.* The noise figure for

For receivers manufactured between—	Certification filed	UHF noise figure
May 1, 1964, and Sept. 30, 1981, inclusive	On or before Sept. 30, 1979	18
	On or after Oct. 1, 1979 ¹	14
Oct. 1, 1981, and Sept. 30, 1984, inclusive	On or before Sept. 30, 1982	14
	On or after Oct. 1, 1982 ²	12
On or after Oct. 1, 1984	On or after Oct. 1, 1984 ³	12

¹Models submitted for certification pursuant to § 15.48(c)—Private label device; Multiple listing of a device—may continue to meet a UHF noise figure of 18 dB. Manufacture of such models must terminate on Sept. 30, 1981.

²Models submitted for certification pursuant to § 15.48(c)—Private label device; Multiple listing of device—may continue to meet a UHF noise figure of 14 dB. Manufacture of such models must terminate on Sept. 30, 1984.

³See par. 34 of the report and order in Docket 21010.

(b) *Data required for certification on or after October 1, 1979.* (1) Measurements of the noise figure of a number of UHF channels of the test sample shall be submitted to give reasonable assurance that the UHF noise figure for each channel of the test sample is less than the value specified in (a) of this section.

(2) A statement explaining the basis on which the applicant will rely to insure that at least 97.5 percent of all production units of the test sample that are manufactured have a noise figure not exceeding the noise figure specified in (a) of this section.

(c) *Followup proof of performance.* Each year after certification has been granted for a specific model, the applicant shall file a report giving the actual noise figure performance of the units of that model as actually measured during that year.

3. In § 15.67, the headnote and text are amended to read as follows:

§ 15.67 All-channel television broadcast reception: Peak picture sensitivity

(a) [Reserved]

(b) The peak picture sensitivity of a television broadcast receiver manufactured after April 30, 1964, averaged for all channels between 14 and 83 inclusive, shall not be more than 8 dB larger than the peak picture sensitivity of that receiver averaged for all channels between 2 and 13 inclusive.

any television channel 14 to 83 inclusive shall not exceed the value shown in the table in this paragraph. A television receiver model is considered to comply with the noise figure of x dB if the maximum noise figure for channels 14–83 inclusive of 97.5 percent of all receivers within that model does not exceed x dB.

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE IN RE UHF TELEVISION RECEIVER NOISE FIGURES (DOCKET 21010)

During all the years I have advocated UHF parity, I have learned that wishful thinking does not make it happen. I am dissenting here because I think the 12 dB standard represents more wishful thinking.

For all we know now, lowering the noise figure from 14 to 12 dB could create other problems which might make the picture on the TV set worse for those who have good reception now. For some others, the hoped-for improvements may not even be perceptible.

On the other hand, if we prod engineers and manufacturers to attack all of the UHF technical issues in a coordinated manner, we may learn enough to set an even lower noise figure level. The 12 dB standard may not be the best we can do for UHF. Indeed, if compliance with this rule diverts research attention from designing the best receiver possible, we may not have done UHF any real good at all.

The way to achieve UHF parity does not lie with noise figures alone. UHF development is affected by a number of technical and nontechnical factors which all need attention in a coordinated manner—as soon as possible. I hope that the Commission does not delay the proceedings promised in paragraphs 34, 46 and 47 of the Report and Order.

AUGUST 1, 1978.

SEPARATE STATEMENT OF FCC COMMISSIONER JAMES H. QUELLO IN RE NEW UHF "NOISE" LEVELS

This action by the Commission aimed at encouraging the technical improvement of UHF television reception is long overdue. Certainly no one familiar with the problems will hail the Commission's action as the end of UHF television's troubles nor see it as a leap to instant comparability. It should be regarded as an important step toward comparability, however, and as a signal to the industry that the Commission is ready to

lend more than lip service to the comparability goal.

I intend to continue to give the other technical problems associated with UHF television my full attention. I am convinced that these problems can be resolved, or at least mitigated, given diligence and concern by the Commission and receiver manufacturers. Like the All Channel Receiver legislation of a few years back, the Commission's efforts to improve the noise figure is a significant, necessary, step toward ultimate comparability.

AUGUST 1, 1978.

SEPARATE STATEMENT OF COMMISSIONER
ABBOTT WASHBURN RE NEW UHF "NOISE"
LEVELS

For 16 years the maximum noise figure level for TV receivers has been 18 dB. In this highly significant action the Commission has set October 1979 as the date for reaching 14 dB, and October 1982 for reaching 12 dB. Also, the Commission has initiated actions to insure all other significant parameters of UHF television reception will, likewise, be improved over a comparable time period. It is my belief that a 10 dB level will also be achieved by the early 1980's.

The public interest considerations in reaching these higher standards are vast. Millions more American families will be able to receive a better quality UHF-TV picture. Increased viewership will encourage the activation of many new UHF channel assignments which now lie fallow. One by-product will be a significant opportunity for increased minority ownership. It will also be a stimulus for programming excellence, through broadened diversity of voices both in commercial and noncommercial television.

We should keep in mind that UHF is the only direction in which U.S. television can expand. (Our studies to date indicate that VHF "drop-ins" may furnish a few channels, but only a handful.) Hundreds of additional channels are needed, for example, by public television in order to provide adequate coverage throughout the U.S. Today only two-thirds of our population can receive public television. Virtually all of these additional channels must be in the UHF band.

Better signal reception, more UHF stations on the air, and millions of additional viewers can only result in increased sales of TV sets, thus directly benefiting the receiver manufacturers.

Setting dates certain for the 14 dB and 12 dB noise figures represents a significant step toward UHF/VHF parity, a long-standing goal of both the Congress and of this Commission.

STATEMENT OF COMMISSIONER MARGITA E.
WHITE DISSIDENTING IN PART IN RE UHF
TELEVISION RECEIVER NOISE FIGURES
(DOCKET NO. 21010)

Although I support the majority's goal to bring UHF television in parity with VHF television, I must dissent to its decision to include a 12 dB noise figure in the Commission's Rules and Regulations at this time for the reasons advanced by Commissioner Lee in his dissenting statement.

Had the Commission majority simply stated, in the text of the Report and Order or in a footnote to the new rule, its intention to adopt a 12 dB or an even lower noise figure when the facts are developed to show

this to be feasible, I would have approved the Commission's decision. However, based on the lack of evidence in the record supporting a 12 dB noise figure and the potential for inhibiting total improvement of UHF reception, I dissent to this part of the Commission's decision.

However, I wish to state my support for the adoption of the 14 dB noise figure for UHF receivers. There is ample evidence that this can be achieved now with little risk to other more significant improvements in UHF television reception to be investigated in another soon to be initiated proceeding.

[FR Doc. 78-22605 Filed 8-14-78; 8:45 am]

[6712-01]

[Docket No. 19879; RM-2264; RM-2299]

PART 73—RADIO BROADCAST
SERVICES

FM Broadcast Stations in Fayetteville,
Ark. and Neosho, Mo.; Changes
Made in Table of Assignments

AGENCY: Federal Communications
Commission.

ACTION: Second report and order.

SUMMARY: This action assigns FM Channel 300 to Fayetteville, Ark., as a third FM assignment. It has been shown that significant first and second aural nighttime service would be provided as a result. Questions regarding the economic impact of this assignment to existing stations are more appropriately considered when an application is filed.

EFFECTIVE DATE: September 18,
1978.

ADDRESSES: Federal Communica-
tions Commission, Washington, D.C.
20554.

FOR FURTHER INFORMATION
CONTACT:

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202-632-7792.

SUPPLEMENTARY INFORMATION:
This proceeding previously involved
FM assignments to various other com-
munities in Arkansas. Actions concern-
ing these communities were taken in
the first report and order adopted
August 16, 1977, 42 FR 42858.

In the matter of amendment of
§ 73.202(b), Table of Assignments, FM
Broadcast Stations. (Little Rock,
Benton, Batesville and Mountain
View, Ark. Also Cherokee Village, Dar-
danelle, Dumas, Fayetteville, Lonoke,
Malvern, Morrilton, Ozark, Pine Bluff,
Russellville, Sheridan, Springdale, and
Van Buren, Ark., and Neosho, Mo.;
Docket No. 19879; RM-2020, RM-2064,
RM-2113, RM-2177, RM-2226, RM-
2264, RM-2288, RM-2299, RM-2305,
RM-2313, RM-2381, RM-2487, RM-
2404, RM-2527; Second Report and

Order (Proceeding Terminated); See
also 42 FR 58417, November 9, 1978.

Adopted: August 4, 1978.

Released: August 15, 1978.

1. The Commission has before it the
Further Notice of Proposed Rule
Making and Order to Show Cause re-
leased on April 24, 1975 (40 FR 18452)
and the Request for Supplemental In-
formation released August 24, 1977 (42
FR 43870). Comments in support were
submitted by Vernon B. Fitzhugh
("Fitzhugh"), proponent for the as-
signment of FM Channel 300 to Fay-
etteville, Ark. Oppositions were sub-
mitted by Johnson Communications,
Inc. ("Johnson"), licensee of Stations
KSPR(AM) and KCIZ(FM), Spring-
dale, Ark.; and Little Chief Broad-
casting Co. of Fayetteville, Inc. ("Little
Chief"), licensee of Stations
KFAY(AM) and KKEG(FM), Fayette-
ville. Replies were received from Fitz-
hugh and Johnson.

2. At earlier stages of this proceed-
ing the Commission was considering
possible FM assignments at various
Arkansas communities and at Neosho,
Mo. All except for Fayetteville and
Springdale, Ark., and Neosho, Mo.,
have since been resolved.¹ This left
the following alternative proposals: to
assign Channel 300 either (1) to Fay-
etteville (petition from Fitzhugh), (2)
to Springdale (petition from Johnson);
or (3) to Neosho, Mo. (petition from
KBTN, Inc., licensee of Station
KBTN(AM), Neosho);² or (4) to assign
Channel 281 in lieu of Channel 280A
at Fayetteville (petition from Kessler
Mountain Broadcasting, licensee of
Station KNWA(FM), Fayetteville).
Since then, all of the proponents
except Fitzhugh have withdrawn the
proposals for their respective com-
munities.³ Therefore, the only proposal
now before us is the assignment of
Channel 300 to Fayetteville, as a third
FM channel to that community.

3. Fayetteville (pop. 30,729),⁴ the
seat of Washington County (pop.

¹In the First Report and Order, 42 FR
42858 (1977), the other proposals in this
proceeding not connected with Fayetteville
and Springdale, were severed because no
conflict about them remained at that point
and additional information was needed to
resolve the Fayetteville and Springdale pro-
posals.

²The Commission also considered assign-
ment of Channel 257A to Neosho, as an al-
ternative proposal at the suggestion of Fitz-
hugh.

³Fitzhugh, the proponent for the assign-
ment of Channel 300 to Fayetteville, also
supported the alternative of assigning the
channel to nearby Springdale. However, it is
clear that his primary interest is in a Fay-
etteville assignment. Because of our action
making the assignment to Fayetteville, no
further consideration needs to be given to
the Springdale alternative.

⁴Population data are taken from the 1970
Census.

77,370), is located in northwest Arkansas. It is the largest city in the Fayetteville-Springdale SMSA (pop. 136,400). It presently has two daytime-only AM stations (KFAY and KHOG) and two commercial FM stations (KKEG, Channel 221A and KNWA, Channel 280A). Demographic information concerning Fayetteville was set forth in earlier documents and need not be repeated here.

4. In the request for supplemental information, we had asked for a showing concerning the proposals which have since been withdrawn. We already had appropriate data on the Channel 300 Fayetteville proposal. This information was requested because the assignment of Channel 300 to Fayetteville, would result in intermixture of classes of channels contrary to Commission policy. (Fayetteville has two Class A channels assigned.) We also pointed out that the assignment would exceed our population criteria, which for communities of this size, call for one or two channels. We indicated, however, that if there were a showing of substantial first and second aural service, the public benefit from such service might outweigh the possible detriments resulting from deviations from our intermixture and population criteria policies. In response to this issue, Fitzhugh argues that the Commission has recognized the need for first and second nighttime aural service despite the creation of intermixture.⁸ Turning to the circumstances here, Fitzhugh asserts that the provision of first or second FM or nighttime aural service to a significant number of persons is sufficient to overcome the Commission's concerns about intermixture and efficient use of the spectrum.⁹ He also asserts that the Commission has in the past agreed to exceed its population criteria where there is a lack of significant preclusion.⁷ Since Fayetteville is experiencing rapid growth and is an economic center for a large area, an exception to the population criteria policy is justified, according to Fitz-

hugh.⁸ Finally, although there have been claims of economic injury resulting from the proposed assignment, we are told by Fitzhugh that consideration of such assertions is best deferred until the application stage.

5. In its opposition, Little Chief asserts that the proposed assignment would have an adverse economic impact on its own Class A station and on the competitive balance of all of the Fayetteville stations. Thus, Little Chief and Johnson Communications, in its opposing comments, both urge that we should not grant an exception to our intermixture and population criteria policies.

6. In reply, Fitzhugh cites the cases of Parkersburg, West Virginia, supra., and Oak Ridge, Tennessee, supra., for the propositions that the Commission's intermixture policy has been a secondary consideration when there has been a showing of need for a wide coverage station and that the competitive advantage of a Class B/C channel over a Class A channel varies from market to market.⁹

7. Much of the argument in this case deals with competitive factors rather than considerations of effective utilization of available frequencies. It is the latter which are the issues of significance in allocation rulemaking proceedings.¹⁰ Although the Commission's policies regarding intermixture and the number of channels to assign are important, the overriding factor is that the proposed Class C station utilizing maximum power and height (100 kW/610 meters (2,000 ft.)) can provide a first aural service at night to 8,650 persons and a second such service to 35,960 persons.¹¹ This proposed

⁸Citing Cheyenne, Wyo., supra.; Valdosta, Ga., 52 FCC 2d 234 (1975); Alexandria, La., 51 FCC 498 2d (1975).

⁹In Parkersburg, West Virginia, supra., the Commission assigned a Class C channel to a community of less than 50,000 persons already having two Class A channels. The primary reason for granting the assignment was the provision of substantial service to unserved and underserved areas. In Oak Ridge, Tennessee, supra., for similar reasons a Class C channel was assigned to a community having one Class A station in operation.

¹⁰Although we understand the logic behind the view that a lower powered (Class A) station would be affected, the significance of such assertions can only be speculative at this stage since no evidence of such economic impact has been set forth.

¹¹This figure is 760 persons less than that indicated in Fitzhugh's previous showing since service from Station KWTO(AM), Springfield, Missouri, was apparently overlooked. The 760 persons are added to the second aural nighttime service total.

service, in our opinion, is of such public benefit that it clearly supports our making an exception to the intermixture and population criteria policies. In this regard we point out that the existing Class A stations may seek use of the Class C channel. Our action was not designed to serve Fitzhugh's needs, but those of Fayetteville and surrounding underserved areas. Also, assignment of a third channel to a growing community of this size certainly can be justified if it can bring service to these areas. Therefore, we shall grant the assignment.¹² In order to accomplish the proposed service, we shall require that any application for the use of Channel 300 specify maximum facilities of 100 kW power and antenna height of 610 meters (2,000 ft.) HAAT or equivalent.

8. Accordingly, it is ordered, pursuant to authority found in sections 4(i), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and section 0.281 of the Commission's Rules, that effective September 18, 1978, the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) is amended with respect to the following city:

City: Fayetteville, Ark., Channel Nos. 221A, 280A, 300.¹³

9. It is further ordered, That the petition of Kessler Mountain Broadcasting, requesting assignment of Channel 281 in lieu of Channel 280A at Fayetteville (RM-2299), is dismissed.

10. It is further ordered, That the proposal of Johnson Communications, Inc., to assign Channel 300 to Springdale, Ark., is dismissed.

11. It is further ordered, That this proceeding is terminated.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-22710 Filed 8-14-78; 8:45 am]

¹²As previously set forth in the Request for Supplemental Information, the assignment of Channel 300 to Fayetteville would not foreclose future assignments to any communities without Class C assignments which would normally warrant such an assignment. This conclusion did not include the preclusion impact on Springdale which is large enough for a Class C assignment. However, in view of the Johnson withdrawal there is no longer an interest in operating a Class C station in Springdale.

¹³Any application for use of this channel must specify maximum power and antenna height or equivalent.

⁷Oak Ridge, Tennessee, 32 FCC 2d 937 (1972), and Parkersburg, West Virginia, 37 FCC 2d 54 (1972).

⁸Citing Parkersburg, W. Va., supra.; Oak Ridge, Tenn., supra.; Palm Springs, Calif., 41 R.R. 2d 307 (1977); and Cheyenne, Wyo., 62 FCC 2d 63 (1976).

⁹Citing Rapid City, S.D., 50 FCC 2d 997 (1975); Hattiesburg, Miss., 37 FCC 2d 54 (1972); Palm Springs, Calif., supra.; cf. Fresno, Calif., 38 FCC 2d 525 (1972).

proposed rules

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

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1004]

MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend an order provision affecting the regulatory status of milk distributing plants. The action was requested by a handler operating a distributing plant under the order and a cooperative association to continue the association of producers' milk with the order. The suspension is proposed for September and October 1978.

DATE: Comments are due not later than August 22, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6273.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provision of the order regulating the handling of milk in the Middle Atlantic marketing area is being considered for September and October 1978:

In §1004.7(a) the words "not less than 50 percent."

All persons who want to send written data, views, or arguments about the proposed suspension should send four copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, not later than August 22, 1978.

The period for filing comments is limited to 7 days because a longer

period would not provide the time needed to complete the required procedures and announce a decision on the timely basis requested by industry proponents.

All documents that are sent will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

STATEMENT OF CONSIDERATION

The proposed suspension would make inoperative for September and October 1978 the provision that at least 50 percent of the receipts of milk at a pool distributing plant be disposed of as Class I milk. The proposed action was requested by Michaels Dairies, Inc., a proprietary handler who operates a pool distributing plant, and by Lehigh Valley Cooperative Farmers, a cooperative that also operates a pool distributing plant.

Michaels Dairies, Inc., indicates that statistical data reveal a continuing downward trend in Class I sales and the class I utilization percentage for the Middle Atlantic market. Proponent anticipates a Class I utilization percentage below the 50 percent pooling requirement for his distributing plant during September and October. The handler claims that the failure of his plant to meet the pooling requirements for such months would result in the milk of producers who are regular suppliers of the market's fluid milk requirements not being priced and pooled under the order.

Proponent indicates that his situation is similar to that of the market. Consequently, he anticipates that other handlers may also require a suspension action to facilitate the pooling of milk historically associated with the market.

Lehigh Valley Cooperative Farmers contends that the continuing decline in Class I sales and increase in milk production requires a continuation of a suspension action effective April through August 1978. The cooperative association indicates that its situation would not be expected to differ from that reflected by market statistics and that the pooling status of its plant is in jeopardy in the coming months. The cooperative association thus contends the suspension action is necessary to continue to have the milk of its dairy farmer members priced and pooled under the order and to maintain orderly marketing conditions.

Signed at Washington, D.C., on August 9, 1978.

IRVING W. THOMAS,
*Acting Deputy Administrator,
Marketing Program Operations.*

[FR Doc. 78-22687 Filed 8-14-78; 8:45 am]

[3410-15]

Rural Electrification Administration

[7 CFR Part 1701]

ELECTRIC PROGRAM

Proposed Revisions to REA Bulletin Concerning Wholesale Power and Energy and Sample Wholesale Power Contract

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to revise REA Bulletin 111-1, Wholesale Power and Energy, and REA form 444, Wholesale Power Contract. The principal changes in Bulletin 111-1 are to more clearly identify the types of arrangements requiring REA approval, and to take cognizance of the authority of the Federal Energy Regulatory Commission and various state regulatory bodies in wholesale power and energy arrangements of REA borrowers. REA form 444, Wholesale Power Contract, and REA form 444a, Supplemental Agreement, are proposed to be attached to, and made a part of, REA Bulletin 111-1. The principal changes proposed in REA form 444 are to increase to ninety (90) days the required waiting period before a change in wholesale rates becomes effective, and to decrease the allowable error of meters used for purposes of billing from ± 2 percent ($\pm 2\%$) to ± 1 percent ($\pm 1\%$). No changes are proposed to be made to REA form 444a.

DATE: Public comments must be received by REA on or before September 14, 1978.

ADDRESS: Interested persons may submit written data, views, or comments to the Power Survey Officer, Rural Electrification Administration, Room 3863, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Power Survey Officer during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Bulman, Power Survey Officer, Rural Electrification Administration, Room 4863, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-5755.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et. seq.) REA proposes to revise REA Bulletin 111-1 and REA form 444. Copies of the proposed revised REA Bulletin 111-1, proposed revised REA form 444, and REA form 444a may be secured in person or by written request from the Power Survey Officer.

Dated: August 7, 1978.

LUIS L. GRANADOS, Jr.,
Acting Administrator.

[FR Doc. 78-22624 Filed 8-14-78; 8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 563 and 571]

[No. 78-453]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Fidelity Bond Requirements for Insured Institutions

AUGUST 9, 1978.

AGENCY: Federal Home Loan Bank Board ("Bank Board").

ACTION: Proposed amendments.

SUMMARY: These amendments would change the maximum deductible amounts permitted for fidelity bonds of FSLIC-insured institutions and codify the Bank Board's policy regarding acceptable surety companies. The deductible amounts being demanded by surety companies today often exceed the maximum amounts permitted by present regulations. Also, in some areas, there are few, if any, acceptable surety companies. The Bank Board believes that surety companies would write bonds with deductible amounts permitted by these amendments and that additional acceptable surety companies would increase competition in writing the bonds, resulting in better rates and services to FSLIC-insured institutions.

DATE: Comments must be received on or before September 30, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate Gener-

al Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, telephone number, 202-377-6440.

SUPPLEMENTARY INFORMATION: The Bank Board proposes to amend § 563.19(b) of the rules and regulations for insurance of accounts (12 CFR 563.19(b)) regarding the maximum deductible amounts permitted in the fidelity bonds of FSLIC-insured institutions and to add a new § 571.14 (12 CFR 571.14) stating Bank Board policy regarding acceptable surety companies.

A. DEDUCTIBLE AMOUNTS

The proposed amendment to § 563.19(b) is designed primarily to provide room for negotiation between an insured institution and an insurer within regulatory limitations sufficiently restrictive to prevent unsafe and unsound practices by the institution. The general premise underlying the proposed schedule is that a deductible should not exceed approximately 2 percent of an insured institution's net worth. The deductible is not tied directly to net worth since (a) that figure may fluctuate considerably over time and (b) it is desirable to retain the present regulatory insurance "base" (insured institution's assets plus the unpaid balance of loans serviced for others). It is therefore assumed that "net worth" would be considered to be 5 percent of the base amount and the schedule is designed to maintain a deductible no more than 2 percent of such figure (i.e., 1/50 of 1 percent of the base). An exception is made for very small institutions because the Bank Board believes that \$1,000 is an acceptable deductible even when strict application of the percentage schedule would dictate a lesser amount. Also, because the dollar amount represented by 1/50 of 1 percent of the base eventually becomes unacceptably large as the base increases, a sliding scale would be imposed. For example, under the proposal, a \$3 billion base institution would be subject to a maximum deductible of \$412,500 or only 0.275 of 1 percent of the 5 percent-of-base-net-worth figure. The Bank Board believes that such an amount is large enough to allow a negotiated deductible without endangering the solvency of the institution.

B. ACCEPTABLE SURETY COMPANIES

The Bank Board has been unique among the Federal financial regulatory agencies in that it has attempted not only to prescribe the type and amount of bond coverage FSLIC-insured institutions must carry, but also to determine which insurance companies may write that bond coverage. This latter effort was never expressed in the FSLIC regulations, but never-

theless has survived as a formal policy of the agency since its earliest days. At least as early as 1937, the FSLIC adopted the United States Treasury Department's list of casualty and surety companies approved by that department for writing bonds running to the Federal Government as the authoritative index of insurers approved to write savings and loan blanket bonds. The Treasury Department's criteria are quite stringent, and as the number of insurers on the Treasury list still offering bonds to financial institutions has dwindled to only a few over the years, the desirability of retaining that list as the only index has become questionable. Lack of competition in the financial institution bond market, especially with respect to savings and loans, may be the prime cause of high premium rates and lack of interest in providing coverage to associations with an adverse loss history. Removing, or at least reducing, the criteria for approval of a surety would encourage competition from insurance companies which currently do not qualify by Treasury standards to offer bonds on Federal projects, including certain surplus lines insurers.

Accordingly the Bank Board proposes to amend § 563.19(b) and add a new § 571.14 to the Rules and Regulations for Insurance of Accounts to read as set forth below.

§ 563.19 Bonds for directors, officers, employees, and agents; form of an amounts of bonds.

(b) No insured institution shall be required to maintain such bond coverage in an amount greater than \$3,000,000. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the bonding company. A deductible amount may be applied separately to one or more insuring agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond). A deductible shall not exceed an amount determined according to the following schedule:

Base	Permissible Deductible
\$25,000,000 and under.....	0.001 of base or \$1,000, whichever is greater.
\$25,000,001 to \$250,000,000.	\$25,000 plus 0.0005 of base over \$25 million.
Over \$250,000,000.....	\$137,500 plus 0.0001 of base over \$250 million.

§ 571.14 Fidelity bonds; acceptable surety companies.

§ 563.19 of this subchapter in part requires each insured institution to maintain bond coverage with a bonding company acceptable to the Corporation. Any surety or insurer meeting one or more of the following criteria is acceptable:

(a) Underwriters holding certificates of authority as acceptable sureties on Federal bonds, as listed in the most recent issue of the United States Treasury Department Circular No. 570, to the limits established by such circular;

(b) Underwriters currently licensed to issue surety bonds by the State in which the home office of the insured institution is located, subject to all restrictions and requirements imposed by the licensing State; or

(c) Underwriters approved to do business as surplus lines insurers under the laws of the State in which the home office of the insured institution is located, subject to all restrictions and requirements imposed by the surplus lines laws of such State.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-22692 Filed 8-14-78; 8:45 am]

[6705-01]

FARM CREDIT ADMINISTRATION

[12 CFR Parts 611, 612]

ORGANIZATION

Clarification of Existing Policy

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit Board, has under consideration proposed amendments to its regulations dealing with the organization of the Farm Credit System, and its general rules covering certain transactions which constitute conflict-of-interest situations. The amendment to the regulations on organization is being made to clarify existing policy, and will have no impact on the operations of the

Farm Credit System. It is proposed that the section covering certain conflict-of-interest situations be deleted because of its limited applicability.

DATES: Written comments must be received on or before September 14, 1978.

ADDRESSES: Submit any comments or suggestions in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, Washington, D.C. 20578. Copies of all communications received will be available for examination by interested persons in the Office of Director, Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Lee R. Brobst, Acting Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578, 202-755-2181.

SUPPLEMENTARY INFORMATION: FCA's current regulations on the organization of the Farm Credit System do not adequately reflect the requirements of the Farm Credit Act of 1971 which specify that banks of the Farm Credit System must acquire Farm Credit Administration approval when establishing branches or other offices. The regulations are being rewritten to clarify this requirement.

FCA's regulations on personnel administration now contain a section which provides for reports to FCA whenever credit is extended to financial institutions, other than those within the Farm Credit System, on the basis of an obligation of a bank employee. Since 1972, experience has demonstrated that there is no substantial need for the reporting requirement. FCA staff has therefore recommended deletion of this section.

Chapter VI of title 12 of the Code of Federal Regulations is proposed to be amended by revising § 611.1070 as follows, and deleting § 612.2260.

§ 611.1070 Branches

A bank may establish branches or other offices necessary for the effective operation of its business if authorized by its board and approved by the Farm Credit Administration. An association may establish such branches or other offices necessary for the effective service to borrowers when approved by the supervising bank.

§ 612.2260 [Deleted]

(Secs. 5.9, 5.12, 5.18, 85 Stat. 619, 620, 621.)

C. T. FREDRICKSON,
Acting Governor,
Farm Credit Administration.

[FR Doc. 78-22891 Filed 8-14-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 101]

GENERAL PROVISIONS

Changes in the Field Organization of the Customs Service

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to change the field organization of the Customs Service: (1) by extending the existing port limits of the Sault Ste. Marie, Mich., port of entry to include the Chippewa County International Airport; (2) by establishing a new port of entry at Dalton Cache, Alaska, and by transferring supervisory authority over the customs station at Haines, Alaska, from the Skagway, Alaska, port of entry to the proposed port of Dalton Cache; (3) by designating the Minot, N. Dak., International Airport as a customs station under the supervision of the port of Pembina, N. Dak.; (4) by extending the existing port limits of the Saginaw-Bay City, Mich., port of entry to include Flint, Mich., in a consolidated port of "Saginaw-Bay City-Flint"; and (5) by establishing a new customs district at Dallas/Fort Worth, Tex., to include the ports of Dallas/Fort Worth, Amarillo, and Lubbock, Tex., and Tulsa and Oklahoma City, Okla., all of which are now in the Houston, Tex., customs district.

These proposed changes are part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATES: Comments must be received on or before: October 16, 1978.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, im-

porters, and the public, the Customs Service proposes to make the following changes in its field organization.

SAULT STE. MARIE, MICH.

Because of a shift in air service from the City-County Airport, located within the present limits of the Sault Ste. Marie Customs port of entry, to the Chippewa County International Airport, located outside of the present port limits, it is proposed to extend the limits of the Sault Ste. Marie, Mich., port of entry (Region IX) to include the Chippewa County International Airport.

As extended, the geographical boundaries of the Sault Ste. Marie, Mich., port of entry would include the following:

All the territory within the corporate limits of Sault Ste. Marie—that is, the area bordered on the north, northeast, and northwest by the St. Mary's River, and on the south, southeast, and southwest by 3 Mile Rd.—and that area from the Sault Ste. Marie city limits (3 Mile Road) along Interstate Route 75 in a southerly direction, passing through sections 24, 25, 26, and 35 of Township 47 North, Range 1 West of Soo Township; sections 2, 11, 14, 15, 22, 27, 33, and 34 of Township 46 North, Range 1 West; sections 4, 5, and 8 of Township 46 North, Range 1 West of Dafter Township; and including section 18 of Township 45 North, Range 1 West and section 24 of Township 45 North, Range 2 West of Kinross Township, including all ramps and exits at marker 378; from marker 378 in a southeasterly direction along State Highway 63 within section 24 of Township 45 North, Range 2 West of Kinross Township, including those parcels of land known as the Chippewa County International Airport located in sections 5, 6, and 8 of Township 44 North, Range 1 West of Pickford Township and sections 30, 31, and 32 of Township 45 North, Range 1 West of Kinross Township.

DALTON CACHE AND HAINES, ALASKA

Vessels (including ferryboats), vehicles, persons, and cargo entering Alaska from Canada in the area of Dalton Cache/Haines presently undergo Customs formalities at the customs station at Haines, located 42 miles south of the United States/Canada border on State Route 7.

Construction of a Federal facility at the border crossing at Dalton Cache began in the Spring of 1978. When the facility is completed, Customs will be able to perform its functions relating to the entry and clearance of vehicles, persons, and cargo at Dalton Cache. Customs at Haines will continue to be responsible for the entry and clearance of ferryboats and other vessels. The entry and clearance of vehicles, persons, and cargo at the border crossing instead of 42 miles to the south will enhance Customs enforcement capabilities while at the same time enabling Customs to provide more convenient service to the public.

For these reasons, it is proposed to designate Dalton Cache, Alaska (region VIII), as a customs port of entry. The geographical boundaries of the Dalton Cache port of entry would include the following:

That area within the boundaries of section 14, township 28 south, range 54, east of Copper River Meridian, in the State of Alaska.

Because of the geographical and work relationships of Haines to Dalton Cache, Customs has determined that Haines could be more effectively supervised if it were maintained as a station under the jurisdiction of the proposed port of Dalton Cache instead of under the port of Skagway, Alaska, as at present. Accordingly, it also is proposed to transfer jurisdiction over the customs station at Haines from the Skagway port of entry to the proposed Dalton Cache port of entry. The geographical limits of the Haines customs station would include the following:

That area within the boundaries of sections 26, 27, 28, and 29, township 30 south, range 59, east of Copper River Meridian, in the State of Alaska.

MINOT, N. DAK.

It is proposed to designate the Minot, N. Dak., international airport as a customs station under the supervision of the Pembina, N. Dak., port of entry (region IX). Although customs personnel are stationed at the airport, its present lack of designation as a customs station has resulted in problems in the clearance of in-bound shipments of merchandise which will be resolved by the proposed action.

SAGINAW-BAY CITY AND FLINT, MICH.

To meet the expanding needs of the importing community in the Flint, Mich., area, and to provide for the most efficient use of available Customs manpower and other resources in that area, it is proposed to extend the limits of the Saginaw-Bay City, Mich., port of entry (Region IX) to include Flint, Mich., in a consolidated port of entry to be known as "Saginaw-Bay City-Flint". As extended, the geographical boundaries of the consolidated port of entry of Saginaw-Bay City-Flint, Mich., would include the following:

All the territory within the corporate limits of Saginaw and Bay City, Mich.; the territory embracing the townships of Zilwaukee, Carrolton and Buena Vista, in Saginaw County; the townships of Portsmouth and Frankenlust, in Bay County; and the right of way of Interstate Route 75, south to and including Flint Township; the city of Flint; and that portion of Genesee Township bounded by Saginaw Street on the west, Stanley Road on the north, Lewis Road on the east, and the city of Flint on the south, all in the State of Michigan.

DALLAS/FORT WORTH, TEX.

Dallas/Fort Worth is the only metropolitan area among the nation's 10 largest in import-export transactions that does not have a Customs district office, and its Customs collections exceed those of 13 established districts. In terms of airborne shipping weights and dollar value, Dallas/Fort Worth is exhibiting a greater growth rate than many existing districts. The airport has the fifth largest passenger volume in the United States. The Customs entry workload at Dallas/Fort Worth is 27 percent of the total for the Houston district, of which it is a part. Dallas/Fort Worth also clears 47 percent of the Houston's district's total air passengers.

To accommodate the present needs and growth potential of the Dallas/Fort Worth, Tex., area, it is proposed to establish a new Customs district in region VI. The new district would include the ports of entry of Dallas/Fort Worth, Amarillo, and Lubbock, Tex., and Tulsa and Oklahoma City, Okla., all of which now are in the Houston, Tex., district. The geographical boundaries of the new district would include the following:

That portion of the State of Texas north of 32 degrees north latitude and all of the State of Oklahoma.

If the new district is established, the northern boundaries of the Houston and Larado, Tex., customs districts would become 32 degrees north latitude.

If the proposed changes are adopted, the lists of customs regions, districts and ports of entry in § 101.3 of the customs regulations (19 CFR 101.3) and the list of customs stations and their supervisory ports in § 101.4) of the customs regulations (19 CFR 101.4) would be amended to reflect the changes.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b) of the customs regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Room 2335, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursu-

PROPOSED RULES

ant to authority provided by Treasury Department Order No. 190, Rev. 15 (43 FR 11884).

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: August 4, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the
Treasury.

[FR Doc. 78-22723 Filed 8-14-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

OLD-AGE, SURVIVORS, AND DISABILITY
INSURANCE PROGRAM

Maintenance and Revision of Records of
Wages and Self-Employment Income

AGENCY: Social Security Administration, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration (SSA) keeps a record of the earnings of each person who works in employment or self-employment covered by the social security program under title II of the Social Security Act. Social security benefits are based upon the worker's earnings as shown in the records maintained by SSA. SSA plans to rewrite and reorganize the regulations that contain the rules on earnings records. The purpose is to make these regulations clearer and easier to use and to make these regulations a more complete and accurate statement of current policy. These regulations are in Subpart I of Part 404 of the regulations. Since no policy changes are planned, the Department of Health, Education, and Welfare has classified the proposed revision of these regulations as being technical in nature.

FOR FURTHER INFORMATION,
CONTACT:

James MacDonald, Room 4234 West High Rise Building, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-5298.

Dated: July 26, 1978.

DON WORTMAN,
Acting Commissioner
of Social Security.

[FR Doc. 78-22693 Filed 8-14-78; 8:45 am]

[4110-07]

[20 CFR Part 404]

RETIREMENT, SURVIVORS, AND DISABILITY
INSURANCE

Changes in Earnings Test—Elimination of the
Monthly Measure

AGENCY: Social Security Administration, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: We plan to publish an interim regulation to implement the changes in the earnings test required by the 1977 amendments to the Social Security Act. We believe that a regulation is needed to uniformly implement the changes in the annual and monthly earnings tests. The statute provides for fractional monthly exempt amounts (but is not specific about how to handle them) for beneficiaries age 65 or older; and it provides for the elimination of the monthly earnings test to be effective January 1978 (but it is not specific how we are to treat people already on the rolls).

The regulations will explain how and when to apply the monthly test; that every individual is entitled to the monthly earnings test at least once and is entitled again when there is a break in entitlement and the reentitlement is to another type of benefit; that the monthly test will be used in the first year a beneficiary has a non-service month whether or not the beneficiary had any earnings (the grace year) and that a beneficiary may have already used the grace year for the currently entitled benefit; that after 1981, a beneficiary can earn any annual amount and receive monthly benefits for all months he or she is age 70 and over; and that fractional amounts will be rounded to the next higher whole dollar amount.

We intend to provide in the regulations the specificity necessary to implement to statute uniformly so that the public will not have the provisions applied differently depending upon interpretation. We plan to publish in interim form and allow for a comment period because a portion of the amendments is already effective and an NPRM is unnecessary.

Regulatory sections 404.428(a), 404.430(b), 404.435 (a), (b), (c), (d), and (e) will be changed to accommodate the amended provisions of the law. New regulatory sections 404.430(d),

404.430(f), 404.430(g), and 404.430(h) will be added to incorporate the new provisions of the amendments. The proposed regulations are classified as policy significant.

FOR FURTHER INFORMATION
CONTACT:

Ms. Mamie Cavell, Room 4-G-10,
West High Rise Building, 6401 Security Boulevard, Baltimore, Md.
21235, telephone 301-594-5599.

Dated: August 3, 1978.

DON WORTMAN,
Acting Commissioner
of Social Security.

[FR Doc. 78-22727 Filed 8-14-78; 8:45 am]

[4110-03]

Food and Drug Administration

[21 CFR Part 73]

[Docket No. 77C-0208]

LISTING OF COLOR ADDITIVES EXEMPT FROM
CERTIFICATION

Ferric Ammonium Ferrocyanide

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the specifications for ferric ammonium ferrocyanide by increasing tolerances for water soluble cyanide, total cobalt, and total nickel, and by adding specifications for water soluble cobalt and water soluble nickel. These revisions are clarifications which are in response to supplementary letters to an objection and a subsequent citizen's petition submitted by manufacturers of the color additive.

DATE: Comments by October 16, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION
CONTACT:

Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: A regulation published in the FEDERAL REGISTER of July 29, 1977 (42 FR 38562) listed ferric ammonium ferrocyanide for use in externally applied drugs and cosmetics, including those drugs and cosmetics intended for use in the area of the eye. A final rule published in the FEDERAL REGISTER of

February 17, 1978 (43 FR 6937) confirmed the effective date of August 29, 1977 for the "permanent" listing of ferric ammonium ferrocyanide, and also increased the tolerances for cobalt and nickel from 30 parts per million (ppm) to 60 ppm in response to an objection to the regulation of July 29, 1977 submitted by the petitioner (the Cosmetic, Toiletry, and Fragrance Association, Inc.).

In a letter of September 22, 1977, which was submitted after expiration of the comment period for the July 29, 1977 regulation, Mallinckrodt, Inc., requested further increases in the cobalt and nickel specifications to 200 ppm, an increase in the water soluble cyanide specification to 10 ppm, and changes in the identity of the color additive to include ferric ferrocyanide as well as ferric ammonium ferrocyanide. These requests for changes in the cobalt, nickel, and cyanide specifications were considered to be related to the fact that Mallinckrodt's product is ferric ferrocyanide and not ferric ammonium ferrocyanide. Hence, they were dismissed as part of the ferric ammonium ferrocyanide regulation along with Mallinckrodt's request for inclusion of ferric ferrocyanide. Subsequently, in a letter of January 31, 1978, Mallinckrodt requested an increase in the cobalt, nickel, and cyanide specifications for ferric ammonium ferrocyanide.

In addition, Mearl Corp. submitted a citizen petition (CAP 8C0138) on March 17, 1978, that requested, among other actions, that the tolerance for water soluble cyanide in ferric ammonium ferrocyanide be increased to 10 ppm. Other portions of this citizen petition are addressed in a regulation published elsewhere in this issue of the FEDERAL REGISTER that restores ferric ferrocyanide (iron blue) to the provisional list. Requests to revise the water soluble cyanide specifications were also supported by letters from Sun Chemical Corp. and Hilton-Davis.

The Commissioner of Food and Drug has reviewed the data submitted by Mallinckrodt, Inc. and other interested parties, as well as data in the original petition, and finds that a tolerance for water soluble cyanide of 10 ppm in ferric ammonium ferrocyanide for externally applied drugs and cosmetics is consistent with public safety because under conditions of use of the color additive, the amounts of releasable cyanide are far below tolerated levels.

Tolerances for cobalt and nickel were increased to 60 ppm each by the final rule of February 17, 1978, on the basis that most of the cobalt and nickel would be expected to be bound in the color additive and, therefore, would not be biologically available. These levels of cobalt and nickel were

well below those for the alkali-resistant grade of ferric ammonium ferrocyanide, which has not been adequately tested for safety. At this time the color additive that is approved for cosmetic and drug use must be readily distinguished from the alkali-resistant grade to ensure the safe use of ferric ammonium ferrocyanide. The requested levels of 200 ppm cobalt and 200 ppm nickel in ferric ammonium ferrocyanide are also well below the levels found in the alkali-resistant grade. As long as the cobalt and nickel are bound in the color complex, ferric ammonium ferrocyanide with 200 ppm each of cobalt and nickel would be considered safe for use in externally applied drugs and cosmetics, including drugs and cosmetics intended for use in the area of the eye. To assure that the cobalt and nickel are bound in the color additive, the revised specifications include tolerances for water soluble cobalt and water soluble nickel as well as for total cobalt and total nickel.

The Commissioner 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 Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 as amended (21 U.S.C. 376 (b), (c), and (d)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend part 73 in § 73.1298 by revising paragraph (b) to read as follows:

§ 73.1298 Ferric ammonium ferrocyanide.

(b) *Specifications.* Ferric ammonium ferrocyanide shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Oxalic acid or its salts, not more than 0.1 percent.

Water soluble matter, not more than 3 percent.

Water soluble cyanide, not more than 10 parts per million.

Volatile matter, not more than 4 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Nickel (as Ni), not more than 200 parts per million.

Water soluble nickel, not more than 5 parts per million.

Cobalt (as Co), not more than 200 parts per million.

Water soluble cobalt, not more than 5 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total iron (Fe), not less than 33 percent and not more than 37 percent.

Interested persons may, on or before October 16, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 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, and shall 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 the hours of 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: August 8, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[FR Doc. 78-22657 Filed 8-14-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-106-75]

INCOME OF FOREIGN GOVERNMENTS

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the taxation of income of foreign governments. The regulations would provide guidance for taxing foreign sovereigns on their income from commercial activities within the United States.

DATES: Written comments and requests for a public hearing must be de-

livered or mailed on or before October 16, 1978. The amendments relating to the taxation of income earned by integral parts of a foreign sovereign are proposed to be effective for all taxable years. The amendments relating to the taxation of income earned by controlled entities are proposed to be effective with respect to income earned after [the date these regulations are filed at the FEDERAL REGISTER as a Treasury decision].

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-106-75), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Anthony Bonanno of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3829, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the income tax regulations (26 CFR Part 1) under section 892 of the Internal Revenue Code of 1954. These amendments are proposed to clarify the regulations and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Section 892 provides in general that income from sources within the United States received by a foreign government is not to be included in gross income and is to be exempt from taxation. Neither section 892 nor the current regulations defines the term "foreign government." For purposes of section 892, a foreign government consists only of integral parts or controlled entities of a foreign sovereign. The proposed regulations generally provide that income derived by a foreign sovereign from commercial activities in the United States is not income of a foreign government for purposes of the exemption provided in section 892.

The proposed regulations provide definitions for the terms "integral part" of a foreign sovereign and "controlled entity" of a foreign sovereign. The proposed regulations further provide guidelines for the determination of what constitutes commercial activities within the United States.

In most respects, the requirements relating to controlled entities parallel the requirements of Rev. Rul. 75-298, relating to certain organizations created by foreign governments that are eligible for the section 892 exemption.

The regulations generally required that a controlled entity must be organized under the laws of the foreign sovereign by which it is owned.

The proposed regulations also provide that the income from the de minimis commercial activities of a controlled entity is subject to tax.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Anthony Bonanno of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.892 [Removed]

PARAGRAPH 1. Section 1.892 is deleted.

PAR. 2. Section 1.892-1 is amended as follows:

1. The title to § 1.892-1 is revised.

2. Paragraph (a) is deleted and in lieu thereof new paragraphs (a) through (i) are added.

3. Paragraphs (b) (1) and (2) are redesignated as paragraphs (a) and (b) respectively of a new § 1.892-2. The amended § 1.892-1 and new § 1.892-2 read as follows:

§ 1.892-1 Income of foreign governments.

(a) *Manner of taxing.*—(1) *In general.* Section 892 provides, in general, that the income of a foreign government from sources within the United States is excluded from gross income and exempt from taxation. Paragraph (b) of this section describes the extent to which either an entity constituting the governing authority of a foreign sovereign or an organization created by a foreign sovereign will be treated as a foreign government for purposes of section 892. To the extent that income is derived by such an entity or

organization of a foreign sovereign which does not qualify as a foreign government as defined in paragraph (b) of this section, a foreign sovereign shall be subject to tax on the income in accordance with the rules of this section.

(2) *Foreign government exemption.* The income derived by an integral part or controlled entity of a foreign sovereign from investments in the United States in stocks, bonds, or other domestic securities, owned by such integral part or controlled entity, or from interests on deposits in banks in the United States of moneys belonging to such integral part or controlled entity, or from any other source within the United States, shall generally be treated as income of a foreign government, shall not be included in gross income, and shall be exempt from taxation.

(3) *Foreign government exemption not available.* (i) Amounts derived by a foreign sovereign from commercial activities in the United States is not income of a foreign government for purposes of the exemption from taxation provided in section 892. Such amounts shall be included in the income of the foreign sovereign and taxed under section 881 or 882 (whichever is applicable).

(ii) Income derived by an organization created by a foreign sovereign that does not qualify as a controlled entity of the foreign sovereign under paragraph (b)(3) of this section shall be included in the gross income of the organization and taxed under the provisions of section 11, 1201, 881, or 882 (whichever is applicable).

(iii) Income derived by a controlled entity from commercial activities in the United States even though on a de minimis basis does not qualify as income of the foreign government and shall be included in gross income of the foreign sovereign and taxed under the provisions of section 11, 1201, 881, or 882 (whichever is applicable).

(b) *Foreign government defined.*—(1) *Classes of a foreign government.* For purposes of this section, a foreign government consists only of integral parts or controlled entities of a foreign sovereign.

(2) *Integral part.* An "integral part" of a foreign sovereign is any person, body of persons, organization, agency, bureau, instrumentality, or body, however designated, that constitutes the governing authority of a foreign country that is not engaged in commercial activities in the United States. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person. It does not include any individual who is a sovereign, official, or administrator

acting in a private or personal capacity.

(3) *Controlled entity.* A "controlled entity" of a foreign sovereign is any organization (including a foreign central bank of issue qualifying under section 895) created by a foreign sovereign that is not an integral part and that meets the following requirements—

(i) It is wholly owned and controlled by a foreign sovereign;

(ii) It is organized under the laws of the foreign sovereign by which it is owned or, if the law of a State of the United States requires, organized under the law of that State;

(iii) Its net earnings are credited either to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person;

(iv) Its assets must vest in the foreign sovereign upon dissolution; and

(v) It does not engage in the United States in commercial activities on more than a de minimis basis.

The term "controlled entity" does not include any entity wholly owned and controlled by more than one foreign sovereign. Thus, a foreign financial organization organized and wholly owned and controlled by several foreign sovereigns to foster economic, financial, and technical cooperation between various foreign nations is not a controlled entity for purposes of this section.

(4) *Political subdivision and transnational entity.* The rules that apply to a foreign sovereign apply to political subdivisions of a foreign country and to transnational entities. A transnational entity is an organization created by several foreign sovereigns that has broad powers over external and domestic affairs of all participating foreign countries stretching beyond economic subjects to those concerning legal relations and transcending state or political boundaries.

(c) *Characterization of activities.*—

(1) *Commercial activities.* For purposes of this section, "commercial activities" generally include activities that constitute a "trade or business within the United States" within the meaning of section 864(b). "Commercial activities" also include activities customarily attributable to and carried on by private enterprise for profit in the United States. The commercial character of an activity is determined by reference to a course of conduct or particular transaction rather than by reference to its purpose. The fact that in some instances Federal, State, or local governments of the United States also are engaged in the same or similar activity does not mean that the activity will not be considered commercial. For example, even though the U.S. Government is engaged in the ac-

tivity of operating a railroad, operating a railroad is a commercial activity.

(2) *Net lease.* Obtaining and holding "net leases" on property is considered to be a commercial activity.

(3) *Certain activities that are not commercial.* The following activities, among others, are not commercial activities—

(i) Investments in the United States in stocks, bonds, or other domestic securities, or the holding of deposits in banks in the United States which produce interest or dividends not effectively connected with the conduct of a trade or business within the United States;

(ii) Performances and exhibitions within the United States devoted to the promotion of the arts by cultural organizations; and

(iii) The mere purchase of goods in the United States for use of the foreign sovereign.

(d) *Other operative sections.* In determining whether income is from sources within or without the United States, see sections 861 through 863 and the regulations thereunder. For purposes of determining whether income is effectively connected with a trade or business, see section 864(c) and the regulations thereunder. For rules with respect to withholding of tax at source under section 1442 in the case of foreign corporations, see § 1.1441-1.

(e) *Accounting rules.*—(1) *Choice of method of accounting.* A foreign sovereign may choose any method of accounting permissible under section 446(c) and the regulations thereunder. Changes in the method of accounting are subject to the requirements of section 446(e) and the regulations thereunder.

(2) *Choice of annual accounting period.* A foreign sovereign may choose its annual accounting period in accordance with section 441 and the regulations thereunder. Changes in the annual accounting period are subject to the requirements of section 442 and the regulations thereunder.

(f) *Filing of returns.* A return with respect to income taxes under subtitle A shall be made by a foreign sovereign, political subdivision, or a transnational entity with respect to all amounts included in gross income under paragraph (a)(3)(i) of this section, and by every controlled entity subject to tax under paragraph (a)(3)(iii) of this section. See section 6012 for other persons required to make returns of income.

(g) *Relationship of section 892 to certain code sections.*—(1) *Section 893.* The term "foreign government" referred to in section 893 (relating to the exemption of compensation of employees of foreign governments) shall have

the same meaning as given such term in paragraph (b) of this section.

(2) *Section 895.* A foreign central bank of issue (as defined in § 1.895-1(b)) that fails to qualify for the exemption from tax provided by this section may nevertheless be exempt from tax on the items of income described in section 895. Thus, a foreign central bank of issue that is not wholly owned and controlled by a foreign sovereign, although not qualifying for exemption under this section, may be exempt under section 895 on the items of income enumerated in such section.

(3) *Section 1442.* No withholding is required under section 1442 and § 1.1442-1 in the case of income exempt from taxation and not included in gross income under paragraph (a)(2) of this section.

(h) *Illustrations.* This section may be illustrated by the following examples:

Example (1). For 1979, the Office of the President of a foreign country invests funds from the foreign sovereign's treasury in publicly traded stocks, bonds, and other domestic securities, and interest bearing bank deposits, the income from which is not effectively connected with the conduct of a trade or business within the United States. The Office of the President has also purchased in 1979 a hotel in the United States which is operated by a U.S. agent. Income from its investments that do not constitute commercial activities under paragraph (c)(3)(i) of this section is exempt from taxation pursuant to paragraph (a)(2) of this section. Income derived from the operation of the hotel is subject to tax pursuant to paragraph (a)(3)(i) of this section since the Office of the President is engaged in commercial activities in the United States by reason of its hotel operations. By reason of section 864(c)(3) and § 1.864-4(b), this income is effectively connected for 1979 with the conduct of a trade or business within the United States by the Office of the President and is taxed under section 882.

Example (2). Pursuant to a general agreement on contracts, exchanges, and cooperation between the United States and a foreign country, the State Concert Bureau, a bureau of a foreign sovereign, entered into four separate contracts to be performed in 1979 with a U.S. corporation engaged in the business of promoting international cultural programs. Under the first contract, the State Concert Bureau agreed to send a singer and accompanists on tour for 3 weeks in the United States. Under the second contract, the Bureau agreed to send a conductor on tour for 4 weeks in the United States. Under the third contract, the Bureau agreed to send the State ensemble of folk dance on tour for 5 weeks in the United States. Under the fourth contract, the Bureau agreed to send the State ballet and opera troupe on tour for 6 weeks in the United States. The State Concert Bureau received approximately \$80,000 from the performances and from the sale of programs from the tours. During 1979, the income received by the State Concert Bureau is exempt from taxation under paragraph (a)(2) of this section since the activities of the Bureau are not commercial activities

under paragraph (c)(3)(ii) of this section. Depending on the facts and circumstances, the State Concert Bureau may be engaged in commercial activities where it receives income from sources within the United States derived from the tour groups' radio or television appearances, motion picture productions, or record and tape recordings.

Example (3). (a) In 1979 a foreign sovereign organizes under its law M Corp. as a wholly owned government corporation under the auspices of the Ministry of Industry and Tourism. M Corp. engages in the purchasing in the United States of grain and other agricultural goods for free distribution to the poor in its foreign country. In addition, when purchases of grain exceed demand in its foreign country (which rarely occurs), M Corp. engages in the sale of the grain in the United States on a de minimis basis. M Corp. also engages in the trading of commodities futures through a resident broker. It does not have an office or other fixed place of business in the United States through which or by the direction of which the transactions in commodities futures are effected. The purchasing and trading activities of M Corp. are not commercial activities under paragraph (c) of this section. M Corp. is a controlled entity under paragraph (b)(3) of this section. Accordingly, the income from these activities derived by M Corp. from sources within the United States is exempt from tax under paragraph (a)(2) of this section. Any income derived by M Corp. from its sale of grain in the United States on a de minimis basis is not considered to be income of a foreign government and is subject to tax pursuant to paragraph (a)(3)(iii) of this section.

(b) The facts are the same as in example (3)(a), except that in 1979, M Corp. opens an office in Washington, D.C., through which transactions of selling commodities futures in the United States are effected. Since M is now considered to be engaged in a trade or business in the United States under section 864, these activities are commercial activities under paragraph (c) of this section. Since M engages in commercial activities on more than a de minimis basis, it is not a controlled entity. M is not entitled to the exemption from tax provided by section 892. Accordingly, M Corp. is taxed under the applicable provisions of sections 881 and 882. In addition, under paragraph (g)(1) of this section, M Corp. is not a foreign government for purposes of section 893.

(i) *Effective date.* The provisions of this section relating to controlled entities are effective with respect to income derived after [the date these regulations are filed at the FEDERAL REGISTER as a Treasury decision].

§ 1.892-2 Income of international organizations.

(a) *Exempt from tax.* * * *

(b) *Income received prior to Presidential designation.* * * *

JEROME KURTZ,
Commissioner of
Internal Revenue.

[FR Doc. 78-22734 Filed 8-14-78; 8:45 am]

[4310-05]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Chapter VII]

SURFACE COAL MINING AND RECLAMATION OPERATIONS

Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Correction of previous FEDERAL REGISTER notices.

SUMMARY: OSM is correcting the address and telephone numbers of its Denver regional office as published in three previous notices in the FEDERAL REGISTER (43 FR 25881, June 15, 1978; 43 FR 29012, July 5, 1978; 43 FR 31954, July 24, 1978).

ADDRESS: The correct address and telephone number for the Denver regional office of OSM are: Room 270, Post Office Building, 1823 Stout Street, Denver, Colo. 80202, 303-835-5511, FTS 8-327-5511.

FOR FURTHER INFORMATION CONTACT:

James Lavender, OSM, Region V, Room 270, 1823 Stout Street, Denver, Colo. 80202, 303-835-5511, FTS 8-327-5511.

Dated: July 28, 1978.

TONEY HEAD,
Assistant Director for
Management and Budget.

[FR Doc. 78-22662 Filed 8-14-78; 8:45 am]

[6560-01]

[FRL 944-5]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Louisiana Emission Offsets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve revisions to the Louisiana State implementation plan (SIP). The revision, which was submitted to EPA by the State, was for the purpose of allowing the construction of a General Motors (GM) plant in Shreveport, La. by implementing the interpretative ruling by EPA (emission offset policy). This is accomplished by orders of the Louisiana Air Control Commission for

emission reductions from specific existing sources to offset new emissions from the proposed GM plant. The EPA invites public comments on the proposal. Under existing regulations changes in SIP's must be approved by the EPA Administrator to insure compliance with the Clean Air Act, as amended.

DATES: Comments must be received on or before September 14, 1978.

ADDRESS: Submit comments to: Air Program Branch, Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Tex. 75270.

FOR FURTHER INFORMATION CONTACT:

Jack S. Divita, Chief, Air Program Branch, Air and Hazardous Materials Division, EPA-Region VI, Dallas, Tex. 75270, 214-767-2742.

BACKGROUND

Under the Agency's interpretative ruling published December 21, 1976 at 41 FR 55524, and amended by the Clean Air Act Amendments of August 7, 1977, a major new source may locate in an area with air quality worse than a national standard only if the following conditions are met:

1. The new source's emissions will be controlled to the lowest achievable emission rate.
2. More than equivalent offsetting emission reductions will be obtained from existing sources.
3. There will be progress towards achievement of the standards.

On August 8, 1977, with a subsequent submittal on December 20, 1977, General Motors Corp. (GMC) applied to the Louisiana Air Control Commission for a permit to construct a truck and van assembly plant in Shreveport, La. The proposed assembly plant would emit more than 100 tons per year of hydrocarbons and would be located in an area which is not attaining the national ambient air quality standard (NAAQS) for hydrocarbon/oxidant. The proposed truck and van assembly plant was, therefore, subject to the Agency's interpretative ruling on emission offsets.

The State of Louisiana determined that the proposed GMC plant, using technology which would result in the lowest achievable hydrocarbon emissions, would emit an estimated 3,650 tons per year of hydrocarbons. These emissions were based on mass balance calculations (i.e., solvent in equals solvent out), and actual emissions at similar existing GMC plants. Offsetting hydrocarbon emissions totaling an estimated 3,726 tons per year were found. Letters of consent were obtained by the State from the existing sources to reduce hydrocarbon emissions before the GMC assembly plant

target operation date of February 1980. These letters of consent were adopted by the commission as commission orders and were submitted by the Governor of Louisiana to the Environmental Protection Agency (EPA) on January 25, 1978 for incorporation into the Louisiana State implementation plan (SIP). All requirements in 40 CFR §51.4 and 51.6 for notice and public hearings for plan revisions were met.

HYDROCARBON OFFSETS

The hydrocarbon emission offsets submitted by the State of Louisiana consist of the following control measures which were adopted by the Louisiana Air Control Commission as Commission orders.

1. Removal from service of a 10,000 barrel capacity crude oil storage tank at the Belcher Station of the Exxon Pipeline Co., Belcher, La., with a final compliance date of January 1, 1980.

2. Removal from service of a 55,000 barrel capacity crude oil storage tank at the Weller Station of the Exxon Pipeline Co., Near Minden, La., with a final compliance date of January 1, 1980.

3. Installation of emission control systems on three 3,000-barrel capacity distillate storage tanks, at the Jones O'Brien Inc., Keatchie, La., with a final compliance date of January 1, 1978.

4. Installation of emission control systems on crude oil storage tanks TK-43, TK-44, T-45 and T-49, and distillate tanks T-46 and T-50 at the Atlas Processing Co., Shreveport, La., with a final compliance date of January 2, 1980.

5. Installation of emission control systems on crude oil storage tanks TK-19-74, TK-HC-74, TK-571-74 and TK-15-74 and agreement to store only nonvolatile organic solvent in tanks TK-F2-74, TK-41-74 and TK-40-74 at the Cotton Valley Solvents Co., Cotton Valley, La., with a final compliance date of January 2, 1980.

6. Discontinue use of residue gas in pneumatic instrumentation and control systems at the Kerr-McGee Corp., Devon Corp., and Eason Oil Co., Calhoun Plant, Calhoun, La., with a final compliance date of July 1, 1978.

7. Discontinue use of residue gas in pneumatic instrumentation and control systems with a final compliance date of July 1, 1978 and install emission control systems on distillate storage tanks 2-7 and 2-13 with a final compliance date of January 2, 1980 at the Kerr-McGee Corp., Devon Corp., and Eason Oil Co., Dubach Plant, Dubach, La.

8. Installation of emission control systems on a 37,500-barrel capacity crude oil storage tank at Cities Service

Pipeline Co., Oil City, La., with a final compliance date of February 1, 1980.

9. Installation of emission control systems on a 25,000-barrel capacity crude oil storage tank at Cities Service Pipeline Co., Haynesville, La., with a final compliance date of February 1, 1980.

10. Installation of emission control systems on a 10,000-barrel capacity crude oil storage tank at Cities Service Pipeline Co., Summerfield, La., with final compliance achieved in August 1977.

11. Installation of emission control systems on a 30,000-barrel capacity crude oil storage tank at the Scurlock Oil Co., Lake End, La., with a final compliance date of January 15, 1980.

12. Installation of emission control systems on a 55,000-barrel capacity crude oil storage tank at the Scurlock Oil Co., Dutchtown Oil Field near Minden, La., with a final compliance date of January 15, 1980.

13. Installation of emission control systems on distillate storage tank No. 414 with a final compliance date of September 1, 1979 and the removal from service of tank No. 415 with final compliance achieved on December 1, 1977, at the Texas Eastern Products Pipeline Company, Sarepta, La.

Control of these tanks will result in estimated hydrocarbon emission reductions of 3,726 tons per year based on calculations using EPA's emission factors in "Compilation of Air Pollutant Emission Factors," February 1976 and April 1977, publication number AP-42.

By incorporation of these emission control requirements in the State implementation plan, both the EPA and the State of Louisiana consider the offsets to be enforceable under section 113 of the Clean Air Act. The offsets are also considered to be enforceable by citizens under section 304 of the Clean Air Act as "emission standards or limitation."

PROPOSED ACTION

The EPA agrees with the State of Louisiana's determination that the proposed GMC truck and van assembly plant will use technology resulting in lowest achievable emissions of hydrocarbons and that these emissions will total an estimated 3,650 tons per year. The hydrocarbon offsets from existing sources, totaling an estimated 3,726 tons per year, are considered to be valid and enforceable by the State of Louisiana and the EPA. As a result of the greater than one-for-one emission offset, the EPA considers that there will be progress towards attainment of the hydrocarbon/oxidant standard. Thus, the EPA considers that all conditions stipulated under the Agency's interpretative ruling of December 21, 1976, published at FR

55524 and as amended by the Clean Air Act Amendments of August 7, 1977, have been met for the GMC truck and van assembly plant to locate in Shreveport, La.

In this notice EPA is proposing the approval of the hydrocarbon emission offsets as discussed above, creditable to GMC truck and van assembly plant, for incorporation in the Louisiana implementation plan.

The State of Louisiana has adopted the emission offset agreements as Commission orders. The State procedures met all requirements of 40 CFR Part 51 including section 51.4, the requirement for adequate public participation. Therefore, the Administrator does not plan to conduct further hearings regarding these emission offsets. Interested persons may still participate in this rulemaking, however, by submitting written comments to: Air Program Branch, Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Tex. 75270.

Relevant comments submitted within 30 days of this notice will be considered. The material submitted by the State of Louisiana is available for inspection during normal business hours at the above EPA regional office and also at the following offices:

Environmental Protection Agency, Public Information Reference Unit, Room 2932, EPA Library, 401 M Street SW., Washington, D.C. 20460.

Louisiana Air Control Commission, 325 Loyola Avenue, New Orleans, La. 70160.

This notice is issued under the authority of section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: July 28, 1978.

ELOY R. LOZANO,
Regional Administrator.

Part 52 of chapter 1, title 40 of the Code of Federal Regulation is proposed to be amended as follows:

Subpart T—Louisiana

1. In §52.970, paragraph (c) is amended by adding paragraph (6) as follows:

§52.970 Identification of plan.

* * * * *

(c) * * * * *

(6) Commission orders creditable as emission offsets for the GM plant in Shreveport were submitted by the Governor on January 25, 1978 as amendments to the Louisiana State implementation plan.

2. Subpart T is amended by adding section 52.987 as follows:

§52.987 Control of hydrocarbon emissions.

(a) Notwithstanding any provisions to the contrary in the Louisiana imple-

PROPOSED RULES

mentation plan, the control measures listed in paragraphs (b) through (n) of this section shall be implemented in accordance with the schedule set forth below.

(b) Removal from service of a 10,000-barrel capacity crude oil storage tank at the Belcher Station of the Exxon Pipeline Co., Belcher, La., with a final compliance date of January 1, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 208 tons per year.

(c) Removal from service of a 55,000-barrel capacity crude oil storage tank at the Well Station of the Exxon Pipeline Co., near Minden, La., with a final compliance date of January 1, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 263 tons per year.

(d) Installation of emission control systems on three 3,000-barrel capacity distillate storage tanks, at the Jones O'Brien Inc., Keatchie, La., with a final compliance date of January 1, 1978. This shall result in an estimated hydrocarbon emission reduction of at least 23 tons per year.

(e) Installation of emission control systems on crude oil storage tanks TK-43, TK-44, T-45 and T-49, and distillate tanks T-46 and T-50 at the Atlas Processing Co., Shreveport, La., with a final compliance date of January 2, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 881 tons per year.

(f) Installation of emission control systems on crude oil storage tanks TK-19-74, TK-HC-74, TK-571-74 and TK-15-74 and agreement to store only nonvolatile organic solvent in tank TK-F2-74, TK-41-74 and TK-40-74 at the Cotton Valley Solvents Co., Cotton Valley, La., with a final compliance date of January 2, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 934 tons per year.

(g) Discontinue use of residue gas in pneumatic instrumentation and control systems at the Kerr-McGee Corp., Devon Corp., and Eason Oil Co., Calhoun Plant, Calhoun, La., with a final compliance date of July 1, 1978. This shall result in an estimated hydrocarbon emission reduction of at least 21 tons per year.

(h) Discontinue use of residue gas in pneumatic instrumentation and control systems with a final compliance date of July 1, 1978, and install emission control systems on distillate storage tanks 2-7 and 2-13 with a final compliance date of January 2, 1980, at the Kerr-McGee Corp., Devon Corp., and Eason Oil Co., Dubach Plant, Dubach, La. This shall result in an estimated hydrocarbon reduction of at least 367 tons per year.

(i) Installation of emission control

systems on a 37,500-barrel capacity crude oil storage tank at Cities Service Pipeline Co., Oil City, La., with a final compliance date of February 1, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 208 tons per year.

(j) Installation of emission control systems on a 25,000-barrel capacity crude oil storage tank at Cities Service Pipeline Co., Haynesville, La., with a final compliance date of February 1, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 28 tons per year.

(k) Installation of emission control systems on a 10,000-barrel capacity crude oil storage at Cities Service Pipeline Co., Summerfield, La., with final compliance achieved in August 1977. This shall result in an estimated hydrocarbon emission reduction of at least 162 tons per year.

(l) Installation of emission control systems on a 30,000-barrel capacity crude oil storage tank at the Scurlock Oil Co., Lake End, La., with a final compliance date of January 15, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 90 tons per year.

(m) Installation of emission control systems on a 55,000-barrel capacity crude oil storage tank at the Scurlock Oil Co., Dutchtown Oil Field near Minden, La., with a final compliance date of January 15, 1980. This shall result in an estimated hydrocarbon emission reduction of at least 186 tons per year.

(n) Installation of emission control systems on distillate storage tank No. 414 with a final compliance date of September 1, 1979, and the removal from service of tank No. 415 with a final compliance achieved on December 1, 1977, at the Texas Eastern Products Pipeline Co., Sarepta, La. This shall result in an estimated hydrocarbon emission reduction of at least 355 tons per year.

[FR Doc. 78-22689 Filed 8-4-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-164, et al.]

PROCEEDINGS CONCERNING NONCOMMERCIAL EDUCATIONAL FM AND TV STATIONS

Extension of Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in educational

broadcasting proceedings in BC docket No. 78-164, docket No. 21136, BC docket No. 78-165, and docket No. 20735. Petitioner, Schwartz and Woods, states that the additional time is necessary so that it can prepare comments and reply comments on behalf of its clients.

DATES: The dates for filing comments and reply comments for the docketed proceedings are as follows:

	Comments	Reply comments
BC docket No. 78-164	Nov. 15, 1978.	Dec. 15, 1978.
Docket No. 21136	Jan. 2, 1979	Feb. 1, 1979.
BC docket No. 78-165	Feb. 15, 1979.	Mar. 15, 1979.
Docket No. 20735	Apr. 2, 1979	May 15, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Jonathan David, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 4, 1978.

Released: August 9, 1978.

In the Matter of: amendment of the Commission's Rules governing the eligibility for noncommercial educational FM and TV broadcast station licenses, BC docket No. 78-164; [43 FR 30842] Commission policy concerning the Noncommercial Nature of Educational Stations, docket No. 21136; [43 FR 31166] amendment of the Commission's Multiple Ownership Rules to Include Educational FM and TV Stations, BC docket No. 78-165; [43 FR 30147] and changes in the Rules Relating to Noncommercial Educational Fm Broadcast Stations, docket Nos. 20735, RM-1974 and RM-2655 [43 FR 27682].

1. The law firm of Schwartz and Woods, on behalf of its various non-commercial educational FM and TV clients, has filed a request for extension of the filing dates of August 15, 1978, and September 15, 1978, for comments and reply comments in the educational license eligibility rule making proceeding in BC docket No. 78-164.

2. Schwartz and Woods indicates that many of its educational broadcasting clients are not in a position to prepare their comments during the vacation months of July and August. It also notes the interrelationship between the eligibility proceeding and another educational broadcasting proceeding, one of several listed in the caption, which are being conducted by the Commission.

¹These are separate proceedings which have been joined here for the purpose of extending the filing dates.

3. Schwartz and Woods points out that the current schedule would not permit it to conduct the seminar it planned for September in which it would brief its clients and begin the process of aiding them in formulating comments. It also notes that one of its clients, the National Association of Educational Broadcasters, will be holding its convention here in Washington in late October. Numerous sessions on the topics of these proceedings are planned and Schwartz and Woods stresses the fact of the convention will bring together many parties involved in educational broadcasting and will provide the forum for thoughtful analysis of the issues raised in the Commission's proceeding.

4. In these proceedings, the Commission is dealing with a wide range of related questions in the area of educational or public broadcasting and it is important to have the benefit of the views of those knowledgeable in the field. As this request points out, the current schedule for the eligibility proceeding and that for the one on underwriting and the solicitation of funds would preclude the effective participation of many interested parties. Consequently, a postponement is needed. However, if only one or two of the dates were changed, the result would be an overlap in the filing dates. The original dates were set so as to avoid this problem and the same reasoning applies now. For that reason we are postponing the filing dates in all four proceedings by the same amount of three months. This should provide all the time needed.²

5. Accordingly, IT IS ORDERED, That the filing dates for these proceeding ARE EXTENDED³ as follows:
Eligibility. BC docket No. 78-164, comments—November 15, 1978, reply comments—December 15, 1978.
Solicitation of funds. Docket No. 21136, comments—January 2, 1979, reply comment—February 1, 1979.
Multiple ownership. BC docket No. 78-165, comments—February 15, 1979, reply comments—March 15, 1979.
Table of assignments. Docket No. 20735, comments—April 2, 1979, reply comments—May 15, 1979.

6. This action is taken pursuant to sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as

²This action also disposes of the supporting pleading filed by the licensee of educational Station WNET(TV), Newark, N.J., and a shorter extension request filed by the National Federation of community Broadcasters to accommodate its August convention.

³With the grant of this substantial extension in the filing dates, we do not anticipate the need for a further extension. If unanticipated new circumstances do require an extension in one proceeding, we do not contemplate delaying the filing dates in the other related proceedings.

amended, and section 0.281 of the Commission's Rules.

FEDERAL COMMUNICATIONS
 COMMISSION,
 WALLACE E. JOHNSON,
 Chief, Broadcast Bureau.

[FR Doc. 78-22708 Filed 8-14-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-155; RM-2809]

COMMON USE OF TV TOWERS

Extension of Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: FCC extends dates for filing comments and reply comments to September 1 and September 22, 1978, respectively, in a proceeding inquiring into the desirability of requiring VHF TV stations to make available their towers for UHF TV or other broadcast antennas.

DATES: Comments must be filed on or before September 1, 1978. Reply comments must be filed on or before September 22, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Carol P. Foelak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 8, 1978.

Released: August 9, 1978.

In the Matter of Common Use of TV Towers [43 FR 30584].

1. On May 31, 1978 the Commission issued a notice of inquiry in this proceeding. The comment and reply comment dates for that notice are August 2 and August 23, respectively.

2. On July 25, 1978, American Telecasters, Inc., requested that the dates for filing comments and reply comments be extended to September 1, and September 22, 1978, respectively. It stated that it had sent a letter requesting specific information from UHF stations throughout the country which it planned to use in filing comments. It had obtained one previous 30-day extension to complete this project, but states additional time will be required for the recipients of the letter to communicate their information to American Telecasters, Inc., for its use in preparing comments. It states that an additional 30 days will be sufficient. In view of this, we are willing to extend the dates as requested.

3. Accordingly, it is ordered, that the request for extension of time filed by

American Telecasters, Inc., is granted and the dates for filing comments and reply comments are extended to and including September 1, and September 22, 1978.

4. This action is taken pursuant to sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.281 of the Commission's Rules.

FEDERAL COMMUNICATIONS,
 COMMISSION,
 MARTIN I. LEVY,

Acting Chief, Broadcast Bureau.

[FR Doc. 78-22709 Filed 8-14-78; 8:45 am]

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered and Threatened Status and Critical Habitat for Three Texas Fishes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposed to determine the Leon Springs pupfish (*Cyprinodon bovinus*) and the Goodenough gambusia (*Gambusia amista-densis*) to be endangered species and to determine the Devil's River minnow (*Dionda diaboli*) to be a threatened species; it also proposes critical habitat for the Leon Springs pupfish and the Devil's River minnow. This action is being taken because the habitat of these species has been and is presently subject to alteration. Habitat of one species, the Goodenough gambusia, was totally destroyed by a Corps of Engineers impoundment. This species presently survives only in captivity. The proposed action, if completed, would protect populations of the Leon Springs pupfish and the Devil's River minnow and their habitats. This action could lead to the reestablishment of the Goodenough gambusia in the wild.

DATES: Comments from the public must be received by October 13, 1978. Comments from the Governor of Texas must be received by November 12, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) states:

General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or education purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under each of the five criteria of section 4(a) of the Act. These factors, and their application to (a) Devil's River minnow, (b) Leon Springs pupfish, and (c) Goodenough gambusia, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—(a) Historically, the Devil's River minnow (*Dionda diaboli*) was known from the Devil's River, San Felipe Creek, and Las Moras Creek, Val Verde County, Tex. In recent years this species has been eliminated from a portion of its range as a result of habitat alteration. The population of the Devil's River minnow and its habitat in the lower portion of the Devil's River was destroyed by the backwaters of Amistad Reservoir. The population in the headwaters of the Devil's River was extirpated by decreased spring and stream flow as a result of excessive removal of ground water. The remaining population in the Devil's River is threatened by the lowering of the water table resulting in decreased spring flows. Pecan Springs, which originally consisted of at least six springs, were reduced to one flowing spring by 1971.

The population of the Devil's River minnow in San Felipe Creek is threatened by the encroachment of urbanization from the city of Del Rio. The current status of the population in Las Moras Creek is now known. However, this habitat is also threatened by modifications resulting from urbanization.

(b) The Leon Springs pupfish was originally found in Leon Springs, Leon Creek, and Diamond Y Spring, located west and north of Fort Stockton, Pecos County, Tex. Alteration of Leon Springs, which dried up in 1962, eliminated that population. The excessive removal of ground water, which dried up Leon Springs and the upper portion of Leon Creek, also threatens the Diamond Y Spring population.

(c) The Goodenough gambusia was known to occur only in Goodenough Spring, tributary to the Rio Grande River in Val Verde County, Tex. In July of 1968, backwaters of the Corps of Engineers Amistad Reservoir began permanent flooding of the area. Subsequent visits to the area after the reservoir had reached full pool level found the spring under more than 70 feet of silt laden water. A scuba diver examined the Goodenough Spring area but did not detect any clear water issuing from the spring. This species is presently surviving only in captivity at the University of Texas and Dexter National Fish Hatchery.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—Not applicable.

3. *Disease or predation.*—Not applicable.

4. *The inadequacy of existing regulatory mechanisms.*—Not applicable.

5. *Other natural or manmade factors affecting its continued existence.*—(b) The Leon Springs pupfish is threatened by hybridization with a closely related introduced pupfish, *Cyprinodon variegatus*. The introduced pupfish and hybrids between *Cyprinodon bovinus* and *Cyprinodon variegatus* were first discovered in the lower portion of Leon Creek at Highway 18, approximately 10 miles north of Fort Stockton, in 1974. Efforts to eliminate the hybrid population in this area were partially successful. However, recently, March 1978, hybrid pupfishes were found at the upper end of pupfish habitat, Diamond Y Spring. Efforts are presently underway to remove the introduced and hybrid pupfishes. Pure stock of *Cyprinodon bovinus* is being held in Dexter National Fish Hatchery.

CRITICAL HABITAT

Section 7 of the Act, entitled "Interagency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeop-

ardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "critical habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876) and is reprinted below:

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, FEDERAL REGISTER (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing of offspring; and generally,
- (5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

With respect to the Devil's River minnow and the Leon Spring pupfish, the areas proposed as critical habitat satisfy all known criteria for the evolutionary, ecological, behavioral, and physiological requirements of the species.

The proposed critical habitat, Devil's River, Pecon Springs, San Felipe Creek and San Felipe Springs, for the Devil's River minnow includes sufficient area for normal population growth and individual movements. The spring and main stream channel riffle and pool areas provide habitat for a variety of aquatic invertebrates which are important food items for this species. Associated aquatic vegetation and cobbles provide cover for this species. Spawning has not been observed for this species, but is presumed to occur in the proposed critical habi-

tat area since it is not known to occur outside the proposed area. The spring and stream habitat proposed are representative of the geographical distribution of listed species.

The proposed critical habitat, Diamond Y Spring and Leon Creek, for the Leon Springs pupfish, includes adequate space for normal behavior, individual and population growth. This species appears to be a generalist in its feeding habits, but the most frequent food organisms include diatoms, algae, amphipods, and gastropods. The proposed area provides sufficient habitat for these food organisms. The substrate of the proposed area contains stones, submerged ledges, roots of *Surpus*, an aquatic plant, and algae, which provide cover for the Leon Springs pupfish. Spawning has been observed in several areas within the proposed critical habitat. Leon Creek and Diamond Y Spring are the only known habitat of the Leon Springs pupfish.

The areas delineated do not necessarily include the entire habitat of the Devil's River minnow and the Leon Springs pupfish, and modifications to the proposed critical habitat descriptions may also be proposed as a result of further studies. In accordance with section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or adverse modification of the critical habitat of the Devil's River minnow and the Leon Springs pupfish.

All Federal departments and agencies shall, in accordance with section 7 of the Act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect critical habitat. Consultation pursuant to section 7 should be carried out using the procedures contained in the January 4, 1978, FEDERAL REGISTER (43 FR 870-876).

EFFECT OF THE RULEMAKING

In addition to the effects discussed above, the effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. All of those prohibitions

and exceptions also apply to any threatened species pursuant to 50 CFR 17.31, unless a special rule pertaining to that threatened species has been published and indicates otherwise. The Devil's River minnow, proposed as a threatened species, has a special rule proposed which would allow for the take of this species in accordance with State laws. A violation of State law would also be a violation of the endangered Species Act of 1973. The other prohibition of § 17.31 will be applicable to the Devil's River minnow. The regulations referred to above, which pertain to endangered species, are found at § 17.21 of title 50, and are summarized below.

With respect to the Leon Springs pupfish and the Goodenough gambusia in the United States, all prohibitions of section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412 codified at 50 CFR 17.22 and 17.32) provided for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available. Pursuant to section 4(b) of the Act, the Director will notify the Governor of Texas with respect to this proposal and request his comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conserva-

tion of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;

(2) The reasons why any habitat of these species should or should not be determined to be critical habitat as provided for by section 7 of the Act;

(3) Additional information concerning the range and distribution of these species.

Final promulgation of regulations on the Leon Springs pupfish, Goodenough gambusia, and Devil's River minnow will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposed rulemaking is Dr. James D. Williams, Office of Endangered Species, 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11(i) by adding, in alphabetical order under "FISHES", the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion endangered			
Fishes:							
Gambusia, Goodenough	<i>Gambusia amistadensis</i>	NA	U.S.A. (Texas)	Entire	E		NA
Minnow, Devil's River	<i>Dionda diabol</i>	NA	do	do	T		17.44(h)
Pupfish, Leon Springs	<i>Cyprinodon bovinus</i>	NA	do	do	E		NA

PROPOSED RULES

2. Amend § 17.44 by adding a new paragraph (h) as follows:

§ 17.44 Special rules—fishes.

(h) Devil's River Minnow (*Dionda diaboli*).

(1) All provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the act.

3. The Service proposes to amend § 17.95(e) by adding critical habitat of the Leon Springs pupfish after that of the Alabama cavefish as follows:

§ 17.95 Critical habitat—fish and wildlife.

(e) Fishes.

LEON SPRINGS PUPFISH

(*Cyprinodon bovinus*)

Texas. Pecos County, Diamond Y Spring and its outflow stream, Leon Creek. From the head of Diamond Y Spring downstream in Leon Creek to a point 1 mile northeast of Texas highway 18, crossing approximately 10 miles north of Fort Stockton.



4. Also, the Service proposes to amend § 17.95(e) by adding critical habitat of the Devil's River minnow after that of the Slender chub as follows:

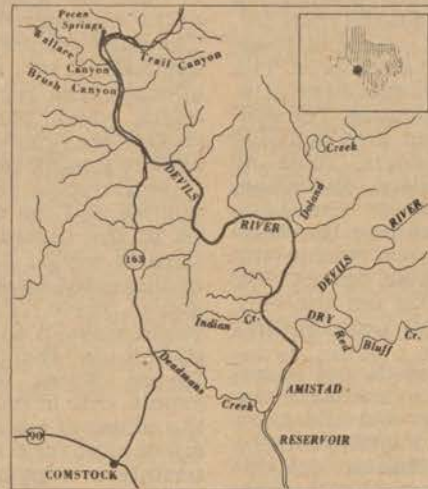
(e) Fishes.

DEVIL'S RIVER MINNOW

(*Dionda diaboli*)

Texas. Val Verde County. Devil's River from the backwaters of Amistad Reservoir

upstream to Texas highway 163, crossing approximately 1 mile east of Pecan Springs. Pecan Springs and its outflow downstream to its junction with the Devil's River. San Felipe Creek, San Felipe Springs and spring runs in Del Rio, Texas, from U.S. highway 277 upstream to the headwater spring of San Felipe Creek approximately 2.5 miles north northeast of U.S. highway 277 crossing.



NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 24, 1978.

KEITH M. SCHREINER,
Director,
Fish and Wildlife Service.

[FR Doc. 78-22599 Filed 8-14-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration
[Designation Number A640]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has de-

termined that farming, ranching, or aquaculture operations have been substantially affected in certain Texas counties as a result of various adverse weather conditions shown in the following chart:

TEXAS.—10 Counties

County	Drought	Severe hail	Severe cold, ice, sleet, and snow	Excessive rainfall
Brewster	Jan. 1, 1978 through June 6, 1978 .....	.....	.....	.....
Irion	May 1, 1977 through May 31, 1978.....	.....	.....	.....
Kinney	June 1, 1977 through May 31, 1978.....	.....	.....	.....
Medina.....	July 1, 1977 through May 23, 1978.....	.....	.....	.....
Nolan.....	June 5, 1977 through June 5, 1978.....	June 5, 1978 .....	.....	.....
Presidio.....	January 1, 1978 through June 7, 1978.....	.....	.....	.....
Red River.....	.....	.....	Jan. 7, 1978 through Feb. 17, 1978.....	.....
Runnels.....	.....	May 28, 1978 .....	.....	May 28, 1978.....
Tom Green.....	Jan 1, 1978 to May 28, 1978 .....	.....	.....	May 28, 1978 and June 4, 1978. ¹
Upshur.....	.....	.....	Jan. 11, 1978 through Feb. 28, 1978.....	.....

¹ With flooding.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904, Subpart C, Exhibit B, Paragraph V B, including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than January 29, 1979, for physical losses and July 30, 1979, for production losses, except that qualified borrowers who received initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 8th day of August 1978.

GORDON CAVANAUGH,
Administrator,

Farmers Home Administration.

[FR Doc. 78-22668 Filed 8-14-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Order 78-7-115, Docket 30332; Agreement CAB 27159, R-1 through R-4, et al]

CARGO RATES

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July, 1978.

By Orders 78-3-54 and 78-4-60, dated March 13, and April 13, 1978 respectively, the Board established procedural dates for the submission of carrier justifications, comments, and replies regarding agreements among the carrier members of the International Air Transport Association (IATA). The agreements would increase North/Central Pacific cargo rates through September 30, 1979, and are intended for effectiveness by July 15, 1978.¹ Agreement CAB 27159 would increase cargo rates, except to and from the Indian Subcontinent, as follows: General cargo rates (GCR's) would be increased 10 cents per kilogram; most specific commodity rates

(SCR's) would be increased 25 cents per kilogram (except for Japan and Korea, where the increase would be 18 cents per kilogram; SCR's on Items 9902, 9903, 9904 and 9905² would be increased 35 cents per kilogram; and container rates would be increased 15 cents per kilogram (except for Japan and Korea, where the increases would be 16 cents per kilogram). The agreement would also introduce a new SCR for Item 9994 (Household Goods and Personal Effects) from the United States to the Far East, and would substitute Item 4416 for Item 4417³ for traffic from Tokyo, Osaka, and Seoul to the United States. Agreement CAB 27197 would increase minimum charges by \$5; GCR's by 2 cents per kilogram; cancel specific commodity Items 9902, 9903, 9904 and 9905; increase all remaining SCR's by 6 percent (except for Japan/Korea, where the increase would be 3 percent); and increase container rates by about 3 percent. Between the United States

¹Rates to and from the Philippines remain unchanged.

²These specific commodity descriptions are of the "basket" type, including many different commodities.

³Both descriptions list numerous electrical products and components and overlap extensively.

and the Indian Subcontinent (India, Pakistan, Afghanistan, Nepal, Bangladesh, and Sri Lanka), the agreement readopts rates which were disapproved in Order 77-12-5, December 1, 1977, entailing increases of 2 to 3.5 percent in GCR's and 1.1 to 7.8 percent in SCR's. Agreement CAB 27380 would specify SCR's and container rates from Singapore, Malaysia, Hong Kong, and Taiwan in local currencies and effect a 10 percent reduction in agreed SCR's and container rates from Singapore, Malaysia, and Hong Kong.

The full implementation of the first two agreements would increase cargo rates and charges between the United States and the Far East as follows:

1. Minimum charges \$5;
2. GCR's from 2.3 percent at the under 45 kilogram rate for beyond Tokyo traffic to 5.7 percent above the highest weight break (500 kilograms) for Tokyo traffic;
3. SCR's from 11.1 percent to 33.3 percent; and
4. Container charges from 4 percent for type 8/9 to 16.8 percent for type 4A and excess weight rates ranging from 12.4 to 13.5 percent for all container types.

The third agreement would reduce agreed SCR's and container rates from the Far East to the United States, producing an estimated 3-percent revenue reduction from that forecast after implementation of the first two phases.

Justification and supporting data have been submitted by Pan American World Airways, Inc. (Pan American), and the Flying Tiger Line, Inc. (Tiger). Similar data have been submitted by Northwest Airlines, Inc. (Northwest), a non-IATA carrier which, in its response to the IATA carriers justifications, generally supports the agreements. Comments in support of the agreements have been filed by Japan Air Lines Co., Ltd. (JAL), while comments in opposition have been filed by the Electronics Shippers (Shippers) representing a group of interested shippers.⁴ The Shippers have filed a

⁴Advanced Micro Devices; American Microsystems; Data General Corp. Electronic Memories and Magnetics; Fairchild Camera and Instruments; General Instrument Corp.; Hewlett-Packard Co.; Intel Corp.; Intersil, Inc.; Litronix; Monolithic Memories; National Semiconductor Corp.; RCA Corp.; Rockwell Microelectronics; and Signetics Corp.

motion requesting oral argument under Rule 18 of the Board's Rules of Practice on the question of approval of this agreement.

CARRIER JUSTIFICATIONS

The carrier proponents have provided statements of financial results in North/Central Pacific scheduled cargo service for the year ended December 31, 1977, as well as for the forecast year ending March 31, 1979, under both present and proposed rates. The financial data submitted by the U.S. carriers suggest that, for the historical period, return on investment, using the cost allocations currently accepted by the Board, was marginal and will be even lower for the forecast period under present rates. With the proposed rate increases, the carriers believe that return on investment will approach a reasonable level. The following table summarizes the financial data submitted by the U.S. carriers:

North/Central Pacific Scheduled Cargo Operations Return on Investment (ROI)

[Figures in percent]

Carrier	Historical year ending Dec. 31, 1977			Forecast year ending Mar. 31, 1979, present rates			Forecast year ending Mar. 31, 1979, proposed rates		
	Belly	Freighter	Total	Belly	Freighter	Total	Belly	Freighter	Total
Pan American.....	10.46	(10.61)	0.96	4.89	(1.35)	1.72	7.88	0.36	4.05
Tiger		12.34	12.34		2.37	2.37		9.52	9.52
Northwest ¹	18.83	(0.48)	3.47			.43			7.30

¹Northwest figures reflect the correction of a mathematical error in the submission and exclude impact of the 3d phase of the agreements.

Pan American and Tiger generally assert that there is a demonstrable need for revenue and profit improvement in the North/Central Pacific market and that the agreements are designed to provide for that need. Tiger states that, despite rising cost, carriers have not implemented most Board approved agreements because of (1) long delays in obtaining necessary Board approvals, (2) various competitive factors and (3) foreign political factors; and inflation and the changing relative value of the dollar and the yen further contribute to the need for increases. Pan American feels that the proposed rate increases are needed not only to offset normal experienced and anticipated cost increases but also those associated with service into the new Narita Airport in Tokyo; cargo operations there will be affected by (1) increased lease and equipment costs, (2) costs of trucking freight between

Narita Airport and the downtown cargo terminal at Baraki, (3) a mandatory customs computer system, (4) increased landing fees, and (5) the most serious cost increase, fuel, for which a new surcharge of approximately seven cents per gallon represents a 16 percent increase over current prices.

Northwest, while generally supporting the agreements, opposes the proposed changes in container general commodity rates and charges. Northwest states that freight moving on these rates constitutes an insignificant percentage of total traffic, yet the agreements would increase these rates even more than bulk GCR's; it is firmly committed to a viable container general commodity rate structure and will maintain these rates at current levels until increased usage indicates that they are in proper perspective with other components of the rate structure; it is also opposed to the

agreements cancellation of the container SCR's for Item 9902; and it believes that an increase in this rate is preferable, and would increase it by 28 percent, on the same basis as other SCR's in the market.

COMMENTS

JAL submits that the proposed increases will not produce the minimum increase in revenue required for providing cargo service in the North/Central Pacific markets, and that these markets have not experienced a rate increase since July 1974. JAL indicates that the agreements further reflect substantial progress toward the Board's stated objective of narrowing the gap between GCR's and SCR's. JAL's financial statements indicate an operating loss on its North/Central Pacific freight operations of \$1.8 million during the year ended September 30, 1977, a loss which is forecast to increase to \$15.2 million during the year

ending April 14, 1979, under existing rates. This loss, however, would decline to \$9.1 million under the proposed rates.

The Shippers make basically three arguments against the proposed increases, concluding that the Board should (1) reexamine policy toward IATA; (2) disapprove IATA agreements except under *Local Cartage* tests; (3) issue an order directing the carriers to provide information necessary to reasonably analyze their justifications; and (4) set the question of approval of the agreement for oral argument.

Their first argument concerns open versus IATA rate setting. They characterize the period since October 1971 as an open rate situation which allowed natural market forces to produce lower electronics rates in an area of extraordinarily high rates.⁵ Encouraged by the then current Board policy that all freight rates should ultimately be set at fully allocated costs with the consequent abolishment of SCR's, IATA began entering into agreements to increase electronics SCR's in 1974. Now, however, the Shippers argue, the Board has completely reversed itself, favoring product and price differentiation based on marginal costs, elasticities of demand, and "innovative growth factors," and therefore previous orders of the Board are no longer applicable. Moreover they assert, at some length, that this agreement provides an opportunity for the Board (1) to reexamine its policy toward IATA; (2) to set out new standards for approval of agreements; and (3) to provide *individual* management flexibility to establish rates, particularly SCR's.

The second argument claims that the proposed increases are exorbitant and that the carriers justifications are seriously flawed. On this point they have filed a motion asking for an order directing the carriers to provide certain information necessary to reasonably analyze the justification data. However, they conclude by asserting that the Board should not be in the business of attempting to judge the validity of the IATA carriers self-serving forecasts; and again that the Board should reexamine its approach to IATA agreements and allow individual management to set international rates and charges.

The third claims that an oral argument is necessary to avoid having the present IATA agreement rubber-

stamped by the Board pursuant to a staff memorandum that starts off with the words "*Policy/Legal Issues: none of significance.*" The Shippers have filed a motion for oral argument under Rule 18 of the Board's Rules of Practice. They support the motion stating that without oral argument the Board Members may never know that key policy questions are involved, let alone the position of the electronic shippers. And furthermore, they assert that the time has come for the Board to alter its past practice of holding hundreds of oral arguments for the benefit of air carriers, and to hold an oral argument specifically at the request of consumer/shipper interests.

REPLIES

Pan American and Tiger have submitted answers to these comments and objections, as well as answers to the Shippers' motion for an order to provide certain information and the motion requesting oral argument.

Pan American submits that all rates should not be based on marginal cost and that the Board has never suggested that they should. The Shippers, it contends, would have the Board require pricing of SCR's below fully allocated costs, disapprove agreements which base rate increases on average costs of all competitors, and shift rate-making policy substantially by basing investment on a valuation of assets at mid-life. Such radical changes, it submits, would not permit a recovery of costs plus a reasonable return on investment and would lead to a deterioration of scheduled cargo service in the North/Central Pacific market, causing irreparable public loss in the long run; the Board cannot require carriers to price below average costs; and to require investment to be based on mid-life rather than current value would, among other things, benefit carriers flying an old, fully depreciated fleet (no matter how inefficient that old equipment may be) and disadvantage a progressive carrier in the process of reequipping (no matter how efficient that new equipment may be). In summary, Pan American states that the electronics Shippers are seeking preferential treatment to which they are not entitled.

Tiger submits that the Shippers comments and objections contain little of substance relating to the particular matter before the Board. Specifically, it contends that the Shippers have used the Board's *Quarterly Interim Financial Reports* improperly in arguing that Tiger has had abnormally high earnings over a long period of years, that in the justification its ROI may be understated because of the accounting method used in allocating investment between domestic and international operations, and that it may

have made an improper allocation between scheduled and nonscheduled operations. Noting that the Board has specifically cautioned against the use of the *Reports* for regulatory purposes, Tiger contends that, had the Shippers used the more refined data derivable from the Form 41's, they would have found the justifications are not only in accord with the Board's regulations but are unquestionably reasonable. Contending that the Shippers argument that the carriers traffic and revenue forecasts are unreliable is irrational, Tiger claims that historically the carriers fundamental predictions have proven accurate, even though revenue and traffic forecasting is far from an exact science. Without a rate increase, it predicts that return on investment would drop below a reasonable level and that it has failed to earn a reasonable profit on investment in each of the last 4 years, despite its efficient and economical freighter fleet and the lowest average available ton-mile (Atm) costs of any transpacific competitor.

Pan American and Tiger, in opposition to the Shipper's motion for an order to provide certain information, argue that the motion asks the Board to order carriers to provide sufficient data to permit assessment of specific costs of transporting certain types of commodities; such an exercise would be complex and time consuming; and the results would be outdated before it could be completed. Pan American adds that the Shippers are wrong in their quest for density data with respect to the markets at issue, because these long-haul markets are weight-limited rather than space-limited, and additional data would not support the shippers point.

They also oppose the Shippers motion requesting oral argument, submitting that the presentation will be used as a generalized attack on the existence of IATA. They argue that these questions are inappropriate in *this* case and that the keystone of the Shippers motion is the allegation that their position will not be considered adequately by the Board due to the nature of the presentations made by its staff. More importantly, the Shippers are alleging a problem which is not peculiar to this case; they are criticizing general internal Board procedures in its decisionmaking process; and the general propriety of staff recommendations should be considered, if at all, in a rulemaking proceeding—not in a case relating exclusively to North and Central Pacific cargo rates. The carriers further argue that the history of the dispute over rate increases is well known and the Shippers have resorted to every procedural device

⁵The Shippers contend that the typical electronics shipment, because of high density, long length of haul, high volume, exceptionally favorable handling characteristics, and other factors, is ideal freight for the carriers and relatively low-cost compared to other traffic. They argue that the low rates for electronics traffic, introduced by competitive carriers, reflect its cost advantages.

available to delay carrier efforts to increase sharply discounted rates.

FINDINGS

Upon full consideration of the agreements and the justifications, as well as the comments and answers, the Board has determined to approve the agreements with certain important exceptions and conditions.

We agree with the Shippers that individual carrier managements can best judge and respond quickly to changing market conditions and are, therefore, best equipped to set innovative rates attuned to the market. With this goal in mind, the Board has been striving to develop a new international rate environment which will foster competition and facilitate development of more innovative rate structures and new service concepts benefiting shippers, consignees, and carriers. We are urged here to consider one basic question—whether to accept collective rate decisions of several carriers in traffic conferences—but we believe we can better handle this question generally, rather than in the context of a specific case like this one.⁶ So long as we continue to accept the conference procedure, this particular agreement is in general a reasonable one.

The Board has generally couched its approval of IATA rate agreements on a demonstrated need for improvement in carrier earnings. Although we have some doubts about particular carrier submissions, we believe on balance that the carriers have shown such a need here.

However, historically Board approval of IATA agreements has, in effect, prescribed the rates contained in them as the ones actually to be charged, because while the agreements purport only to set minimums, competition among the carriers, though attenuated, has typically prevented them from exceeding these levels. The results of such arrangements have left much to be desired. IATA and non-IATA carriers alike should have the opportunity to compete in the rates they offer. Therefore, we will approve these agreements subject to the condition that they serve to set ceilings. This condition will permit and encourage all carriers to file new and innovative low rates. We believe that the presence of strong non-IATA carriers, the introduction of more efficient equipment, the availability of shipper alternatives and the unique conditioning of this approval may help to foster new and real market competition in the North/Central Pacific area.

⁶See Order 78-6-78, *Order to Show Cause*, concerning tentative withdrawal of Board approval of the Traffic Conference Resolution and related resolutions and agreements of the International Air Transport Association.

The Board agrees with the Shippers that market forces should be the primary determinant of SCR's. We also favor promotional rates. There is evidence that electronics SCR's are the product of market competition, and that they have greatly stimulated this traffic. We encourage continued individual carrier initiative in developing similar imaginative rates for other classes of traffic.

The Shippers contend that the cost of carrying electronics cargo is less than that of the average mix of traffic in the North/Central Pacific markets because of its high density and exceptional handling characteristics, as well as the relatively long shipping distances and the few pairs of points this commodity moves between, and therefore this traffic is entitled to lower rates. They would have the Board require the carriers to prove otherwise before permitting increases in these rates. The Board does not believe, however, that it should immerse itself in the kind of time-consuming, detailed analyses necessary to attempt to determine the exact cost of each and every type of traffic moving in scheduled air transportation. The full cost allocations necessary to make this kind of finding in any event involve a great deal of arbitrariness; and the rates that issue from such proceedings are not competitive rates. Our goal is just the opposite. We believe that the marketplace will provide the most accurate and most timely analysis of these and other important cost factors. We have conditioned our approval of these agreements in such a way that if electronics traffic does, in fact, cost less to carry than other freight, this will provide a strong profit opportunity and incentive for air carriers, free from the IATA rate minimums, to compete vigorously for this business, and to offer lower rates in order to get it.

The Shippers point out the desirability of pricing at the marginal cost of providing service, as opposed to insisting that all rates cover average total costs. Again, we heartily agree. In this case, however, the Shippers appear to be misapplying the principles.

Short-run marginal cost is the change in total variable cost caused by supplying an additional unit. It is clear that when a new promotional rate is introduced to fill space that would otherwise fly empty, that rate can be based on short-run marginal cost, which approximates handling (noncapacity) cost. This, according to the Shippers, is what happened during the open rate period which began in late 1971, when the forces of competition resulted in the introduction of low electronics SCR's based on short-run marginal costs and elasticity of

demand. Since 1971, however, the North/Central Pacific market has been characterized by expanding traffic and capacity with the exception of the period immediately following the 1973 fuel embargo. The Shippers acknowledge that electronics parts, moving on low SCR's, have played a large part in the dramatic growth of air freight traffic in this market over the last 7 years, and that they now account for about 30 percent of the total. Increased electronics traffic has undoubtedly influenced capacity levels in this market, and must bear substantial casual responsibility for its long-run costs. The continued provision of capacity sufficient to accommodate even the present volume of electronics traffic involves a real social opportunity cost; and accordingly the present levels of electronics SCR's cannot be imposed on the carriers indefinitely merely by a reference to the low short-run marginal costs that prevailed when the market was characterized by substantial excess capacity, but apparently do no longer. The Board will not protect a particular class of rate.

Holding electronics rates below long-run marginal costs promotes a misallocation of resources, and such a policy would provide unduly preferential treatment in this or any similar situation. Rates in the North/Central Pacific area have essentially remained unchanged since 1971 (with the exception of fuel cost adjustments in 1974, which increased electronics SCR's approximately 17 percent). Freighter costs per ATM, on the other hand, have increased approximately 75 percent.⁷ The Shippers themselves have agreed on numerous occasions that electronics rates should cover all costs reasonably associated with them. Here, however, they would have the Board disapprove carrier proposals to increase rates, perhaps initially warranted by low short-run marginal cost and market development considerations, but which have already passed the threshold where they should cover at least some capacity costs as well. Where capacity has been added to accommodate increased traffic generated by low promotional rates, the Board will not prevent carriers from increasing those rates to cover their costs.

The data submitted by the carriers in their justification of the agreements indicate that earnings will deteriorate in the forecast period and that the revenue improvement is warranted. Our review of the data verifies their arguments that earnings are not now excessive and will not be excessive in the forecast period with the rate in-

⁷Based on a comparison of total operating expenses and available ton-miles in Tiger's Pacific Entity as published in the Board's *Air Carrier Financial Statistics* and *Air Carrier Traffic Statistics*.

creases in effect.⁸ The Board believes, moreover, that the earnings realized will be moderated by the fact that Northwest, a non-IATA carrier, may not adhere to certain parts of the agreements.

While our review of carrier justifications suggests that there has been some understatement of revenues and overstatement of investment, most of these defects are arguable. We will, however, highlight areas where we believe that carrier justifications were deficient. Pan American's allocation of revenues between South Pacific and North/Central Pacific markets is not fully explained and our analysis, based on yield comparisons, would increase revenues applicable to the North/Central Pacific area. Further, our analysis of all-cargo investment on an entity revenue block-hour basis indicates that Northwest and Pan American may have overstated investment in the North/Central Pacific area. This is especially troublesome in this case because it is in the area of all-cargo ROI that the real need for increased revenues is argued. Our independent analysis does indicate, nevertheless, that the carriers ROI will not be excessive under the new rate structure.

But neither does our analysis suggest that their financial condition is precarious or that they need special protection against the competition that we want to achieve in the North/Central Pacific market.

We are therefore placing two conditions on our approval of these agreements: (1) That any rates established pursuant to them shall serve as maximums; and (2) that IATA carriers shall be able to file rates below the ones set forth in them. These conditions will remove the spectre of IATA enforcement action, as far as transportation to or from the United States is

concerned, against any IATA carriers which openly choose not to adhere to the agreements in full, or wish to introduce new rates without first going through the IATA mechanism. Approval of the agreements without such conditions would reestablish the traditional IATA framework in this market, with its inherent deleterious effects on competition. IATA carriers would be bound to adhere to the exact set of rates published in the agreements, and any individual carrier initiative to reduce them or to file new promotional rates would have to be accepted by the other Conference members, a time-consuming process. Rate proposals by low-cost carriers would have to meet with the approval of high-cost carriers, a discouraging prospect for a would-be competitor.

There appear to be substantial forces favoring competition in this market: several strong non-IATA carriers⁹, strong shipper interests, a wide variety of services with increasingly efficient equipment, and an expanding traffic base. By our action here in conditioning the IATA agreements we mean to prevent the imposition of the usual IATA fetters on competition and encourage carriers to explore the widest possible range of competitive alternatives.

We will deny the Shippers Motion for an Order to Provide Certain Information, which requests the Board to require the carriers to provide extensive background information for their justifications as well as complete details as to how they were derived. The justifications are reasonably self-explanatory and the Board, as discussed earlier, prefers to develop mechanisms, such as the conditions imposed here, that will obviate this kind of time-consuming analysis.

We will also deny the Shippers'

motion requesting oral argument because we are considering in another proceeding the Board's historical approach to IATA rate proposals. While oral argument may be useful in some cases, here it appears redundant, given order 78-6-78. No finding on the Shippers' allegation that staff memoranda have not aired their positions seems necessary. Their petitions have been fully described in this order and the staff memorandum accompanying it and we respond to their arguments here. In any event, Board procedures provide for distribution of comments and petitions directly to individual Board members.¹⁰

The Board, acting under the Federal Aviation Act of 1958 and particularly section 102, 204(a), and 412 makes the following finding:

It is not found that the following resolutions, incorporated in the agreements indicated, are adverse to the public interest or in violation of the act, subject to the following conditions, and provided further that:

(a) Notwithstanding any provisions of the following resolutions or any other resolution all rates and charges established pursuant to those resolutions with respect to any U.S. point as an origin or destination shall be maximums; and

(b) Each and every carrier operating pursuant to the following resolutions shall be permitted to file tariffs incorporating rates and/or charges below those established in the resolutions.

¹⁰ On June 21, 1978, the Shippers submitted a motion for leave to file an otherwise unauthorized document in reply to the replies of Pan American and Tiger, claiming that the Shippers had to apprise the Board of their correct position on a number of matters, and that Pan American and Tiger had completely misunderstood and misconstrued the Shippers' position on marginal costing. The Shippers' motion will be granted and their reply to the carriers accepted. The only new information in the latest document, however, relates to the legal validity of the particular IATA rate agreements at issue according to which no IATA carrier is permitted to deviate from the SCR's agreed to. We have already dealt with this problem in our decision. Pan American and Tiger have filed replies controverting all contentions made by the Shippers.

⁸Our review indicates that the carriers will earn about 10.2 percent, on a composite basis, during the forecast period. See Appendix.

⁹Under the IATA agreements, IATA carriers are already free to match rates filed by non-IATA carriers, but cannot initiate rates without first obtaining an IATA consensus.

Agreement CAB	IATA No.	Title	Application
27380:			
R-1.....	022ee.....	JT31/JT123(North and Central Pacific) Adjustment Factors for Sales of Cargo Air Transportation (Amending).	3/1; 1/2/3
R-2.....	536a.....	Charges for Bulk Unitization—North and Central Pacific—(Amending).	3/1; 1/2/3/; 3/1; 1/2/3
R-3.....	590.....	Specific Commodity Rates Board (Amending): (1) Copies of minutes or reports of meetings shall be submitted to the Board at the conclusion of meetings, as well as copies of all notices and status reports at the time of circulation among members. (2) Rates established pursuant to said resolutions which are applicable in air transportation as defined by the Federal Aviation Act of 1958, or which are combinable with rates in air transportation, shall be filed with the Board under sec. 412 of the Act and shall not be placed in effect prior to Board approval.	3/1; 1/2/3

Agreement CAB	IATA No.	Title	Application
27159:			
R-1.....	115k.....	Meeting Rates and Practices—Cargo (JT31 North and Central Pacific) (New).	3/1
R-2.....	590i.....	JT31 North and Central Pacific Specific Commodity Rates (New).	3/1; 1/2/3
R-3.....	LA18.....	JT31 Limited Agreement North and Central Pacific—Cargo (New).	3/1
R-4.....	003hh.....	General Increase in Cargo Rates (New).....	3/1
27197:			
R-1.....	LA19.....	JT31 Limited Agreement North and Central Pacific—Cargo.	3/1; 1/2/3
R-2.....	001c.....	Cargo Tie-In Resolution North and Central Pacific.	3/1; 1/2/3
R-3.....	001ee.....	North and Central Pacific Escape Resolution—Cargo.	3/1; 1/2/3
R-4.....	014b.....	Construction Rule for Cargo Rates. All unprotested notices issued pursuant to the provision of said resolution which are applicable in air transportation as defined by the Federal Aviation Act of 1958 shall be filed with the Board as agreements under sec. 412 of the Act and shall not be placed in effect prior to Board approval.	3/1; 1/2/3
R-5.....	014x.....	Special JT31 and JT123 Cargo Construction Rule.	3/1; 1/2/3
R-6.....	022ee.....	JT31/123 (North and Central Pacific) Adjustment Factors for Sales of Cargo Air Transportation.	3/1; 1/2/3
R-7.....	501.....	Minimum Charges for Cargo (North and Central Pacific).	3/1; 1/2/3
R-8.....	501a.....	Small Package Service (North and Central Pacific). The limitations on maximum value established in the resolution shall not apply to valuations affecting determination of carrier liability.	3/1; 1/2/3
R-9.....	521.....	Charges for the Use of Unit Load Devices....	3/1; 1/2/3
R-10.....	522.....	Charges for the Use of Member Owned Unit Load Devices.	3/1; 1/2/3
R-11.....	536a.....	Charges for Bulk Unitization North and Central Pacific.	3/1; 1/2/3
R-12.....	556a.....	JT31/123 General Cargo Rates North and Central Pacific.	3/1; 1/2/3
R-13.....	590.....	Specific Commodity Rates. (1) Copies of Minutes or Reports of meetings shall be submitted to the Board at the conclusion of meetings, as well as copies of all notices and status reports at the time of circulation among members. (2) Rates established pursuant to said Resolutions which are applicable in air transportation as defined by the Federal Aviation Act of 1958, or which are combinable with rates in air transportation, shall be filed with the Board under Section 412 of the Act and shall not be placed in effect prior to Board approval.	3/1; 1/2/3

Accordingly, *it is ordered*, that: 1. Agreements C.A.B. 27159, C.A.B. 27197, and C.A.B. 27380 set forth in the finding paragraph above are approved subject to the conditions stated therein;

2. Tariffs implementing the agreements approved herein in air transportation as defined by the act shall be marked to expire not later than September 30, 1979; and

3. The motions of the Electronics Shippers requesting oral argument and an order directing the carriers to provide certain information in docket 30332 are denied.

4. The motions of Pan American World Airways, Inc., the Flying Tiger Line, and the Electronics Shippers for leave to file otherwise unauthorized documents are granted.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

All Members concurred, and Vice Chairman Minetti filed the attached concurring statement.

MINETTI, VICE CHAIRMAN, CONCURRING

I join in approving these three agreements with the conditions contained in the order. Those conditions, which would set as maxima rates established under the agreements and would permit IATA carriers to file rates below them, offer the real possibility of improving the competitive environment in the North/Central Pacific region. Competitive pressures in that area have in the past found some unusual avenues for release. Consequently, the Board has sought to foster the development of what it be-

lieved would be a rational cargo rate structure in the area by encouraging the use of general commodity rates and containerization. That undertaking, which has extended for several years, has plainly not achieved complete success.

Today's action by the Board should enhance the prospect for a movement toward a more competitive, and therefore more rational, cargo rate structure in the North/Central Pacific. While initially our action may create some turbulence, I hope that eventually it will result in a more simplified rate structure that will benefit as many shippers as possible. In the meantime, I believe we should press for greater competition in this and other regions, and monitor the progress of our efforts to be certain that consumers, as well as carriers, reap the benefits of less regulatory intrusion.

G. JOSEPH MINETTI.

APPENDIX.—North/Central Pacific scheduled cargo operations adjusted forecast year ending Mar. 31, 1979—Proposed rates

	Pan American	Tiger	Northwest	Composite
Operating revenues.....	\$75,861,000	\$134,057,000	\$58,860,000	\$268,778,000
Operating expenses.....	67,349,000	122,406,000	50,594,000	240,349,000
Operating profit.....	8,512,000	11,651,000	8,266,000	28,429,000
Interest expense.....	\$3,214,000	6,469,000	\$388,000	10,071,000
Taxable income.....	5,298,000	5,182,000	7,878,000	18,358,000
Income tax at 48 pct.....	2,543,000	2,487,000	3,781,000	8,811,000
Net income after tax.....	2,755,000	2,695,000	4,097,000	9,547,000
Add: interest expense.....	3,214,000	6,469,000	388,000	10,071,000
Return element.....	5,969,000	9,164,000	4,485,000	19,618,000
Investment.....	\$59,247,000	96,300,000	\$37,454,000	193,001,000
Return on investment (percent).....	10.07	9.52	11.97	10.16

¹Reallocates PA cargo revenues between North/Central and South Pacific.

²Reallocates all-cargo investment and interest expense based on revenue block-hours.

³Adjusts NW revenue downward to reflect decreases proposed in third agreement, using weighted average decrease in freight revenue forecast by PA and FT.

[FR Doc 78-22626 Filed 8-14-48; 8:45 am]

[6320-01]

[Docket 33068]

**TRANSPACIFIC LOW FARE ROUTE
INVESTIGATION**

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on September 7, 1978, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge Stephen J. Gross.

The Bureau of International Aviation is to circulate its Prehearing Conference materials on or before August 21, 1978.¹ Other parties are to submit their Prehearing Conference materials and/or responses to the Bureau's on or before August 31, 1978.

Dated at Washington, D.C., August 9, 1978.

STEPHEN J. GROSS,
Administrative Law Judge.

[FR Doc. 78-22711 Filed 8-14-78; 8:45 am]

[6320-01]

[Docket 31977; Order 78-8-37]

INTERNATIONAL DEVELOPERS, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 8th day of August, 1978.

By application filed January 11, 1978, International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. (Toyo) requests is-

¹By "Prehearing Conference materials" I mean proposed statements of issues, proposed stipulations, requests for information and evidence, statements of position and proposed procedural dates.

suance of a foreign air carrier permit authorizing it to engage in the indirect air transportation of persons and their accompanying baggage from any point or points in the United States to any point or points outside the United States and return.¹

No answers to the application and motion have been filed.

BACKGROUND

Toyo is not a direct air carrier and is not affiliated directly or indirectly with a direct air carrier or direct foreign air carrier. It operates no aircraft of its own and does not propose to do so. Toyo requests the Board to issue it a foreign indirect air carrier permit so as to authorize it to engage in indirect air transportation through the organization of advance booking charters, one-stop-inclusive tour charters, travel group charters, or any other type of charter flights in foreign air transportation.

OWNERSHIP AND CONTROL

International Developers, Inc. (Japan) (IDI) is a corporation organized and incorporated in 1974 under the laws of Japan. IDI has its principal place of business in Tokyo and engages in business from Japan to and from points throughout the world as a travel agency and as an indirect air carrier. Its capital stock is entirely owned by Japanese citizens. Toyo was incorporated September 18, 1974 in the State of California and is wholly owned subsidiary of IDI.² All nine officers and directors of IDI are citizens of Japan, and five of the six key personnel of Toyo are citizens of Japan.³

¹On May 4, 1978, Toyo filed a motion for order to show cause why its application should not be granted without a hearing.

²Application for Indirect Air Carrier Permit, Exhibit 2.

³Ibid., Exhibit 4.

On the basis of the foregoing, we tentatively conclude that Toyo is substantially owned and effectively controlled by citizens of Japan.

FINANCIAL AND OPERATIONAL FITNESS

The balance sheets of IDI show assets in excess of liabilities for the years ended December 1976 and 1975.⁴ The statement of profit and loss for IDI for the same years show a significant profit for the year ended December 31, 1976 and a very small loss for the year ended December 31, 1975. The most recent balance sheet for Toyo shows assets of \$418,946 and liabilities of \$332,487.⁵ In addition to the company's current investment, Parts 371, 372a, 373, 378 and 378a of the Board's Special Regulations, which require surety bonding and escrow arrangements, provide further protection for the traveling public against fiscal irresponsibility. Finally, IDI carries a multi-million dollar third-party liability insurance policy.⁶ Thus, it is tentatively concluded that all of the fitness requirements of section 402 of the Act are met by the applicant.

PUBLIC INTEREST

On the basis of comity and reciprocity, it is tentatively concluded that it is in the public interest to grant Toyo a foreign indirect air carrier permit. No party has claimed that Japan has restricted the ability of person of either U.S. or Japanese citizenship to become indirect air carriers, and U.S. tour operators do operate charters from Japan to the United States and other countries.⁷

On the basis of the foregoing, it is tentatively found and concluded that:

1. International developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. is fit, willing and able properly to perform the indirect foreign air transportation proposed in its application and to adhere to the provisions of the act and the rules, regulations, and requirements of the Board;

2. International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. is owned and effectively controlled by citizens of Japan;

3. Since no issues in this application appear to be contested, a hearing on the application is not required in the public interest;

4. It is in the public interest to issue a foreign indirect air carrier permit in the form of the attached specimen to

⁴Ibid., Exhibit 4.

⁵Ibid., Exhibit 7.

⁶Ibid., Exhibit 5.

⁷Ibid., Exhibit 5.

International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc., authorizing the carrier to engage indirectly in foreign air transportation of persons from any point or points in the United States to any point or points outside the United States, and return for a period of five years; and

5. The public interest requires that the exercise of the privileges granted by this permit should be subject to the terms, conditions, and limitations prescribed there, the conditions set forth in paragraphs (a) and (b) below, and such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board:

(a) With respect to the operations conducted pursuant to the authority granted here, the holder shall be subject to the provisions of Parts 371, 372a, 373, 378 and 378a of the Board's Special Regulations, as now or later amended;

(b) In using this authority (1) the name International Developers, Inc. (Japan) shall appear on all of the holder's advertising, tickets, stationery, and other public documents; (2) the above name will always be used in its entirety; and (3) words designating the holder's nationality shall be displayed at least as prominently as its most prominently displayed name on any material disseminated to the public. For purposes of this order, the holder's name shall include its legal name, trademarks, trade-names or any other name that may be used in conjunction with any of the above.

6. The grant of a permit to the applicant is not a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and will not be inconsistent with the policy objectives of the Energy Policy and Conservation Act of 1975 (EPACA).

All interested persons will be given 30 days following the adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific issues and to support such objections with detailed analysis. If an evidentiary hearing is requested, the objector should state the issue with respect to which a hearing is requested, and should state in detail why such a hearing is necessary and what relevant and material facts it would establish through such a hearing. Vague, general or unsupported objections will not be entertained.

It is therefore ordered that:

1. All interested persons be directed to show cause why the Board should not make final the tentative findings and conclusions here, and why an order to show cause should not be issued, subject to approval of the President pursuant to section 801(a) of the Act, issuing an indirect foreign air

carrier permit to International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. in the attached form;

2. Any interested persons having objections to the issuance of an order making final the tentative findings and conclusions or to the issuance of the proposed indirect foreign air carrier permit, shall, no later than September 7, 1978, file with the Board and serve on the persons named in paragraph 5 below a statement of objections, together with a summary of testimony, statistical data, and any evidence expected to be relied upon to support the statement of objections;

3. If timely and properly supported objections are filed, full consideration will be accorded matters or issues raised before further action is taken by the Board: *Provided, however,* That the Board may proceed to enter an order in accordance with the tentative findings and conclusions here if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Secretary may proceed to enter an order which (1) shall make final the tentative findings and conclusions here, and (2) shall issue a foreign indirect air carrier permit to the applicant, subject to the approval of the President, in the specimen form attached; and

5. This order shall be served on International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. the Ambassador of Japan, and the Departments of State and Transportation.

This order shall be published in the FEDERAL REGISTER and transmitted to the President.

PHYLLIS T. KAYLOR,⁸
Secretary.

[FR Doc. 78-22712 Filed 8-14-78; 8:45 am]

[Docket 32327-1; Order 78-7-106]

CONNER AIR LINES, INC. AND F. A. CONNER,
ET AL.

Former Large Irregular Air Service
Investigations

Correction

In FR Doc. 78-21305 appearing at page 33779 in the issue of Tuesday, August 1, 1978 on page 33783, first column, add after the first complete paragraph, the following paragraph:
"Our views have not changed."

⁸All Members concurred.

[6335-01]

COMMISSION ON CIVIL RIGHTS
CONNECTICUT ADVISORY COMMITTEE

Meeting; Amendment

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 Connecticut Advisory Committee (SAC) of the Commission originally scheduled for August 16, 1978 (FR Doc 78-18974), on page 29821 has been changed to August 23, 1978.

The meeting time and meeting place will remain the same.

Dated at Washington, D.C., August 9, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22641 Filed 8-14-78; 8:45 am]

[6335-01]

ILLINOIS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 10 p.m. on September 18, 1978, in the Education Building, Union Baptist Church, 1405 East Monroe, Springfield, Ill.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Midwestern regional office of the Commission, 230 South Dearborn Street, 32d Floor, Chicago, Ill. 60604.

The purpose of this meeting is to discuss the Chicago desegregation project and the special education workshops for a fiscal year 1979-80 project, and to gather information of civil rights in Springfield.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., September 18, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22642 Filed 8-14-78; 8:45 am]

[6335-01]

ILLINOIS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a Conference of the Illi-

nols Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 3 p.m. on September 23, 1978, City Council Chambers, 305 East Woods, Decatur, Ill. 62525.

Person 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, Ill. 60604.

The purpose of this conference/educational workshop, "Parents, Students Rights and Responsibilities in Education," for a community organization (Coalition for Community Improvement). Special attention will be given to Family Educational Rights, Special Education for the Handicapped, and School Record Acts.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 8, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22643 Filed 8-14-78; 8:45 am]

[6335-01]

IOWA 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 Iowa Advisory Committee (SAC) of the Commission will convene at 5 p.m. and will end at 7 p.m. on September 21, 1978, Ramada Inn Downtown, 929 Third Street, Des Moines, Iowa 50309.

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, Mo. 64106.

The purpose of this meeting is for planning followup activities to CETA report and new project planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 9, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22644 Filed 8-14-78; 8:45 am]

[6335-01]

MASSACHUSETTS 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 Massachusetts Advisory Committee (SAC) of the Commission will convene at 6 p.m. on September 14, 1978, and again at 5 p.m. on September 15, 1978, Car Springfield, Mass.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss Springfield's community development block grant program.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 8, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22645 Filed 8-14-78; 8:45 am]

[6335-01]

NEW YORK 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 New York Advisory Committee (SAC) of the Commission will convene at 4:30 p.m. and will end at 7 p.m. on September 21, 1978, at Phelps Stokes Fund, 102 87th Street, New York, N.Y.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Northeastern regional office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 9, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22646 Filed 8-14-78; 8:45 am]

[6335-01]

OHIO 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 Ohio Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 3 p.m. on September 9, 1978, Cincinnati Holiday Inn,

8th and Linn Street, Cincinnati, Ohio 45203.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Midwestern regional office of the Commission, 230 South Dearborn Street, 32d Floor, Chicago, Ill. 60604.

The purpose of this meeting is to discuss and refine the energy project for fiscal 1979 and 1980 also to discuss the health care project.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 8, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22647 Filed 8-14-78; 8:45 am]

[6335-01]

PENNSYLVANIA 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 Pennsylvania Advisory Committee (SAC) of the Commission will convene at 12 noon and will end at 3 p.m. on September 14, 1978, in the Federal Building and Courthouse, 228 Walnut Street, Room 202, Harrisburg, Pa. 17108.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Mid-Atlantic regional office of the Commission, 2120 L Street NW., Washington, D.C. 20037.

The purpose of this meeting is to discuss program planning, including monitoring of Lewisburg Penitentiary, State and local human relations commission, and higher education in Pennsylvania.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 8, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22648 Filed 8-14-78; 8:45 am]

[6335-01]

TENNESSEE 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 Tennessee Advisory Committee (SAC) of the Commission will convene at 5

p.m. and will end at 9 p.m. on September 5, 1978, and again on September 6, 1978, at 10 a.m. for the press conference, in the Ramada Inn-Central, 160 Union Avenue, Plantation Room, Memphis, Tenn.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Southern regional office of the Commission, 75 Piedmont Avenue NE., Atlanta, Ga. 30303.

The purpose of this meeting is to discuss Memphis police study, schedule followup to the report for release in Knoxville, Nashville, and Chattanooga. Briefing for SAC release of report (press conference) for September 6, 1978.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 8, 1978.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 78-22649 Filed 8-14-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

STADT NURNBERG, WEST GERMANY

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, Stadt Nurnberg; b. Address, Tiergarten, Am Tiergarten 30, D-8500 Nurnberg, West Germany.

2. Type of permit: Public Display.

3. Name and Number of animals: Atlantic bottlenose dolphin (*Tursiops truncatus*), 2.

4. Type of take: To capture and maintain in a permanent facility.

5. Location of activity: Copano Bay, Rockport, Tex.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

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, on or before September 14, 1978. 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.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11614, March 12, 1975). In this regard the application:

(a) Was submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the Veterinaramt of West Germany, that Department being responsible, among other things for ensuring the suitable care of animals in captivity;

(b) Includes: i. A verification from the Veterinaramt of West Germany, of the information set forth in the application;

ii. A certification from the Veterinaramt that the Government of West Germany is prepared to monitor compliance with the terms and conditions of the permit, and will do so, if and when necessary; and

iii. A statement that the Veterinaramt will have no objection to a NMFS decision to amend, suspend, or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Veterinaramt of West Germany have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Fla. 33702.

Dated: August 9, 1978.

ROLAND A. FINCH,
Acting Assistant, Director for
Fisheries Management, Na-
tional Marine Fisheries Ser-
vice.

[FR Doc. 78-22733 Filed 8-14-78 8:45 am]

[3510-60]

National Telecommunications and Information Administration

POSITIONS AVAILABLE IN NEEDS ASSESSMENT AND TELECOMMUNICATIONS PLANNING IN RURAL COMMUNITIES

The Office of Telecommunications Applications of the National Telecommunications and Information Administration (NTIA) is seeking persons presently employed in rural areas (by a mixed Federal-State, State, local, or tribal government agency or institution of higher education) to conduct studies of the telecommunications needs of their home communities. Qualified individuals should submit an application in conjunction with the agency or institution with which they are affiliated. Two or more individuals will be selected for temporary (1-year) Federal employment in fiscal year 1979 in different areas of the Nation. Those selected will be given training in telecommunications services and will conduct field studies of rural service needs that might be addressed by conventional or advanced telecommunications technologies. They will consult with local communities on the planning of telecommunications systems responsive to the service needs identified in each community; NTIA, of course, will provide appropriate technical assistance.

The individuals selected will be temporarily assigned to NTIA for 12 months under the Intergovernmental Assignment Program. Except for periods of fieldwork and training, they will continue to reside in their home communities. Nominations must show evidence that the individuals will be given administrative support by their home agencies or institutions. It is expected that the candidates will resume work with their agencies or institutions after the assignment periods. Individuals who are affiliated with institutions and communities which have some experience with and commitment to telecommunications applications may be given preference; such experience and commitment, however, will not be the sole determining factors of selection.

The study will require extensive contacts with personnel in local organizations to assess community problems and needs which may be addressed through telecommunications and to identify local and State resources

which might support such services. NTIA will provide a format and overall guidance for the study including technical assistance in the identification of possible telecommunications-based services. By the end of the study period, the researcher will, with the assistance of NTIA, complete a report describing in detail the community needs and services which might be addressed through improved telecommunications and the support in local and State organizations for such services (including likely budgetary support).

The results of this study will inform NTIA about the possibilities of improved communications services in rural areas and about barriers to such services. Should the study results be encouraging and should the study communities wish to go forward in developing new services, NTIA will provide assistance in identifying possible funding sources from Federal agencies.

QUALIFICATIONS

Candidates must be familiar with a rural community, preferably living and working in the community. Commitment to the rural regions in which the candidates reside is an important consideration since one objective of the program is to enhance local telecommunications applications know-how. If the individual and her or his institution or agency have been working with a rural community on in-place or planned telecommunications applications, this would be viewed favorably in the selection process.

Candidates need not be experts in the field of telecommunications, but they must be able to understand quickly from literature and examples provided by NTIA the basic applications likely to be of use in rural areas. For this purpose, candidates must be free to travel occasionally to other study sites of to offices of NTIA in Washington, D.C., and Boulder, Colo., to participate in briefings, short study seminars, and fieldwork.

NTIA will negotiate with the candidates' employers regarding administrative services and support of the candidates' fringe benefits. Generally, it is expected that NTIA will provide salary, travel expenses, and technical assistance and that the employer would continue to provide office space and support services (e.g., secretarial) as evidence of a commitment to the work of the study.

Deadline for responses will be October 6, 1978, and candidate review and selection may be completed by November 1, 1978. Negotiations between NTIA and candidate's employers will begin soon thereafter. (Candidates may be employees of a mixed Federal-State, State, local, or tribal govern-

mental agency, or academic institution.) It is anticipated that the processing of all documents and the handling of all negotiations can be completed by December 1, 1978. Candidates may be hired as early as December 1, 1978, and may need to begin 1- to 2-week briefings in Washington, D.C., or Boulder during December. Employees of academic institutions may be able to initiate their periods of employment on a part-time basis, but it is expected that they would be available on a full-time basis as soon as possible after December 1, 1978.

The accompanying statement should include a discussion of local institutional support available to meet the candidate's responsibilities and needs as a participant in the program. In addition, the needs assessment and telecommunications capabilities of local institutions which would be relied upon in carrying out the study should be discussed.

To apply for these positions, candidates should send a resume, Civil Service Form 171, and a supporting statement from their employing agency to:

National Telecommunications and Information Administration, 1800 G Street NW., Washington, D.C. 20504, Attention: Carol Lee Hilewick, 202-395-4737.

VINCENT SARDELLA,
*Rural Communications
Program Manager.*

[FR Doc. 78-22699 Filed 8-14-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

IMPORTS OF COTTON, WOOL, AND MAN-
MADE FIBER TEXTILES AND APPAREL

Bilateral Agreements

AUGUST 10, 1978.

In furtherance of the objectives of, and under the terms of, the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as extended on December 15, 1977, the United States has negotiated bilateral agreements concerning imports of cotton, wool, and man-made fiber textiles and apparel from Brazil, the Republic of China, Colombia, Egypt, Haiti, Hong Kong, India, Japan, the Republic of Korea, Macau, Malaysia, Mexico, Pakistan, the Philippines, Poland, Romania, Singapore, and Thailand.

In the past, when shipments exported from any of such countries before the end of an agreement year have exceeded that year's ceiling for one or more product groups or categories, the Committee for the Implementation of Textile Agreements (CITA) has generally permitted entry of such excess shipments at the start of the following

year, charging such entries to the ceilings established for that following year. The purpose of this notice is to advise importers and other interested parties that this practice of permitting such entries is not automatic or mandatory.

CITA may direct the Commission of Customs not to permit entry at the start of a new agreement year of shipments in excess of agreement levels of the previous year.

FOR FURTHER INFORMATION CONTACT:

Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

ARTHUR GAREL,
*Acting Chairman, Committee for
the Implementation of Textile
Agreements.*

[FR Doc. 78-22750 Filed 8-14-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. 78-002-NG, Et Al.]

NORTHERN NATURAL GAS CO. AND GREAT
LAKES GAS TRANSMISSION CO.

Order Accepting Additional Interveners

This order supplements the Economic Regulatory Administration's (ERA) Order on Consolidation and Acceptance of Interveners into the Consolidated ERA Docket No. 78-002-NG, et al., dated June 29, 1978 (the June 29, 1978 order).

The following petitioners requested intervention in ERA Docket No. 78-002-NG, et al., and have provided adequate justification for being granted such status:

PETITIONER AND DATED FILED

Iowa Power & Light Co., May 1, 1978.
Iowa Electric Light & Power Co., May 2, 1978.
Iowa Public Service Co., May 11, 1978.
Public Service Commission of Wisconsin, May 22, 1978.
Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin), July 24, 1978.

ERA has concluded that neither would it be consistent with a thorough review of the applications, nor would it serve any useful purpose, to exclude Iowa Public Service Co., the Public Service Commission of Wisconsin, Northern States Power Co. (Minnesota), and Northern States Power Co. (Wisconsin) from participating in these proceedings only because their motions for intervention were received after the closing date for receipt of petitions to intervene (May 10, 1978) had passed.

Therefore, these petitions for intervention are hereby granted and each intervenor is accorded the rights of a party in the consolidated proceeding, as ordered in ERA's June 29, 1978, order.

Issued in Washington, D.C., August 9, 1978.

DORIS J. DEWTON,
Acting Assistant Administrator,
Fuels Regulation, Economic
Regulatory Administration.

[FR Doc. 78-22719 Filed 8-14-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. CP74-126]

EL PASO NATURAL GAS CO.

Petition to Amend Order

AUGUST 7, 1978.

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso), a Delaware corporation, whose mailing address is P.O. Box 1492, El Paso, Tex. 79978, filed at Docket No. CP78-126, pursuant to section 7(c) of the Natural Gas Act and § 1.7 of the Commission's Rules of Practice and Procedure and § 157.17 of the Commission's Regulations under the Natural Gas Act, a petition to amend the order of the Federal Power Commission heretofore issued in said docket on April 2, 1975, as amended, and an application for a temporary certificate necessary so as to authorize the establishment of a new delivery point to facilitate additional exchange deliveries between El Paso and Natural Gas Pipeline Co. of America (Natural), all as more fully set forth in the petition to amend order and application for a temporary certificate on file with the Commission and open to public inspection.

The instant petition to amend order and application for a temporary certificate states that by Federal Power Commission order issued April 2, 1975, as amended, at Docket Nos. CP74-126 and CP74-162, El Paso and Natural, respectively, received authorization to construct and operate certain facilities and for the exchange of natural gas in quantities aggregating up to 65,000 Mcf daily.

The petition further states that El Paso has advised Natural that it has acquired and expects to further acquire additional natural gas supplies from various sources located in offshore Texas and offshore Louisiana areas of the Gulf of Mexico, which it desires to cause to be delivered to Natural under the existing exchange arrangement. Certain of the additional natural gas supplies will be purchased

by El Paso from Mobile Oil Corp. ("Mobil") pursuant to a Gas Sales Contract dated January 20, 1978 ("Sales Contract"). In accordance with said Sales Contract, Mobil has agreed to sell and deliver and El Paso has agreed to purchase and receive thirty-three and one-third (33.3) percent of the natural gas produced by Mobil from Blocks A-334 and A-335 located in the High Island Area, East Addition, South Extension, offshore Texas. El Paso projects that such supply will aggregate approximately 20.4 MMcf daily. In addition, El Paso projects availability of approximately 9 MMcf per day and 2.9 MMcf per day from its working interest in Blocks A-309 and A-298, respectively, through December 1979, and declining thereafter.

In order to facilitate El Paso's receipt of such additional offshore gas supplies, El Paso and Natural have executed Amended Agreement No. 11 dated July 19, 1978, further amending the Gas Exchange Agreement ("Exchange Agreement") dated September 24, 1973, as previously amended, which Amended Agreement provides that El Paso will cause the delivery by Michigan Wisconsin of up to 25,000 Mcf per day for El Paso's account to Natural for a limited term commencing on or about August 1, 1978, and continuing until June 1, 1979, at an existing point of interconnection of the pipeline systems of Natural and Michigan Wisconsin located in Hansford County, Tex., hereinafter referred to as the Hansford Exchange Point. Volumes of gas received at the Hansford Exchange Point by Natural, and delivered by Michigan Wisconsin for El Paso's account, will be commingled with other gas delivered by Michigan Wisconsin to Natural. As set forth in the Amended Agreement Michigan Wisconsin will deliver said volumes into measurement facilities owned and operated by Natural and no facilities are required by El Paso at such point. Deliveries of natural gas received by Natural from Michigan Wisconsin for El Paso's account will be concurrently delivered to El Paso by Natural at an existing point of interconnection of Natural's pipeline and El Paso's 20 inch O.D. pipeline in Ward County, Tex., hereinafter referred to as the Lockridge Exchange Point. With respect to such point, Natural shall cause the delivery of exchange gas through existing measurement facilities, which facilities are owned and operated by Natural; therefore, no additional facilities are required by Natural or El Paso at such exchange point.

The additional volumes El Paso will cause Michigan Wisconsin to deliver under the arrangements described herein and which Natural will deliver to El Paso at an existing interconnection are for a limited term expiring

June 1, 1979. Further, the quantity of up to 25,000 Mcf per day to be delivered to Natural described herein is proposed to be a separate quantity which may be delivered by El Paso in addition to the presently authorized maximum exchange deliveries of 65,000 Mcf per day permitted at Docket Nos. CP74-126 and CP74-162.

El Paso filed concurrently with its petition to amend order and application for a temporary certificate, pursuant to Part 154 of the Commission's Regulations, its tariff filing which incorporates into its special Rate Schedule Z-3 of its Third Revised Volume No 2 Tariff, the provisions of Amended Agreement No. 11.

Pending issuance by the Commission of such requested authorization, El Paso also requests the issuance of a temporary certificate authorizing El Paso and Natural to establish the Hansford Exchange Point as a new point of delivery by El Paso under the exchange arrangements authorized by the Commission at Docket Nos. CP74-126 and CP74-162 and to utilize the existing Lockridge Exchange Point to permit the additional exchange receipts by El Paso of up to 25,000 Mcf daily.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22670 Filed 8-14-48; 8:45 am]

[6740-02]

[Docket No. CP74-126]

EL PASO NATURAL GAS CO.

Tariff Filing

AUGUST 7, 1978

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Part 154 of the Commission's Regulations under the Natural Gas, Third Revised Sheet No. 445-A, Original Sheet No. 445-A.1, Second Revised Sheet No. 445-F, and Seventh Revised Sheet Nos. 447 and 451, to special Rate Schedule Z-3 contained in El Paso's FERC Gas Tariff, Third Revised Volume 2.

El Paso states that special Rate Schedule Z-3 is comprised of the Gas Exchange Agreement dated September 24, 1973, as amended, between El Paso and Natural Gas Pipeline Company of America (Natural) providing for the exchange of natural gas between the parties at points in Beckham, Dewey and Washita Counties, Okla., Eddy and Leas Counties, New Mex., and Reeves and Ward Counties, Tex.¹ El Paso further states that the purpose of the instant tender is to incorporate the Hansford Exchange Point and provisions related thereto as a part of the exchange agreements authorized under El Paso's Rate Schedule A-3, pursuant to Amending Agreement No. 11 dated July 19, 1978, between the parties. Concurrent with the instant tender, El Paso filed a petition to amend order and application for a temporary certificate so as to authorize the establishment of the new exchange delivery point and additional exchange volumes, on a limited-term basis, provided by said Amending Agreement No. 11.

El Paso has requested, pursuant to § 154.51 of the Commission's Regula-

¹By order issued Apr. 2, 1975, as amended, at Docket Nos. CP74-126 (El Paso) and CP74-162 (Natural) the Federal Power Commission issued a certificate of public convenience and necessity authorizing such exchange between El Paso and Natural and accepted for filing and placed into effect said special rate schedule. Permanent authorizations for additional delivery points and the exchange of up to 65,000 Mcf per day were granted by orders issued Feb. 14, 1977, Mar. 28, 1977, Apr. 27, 1977, Aug. 30, 1977 and Apr. 4, 1978.

tions, that waiver be granted of the notice and certificate requirements of § 154.22 of said Regulations, in order that the tendered tariff sheets may be permitted to become effective on a date coincident with the date of issuance of the requisite authorization requested by the subject petition to amend order and application for temporary certificate filed concurrently with the instant tariff filing.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before August 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22671 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-444]

EL PASO NATURAL GAS CO.

Initial Rate Schedule Filing

AUGUST 7, 1978.

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso) filed, pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, Original Sheet Nos. 1121 through 1131 to its FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states that the tendered tariff sheets will establish initial special Rate Schedule X-43 which rate schedule is comprised of the Gas Exchange Agreement ("Exchange Agreement") dated July 19, 1978, between El Paso and Columbia Gas Transmission Corp. ("Columbia"). El Paso states that the subject Exchange Agreement provides for the transportation and delivery, on an exchange basis, between the parties of certain volumes of gas produced from properties located in offshore areas of the Gulf of Mexico and Eddy County N. Mex. The subject Exchange Agreement is an integral part of certain arrangements which have been undertaken by El

Paso in order to make newly acquired offshore gas reserves available for utilization as a part of its interstate transmission pipeline system general supply.

Concurrent with the instant tender, El Paso and Columbia filed, pursuant to section 7(c) of the Natural Gas Act, a joint application for a certificate of public convenience and necessity and request for a temporary certificate seeking authorization to transport and deliver, on an exchange basis, natural gas between the parties, and to grant blanket authorizations to enable future additional exchange deliveries as new sources of supplies become available to each party.

El Paso has requested, pursuant to § 154.51 of the Commission's Regulations, that waiver be granted of the notice and certificate requirements of § 154.22 of said Regulations and that the Commission accept the tendered tariff sheets for filing and permit them to become effective on a date coincident with the date El Paso and Columbia receive requisite certificate authority covering the transportation and delivery, on an exchange basis, of natural gas pursuant to the Gas Exchange Agreement dated July 19, 1978, between the parties.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before August 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-22672 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-446]

EL PASO NATURAL GAS CO.

Initial Rate Schedule Filing

AUGUST 7, 1978.

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso) filed, pursuant to Part 154 of the Commis-

sion's Regulations under the Natural Gas Act, Original Sheet Nos. 1132 through 1143 to its FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states that the tendered tariff sheets will establish initial special Rate Schedule X-44 which rate schedule is comprised of the Gas Exchange Agreement (Exchange Agreement) dated July 19, 1978, between El Paso and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin). El Paso states that the subject Exchange Agreement provides for the limited term exchange of up to 25,000 Mcf per day, at points located in Cameron Parish, La., and Hansford County, Tex. The subject Exchange Agreement is an integral part of certain arrangements designed to enable El Paso to make newly acquired offshore gas reserves in the Gulf of Mexico available for utilization as a party of its interstate transmission pipeline system general supply.

Concurrent with the instant tender, El Paso and Michigan Wisconsin filed, pursuant to section 7(c) of the Natural Gas Act, a joint application for a certificate of public convenience and necessity and request for a temporary certificate seeking authorization for the transportation and the exchange of natural gas by and between the parties.

El Paso has requested, pursuant to § 154.51 of the Commission's regulations, that waiver be granted of the notice and certificate requirements of § 154.22 of said Regulations and that the Commission accept the tendered tariff sheets for filing and permit them to become effective on a date coincident with the date El Paso and Michigan Wisconsin receive requisite certificate authority covering the transportation and exchange of natural gas pursuant to the Gas Exchange Agreement dated July 19, 1978, between the parties.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before August 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are

on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22676 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-447]

EL PASO NATURAL GAS CO.

Initial Rate Schedule Filing

AUGUST 7, 1978.

Take notice that on July 26, 1978, El Paso Natural Gas Co. (El Paso), filed, pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, Original Sheet Nos. 1167 through 1174 to its FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states that the tendered tariff sheets will establish initial special Rate Schedule Z-5 which rate schedule is comprised of a letter agreement dated July 13, 1978, between El Paso and Transcontinental Gas Pipe Line Corp. (Transco). El Paso states that the subject letter agreement provides for the sale by El Paso and the purchase by Transco, on a best efforts basis, of certain quantities of excess offshore natural gas, acquired by El Paso from various sources in the offshore areas of the Gulf of Mexico, which can be made available to High Island Offshore System (HIOS) for transportation.

El Paso further states that proposed initial special Rate Schedule Z-5 recognizes that, from time to time, the quantities of natural gas available to El Paso, from both present and future offshore sources, that can be made available to the HIOS system may exceed the quantities of gas which El Paso's arrangements with others will permit to be moved or displaced to the El Paso interstate pipeline system. El Paso states that the sales arrangement provided by tendered special Rate Schedule Z-5 has been executed by the parties in order to avoid a take or pay situation with respect to those volumes it is unable to make available to its interstate pipeline system.

Concurrent with the instant tender, El Paso filed, pursuant to section 7(c) of the Natural Gas Act, an application for a certificate of public convenience and necessity and request for a temporary certificate to sell and deliver excess quantities of offshore gas to Transco in accordance with the provisions of the Letter Agreement comprising the related special rate schedule tendered in the instant filing.

El Paso has requested, pursuant to § 154.51 of the Commission's regulations, that waiver be granted of the notice and certificate requirements of § 154.22 of said regulations and that

the Commission accept the tendered tariff sheets for filing and permit them to become effective on a date coincident with the date El Paso receives requisite authorization to initiate the sale to Transco.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before August 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22677 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-447]

EL PASO NATURAL GAS CO.

Pipeline Application

AUGUST 7, 1978.

Take notice that on July 26, 1978, El Paso Natural Gas Co. (El Paso), a Delaware corporation, whose mailing address is P.O. 1492, El Paso, Tex. 79978, filed an application at Docket No. CP78-447 under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery in interstate commerce to Transcontinental Gas Pipe Line Corp. (Transco) of certain excess quantities of natural gas from El Paso's sources of supply located in the offshore Texas and offshore Louisiana areas of the Gulf of Mexico, and permitting, as necessary, under blanket authorization, the addition or deletion of offshore blocks which will be used to determine El Paso's weighted average cost of offshore gas for purposes of the arrangement between the parties, and for a temporary certificate, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that El Paso has undertaken an active role in the development, acquisition, and purchase of certain offshore natural gas sup-

plies so as to make additional quantities of natural gas available to its interstate transmission pipeline system customers. El Paso has entered into exchange agreements with Transco, Columbia Gas Transmission Corp., Michigan Wisconsin Pipe Line Co., and Natural Gas Pipeline Co. of America, individually, for the transportation and/or delivery of gas, on an exchange basis, in order to make such offshore natural gas supplies available to El Paso's system supply.

The application further states that El Paso anticipates that from time to time quantities of natural gas available to it from offshore sources in the Gulf of Mexico available to the High Island Offshore System ("HIOS") will exceed the quantities of natural gas which El Paso is able to exchange pursuant to the above mentioned or other arrangements. Therefore, El Paso proposes to sell and Transco desires to purchase, on a best efforts basis, such excess offshore natural gas from time to time.

El Paso and Transco have entered into a Letter Agreement dated July 13, 1978 ("Letter Agreement") wherein El Paso agrees to sell and Transco agrees to purchase, on a best efforts basis, those quantities of offshore natural gas which are available to El Paso for delivery into the HIOS system in excess of the quantities of offshore natural gas which El Paso has been able to exchange or otherwise make available to its system.

Pursuant to the Letter Agreement, El Paso shall be required to construct or cause the construction of any facilities that may be required for the delivery of such excess natural gas to Transco. No additional facilities are proposed herein to implement the initial sales.

With respect to rates and charges for the sale of natural gas to Transco, Transco shall pay each month to El Paso for each Mcf of excess gas sold by El Paso and purchased by Transco:

(a) El Paso's weighted average cost of offshore gas, from the offshore blocks listed in Exhibit A to the Letter Agreement.

(b) The then current cost to El Paso, on a 100 percent (100 percent) load-factor basis, of providing transportation of excess gas through offshore facilities including those facilities in which El Paso has an ownership interest. As part of the charge for transportation, Transco shall also pay to El Paso the area or national ceiling rate for Transco's allocable share of "Unaccounted For" gas (as defined in the transportation agreements between El Paso and HIOS, and El Paso and U-T Offshore System ("U-TOS")) which El Paso incurs as a result of its gas being transported by HIOS and U-TOS.

In determining El Paso's weighted average cost of offshore gas, El Paso's cost of gas from its own production shall not exceed the highest applica-

ble area or national ceiling rate, as long as such a rate exists.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22678 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket Nos. R-478 and RP72-150, et al.]

EL PASO NATURAL GAS CO.

Filing Report of Refund Acknowledgment

AUGUST 1, 1978.

On July 21, 1978, El Paso Natural Gas Co. (El Paso) filed with the Commission a report that it had received acknowledgment of receipt of refunds from all its jurisdictional customers in this docket.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before August 21, 1978. Comments will be considered by the Commission in determining the appropri-

ate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-22679 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-444]

EL PASO NATURAL GAS CO. AND COLUMBIA
GAS TRANSMISSION CORP.

Joint Pipeline Application

AUGUST 7, 1978.

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso), a Delaware corporation, whose mailing address is P.O. Box 1492, El Paso, Tex. 79978, and Columbia Gas Transmission Corp. (Columbia), a Delaware corporation, whose mailing address is P.O. Box 1273, Charleston, W.Va. 25325, filed a joint application at Docket No. CP78-444 under section 7(c) of the Natural Gas Act for a certification of public convenience and necessity authorizing the transportation and delivery, on an exchange basis, of certain natural gas supplies which (i) are available, or which may become available, to El Paso from various sources in the offshore Texas and offshore Louisiana areas of the Gulf of Mexico which are accessible to the High Island Offshore System (HIOS); and (ii) are available to Columbia from certain gas wells located new El Paso's existing gathering system in the State of New Mexico. El Paso and Columbia also seek blanket authorization herein under section 7(c) of the Act to permit, from time to time, the addition of wells and delivery points to the Gas Exchange Agreement dated July 17, 1978 (Exchange Agreement), between El Paso and Columbia, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that in order to facilitate the proposed exchange arrangements, El Paso and Columbia have entered into an Exchange Agreement wherein Columbia has agreed to cause to be delivered to El Paso and El Paso has agreed to accept and receive such quantities of natural gas as Columbia may have an interest in and as may be produced from certain wells located in Eddy County, N. Mex., and described in Exhibit B to the Exchange Agreement. In exchange therefor, El Paso has agreed to concurrently cause to be delivered to Columbia, or its designee, and Columbia has agreed to accept and receive an equiva-

lent quantity of natural gas, on an MMBtu basis, at the points described in Exhibit A to the Exchange Agreement.

The application further states that it is the intent of El Paso and Columbia to cooperate to provide a free exchange of natural gas. Unless otherwise specifically provided, the party receiving natural gas at any point pursuant to the Exchange Agreement shall be responsible for the installation, ownership, maintenance and operation of all facilities necessary to receive such natural gas. With respect to those facilities necessary for El Paso to receive natural gas delivered for Columbia's account from the Keohane Fed. Com. No. 1 well located in Eddy County, N. Mex., El Paso shall own, install, operate and maintain approximately .61 miles of 4½" O.D. gathering pipeline and one (1) 4½" O.D. standard orifice meter run, with associated appurtenances. Columbia has agreed, pursuant to the Exchange Agreement, to pay to El Paso 50 percent of the total actual costs incurred by El Paso in obtaining, constructing and installing such facilities, which costs are presently estimated to be \$72,500. Other than the above mentioned nonjurisdictional gathering facilities, no additional facilities are required by El Paso or Columbia in order to accomplish the arrangements described herein.

El Paso has arranged for the long-term transportation by HIOS of the natural gas supplies available to El Paso from offshore areas in the Gulf of Mexico pursuant to a Transportation Agreement dated February 15, 1978, filed with the Commission by HIOS as HIOS Rate Schedule T-13, which provides for the transportation and delivery of natural gas by HIOS, for El Paso's account, from the terminus of the 2.80 miles, 16" O.D. pipeline extending from Block A-334 to the existing point of interconnection between the pipeline systems of HIOS and U-T Offshore System ("U-TOS"). In addition, El Paso and U-TOS have executed a Transportation Agreement dated May 1, 1978, on file with the Commission as Rate Schedule T-7 to U-TOS' FERC Gas Tariff, Original Volume No. 2, providing for the transportation of natural gas by U-TOS, for El Paso's account, from said point of interconnection to U-TOS' separation plant located at Johnson's Bayou, La. At that location El Paso's gas will be delivered to Transcontinental Gas Pipe Line Corp. ("Transco") and Transco, pursuant to an Exchange Agreement dated July 19, 1978, with El Paso, will thereafter deliver to Columbia such quantity of gas, for El Paso's account, at Mobil's Cameron Meadows Plant where the system of Columbia Gulf Transmission Compa-

ny, a subsidiary of Columbia, connects in Cameron Parish, La. El Paso will bear the transportation charges thereunder in order to have its offshore supplies available to it onshore, which charges shall be based upon the contract demand quantities committed to El Paso under each agreement. The exchange arrangement between El Paso and Transco providing for the delivery of El Paso's gas to Columbia will be accomplished without charge.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22673 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-446]

**EL PASO NATURAL GAS CO. AND MICHIGAN
WISCONSIN PIPE LINE CO.**

Joint Pipeline Application

AUGUST 7, 1978.

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso), a Delaware corporation, whose mailing

address is P.O. Box 1492, El Paso, Tex. 79978, and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), a Delaware corporation whose mailing address is One Woodward Avenue, Detroit, Mich. 48226, filed a joint application at Docket No. CP78-446 under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the limited-term transportation by Michigan Wisconsin and the delivery in exchange by El Paso and Michigan Wisconsin of up to 25,000 Mcf of natural gas per day, commencing on or about August 8, 1978, and continuing June 1, 1979, and for a temporary certificate, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that El Paso and Michigan Wisconsin have entered into a Letter Agreement dated July 13, 1978 (Letter Agreement) covering the transportation of gas by Michigan Wisconsin for the account of El Paso and a Gas Exchange Agreement dated July 19, 1978 (Exchange Agreement), providing for the exchange of gas between the parties. Pursuant to said Letter Agreement, Michigan Wisconsin has agreed to accept such quantities of natural gas, up to 25,000 Mcf per day, which its operating conditions permit and which El Paso has arranged to have transported and delivered to Michigan Wisconsin by High Island Offshore System (HIOS), for El Paso's account, at the West Cameron Area, Block 167, Offshore Louisiana. Michigan Wisconsin will thereafter transport and deliver, and receive for El Paso's account, an equivalent quantity of gas, on an MMBtu basis, as it received from HIOS at Block 167, at its Grand Chenier South measurement station, Cameron Parish, La.

For all quantities so transported, El Paso agrees to pay Michigan Wisconsin three and five-tenths cents (3.5¢) per Mcf (14.73 p.s.i.a.). The agreement shall continue in effect until June 1, 1979.

In addition, pursuant to the Exchange Agreement, Michigan Wisconsin has agreed to accept natural gas which El Paso has caused to be delivered at the Grand Chenier South measurement station and in exchange therefor shall concurrently deliver equivalent quantities of natural gas, on an MMBtu basis, to Natural Gas Pipeline Company of American (Natural) for El Paso's account, at an existing point of interconnection between the systems of Michigan Wisconsin and Natural in Hansford County, Tex. Such quantities of natural gas are not to exceed 25,000 Mcf daily and are subject to the operating conditions on Michigan Wisconsin's existing system. Upon the delivery of such quantities of natural gas by Michigan Wisconsin

to Natural, for El Paso's account, Natural has agreed to deliver equivalent quantities, on an MMBtu basis, to El Paso at an existing point of interconnection between the systems of Natural and El Paso in Ward County, Tex.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc 78-22675 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-445]

**EL PASO NATURAL GAS CO. AND
TRANSCONTINENTAL GAS PIPE LINE CORP.**

Joint Pipeline Application

AUGUST 8, 1978.

Take notice that on July 24, 1978, El Paso Natural Gas Co. (El Paso), a Delaware corporation, whose mailing address is P.O. Box 1492, El Paso, Tex. 79978, and Transcontinental Gas Pipe Line Corp. (Transco), a Delaware corporation, whose mailing address is P.O. Box 1396, Houston, Tex. 77001, filed a joint application at Docket No.

CP780445 under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and delivery, on an exchange basis, of certain natural gas supplies which are available, or which may become available, to (i) El Paso, for various sources in the offshore Texas and offshore Louisiana areas of the Gulf of Mexico which can be made available to the High Island Offshore System (HIOS) and the U-T Offshore System (U-TOS) for transportation to onshore; and (ii) Transco, from wells located near El Paso's existing interstate system in the States of Texas and New Mexico, and for a temporary certificate, all as more fully set forth in the joint application on file with the Commission and open to public inspection.

The application states that El Paso and Transco have entered into a Gas Exchange Agreement dated July 19, 1978 (Exchange Agreement) wherein Transco has agreed to deliver to El Paso and El Paso has agreed to accept and receive, such quantities of natural gas as Transco will purchase from certain specified wells located in Roberts County, Tex., and Eddy County, N. Mex. In exchange therefor, El Paso has agreed to concurrently deliver or cause to be delivered to Transco and Transco has agreed to accept and receive an equivalent quantity for natural gas, on an MMBtu basis, at the points described Exhibit A to the Exchange Agreement.

In order to facilitate the delivery by Transco of natural gas to El Paso from the CK Federal No. 1 well located in Eddy County, N. Mex., El Paso will install, operate and maintain and Transco will pay for a portion of approximately .82 miles of 4½" O.D. gathering pipeline and one (1) 4½" O.D. Standard orifice meter run, with associated appurtenances. In addition, in order for Transco to deliver natural gas to El Paso from the Campbell Ranch area located in Roberts County Tex., El Paso shall install, operate and maintain and Transco will pay for a portion of approximately 2.9 miles of 4½" O.D. and 6½" O.D. gathering pipeline and three (3) 4½" O.D. Standard orifice meter runs, with associated appurtenances.

The application further states that El Paso has arranged for the transportation by HIOS of the natural gas supplies available to El Paso from offshore areas in the Gulf of Mexico pursuant to a Transportation Agreement dated February 15, 1978, filed with the Commission by HIOS as HIOS Rate Schedule T-13, which provides for the transportation and delivery of natural gas by HIOS, for El Paso's account, from the terminus of the 2.80 mile, 16" O.D. pipeline, extending from Block A-334, to the existing point of inter-

connection between the pipeline systems of HIOS and U-TOS. In addition, El Paso and U-TOS have executed a Transportation Agreement dated May 1, 1978, on file with the Commission as Rate Schedule T-7 to U-TOS' FERC Gas Tariff, Original Volume No. 2, providing for the transportation of natural gas by U-TOS, for El Paso's account, from said point of interconnection to the tailgate of the separation plant at Johnson's Bayou.

It is the intent of the Applicants to cooperate to provide a free exchange of natural gas. Unless otherwise specifically provided, the party receiving natural gas at any point pursuant to the Exchange Agreement shall be responsible for the installation, ownership, maintenance and operation of all facilities (including measurement facilities) necessary to receive natural gas delivered to it. Further, unless otherwise specifically provided, the party delivering natural gas shall install, maintain, and operate, or cause the installation, maintenance, and operation of, all facilities (including measurement facilities) necessary to deliver gas pursuant to the Exchange Agreement.

The exchange of natural gas as described herein is intended to be accomplished on a reasonably concurrent basis. However, should an imbalance occur, the Exchange Agreement provides that any such imbalance shall be carried forward to the next month and shall be eliminated as quickly as possible. In the event the Applicants anticipate that Transco shall have quantities of natural gas consistently available to it at the points described in Exhibit B to the Exchange Agreement in excess of those quantities expected to be available to El Paso, at the points described in Exhibit A, for exchange pursuant to said Exchange Agreement, representatives of El Paso and Transco shall promptly meet to determine the method by which El Paso shall eliminate any resulting imbalance.

The Exchange Agreement shall continue in full force and effect for a primary term extending through fifteen (15) years from the date of first deliveries and thereafter from year to year subject to termination upon expiration of the primary term or upon any subsequent anniversary thereof, upon 12 months notice by either party to the other.

Applicants also requested that the authorization sought herein, when issued, specifically permit the transportation and delivery, on an exchange basis, of additional supplies of natural gas as may be agreed to by the Applicants from additional wells located in the States of Texas and New Mexico, which Transco will purchase and which may be attached to El

Paso's system as production therefrom becomes available to Transco, and of additional delivery points to deliver gas from offshore areas of the Gulf of Mexico which may become available to El Paso and may be made available to HIOS and U-TOS for transportation. Upon inclusion of such additional wells and additional delivery points to the Exchange Agreement, Applicant propose to promptly file with the Commission, pursuant to Part 154 of the Commission's Regulations, the revisions to Exhibits A and/or B of the Exchange Agreement.

Any person desiring to heard or to make any protest with reference to said application, on or before August 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the Procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-22674 Filed 8-14-78; 8:45 am]

[6740-01]

[Docket No. RP76-89]

NORTHERN NATURAL GAS CO.

Denying Extension of Time

AUGUST 7, 1978.

On August 4, 1978, Commission Staff Counsel filed a motion to extend the time for filing Briefs on Exceptions to the Initial Decision issued June 22, 1978, in this proceeding. Under an extension granted on July 20, 1978, Briefs on Exceptions are due August 7, 1978. Staff cites as the reasons for its motion an unforeseen and unavoidable assignment and two settlement conferences that cannot be conveniently rescheduled.

Because of the lateness of the filing of the motion and because Northern Natural has already filed its Brief on Exceptions under the extended schedule, Staff's motion is denied.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc 78-22680 Filed 8-14-78; 8:45 am]

[6740-02]

[Project No. 2729]

POWER AUTHORITY OF THE STATE OF NEW YORK

Extension of Time

AUGUST 7, 1978.

Requests for extensions of time to file comments in this proceeding on the Draft Environmental Impact Statement made available on June 22, 1978, were filed by the New York State Department of Environmental Conservation on July 21, 1978; by the Catskill Mountains Chapter of Trout Unlimited, Inc., on July 31, 1978; and by the Catskill Center for Conservation and Development, Inc., on July 24, 1978. PASNY filed a statement on August 2, 1978, that it has no objection to the request and asked that it be made applicable to all parties.

Upon consideration, notice is hereby given that an extension of time is granted to and including September 6, 1978, for filing comments on the DEIS.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc 78-22681 Filed 8-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-212]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Findings and Order After Statutory Hearing Issuing Certificates of Public Convenience and Necessity

AUGUST 8, 1978.

On March 3, 1978, Transcontinental Gas Pipe Line Corp. (Transco) filed in Docket No. CP78-212 an application, as supplemented June 13, 1978, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Transco to transport natural gas for United Gas Pipe Line Corp. (United).

Transco requests authorization to transport up to 30,000 Mcf per day, on a firm basis, for United. Pursuant to a transportation agreement dated February 14, 1978, with United, Transco will transport the gas from a point of receipt in High Island Block 110,¹ offshore Texas and redeliver thermally equivalent volumes onshore at an existing point of interconnection between Transco's and United's systems in Victoria County, Tex. and at an existing point of interconnection between the systems of Transco and Tennessee Gas Pipeline Co. a Division of Tenneco Inc. (Tennessee) in Calcasieu Parish, La. for United's account.

For the proposed service to be rendered by Transco, United will pay Transco initially a monthly charge of \$146,700. The charge is based on a rate of \$4.89 per month per Mcf of contract demand. Should Transco fail to take the contract quantity or take in excess of the contract quantity, the monthly charge will be adjusted upward or downward by 16.1¢ per Mcf, as appropriate.

The \$4.89 demand charge is comprised of (1) a rate of \$3.83 per month per Mcf of contract demand for transporting gas through Transco's North High Island System from Block 110 to its interconnection with Transco's onshore system at Cameron Parish, La. and (2) a rate of \$1.06 per month per Mcf of contract demand for the onshore portion of the transportation service to be performed.

Upon completion of certain additional facilities authorized in Docket No. CP78-17, the transportation agreement provides for a charge of \$5.11 per month per Mcf of contract demand resulting in a total monthly charge of \$153,300. The increase is attributable to an increase in the cost of performing the onshore portion of the transportation service resulting from the installation of additional facilities. Therefore, the \$1.06 rate will be in-

¹ Getty Oil Co. was authorized to sell the subject gas to United in Docket No. CI77-438.

creased to \$1.28 to reflect the cost of the additional facilities, thus the charge of \$5.11. Should Transco fail to take the contract quantity, or take in excess of the contract quantity, the monthly charge will be adjusted upward or downward by 16.8¢ per Mcf, as appropriate.

Since the proposed rate is subject to adjustment to reflect the outcome of Transco's rate cases, the certificate should require that the monthly charge shall be adjusted to be consistent with the rates ultimately determined in Transco's rate proceeding in Docket No. RP77-108.

In addition to the proposed rate, Transco will also retain 0.6 percent of the volume transported for fuel and unaccounted for volumes.

Approval of this proposed project would not constitute a major Federal action significantly affecting the quality of human environment.

After due notice by publication in the FEDERAL REGISTER, no protests or petitions to intervene in opposition have been filed. On April 4, 1978, and April 6, 1978, United and Tennessee, respectively, filed petitions to intervene in support of Transco's application.

At a hearing held on August 2, 1978, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transco, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The transportation of natural gas hereinbefore described as more fully described in the application in this proceeding, is made in interstate commerce, subject to the jurisdiction of the Commission, and is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Participation by petitioners to intervene in the docket in which they filed may be in the public interest.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco in Docket No. CP78-212 subject to compliance with Section 157.20(a), (c)(3), (e), and Part 154 of the regulations.

(B) Transco is advised that service shall commence within 60 days of the date of issuance of this order and the rate charged by Transco shall be subject to and consistent with the out-

come of the rate proceeding in Docket No. RP78-108.

(C) The certificate granted in Ordering Paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(D) Petitioners are permitted to intervene in the dockets in which they filed subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their respective petitions to intervene; *And provided, further,* That the admission of such intervenors shall not be constructed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these dockets.

By the Commission. Commissioner Holden voted present.

KENNETH F. PLUMB,
Secretary.

[FR Doc 78-22682 Filed 8-14-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20271; FCC 78-581]

NINTH NOTICE OF INQUIRY

Preparation for a General World Administrative Radio Conference of the International Telecommunication Union to Consider Revision of the International Radio Regulations

AGENCY: Federal Communications Commission.

ACTION: Seeks public comment concerning the proposed rearrangement of the international Radio Regulations.

SUMMARY: Notice of Inquiry discusses the proposed "Re-Arrangement of the Radio Regulations" and queries the public on possible distortions and errors caused by such a rearrangement.

COMMENTS: Must be received on or before October 2, 1978.

REPLY COMMENTS: Must be received on or before October 17, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Frank Williams, Robert Littler, Treaty Branch, International and Operations Division, Office of Chief

Engineer, 202-632-7054.

Adopted: August 4, 1978.

Released: August 8, 1978.

By the Commission:

1. The Commission has issued eight previous Notices in this proceeding, the most recent of which was released on May 3, 1978. As has been the case with all previous Notices of Inquiry, the purpose of the instant Notice is to develop information on which U.S. proposals for the 1979 World Administrative Radio Conference will be based. Necessary rule changes resulting from decisions made at the Conference will be the subject of further action following its conclusion.

2. The emphasis of previous Notices has been on possible changes to the international Table of Frequency Allocations, technical matters related to the use of the spectrum and procedural provisions of the international Radio Regulations relating to the requirements for the advance publication, coordination, and notification of frequency assignments. The purpose of this Notice is to solicit comments on Part B and Appendices B and C of the proposed editorial and structural "Re-Arrangement of the Radio Regulations" as recommended by the World Broadcasting-Satellite Administrative Radio Conference, Geneva, 1977, and published by the Secretary General of the International Telecommunication Union (see Resolution No. Sat-10 in the "Re-Arrangement"). The Commission believes that there have been only minor editorial and structural revisions in Part A of the proposed rearrangement and therefore no comments are sought. However, with regard to Part B, the Commission believes that extensive editorial and structural revisions may be required. The Commission further believes that there is some question whether new Appendices B and C of the rearrangement should be included in the body of the international Radio Regulations, rather than appended to the Regulations.

3. Comments are sought regarding structural and editorial revision of Part B, with particular emphasis on the Aeronautical, Maritime, and Land Mobile chapters. It should be noted that the general mobile provisions found in the 1976 edition of the international Radio Regulations have been included in the new Aeronautical, Maritime, and Land Mobile chapters, and these general provisions may not apply in every detail to a particular mobile chapter.

4. Comments are solicited on the proposed movement of what is now known as Radio Regulation 109 and Radio Regulation 747 in the current edition of the international Radio Regulations to become Appendix B

and C, respectively. Appendix A does not appear to require further attention at this time in that it is merely an editorial adjustment of the placement of existing Appendices of the current Radio Regulations.

5. An extract of the "Re-Arrangement of the Radio Regulations" is available for inspection and comment in the Commission's Public Reference Room, Room 239, 1919 M Street NW., Washington, D.C.

6. Pursuant to applicable procedures set forth in section 1.415 of the Commission's rules, interested persons may file comments on or before October 2, 1978, and reply comments on or before October 17, 1978. All relevant and timely comments and reply comments, along with any pertinent information which we may have available, will be considered. When commenting, it should be borne in mind that this effort is directed toward international and not domestic issues.

7. Although § 1.419 of the Commission's rules requires that an original and five copies of all statements, briefs or comments be filed in response to a Notice, our conference preparatory organization necessitates the filing of an original and nineteen copies. All responses received will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

8. This Notice is issued pursuant to the authority set forth in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i).

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22703 Filed 8-14-78; 8:45 am]

[6712-01]

CONCORD, CALIFORNIA

TV Broadcast Applications Ready and Available for Processing Pursuant to Section 1.572(c) of the Commission's Rules

Adopted: August 10, 1978.

Released: August 10, 1978.

By the Chief, Broadcast Bureau:

Notice is hereby given, pursuant to § 1.572(c) of the Commission's Rules, that the television broadcast applications listed below will be considered to be ready and available for processing on August 16, 1978. Since the listed applications are mutually exclusive and have been cut off, no other application which involves a conflict with these applications may be filed. Rather, the purpose of this notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amend-

ments as a matter of right under § 1.522(a)(2) of the Rules and pleadings to specify issues pursuant to § 1.584.

BPCT-4995—New—Concord, Calif., Bohannan Broadcasting Co., Channel 42.
BPCT-5048—New—Concord, Calif., First Century Broadcasting, Channel 42.

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22701 Filed 8-14-78; 8:45 am]

[6712-01]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 72, "Numerical Identification of Stations in Maritime Telecommunications Systems."

Notice of 8th Meeting. Wednesday, September 6, 1978—9:30 a.m.

Conference Room 7327,
2025 M Street NW.,
Washington, D.C.

AGENDA

1. Call to order; Chairman's report.
2. Administrative matters.
3. Report of recent CCIR IWP 8/6 meeting.
4. Discussion of related U.S. Position for CCIR Special Preparatory Meeting.
5. Possible adoption of U.S. Position.

Francis K. Williams, Chairman, SC-72
Federal Communications Commission,
Washington, D.C. 20554,
Phone: 202-632-7054.

Special Committee No. 72, "Numerical Identification of Stations in Maritime Telecommunications Systems."

Notice of 9th Meeting. Tuesday, September 19, 1978—9:30 a.m.

Conference Room 7327,
2025 M Street NW.,
Washington, D.C.

AGENDA

1. Call to order; Chairman's report.
2. Administrative matters.
3. Report of recent CCIR IWP 8/5 meeting.
4. Discussion of related U.S. Position for CCIR Preparatory Meeting.
5. Adoption of U.S. Position.

Francis K. Williams, Chairman, SC-72
Federal Communications Commission,
Washington, D.C. 20554,
Phone: 202-632-7054.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meetings may contact either the designated chairman or the RTCM Secretariat, phone 202-632-6490.

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-22702 Filed 8-14-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218, or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 4, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

AGREEMENT NO.: T-2171-7.

FILING PARTY: Mr. R. Higashionna, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

SUMMARY: Agreement No. T-2171-7, between the State of Hawaii (Hawaii) and Matson Terminals, Inc. (Matson), modifies the parties' basic agreement which provides for the lease of marine terminal space by Hawaii to Matson for use primarily as a container facility. The purpose of the modification is to revise the boundaries of the container facility. Except for the boundary revisions as outlined, the agreement, as previously modified, will continue in full force and effect.

AGREEMENT NO.: T-2827-1.

FILING PARTY: Edward D. Ransom, Esquire, Lillick, McHose and Charles, Two Embarcadero Center, San Francisco, Calif. 94111.

SUMMARY: Agreement No. T-2827-1, between Encinal Terminals (Encinal) and Crescent Wharf and Warehouse Co. (Crescent), modifies the parties' basic agreement providing for Crescent's lease of certain property in Alameda, Calif., to be operated as a public marine terminal. The purpose of the modification is to: (1) Extend the lease term for an additional period of approximately 10 years; (2) grant Encinal an option to delete from the premises the container facility described in Exhibit C; (3) adjust the provisions for sharing revenues by changing the breakpoint from \$800,000 to \$1,000,000 with the maximum to which the lessee is entitled to receive placed at 15 percent of total gross revenues; and (4) amend certain items relating to maintenance and repairs, divisions of revenue with respect to the cargo on the premises at expiration of the lease, and increase in the amount of insurance.

AGREEMENT NO.: T-3690.

FILING PARTY: Peter P. Wilson, Senior Counsel, Matson Navigation Co., 100 Mission Street, San Francisco, Calif. 94105.

SUMMARY: Agreement No. T-3690, between Matson Terminals, Inc., (Matson) and Polynesia Line, Ltd. (Poly), is a month-to-month Chassis Preventive Maintenance and Container Repair Contract whereby Matson shall furnish all materials, supplies, equipment, labor, supervision, and transportation necessary within Matson's Oakland and Los Angeles Terminals to perform the preventive maintenance services and container repair services itemized in the agreement on the Poly owned/leased chassis and containers. As compensation for Matson's chassis, maintenance inspection, and container repair, Poly shall pay Matson according to a schedule of rates, listed in the agreement. Poly shall have the option to contract for the repair of its damaged equipment with either Matson or another contractor.

AGREEMENT NO.: 9984-14.

FILING PARTY: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, N.Y. 10004.

SUMMARY: Agreement No. 9984-14, among the member lines of the South Atlantic-North Europe Rate Agreement, modifies the basic agreement by deleting the words "individual lines" from the first line of Article IV and provides in Article VII that the agreement shall remain in force through September 30, 1981, unless cancelled prior thereto by the unanimous consent subject to prior approval by the Federal Maritime Commission.

AGREEMENT NO.: 10348.

FILING PARTY: John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

SUMMARY: Agreement No. 10348 between the Greece/United States Atlantic Rate Agreement (No. 9238) and WINAC (No. 2846) provides that WINAC will provide the Greek Agreement with office space, equipment, personnel, administrative and related facilities necessary for the operation of the Greek Agreement. It further provides that the Greek Agreement will compensate WINAC for such services under the terms as specified therein.

By Order of the Federal Maritime Commission.

Dated: August 9, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-22704 Filed 8-14-78; 8:45 am]

[6730-01]

[Independent Ocean Freight Forwarder License No. 608R]

MURRAY H. WEISS & SON, INC.

Reinstatement of License

By order served July 19, 1978 and published in the FEDERAL REGISTER on July 24, 1978 (43 FR 142), Independent Ocean Freight Forwarder License No. 608R issued to Murray H. Weiss & Son, Inc., was revoked, effective June 30, 1978, for failure to maintain a valid surety bond on file with the Commission.

Subsequent to the revocation of Independent Ocean Freight Forwarder License No. 608R, Murray H. Weiss & Son, Inc., filed a new surety bond effective June 30, 1978. The new bond evidenced compliance with section 44, Shipping Act, 1916, and section 510.9 of Federal Maritime Commission General Order 4.

Therefore, 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, dated August 8, 1977, Independent Ocean Freight Forwarder License No. 608R is reissued to Murray H. Weiss & Son, Inc., effective June 30, 1978. A copy of this notice of Reinstatement shall be published in the FEDERAL REGISTER and served upon Murray H. Weiss & Son, Inc.

ROBERT G. DREW,
Director, Bureau of Certification
and Licensing.

[FR Doc. 78-22705 Filed 8-14-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

EQUIMARK CORP.

Proposed Retention of Equimark Commercial Finance Co.

AUGUST 10, 1978.

Equimark Corp., Pittsburgh, Pa., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of Equimark Commercial Finance Co., Pittsburgh, Pa. Notice of the application was published on June 15, 1978, in the Wall Street Journal, a newspaper circulated in New York City, N.Y., and on June 21 and 22, 1978, in the Pittsburgh Press and the Pittsburgh Post-Gazette, respectively, newspapers circulated in Pittsburgh, Pa.

Applicant states that the proposed subsidiary would continue to engage in the activity of making extensions of credit primarily collateralized by the borrower's accounts receivable and inventory. Such activities have been specified by the Board in § 225.4(a)(1) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors

or at the Federal Reserve Bank of Cleveland.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 11, 1978.

Board of Governors of the Federal Reserve System, August 10, 1978.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc. 78-22716 Filed 8-14-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on August 7, 1978. 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 receipts.

The notice includes the title of each 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 FCC and NRC requests 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 requests, comments (in triplicate) must be received on or before September 5, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests an extension without change clearance of Form 401, Application for New or Modified Common Carrier Radio Station Construction Permit Under Parts 21 and 25. Form 401 is required by section 319 of the Communications Act of 1934, as amended, and §§ 21.9, 21.22, and 25.390 of the FCC Rules and Regulations. The form is filed when applying for an authorization to construct a new common carrier radio station, to make changes in a licensed station that requires a construction permit, to modify an existing construction

permit, and for a developmental class of station in the Communications Satellite Service. The FCC estimates approximately 12,000 applications are received annually and that respondent burden averages 12 hours per response.

The FCC requests an extension without change clearance of Form 703, Application for Consent to Transfer of Control of Corporation Holding Construction Permit or Station License. Form 703 is required by §§ 87.31(c), 81.42(a)(2), 89.59(d), 5.57(f), 83.37(a), 91.56(d), 93.56(d), and 94.27(c) of the FCC Rules and Regulations. The form is used when applying for consent to transfer of control of corporation holding a construction permit or station license. The FCC estimates that approximately 300 applications are received annually and that respondent burden averages one-half hour per response.

The FCC requests an extension without change clearance of Form 341, Application for Noncommercial Educational AM, FM, or TV Broadcast Station License. Form 341 is required by §§ 1.511, 1.536(b)(6), and 1.537 of the FCC Rules and Regulations. The form is used by applicants seeking noncommercial educational AM, FM, or TV Broadcast Station Licenses. The FCC estimates approximately 100 applications are received annually and that respondent burden averages 25 hours per response.

The FCC requests an extension without change clearance of Form 405, Application for Renewal of Radio Station License in Specified Services. Form 405 is required by §§ 5.55, 21.11, 23.50, and 23.390 of the FCC Rules and Regulations. The form is used by all common carriers to apply for renewal of radio station licenses. The FCC estimates approximately 2,700 applications are received annually and that respondent burden averages 30 minutes per response.

The FCC requests an extension without change clearance of Form 407, Application for Radio Station Construction Permit for Part 23. Form 407 is required under section 319 of the Communications Act of 1934, as amended, and § 23.50 of the FCC Rules and Regulations. The form is required when applying for a new or modified radio station construction permit for stations in the International Fixed Public Radio Communications Service. The FCC estimates approximately five applications are received annually and that respondent burden averages 24 hours per response.

The FCC requests an extension without change clearance of Form 436, Application for New or Modified Common Carrier Microwave Radio Station License Under Part 21. Form 436 is required by section 21 of the

FCC Rules and Regulations. The form is used by entities to request the Commission to issue a license for operation of a common carrier microwave station. The FCC estimates approximately 2,500 applications are received annually and that respondent burden averages 30 minutes per response.

The FCC requests an extension without change clearance of Form 704, Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License. Form 704 is required by § 21.11(f) of the FCC Rules and Regulations and section 310(d) of the Communications Act of 1934, as amended. The form is used to submit data to the FCC which assists the Commission in determining if authorization should be granted to permit transfer of control of corporations holding common carrier radio or satellite station construction permit or license. The FCC estimates approximately 260 applications are filed annually and that respondent burden averages 8 hours per response.

The FCC requests an extension without change clearance of Form 730, Application for Equipment Authorization—Registration of Equipment to be Connected to the Public Switched Telephone Network Under Part 63. Form 730 is required by Part 68 of the FCC Rules and Regulations. The form is completed by equipment manufacturers to provide data to obtain registration of telephone interconnect equipment. The information provided assist the FCC in determining that the interconnect equipment will not cause harm to public switched networks. The FCC estimates approximately 800 applications are received annually and that respondent burden averages 30 hours per response.

The FCC requests an extension without change clearance of Form 731, Application for Equipment Authorization—Radiofrequency Devices. Form 731 is required to be filed when applying for type acceptance, type approval, or certification of equipment as prescribed by Subpart J (Parts 2 and 15) of the Commission's Rules and Regulations. The FCC estimates approximately 10,000 applications are received annually and that respondent burden averages 15 minutes per response.

NUCLEAR REGULATORY COMMISSION

The NRC requests an extension without change clearance of the application requirements in 10 CFR Part 51, Licensing and Regulatory Policy and Procedures for Environmental Protection. Section 51.20 requires that applicants submit an Environmental Report—Construction Permit Stage containing a description of the proposed action, its purpose and description of the environment affected. Sec-

tion 51.21 requires that applicants submit an Environmental Report-Operating License Stage which discusses the same matters described in § 51.20 but only to the extent that they differ from those discussed at the Construction Permit Stage or reflect new information in addition to that discussed in the final environmental statement prepared in connection with the construction permit. The NRC estimates approximately three applications are received annually under § 51.20 and reporting burden averages 66,960 hours per respondent, and that nine applications are received annually under § 51.21 and reporting burden averages 23,220 hours per respondent.

NORMAN F. HEYL,
Regulatory Reports,
Review Officer.

[FR Doc. 78-22669 Filed 8-14-78; 8:45 am]

[6820-22]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

AUGUST 9, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 1, scheduled to meet on August 31, 1978, as announced in the FEDERAL REGISTER on August 3, 1978 (43 FR 34210); the revised date is August 30, 1978, from 9 a.m. to 11 p.m., Room 711, J. W. McCormack Post Office and Courthouse, Post Office Square, Boston, Mass. 02109.

The Public Advisory Panel will review and advise the region on the acceptability of the conceptual design proposed by the A-E firm commissioned for this project:

"New Construction" U.S. Border Station, Fort Kent, ME.

The meeting is open to the public.

L. F. BRETTE,
Regional Administrator.

[FR Doc. 78-22663 Filed 8-14-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78F-0210]

MORTON CHEMICAL CO.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Morton Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the sodium salt of 2-sulfoethyl methacrylate as a component of coatings in contact with food.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C., 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B3381) has been filed by Morton Chemical Co., 110 North Wacker Drive, Chicago, Ill. 60606, proposing that the food additive regulations be amended to provide for the safe use of the sodium salt of 2-sulfoethyl methacrylate as a component of food-contact coatings on metal and on polyester film.

The agency has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the need of an environmental impact analysis report, and that no environmental impact statement is necessary.

Dated: August 8, 1978.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.
[FR Doc. 78-22652 Filed 8-14-78; 8:45 am]

[4310-31]

DEPARTMENT OF THE INTERIOR

Geological Survey

CARLSBAD KNOWN POTASH LEASING AREA

New Mexico

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), and 220 Departmental Manual 2 and Secretary's Order No. 2948, Federal lands within the State of New Mexico have been classified as subject

to the competitive potash leasing provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 281), as amended. The name of the area, effective date, and total acreage involved are as follows:

(31) NEW MEXICO

Carlsbad (New Mexico) Known Leasing Area (potash); Revision, July 1, 1977; 17,900 acres.

A diagram showing the boundaries of the area classified 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, Colo., 80225.

Dated: August 8, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-22694 Filed 8-14-78; 8:45 am]

[4310-03]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before August 8, 1978. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by August 25, 1978.

RONALD M. GREENBERG,
Acting Keeper of the
National Register.

ARIZONA

Maricopa County

Cashion vicinity, Cashion Archeological Site, S of Cashion.

Yavapai County

Carefree vic., Verde River Sheep Bridge, N of Carefree on Verde River.

CALIFORNIA

Alameda County

Berkeley, Thorsen, William R., House, 2307 Piedmont Ave.
Oakland, Clay Building, 1001-1007 Clay St.
San Leandro, Peralta House, 561 Lafayette Ave.

*Amador County*Ione, *Scully Ranch*, Merlette St.*Fresno County*Fresno, *Physicians Building*, 2607 Fresno St.*Humboldt County*Arcata, *Schorlig House*, 1050 12th St.*Los Angeles County*

Long Beach, *First Congregational Church of Long Beach*, 241 Cedar Ave.
 Los Angeles, *Plaza Substation*, 10 Olvera St.
 Norwalk, *Johnston, Darius David, House*, 12426 Mapledale St.
 Pasadena, *Friendship Baptist Church*, 80 W. Dayton St.
 Santa Monica, *Parkhurst Building*, 185 Pier Ave.

*Marin County*Mill Valley, *Outdoor Art Club*, 1 W. Blithedale Ave.*Orange County*

San Juan Capistrano, *Parra, Miguel, Adobe*, 27832 Ortega Hwy.
 Santa Ana, *Spurgeon Block*, 206 W. 4th St.

*Placer County*Penryn, *Griffith, Griffith, House*, 7325 English Colony Way.*Riverside County*Riverside, *Federal Post Office*, 3720 Orange St.*Sacramento County*

Sacramento, *Meister, A. G. and Sons, Carriage Factory*, 910-914 9th St.
 Sacramento, *Travelers Hotel*, 428 J St.

*San Joaquin County*Tracy, *Tracy City Hall and Jail*, 25 W. 7th St.*Santa Cruz County*Aptos vicinity, *Mangels Ranchhouse*, N of Aptos on Aptos Creek Rd.*Yolo County*Woodland vic., *Moore, James, House*, SW of Woodland.

ILLINOIS

*Boone County*Belvidere, *Pettit Memorial Chapel*, 1100 N. Main St.*Clark County*Clark Center vicinity, *Old Stone Arch Bridge*, E of Clark Center off U.S. 40.*Coles County*Charleston, *Coles County Courthouse*, Charleston Public Sq.*Cook County*Chicago, *Old Chicago Historical Society Building*, 632 N. Dearborn St.Chicago, *Schoenhofen Brewery Historic District*, bounded by 16th, 18th, Canal, and Clinton Sts.LaGrange, *Lyons Township Hall*, 53 S. LaGrange Rd.*DuPage County*Wayne, *Wayne Village Historic District*, irregular pattern almy Trail Rd.*Hamilton County*McLeansboro, *Cloud State Bank*, 108 N. Washington St.*Kendall County*Newark vicinity, *Evelyn Site*, E of Newark*Lake County*

Fos Lake, *Mineola Hotel*, 91 N. Cora St.
 Millburn, *Millburn Historic District*, U.S. 45, Millburn, and Grass Lake Rds.
 Waukegan, *Bowen, Joseph T., Country Club*, 1917 N. Sheridan Rd.

*Monroe County*Valmeyer vicinity, *Miles, Stephen W., House*, NW of Valmeyer off IL 156*Randolph County*Red Bud, *Red Bud Historic District*, irregular pattern along Main and Market Sts.*Rock Island County*Rock Island, *Industrial Home No. 94*, 2100 3rd Ave.*Tazewell County*Mackinaw, *Illinois Traction System Mackinaw Depot*, N. Main St.

IOWA

*Polk County*Des Moines, *Des Moines Rapid Transit Company Car Barn*, 24th and Ingersoll Ave.

KANSAS

Riley County

Manhattan, *Manhattan State Bank*, 400 Poyntz Ave.
 Manhattan, *Ulrich, Robert, House*, 121 N. 8th St.

LOUISIANA

*Orleans Parish*New Orleans, *LeBoeuf House*, 101 Carmick St.

MISSISSIPPI

*Hinds County*Jackson, *Robertson, Smith, Elementary School*, 528 Bloom St.

NEBRASKA

*Hall County*Grand Island, *Liederkrantz*, 401 W. 1st St.*Lancaster County*Lincoln, *Nebraska Telephone Company Building*, 128-130 S. 13th St.*Saline County*Wilber, *Hotel Wilber*, 2nd and Wilson Sts.

NEW HAMPSHIRE

*Merrimack County*Concord, *Eagle Hotel*, 110 N. Main St.

NEW YORK

*Dutchess County*Red Hook, *Elmendorph Inn*, 43-45 N. Broadway.*Saratoga County*Saratoga Springs, *Broadway Historic District*, Broadway, Washington, and Rock Sts.

OREGON

Multnomah County

Portland, *Heusner, George F., House*, 333 NW. 20th Ave.
 Portland, *MacKenzie, W. R., House*, 1131 Sw. King Ave.

TEXAS

*Dallas County*Dallas, *Dallas Hall*, Southern Methodist University campus.*Galveston County*Galveston, *Sweeney-Royston House*, 2402 Ave. L.

UTAH

*Wasatch County*Heber City, *Crook, John, House*, 188 W. 3rd North.

VERMONT

*Lamoille County*Stowe, *Stowe Village Historic District*, VT 100 and VT 108.*Rutland County*Castleton, *Castleton Village Historic District*, irregular pattern along Main and South Sts.

VIRGINIA

*Augusta County*Mint Spring vicinity, *Chapel Hill*, E of Mint Spring on VA 654.*Halifax County*Oak Level vicinity, *Redfield*, SE of Oak Level on VA 683.South Boston vicinity, *Tarover*, W of South Boston on Va 659.*Hampton* (independent city)

Roseland Manor, Strawberry Banks Blvd.

*King and Queen County*St. Stephens Church vicinity, *Bewdley*, S of St. Stephens Church on Mattaponi River.*Louisa County*Holly Grove vicinity, *Anderson-Foster House*, N of Holly Grove on VA 635.*Middlesex County*Urbanna vicinity, *Hewick*, NW of Urbanna on Va 602.

Prince William

Brentsville vicinity, *Moor Green*, N of
Brentsville off Va 692.

Richmond (independent city)

Agecroft, 4305 Sulgrave Rd.

Rockingham County

Port Republic, *Port Republic Historic Dis-*
trict, Main and Water Sts. From North
River to Leroy Rd.

[FR Doc. 78-22322 Filed 8-14-78; 8:45 am]

[4310-05]

Office of Surface Mining Reclamation and
Enforcement

ADVISORY COMMITTEE ON MINING AND
MINERAL RESOURCES RESEARCH

Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and the Office of Management and Budget's Circular No. A-63, Revised.

The Advisory Committee on Mining and Mineral Resources Research will meet from 9 a.m. to 5 p.m. (or completion of business) on August 28 and 29, 1978, in rooms 7000 A and B, Department of the Interior, 18th and C Streets NW., Washington, D.C.

The meeting will deal with the following principal subjects:

1. Review of minutes of previous meeting, Assistant Director, David R. Maneval.

2. Evaluation of potential institutions and recommendations for designation by the Director as Mineral Institutes.

3. Policies, responsibilities, and future activities of the advisory committee.

The meeting of this committee is open to the public. Approximately 75 visitors can be accommodated on a first come, first serve basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should make this known no later than August 25 to: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, room 114, South Interior Building, 19th and Constitution Avenue NW., Washington, D.C. 20240. 202-343-4264.

Dated: August 11, 1978.

DAVID R. MANEVAL,
Assistant Director,
Technical Services and Research.

[FR Doc. 78-22651 Filed 8-14-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE
COMMISSION

[TA-201-37]

BOLTS, NUTS, AND LARGE SCREWS OF IRON
OR STEEL

Investigation and Hearing

Investigation instituted. Following receipt on June 9, 1978, of a resolution of the Committee on Ways and Means of the House of Representatives for an investigation pursuant to section 201(b)(1) of the Trade Act of 1974 (Trade Act) and after having considered the submissions of interested persons concerning the "good cause" question, the U.S. International Trade Commission on August 3, 1978, having determined good cause to exist within the meaning of section 201(e) of the Trade Act for a reinvestigation within 1 year, instituted an investigation to determine whether lag screws or bolts, bolts (except mine-roof bolts), and bolts and their nuts imported in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, all the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, 646.63, and 646.79 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Investigation to be expedited. It is the intention of the Commission to expedite its investigation in this matter and to submit its report to the President as soon as possible.

Hearing and prehearing conference. A public hearing in connection with this investigation will be held in the 31st Floor Reception room, A.J.C. Federal Building, 1240 East 9th Street, Cleveland, Ohio, beginning at 10 a.m., e.d.t., Wednesday, September 6, 1978. Requests to appear at the hearing should be filed with the Secretary of the Commission, in writing, at his office in Washington, D.C., not later than noon, August 31, 1978.

There will be a prehearing conference in connection with this investigation in Washington, D.C., at 10 a.m., e.d.t., on Thursday, August 31, 1978, in Room 117, U.S. International Trade Commission Building, 701 E Street NW.

Views of Commissioners. Views of Commissioners explaining their good cause determinations will be available in the Office of the Secretary.

Notice of the receipt of the Committee's resolution and of opportunity to comment on the "good cause" question was published in the FEDERAL

REGISTER of June 28, 1978 (43 FR 28057). Interested persons were given 21 days (until July 19, 1978) to comment, and their submissions are available for public inspection in the Office of the Secretary. Copies of the Committee's resolution and the accompanying letter of Committee Chairman Ullman were made a part of that notice and were published in the June 28 FEDERAL REGISTER.

By order of the Commission.

Issued: August 10, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-22736 Filed 8-14-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-37]

CERTAIN SKATEBOARDS AND PLATFORMS
THEREFOROrder Concerning Procedure for Commission
Determination and Action

Notice is hereby given that—

1. The Commission will hold a hearing beginning at 10 a.m., e.d.t., Tuesday, October 10, 1978, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C., for the purposes of (1) hearing oral argument on the recommended determination of the presiding officer concerning whether there is a violation of section 337 of the Tariff Act of 1930; (2) receiving information and hearing oral argument concerning appropriate relief in the event the Commission determines that there is a violation of section 337 and that relief should be granted; and (3) receiving information and hearing oral argument, as provided for in section 210.14(a) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.14(a)), concerning bonding and the public interest factors set forth in subsections 337 (d) and (f) of the Tariff Act, which factors the Commission is to consider in the event it determines that there is a violation of section 337 and that relief should be granted. The latter two proceedings are legislative in character, and therefore the hearing on remedy, bonding, and public interest will not be subject to the requirements of 5 U.S.C. 556, 557. Instead, these phases of the hearing will be conducted in accordance with section 201.11 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.11). These matters are all being heard on the same day in order that this investigation may be completed within the time limits prescribed by the statute and to minimize the burden of this hearing upon the parties.

Parties and agencies wishing to make oral argument with respect to the recommended determination shall

be limited in each oral argument to not more than 30 minutes, 10 minutes of which may be reserved for rebuttal by the staff and complainant.

For that party of the hearing devoted to relief, bonding, and the public interest, parties, interested persons, and Government agencies will be limited in their presentations to no more than 15 minutes. Participants will be permitted an additional 5 minutes for closing arguments after all presentations have been concluded. Participants with similar interests may be required to share time. The Commission investigative staff will be allotted the full time available to a party.

Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than close of business, Monday, October 2, 1978. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination, relief, bonding, the public interest factors, or any combination thereof) in which the requesting person desires to participate.

2. Briefs concerning exceptions to the presiding officer's recommended determination may be filed by any party or agency. Complainant's brief shall be filed not later than the close of business, Monday, August 28, 1978; respondents' brief and the brief of the Commission investigative staff shall be filed not later than the close of business, Monday, September 11, 1978; Complainant's reply brief, if any, shall be filed not later than Thursday, September 21, 1978. The Commission investigative staff is here being required to brief at the same time as respondents because the staff's views are most consistent with those of respondents. We do not suggest by this order that the staff has lost its independent status in this or any other case. Briefs shall be served on all parties of record on the date they are filed. The cover of complainant's brief shall be blue; respondents' brief, red; Commission investigative staff's brief, green; and any reply briefs, gray. Concerned Government agencies may file briefs on any issue related to the recommended decision in the same style and at the same time as the Commission investigative staff. Parties, persons, and agencies are encouraged to consolidate their briefing where their positions are the same, and to refer to the record.

3. Written comments and information are encouraged by any party, interested person, Government agency, or Government concerning relief, bonding, and the public interest factors set forth in section 337 (d) and (f) of the Tariff Act of 1930, as amended (19 U.S.C. 1337), which the Commission is to consider in the event it determines that there should be relief.

Such comments and information shall be filed with the Secretary in 1 original and 10 copies on the dates set forth below, and the comments and information shall thereafter be available for inspection and copying by any person, except as respects in camera comments and information, which are to be treated as described below.

Comments and information on remedy, bonding, and public interest shall be submitted as follows: Complainant shall file a detailed proposed Commission action, including a determination of bonding, on or before Monday, August 28, 1978. Complainant shall, at the same time, file such comments and information as it wishes respecting the effect of its proposed Commission actions upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States and (4) U.S. consumers (collectively the "public interest" factors). Thereafter, on or before Monday, September 11, 1978, any person, agency, or Government may file written comments on and information pertaining to alternatives (if any) to the proposed Commission action and to whether any Commission action ought or ought not to be taken after consideration of the effect of the action upon the public interest factors.

A request for in camera treatment of such comments and information must include a full statement of the reasons for granting in camera treatment. The Commission will either accept such information in camera, or it will return the information.

Notice of the Commission's institution of the investigation was published in the FEDERAL REGISTER on November 11, 1977 (42 FR 58792).

By order of the Commission.

Issued: August 10, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-22737 Filed 8-14-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Antitrust Division

"UNITED STATES" v. "WHITTENBERG ENGINEERING & CONSTRUCTION CO., ET AL." AND COMPETITIVE IMPACT STATEMENT THEREON

Proposed Final Judgment

AUGUST 4, 1978.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment and a Competitive Impact Statement (CIS)

as set out below have been filed with the U.S. District Court for the Western District of Kentucky, at Louisville, in *United States v. Whittenberg Engineering & Construction Co.* Civil No. C 75-0380 L(A). The complaint in this case alleges that 11 corporations, Whittenberg Engineering & Construction Co.; F. W. Owens & Associates, Inc.; Garst-Receveur Construction Co.; Struck, Inc.; Sullivan & Cozart, Inc.; Coupe Construction Co.; Platoff Construction Co., Inc.; Ale Bornstein, Inc.; Hays & Nicoulin, Inc.; E. L. Noe & Sons, Inc.; and W. C. Schickli Construction Co., Inc., violated the Sherman Act by conspiring to rig bids on general contracting jobs in the Louisville market, i.e., the territory encompassed by the city of Louisville and Jefferson County in the Commonwealth of Kentucky.

The proposed judgment enjoins the defendants from engaging in or renewing the alleged conspiracy and requires the defendants for a period of five (5) years to affix to every bid or quotation for general contracting services a written certification that such bid or quotation was not in any way the result of any discussions, communication, agreement, understanding, plan or program, whether formal or informal, between any defendant and any other general contractor. The CIS describes the terms of the judgment and the background of the action and concludes that the proposed judgment provides appropriate relief against the violation alleged in the complaint.

Public comment is invited on or before October 13, 1978. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199.

Dated: August 4, 1978.

CHARLES F. B. McALEER,
Special Assistant for
Judgment Negotiations.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation,

this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendants in this and any other proceeding.

For the Plaintiff: John H. Shenefield, Assistant Attorney General, William E. Swope, Charles F. B. McAleer, Anthony E. Harris, and John A. Weedon, Attorneys, Department of Justice; Albert Jones, JHB, U.S. Attorney, William A. LeFaiver, Joan Farragher, and Deborah L. Hiller, Attorneys, Department of Justice, Antitrust Division.

For the Defendants: Frank E. Haddad, Jr., Counsel for Whittenberg Engineering & Construction Co.; Sullivan & Cozart, Inc.; Coupe Construction Co.; Platoff Construction Co., Inc.; Ale Bornstein, Inc. Gordon B. Davidson and K. Gregory Haynes, Counsel for Whittenberg Engineering & Construction Co. Joseph E. Stopher, Robert Hanley, and Rodney Joslin, Counsel for F. W. Owens & Associates, Inc. Marshall P. Eldred and Kenneth J. Tuggle, Counsel for Garst-Receveur Construction Company and Struck, Inc. Kent McElwain, Counsel for Sullivan & Cozart, Inc. Stanley V. Benovitz, Counsel for Ale Bornstein, Inc. Chris C. DuVall, Counsel for E. L. Noe & Sons, Inc. Oldham Clarke, Counsel for Coupe Construction Co. Don H. Major, Counsel for Hays & Nicoulin, Inc., Joseph J. Kaplan, Counsel for W. C. Schickli Construction Co., Inc.

FINAL JUDGMENT

United States of America, Plaintiff, v. Whittenberg Engineering & Construction Co., F. W. Owens & Associates, Inc.; Garst-Receveur Construction Co.; Struck, Inc.; Sullivan & Cozart, Inc.; Coupe Construction Co.; Platoff Construction Co., Inc.; Ale Bornstein, Inc.; Hays & Nicoulin, Inc.; E. L. Noe & Sons, Inc.; and W. C. Schickli Construction Co., Inc., Defendants.

The plaintiff, having filed its complaint herein on November 20, 1975, and the defendants, having appeared by their respective attorneys and having filed their answers to the complaint denying the substantive allegations thereof; and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment herein, without trial or adjudication of, or finding on, any issues of fact or law herein, and without this Final Judgment constituting any evidence against or admission by any party with respect to any such issues;

Now, therefore, without any testimony having been taken herein, and without trial or adjudication of or finding on any issues of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the complaint states claims upon which relief may be granted against defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II.

As used in this Final Judgment, the term:

(A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "General contracting services" shall mean the supervision of and/or the responsibility for the installation and/or removal of materials for maintenance, construction, renovation, alteration, repair or destruction purposes;

(C) "General contractor" shall mean any person engaged in the business of providing general contracting services for customers;

(D) "General contracting supplies" shall mean lumber, steel, wall board, masonry, concrete, plumbing, heating and air conditioning equipment, and other materials used for construction, destruction, renovation, or maintenance purposes; and

(E) "General contracting equipment" shall mean cranes, bulldozers, loaders, graders, other earth moving machinery, trucks, other vehicles, concrete mixers, concrete pumps, concrete transportation and finishing machinery, and other tools, machinery and equipment used for construction, destruction, renovation, or maintenance purposes.

III.

The provisions of this Final Judgment applicable to any defendant shall also apply to its subsidiaries, successors, assigns, officers, directors, agents servants and employees, and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise; *Provided, however*, That this Final Judgment shall not apply to transactions or activities solely between a defendant and its directors, officers, employees, parent companies, subsidiaries or any of them when acting in such capacity.

IV.

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any other general contractor to:

(A) Submit any noncompetitive, collusive, or complementary bid for any project requiring general contracting services;

(B) Include any agreed-upon charge in any bid on a project requiring general contracting services;

(C) Compensate unsuccessful bidders on a project requiring general contracting services;

(D) Refrain from bidding on a project requiring general contracting services;

(E) Exchange information concerning bid amounts or bid ranges with respect to general contracting jobs.

V.

Each defendant is enjoined and restrained from furnishing to or exchanging with any other defendant or with any other general contractor any information concerning the prices, terms or other conditions of sale or lease which any general contractor has submitted, intends to submit or is considering submitting to any prospective customer prior to the release of such information to the public or to the trade generally.

VI.

Nothing in this Final Judgment shall be:

(A) Applicable to any prices, terms or other conditions of sale, lease or rental offered by a defendant to any other general contractor or offered by any other general contractor to a defendant in negotiating a purchase, sale, lease, or rental of general contracting supplies or general contracting equipment between that defendant and such other general contractor;

(B) Deemed to prohibit a defendant from entering into, participating in, or maintaining with any other person a joint venture or sub-contract agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for rendering general contracting services, provided that the transaction is denominated as a joint venture or sub-contract agreement in the bid submitted to the prospective customer.

VII.

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every bid or quotation for the rendering of general contracting services a written certification, signed by an officer of such defendant responsible for the preparation of bids or quotations, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other general contractor, except as specifically permitted by paragraph VI of this Final Judgment.

VIII.

Each defendant is ordered and directed to:

(A) Furnish a copy of this final Judgment to each of its officers, directors, sales managers and service managers within thirty (30) days after the date of entry of this Final Judgment;

(B) Furnish a copy of this Final Judgment to each successor to those persons described in subparagraph (A) hereof within thirty (30) days after each such successor is employed;

(C) Attach to each copy of this Final Judgment furnished pursuant to subparagraphs (A) and (B) hereof a statement advising each person of his obligations and of such defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him and/or upon such defendant for violation of this Final Judgment; and

(D) File with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs (A) and (C) hereof.

IX.

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant to inspect and copy all books, led-

gers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Paragraph IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X.

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

XI.

Entry of this Final Judgment is in the public interest.

COMPETITIVE IMPACT STATEMENT

United States of America, plaintiff, v. *Whittenberg Engineering & Construction Co.; F. W. Owens & Associates, Inc.; Garst-Receveur Construction Co.; Struck, Inc.; Sullivan & Cozart, Inc.; Coupe Construction Co.; Platoff Construction Co., Inc.; Ale Bornstein, Inc.; Hays & Nicoulin, Inc.; E. L. Noe & Sons, Inc.; and W. C. Schickli Construction Co., Inc.*, Defendants.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16 (b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On November 20, 1975, the United States filed a civil antitrust Complaint alleging that eleven corporations combined and conspired to submit noncompetitive bids in violation of section 1 of the Sherman Act (15 U.S.C. § 1).

The Complaint alleged that beginning sometime prior to 1970 and continuing thereafter up to and including December 1, 1974, the defendants engaged in a combination and conspiracy (a) to exchange information concerning bid amounts or bid ranges with respect to general contracting jobs and (b) to submit noncompetitive, collusive, complementary bids on projects requiring general contracting services in the territory encompassed by the City of Louisville and Jefferson County in the Commonwealth of Kentucky (hereinafter, the "Louisville market").

The Complaint sought a judgment by the Court declaring that the defendants had engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also sought an Order by the Court to enjoin and restrain the defendants from such activities in the future and, for a period of five years following the date of entry of such Order, to require each of the defendants to affix to every bid and quotation for general contracting services a written certification that such bid or quotation was not the result of any agreement, understanding, or communication between the defendant and any other general contracting company.

The corporations named in the Complaint were: Whittenberg Engineering & Construction Co.; F. W. Owens & Associates, Inc.; Garst-Receveur Construction Co.; Struck, Inc.; Sullivan & Cozart, Inc.; Coupe Construction Co.; Platoff Construction Co., Inc.; Ale Bornstein, Inc.; Hays & Nicoulin, Inc.; E. L. Noe & Sons, Inc.; and W. C. Schickli Construction Co., Inc.

All of these defendants to this action have previously pleaded *nolo contendere* to criminal misdemeanor charges with respect to this alleged conspiracy and fines ranging from \$50,000 to \$5,000 were levied against the defendants. This civil action had been held in abeyance until the criminal misdemeanor charge was resolved.

II.

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTI-TRUST LAWS

For the purpose of this case, the Complaint defined "general contracting services" as the supervision of and/or the responsibility for the installation of various building materials for the construction, renovation, alteration, or repair of buildings. The furnishing of these services is a specialized field engaged in by a limited group of companies equipped by technical training and experience to perform this work.

General contracting services are purchased by customers either through negotiations with, or through the solicitation of bids from, general contracting companies. The nature and extent of the project, as well as the time within which it must be completed, are often determinative factors influencing a customer in the means used in selecting a general contracting company. The customers for general contracting ser-

vices include commercial, industrial, and institutional concerns, and governmental units such as the Louisville Board of Education and the Jefferson County Board of Education.

During the period of time covered by the Complaint, the defendants were among the leading general contracting companies serving commercial, industrial, institutional, and governmental customers located in the Louisville market. In 1974, the defendants had revenues of approximately \$50 million from the sale of general contracting services to such customers.

The Complaint alleges that the defendants engaged in a combination and conspiracy beginning sometime prior to 1970 that consisted of an agreement, understanding, and concert of action among themselves and co-conspirators, the substantial terms of which were:

(a) to exchange information concerning bid amounts or bid ranges with respect to general contracting jobs;

(b) to submit noncompetitive, collusive, complementary bids on projects requiring general contracting services.

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

(a) price competition in the sale of general contracting services in the Louisville market has been restrained; and

(b) customers in the Louisville market have been deprived of the benefits of full, free, and open competition in the purchase of general contracting services.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The Stipulation between the parties provides that there is no admission by any party with respect to any issue of fact or law. Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, section IV provides that the defendants are enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any other general contractor to:

(A) Submit any noncompetitive, collusive, or complementary bid for any project requiring general contracting services;

(B) Include any agreed-upon charge in any bid on a project requiring general contracting services;

(C) Compensate unsuccessful bidders on a project requiring general contracting services;

(D) Refrain from bidding on a project requiring general contracting services;

(E) Exchange information concerning bid amounts or bid ranges with respect to general contracting jobs.

Section V further enjoins each defendant from furnishing to or exchanging with any other defendant or with any other general contractor any information concerning the prices, terms or other conditions of sale or lease which any general contractor has submitted, intends to submit or is considering submitting to any prospective customer prior to the release of such information to the public or to the trade generally. The injunctions in sections IV and V run perpetually.

For a period of five (5) years from the date of entry of the Judgment, each defendant is ordered and directed to affix to every bid or quotation for the rendering of general contracting services a written certification, signed by an officer of such defendant responsible for the preparation of bids or quotations, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other general contractor.

Section VIII of the proposed Judgment orders and directs each defendant to:

(A) Furnish a copy of the Judgment to each of its officers, directors, sales managers and service managers within thirty days after the date of entry of the Judgment;

(B) Furnish a copy of the Judgment to each successor of those persons described in subparagraph (A), above, within thirty days after each such successor is employed;

(C) Attach to each copy of the Judgment furnished pursuant to subparagraphs (A) and (B), above, a statement advising each person of his obligations and of the defendant's obligations under the Judgment, and of the criminal penalties which may be imposed upon him and/or upon such defendant for violation of the Judgment; and

(D) File with the Court and serve upon the United States within sixty days after the date of entry of the Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs (A) and (C), above.

There are several limited exceptions to the prohibitions against exchange of information set forth in Sections IV and V of the Judgment. These exceptions, found in Section VI of the Judgment, relate to possible purchase, sale, lease, or rental of general contracting supplies or general contracting equipment between a defendant and any other general contractor, or possible joint venture or sub-contract agreements, provided that the transaction is denominated as a joint venture or sub-contract agreement in the bid submitted to the prospective customer.

The proposed Judgment is applicable to each of the defendants and to the subsidiaries, successors, assigns, officers, directors, agents, servants and employees of each defendant, and to all persons in active concert or participation with any of them who shall have received actual notice of the Judgment by personal service or otherwise.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they may

have had if the Judgment had not been entered. The Judgment may not be used, however, as *prima facie* evidence in private litigation pursuant to Section (5) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070), within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such orders as may be necessary or appropriate for its modification, interpretation or enforcement.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The only alternative to the proposed Judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations charged in the Complaint.

In reaching an agreement on the proposed Judgment, two matters were the principal subject of negotiation. Both of the matters concerned the limited exceptions to the prohibitions against the exchange of information. Initially the United States proposed that the first exception be limited to the purchase, sale or lease of general contracting equipment between a defendant and any other general contractor. The second exception was to be limited to joint ventures or sub-contract agreements on projects which were of such size or nature, or performable at such time, that a defendant would be unable to handle the entire project alone. The United States ultimately decided to amend these limitations to allow for a general contractor's normal legitimate business activities. The first exception was changed to allow rental, as well as purchase, sale, or lease, or equipment to other contractors. It was found that the initial capital investment for general contracting equipment was often made with the expectation that, when not in use, rentals of the equipment would occur and, thereby, help defray a portion of the investment. The second exception was changed to allow joint ventures and sub-contracting even if a defendant is able to handle the entire project alone. The defendants were found to frequently sub-contract work from and to other more specialized general contractors even though a particu-

lar project was not impossible for one contractor to handle alone.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the Government considered determinative in formulating this proposed final judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Dated: August 4, 1978.

DAVID F. HILLS,
Attorney.

WILLIAM A. LEFAVER,
JOAN FARRAGHER,
DEBORAH L. HILLER,
Attorneys, Department of Justice,
Antitrust Division.

[FR Doc. 78-22695 Filed 8-14-78; 8:45 am]

[4410-18]

Law Enforcement Assistance Administration INTERJURISDICTIONAL INTELLIGENCE SYSTEMS FUNDED BY LEAA

Annual Notice

This notice is pursuant to the Criminal Intelligence Systems Operating Policies, 43 FR 28572, section III C, which provides that an annual notice will be published by LEAA to indicate the existence and objective of all systems for the continuing interjurisdictional exchange of intelligence data funded with LEAA funds. Interjurisdictional Intelligence Systems presently being funded by LEAA are:

1. California Narcotics Information Network—to increase law enforcement's effectiveness in the interdiction of narcotics smuggling;
2. Regional Organized Crime Information Center—a repository involving an 11-State area, the purpose of which is to assist in the collection, evaluation, and dissemination of information concerning crime of an inter- or intra-State nature;
3. Quad-State Unified Intelligence System—to increase law enforcement effectiveness in reducing organized crime and interdiction of narcotics smuggling in the Quad-State regions (Utah, Colorado, Arizona, New Mexico).

JAMES M. H. GREGG,
Assistant Administrator, Office
of Planning and Management.

[FR Doc. 78-22696 Filed 8-14-78; 8:45 am]

[4410-18]

[AAG/A Order No. 3-78]

PRIVACY ACT OF 1974

System of Records

On April 27, 1978 (43 FR 18059) consistent with the provisions of the Privacy Act of 1974, 5 U.S.C. 552a(e) (4)

and (11), the Department of Justice, Law Enforcement Assistance Administration, published a proposal to add a new routine use set forth below to the Civil Rights Investigative System (JUSTICE/LEAA-008). The system was published in its entirety on September 30, 1977.

Department of Health, Education, and Welfare; State civil rights offices; and Law Enforcement Assistance Administration researchers for purposes of evaluation, technical assistance, and training.

No comments were received regarding the new routine use. Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, the new routine use as published on April 27, 1978 is hereby adopted.

Dated: August 4, 1978.

KEVIN D. ROONEY,
Assistant Attorney General
for Administration.

[FR Doc. 78-22714 Filed 8-11-78; 8:45 am]

[4510-26]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

HAWAII 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 Regional Administrator, OSHA) 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 January 4, 1974, notice was published in the FEDERAL REGISTER (39 FR 1010) of the approval of the Hawaii plan and the adoption of subpart Y to Part 1952 containing the decision.

The Hawaii 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. State standards comparable to 29 CFR Part 1910 (37 FR 22102) and 29 CFR Part 1926 (37 FR 27503) were adopted by the State and approved by the Occupational Safety and Health Administration on December 27, 1974 (39 FR 44823). However, there have been many Federal changes to the standards since

the initial approval of the State standards. Accordingly Hawaii has revised these standards and promulgated them in accordance with applicable State procedures.

Section 1952.310(a) of Subpart Y sets forth the State's procedure for the adoption of at least as effective State standards. By letter dated December 5, 1977 from Joshua C. Agsalud, Director of Labor and Industrial Relations to Gabriel J. Gillotti, Regional Administrator, OSHA, and incorporated as part of the plan, the State submitted proof documents concerning the adoption of Federal standard changes and State initiated changes to 29 CFR Part 1910, 29 CFR Part 1926 and 29 CFR Part 1928 from October 22, 1976 through November 1, 1977. These standards, which are contained in Hawaii Occupational Safety and Health Standards—Rules and Regulations, were promulgated by the State after public hearings.

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 comparable Federal standards. The State standards are more specific in several areas particularly with respect to § 1910.141(d) Sanitation and § 1926.400(h) Ground-Fault Protection. The detailed standards comparison is available at the locations specified below.

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, 450 Golden Gate Avenue, Room 9470, San Francisco, Calif. 94102; the offices of the Department of Labor and Industrial Relations, Room 308, 825 Miliani Street, Honolulu, Hawaii 96313; and the Technical Data Center, Room N2439R, 200 Constitution Avenue NW., 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 Hawaii plan as a proposed change and making the Regional Administrator, OSHA'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 August 15, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at San Francisco, Calif., this 27th day March, 1978.

GABRIEL J. GILLOTTI,
Regional Administrator.

[FR Doc. 78-22725 Filed 8-14-78; 8:45 am]

[4510-26]

VERMONT 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 October 1, 1973, notice was published in the FEDERAL REGISTER (vol. 38, FR 28658) of the approval of the Vermont plan and the adoption of Subpart U to Part 1952 containing the decision.

The Vermont plan provides for the adoption of Federal Standards as State standards. On January 17, 1978, the Occupational Safety and Health Administration (OSHA) adopted, pursuant to section 6(c) of the Act, an emergency temporary standard for acrylonitrile. By letter dated February 10, 1978 from Joel R. Cherington, Commissioner, Vermont Department of Labor and Industry to Gilbert Sauter, Regional Administrator and incorporated as part of the plan, the State submitted emergency temporary standards for acrylonitrile (AN). This standard, which is contained in section 1910 of Vermont's Administrative Rules, was promulgated on February 10, 1978, in accordance with applicable State law.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly should be 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, U.S. De-

partment of Labor, OSHA, Room 1804, J. F. Kennedy Federal Building, Government Center, Boston, Mass. 02203; State Office Building, Montpelier, Vt. 05602; and the Technical Data Center, Room N2439, 200 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 Vermont plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards were adopted in accordance with the procedural requirements of State law which authorizes promulgation without public participation for emergency standards and participation at the Federal level would be impracticable.

2. The emergency nature of the standards requires that approval be implemented immediately.

This decision is effective August 15, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Boston, Mass., this 21st day of July 1978.

GILBERT J. SAULTER,
Regional Administrator.

[FR Doc. 78-22726 Filed 8-14-78; 8:45 am]

[7590-01]

**NUCLEAR REGULATORY
COMMISSION**

[Docket Nos. 50-413-A and 50-414-A]

**DUKE POWER CO., NORTH CAROLINA
MUNICIPAL POWER AGENCY NO. 1**

**Catawba Nuclear Station, Units 1 and 2; Receipt
of Additional Antitrust Information: Time for
Submission of Views on Antitrust Matters**

Duke Power Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on May 15, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information adds North Carolina Municipal Power Agency No. 1 as coowner of the Catawba nuclear station, units 1 and 2.

The information was filed by Duke Power Co. and North Carolina Municipal Power Agency No. 1 in connection with their application for construction permits and operating licenses for the Catawba nuclear station, units 1 and 2.

The site for this plant is located in York County, S.C.

The original antitrust portion of the application was submitted on October 27, 1972, and notice of receipt of application for construction permits and facility licenses and availability of applicant's environmental report; time for submission of views on antitrust matters, was published in the FEDERAL REGISTER on December 28, 1972 (37 FR 28642). The notice of hearing was published in the FEDERAL REGISTER on December 1, 1972 (37 FR 25560).

Copies of the above stated documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the York County Library, 325 South Oakland Avenue, Rock Hill, S.C. 29730.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to the North Carolina Municipal Power Agency No. 1, presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission on or before October 16, 1978.

Dated at Bethesda, Md., this 28th day of July 1978.

For the Nuclear Regulatory Commission.

STEVEN A. VARGA,
*Chief, Light Water Reactors
Branch No. 4, Division of Project
Management.*

[FR Doc. 78-22958 Filed 8-14-78; 10:19 am]

[7590-01]

**ADVISORY COMMITTEE ON REACTOR
SAFEGUARDS**

Notice of Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or canceled since the last list of proposed meetings published July 17, 1978 (43 FR 30630). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a por-

tion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee and Working Group meetings usually begin at 8:30 a.m. The exact time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published approximately 15 days prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the September 1978 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee, telephone 202-634-3267, Attn.: Mary E. Vanderholt, between 8:15 a.m. and 5 p.m., e.d.t.

**SUBCOMMITTEE AND WORKING GROUP
MEETINGS**

*Fluid Dynamics, August 15, 1978, Idaho Falls, Idaho. The Subcommittee will discuss the relap 4 and 5 codes, their application to PWR's, BWR's, and PWR/UHI systems as well as the Beacon code and advanced containment codes for BWR's. Notice of this meeting was published on June 16, July 17, and 31, 1978 (43 FR 26162, 30631, and 33353, respectively).

*Reactor Fuels, August 17-18, 1978, Idaho Falls, Idaho. The Subcommittee will gather information on reactor fuel research conducted at the Idaho National Engineering Laboratory (INEL) for consideration by the ACRS in its preparation of a report to Congress on NRC research. Notice of this meeting was published on June 16, July 17, and August 2, 1978 (43 FR 26162, 30631, and 33968, respectively).

*Reliability and Probabilistic Assessment, August 25, 1978, Washington, D.C. The Subcommittee will review the NRC Office of Nuclear Regulatory Research programs in risk assessment. Notice of this meeting was published on August 10, 1978 (43 FR 35561).

*Emergency Core Cooling Systems, August 28-29-30, 1978 (rescheduled from August 22-23), Washington, D.C. The Subcommittee will meet to discuss the status of a variety of programs related to ECCS-LOCA research programs. Notice of this meeting was published on June 16, July 17, and August 11, 1978 (43 FR 26162, 30631, and 35762, respectively).

*Fluid Dynamics, August 29-30, 1978, Los Angeles, Calif, Rescheduled for October 23-24-25, 1978, San Francisco, Calif.

*Regulatory Activities, September 6, 1978, Washington, D.C. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published on June 16 and July 17, 1978 (43 FR 26162 and 30631, respectively).

*Reactor Safety Research, September 6, 1978, Washington, D.C. The Subcommittee will meet in executive session to discuss review efforts for the ACRS 1978 report to Congress on NRC reactor safety research. Notice of this meeting was published on July 17, 1978 (43 FR 30631).

*Metal Components, September 11-12, 1978, Washington, D.C. The Subcommittee will review the NRC research program in this area.

*Advanced Reactors, September 12-13, 1978 (rescheduled from September 14-15), Albuquerque, N. Mex., and September 25, 1978 (rescheduled from September 21), Washington, D.C. The Subcommittee will review matters related to the NRC sponsored research on the safety of advanced reactor designs. Notices of these meetings were published on June 16 and July 17, 1978 (43 FR 26162 and 30631, respectively).

*General Electric Test Reactor (GETR), September 15-16, 1978, San Francisco, Calif. The Subcommittee will review matters related to the seismicity of the GETR site and the structural design of the GETR plant.

*Advanced Reactors, September 25, 1978, Washington, D.C. Reference item for September 12-13, above.

*Safeguards and Security, September 26, 1978, Washington, D.C. The Subcommittee will review the NRC research program in this area. Notice of this meeting was published on July 17, 1978 (43 FR 30631).

*Regulatory Activities, October 4, 1978, Washington, D.C. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations.

*Fluid Dynamics, October 23-24-25, 1978, San Francisco, Calif. (Rescheduled from August 29-30, Los Angeles, Calif.) The Subcommittee will meet with representatives of the NRC to discuss methods used in licensing for calculating containment system response by the NRC staff and the nuclear industry. Containment leak testing will also be discussed. In addition, the Subcommittee will review the design basis and construction of the Mark II boiling water reactor (BWR) containment system. Notice of this meeting (scheduled for August 29-30 in Los Angeles, Calif.) was published on June 16 and July 17, 1978 (43 FR 26162 and 30631, respectively).

ACRS FULL COMMITTEE MEETINGS

SEPTEMBER 7-9, 1978

A. *Fast Flux Test Facility (FFTF)—Operation.

B. *Anticipated Transients Without Scram (ATWS)—Implementation of provisions to mitigate the consequences of ATWS events.

SEPTEMBER 18-20, 1978

*Members of the ACRS will meet with members of the French Groupe Permanent to discuss various matters related to reactor safety including reactor safety research, emergency core cooling, reliability of auxiliary systems, use of probabilistic analysis, and consideration of systems interaction in nuclear plant design and arrangement.

OCTOBER 5-7, 1978

Agenda to be announced.

NOVEMBER 2-4, 1978

Agenda to be announced.

Dated: August 11, 1978.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 78-22949 Filed 8-14-78; 10:19 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-368; Administrative Proceeding 3-5493]

Y&S CANDIES, INC.

Application and Opportunity for Hearing

AUGUST 3, 1978.

Notice is hereby given that Y&S Candies, Inc. ("Applicant") has filed an application, pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), that Applicant be granted an exemption from the reporting provisions of sections 13 and 15(d) of that Act.

The Applicant states, in part:

1. Applicant is incorporated under the laws of the State of New York.
2. As a result of a merger on November 30, 1977, the Applicant became a wholly owned subsidiary of Hershey Foods Corporation ("Hershey").
3. At this time the Applicant has only one shareholder, Hershey.

In the absence of an exemption, Applicant is required to file reports pursuant to sections 13 and 15(d) of the 1934 Act. Applicant believes that its request for an order exempting it from the provisions of sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that the Applicant is a wholly owned subsidiary with only one shareholder. Applicant believes that

the time, effort and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than August 28, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary: Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-22660 Filed 8-14-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30, Rev. 15, Amdt. 22]

PROGRAM ACTIVITIES IN FIELD OFFICES

Delegation of Authority

Delegation of Authority No. 30, Revision 15, republished in the FEDERAL REGISTER on February 25, 1976 (41 FR 8240), as amended (41 FR 16234, 17829, 28049, 36702, 47610, 50883, 42 FR 56990, 59153, 61347, 43 FR 55, 1577, 6667, 10998, 13651, and 22261) is hereby further amended to delegate authority for surety bond guaranty approval to certain positions in the Baltimore district office.

Accordingly, Delegation of Authority No. 30, Revision 15, Part III, is amended as follows:

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

* * * * *

Section D—Surety Guarantee. 1. To guarantee sureties against portion of losses resulting from the breach of

bid, payment, or performance bonds on contracts, not to exceed \$500,000.

d. District Director, Philadelphia, San Francisco, New York, Baltimore, and Region IV District office only.

e. Assistant District Director for F&I, Philadelphia, San Francisco, Baltimore, and Region IV District offices only.

Effective Date: July 18, 1978.

Dated: August 9, 1978.

BERNARD KULIK,
*Acting Associate Administrator
for Operations.*

[FR Doc. 78-22665 Filed 8-14-78; 8:45 am]

[8025-01]

REGION IV—ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, Tenn., will hold a public meeting from 9 a.m. to 12 noon (central standard time) on Tuesday, September 26, 1978, in the conference room of the Nashville District Office, 404 James Robertson Parkway, Parkway Towers, Nashville, Tenn., to discuss such business as may be presented by members and staff of the Small Business Administration or others attending. For further information, write or call W. J. Shaver, District Director, U.S. Small Business Administration, Parkway Towers, Room 1012, 404 James Robertson Parkway, Nashville, Tenn. 37219, 615-852-5850.

Dated: August 8, 1978.

K DREW,
*Deputy Advocate for
Advisory Councils.*

[FR Doc. 78-22666 Filed 8-14-78; 8:45 am]

[4710-07]

DEPARTMENT OF STATE

[CM-8/87]

SHIPPING COORDINATING COMMITTEE

Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, September 20, 1978 in room 8236 of the Department of Transportation Building, 400 Seventh Street SW., Washington, D.C.

The purpose of this meeting is to finalize preparations for the 39th session of the Maritime Safety Committee (MSC) of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for Sep-

tember 25-29, 1978 in London. In particular, the Shipping Coordinating Committee will discuss development of U.S. positions dealing with, inter alia, the following topics:

Status of Conventions and Acts of which IMCO is depository;
Outcome of the International Conference on Training and Certification of Seafarers;
Procedures for the effective enforcement of the SOLAS Convention and Protocol, as well as the Load Line Convention;
Guidelines for the performance of surveys and inspections;
Location of specific requirements related to various conventions and codes; and
Election of Chairman and Vice-Chairman for 1979.

Further information may be obtained by writing to Capt. R. A. Biller, Chief, International Affairs Division, U.S. Coast Guard (G-AIA/83), 400 Seventh Street SW., Washington, D.C. 20590, or by calling (area code 202) 426-2280.

The Chairman will entertain comments from the public as time permits.

Dated: August 3, 1978.

RICHARD K. BANK,
*Chairman,
Shipping Coordinating Committee.*
[FR Doc. 78-22697 Filed 8-14-78; 8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSRM-77-4 et al.]

GREEN MOUNTAIN RAILROAD CORP., ET AL.

Petitions for Waiver of Rules Requiring Rear End Marking Devices

As required by 45 U.S.C. 431(c), and in accordance with 49 CFR 211.41 and 221.9, notice is hereby given that seven railroads have submitted waiver petitions to the Federal Railroad Administration (FRA) requesting temporary or permanent waivers of compliance with 49 CFR Part 221 (Rear End Marking Devices—Passenger, Commuter, and Freight Trains). That part requires that certain passenger, commuter, and freight trains be equipped with highly visible marking devices located on the trailing end of the rear car of the train.

Part 221 was published in the FEDERAL REGISTER on January 11, 1977 (42 FR 2321), and became effective on February 15, 1977. Compliance with the provisions of that part became mandatory on July 1, 1978 (42 FR 62002).

Each of the railroads seeking a waiver is identified below. A brief discussion of each request for waiver is provided.

Interested persons are invited to participate in these proceedings by submitting written data, views, or comments. The FRA does not anticipate scheduling a public hearing in connection with the aforementioned petitions since the facts do not appear to warrant a hearing. However, a public hearing will be scheduled if requested by an interested person before August 30, 1978.

All communications concerning these petitions must identify the appropriate docket number (e.g., FRA Waiver Petition No. RSRM-78-1) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before September 15, 1978, will be considered by the FRA before final action is taken. Comments received after that date will be considered to the extent practicable.

Detailed information concerning each petition is on file with the Docket Clerk. Any comments received will also be on file. This material is available for examination by the public during regular business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

GREEN MOUNTAIN RAILROAD CORP.,
FRA WAIVER PETITION DOCKET NO.
RSRM-77-4

The Green Mountain Railroad Corp. (Green Mountain) of Bellows Falls, Vt., petitioned for a permanent waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

Petitioner states that it normally operates one round-trip freight train over its 50-mile line on Mondays through Fridays and occasionally on Saturdays. In rare instances, and almost always during daylight hours, petitioner operates an additional train on its main track.

Green Mountain states that its trains display kerosene lamps of traditional design on the rear of the caboose and that those lamps are lighted at night. When a caboose is not used, a red flag is used during daylight hours. At night, a red kerosene lantern is hung from the rear ladder of the car.

In order to comply with 49 CFR Part 221, petitioner asserts that it would have to purchase suitable approved marking devices and necessary power supplies and replacement parts. Green Mountain further asserts that any marking device purchased would have to contain a built-in power supply since its caboose cars are not equipped with electric lights.

In view of the foregoing, Green Mountain contends that no benefit

would be derived from its compliance with 49 CFR Part 221. Moreover, it contends that a grant of the waiver requested would not compromise the intent of Pub. L. 94-348, the legislation pursuant to which Part 221 was promulgated.

THE NEWBURGH & SOUTH SHORE RAILWAY CO., FRA WAIVER PETITION DOCKET NO. RSRM-78-1

The Newburgh & South Shore Railway Co. of Cleveland, Ohio (Newburgh and South Shore), petitioned for a waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

In support of its petition, Newburgh & South Shore contends that its operating rules justify its request for waiver. These rules require the use of an absolute block system on the main line, the use of warning devices such as lighted fuses and flagging signals, and radio or telephone communications between train crews and train dispatchers in case of train stalling, accident, or engine failure. In addition, petitioner notes that two trains rarely operate on its 3.06 miles of main line at the same time and two trains operate in the same direction on even fewer occasions. Finally, petitioner notes that the last reported rear end collision involving its trains occurred on September 8, 1966.

BIRMINGHAM SOUTHERN RAILROAD CO. FRA WAIVER PETITION DOCKET NO. RSRM-78-2

The Birmingham Southern Railroad Co. of Fairfield, Ala. (Birmingham Southern) petitioned for a waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

Birmingham Southern states that it is a common-carrier short-line railroad, operating within the boundaries of Jefferson County, Ala. Petitioner further states that most of its operations consist of yard movements and that 10 percent or less of daily train-crew time is spent in train movements over its 21 miles of "main running tracks."

In support of its request for waiver, petitioner states that its operating rules provide for an absolute block system for following trains. According to petitioner, this system assures that no train will be given an order permitting it to overtake another train. In addition, Birmingham Southern notes that operations on its main running tracks consist of slow-speed transfer movements over distances of only a few miles in length. Finally, petitioner points out that, to the best of its knowledge, there have been no rear-end collisions on its line since 1966. In

light of the foregoing, Birmingham Southern asserts that it is neither economically nor operationally warranted to require it to comply with 49 CFR Part 221.

THE CHESSIE SYSTEM, FRA WAIVER PETITION DOCKET NO. RSRM-78-3

The Chessie System (Chessie) petitioned for a temporary waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

The Chessie System consists of the Chesapeake & Ohio, the Baltimore & Ohio, the Western Maryland, and affiliated lines. Petitioner states that it expects to complete its analysis of the making devices for its 952 electrified cabooses in the near future. However, it points out that this will bring only 60 percent of its operation into compliance with 49 CFR Part 221.

With respect to the remaining 40 percent of its operation, Chessie asserts that it has not as yet been able to locate an appropriate strobe, portable incandescent light, or acceptable alternative. After obtaining the marking devices needed, petitioner asserts that a substantial period of time will be needed for retrofit. According to Chessie, this additional time is needed to avoid serious service disruptions and catastrophic effects on maintenance programs and car service requirements.

In view of the foregoing problems it anticipates, petitioner requests a 3-year waiver of compliance from the requirements set forth in 49 CFR Part 221.

ILLINOIS CENTRAL GULF RAILROAD CO., FRA WAIVER PETITION DOCKET NO. RSRM-78-4

The Illinois Central Gulf Railroad Co. (ICG) of Chicago, Ill., requested a temporary waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

In support of this request, ICG asserts that its passenger equipment currently has previously installed illuminated rear markers on all of its commuter cars as well as retroreflective materials. Data is not yet available to ICG which permits it to indicate whether these markers meet FRA criteria. Additionally, ICG states that approximately 470 of its electrified cabooses are currently equipped with illuminated rear markers which may meet FRA criteria. However, test data on these devices has not yet been received. Finally, ICG indicates that it has 100 nonelectrified cabooses that are presently equipped with retroreflective devices.

In support of its petition, ICG also asserts that it has made efforts to

comply with Part 221. According to petitioner, it has attempted to obtain appropriate marking devices but has found that they are not available. As a result, it has arranged for the testing of its available marking devices to determine if they comply with Federal standards and ICG operational requirements.

Since petitioner does not have the results of the tests, it requests a waiver of compliance with 49 CFR Part 221 through June 30, 1980. ICG asserts that this temporary waiver would permit it to complete its experimentation, submit marking devices for FRA approval, and retrofit its equipment.

CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD, FRA WAIVER PETITION DOCKET NO. RSRM-78-5

The Chicago South Shore & South Bend Railroad (South Shore) requested a temporary waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

With respect to its passenger cars, petitioner states that, due to factors beyond its control full compliance with Part 221 by July 1, 1978, is at best problematical. These factors include delays in obtaining FRA approval of modified marking devices and delays in refitting cars with upgraded marking devices due to severe weather conditions. Accordingly, South Shore requests a 6-month temporary waiver of compliance in order to complete refitting of its passenger cars.

Petitioner states that its seven cabooses are nonelectrified and equipped with passive markers. Due to economic and operational considerations, it asserts that electrification is impractical. As a result, South Shore contends that those cars will have to be equipped with portable lights and batteries. According to petitioner, data concerning maintenance of approved portable devices and their ability to withstand stress is not presently available. Therefore, it requests an 18-month waiver of compliance to refit its freight cars and cabooses.

SOUTHERN RAILWAY SYSTEM FRA WAIVER PETITION DOCKET NO. RSRM-78-6

The Southern Railway System (Southern) requested a temporary waiver of compliance with the requirement to equip its trains with highly visible marking devices as required by 49 CFR Part 221.

The Southern Railway System consists of the Southern Railway Co. and its affiliated carriers. Those carriers are the Cincinnati, the New Orleans, and Texas Pacific Railway Co., the Alabama Great Southern Railroad Co.,

the Central of Georgia Railroad Co., the New Orleans Terminal Co., the St. Johns River Terminal Co., the Interstate Railroad Co., and the Norfolk Southern Railway Co.

With regard to its passenger equipment, Southern states that appropriate marking devices have been ordered. However, it asserts that these passenger cars cannot be equipped to meet the July 1, 1978, deadline, due to delays in FRA approval of the devices, delays in shipment of the devices; and the time reasonably required to install the devices. Southern states that the approved devices for its steam excursion trains, its regular passenger trains, and its business and research cars should be delivered and installed by December 31, 1978. Southern indicates that it will take interim measures, using portable devices, to try to achieve compliance during this period but seeks a waiver of compliance until December 31, 1978, for this equipment.

Petitioner states that it has encountered greater difficulty in equipping its cabooses. Devices have been ordered for its road cabooses which are electrified, and delivery is expected to begin in September 1978. Additionally, Southern has 90 local cabooses without electricity. An on-board charging system will have to be installed on these cabooses since Southern has discarded the possibility of using portable marker lights due to lack of facilities for recharging batteries and the risk of theft of the batteries. Petitioner is currently considering axle generators or solar-powered panels as a power source. However, it contends that additional time is needed to complete experiments involving the solar-powered panel system. Moreover, regardless of which system it elects to use, Southern contends that a substantial amount of additional time will be required for installation.

In light of the foregoing, Southern request a temporary waiver of compliance for its passenger trains until December 31, 1978, and for its freight trains until December 31, 1979.

AUTHORITY: Secs. 202 and 208, Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431 and 437); § 1.49(n), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(n)).

Issued in Washington, D.C., on August 7, 1978.

ROBERT H. WRIGHT,
Acting Chairman,
Railroad Safety Board.

[FR Doc. 78-22720 Filed 8-14-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Office of the Secretary

STEEL WIRE ROPE FROM THE REPUBLIC OF KOREA

Antidumping; Tentative Determination of Sales at Not Less Than Fair Value

AGENCY: United States Treasury Department.

ACTION: Tentative negative determination.

SUMMARY: This notice is to advise the public that there is no reason to believe or suspect, based on the information available, that steel wire rope from the Republic of Korea is being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of the merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Interested persons are invited to comment on this action not later than September 14, 1978.

EFFECTIVE DATE: August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTAL INFORMATION: Information was received in proper form on September 27, 1977, from counsel acting on behalf of Broderick and Bascom Rope Co. of St. Louis, Mo., alleging that steel wire rope from the Republic of Korea was being sold in the United States at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.), (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, and "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of November 1, 1977 (42 FR 57202).

For purposes of this notice, the term "steel wire rope" means ropes, cables, and cordage other than wire strand, of steel, other than brass plated, not fitted with fittings, not made up into articles, and not covered with textiles or other nonmetallic materials.

During the course of the investigation, the Secretary determined that a tentative determination could not be made within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was ex-

tended to no more than 7 months and later extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice." Notices to that effect were published in the FEDERAL REGISTER of May 3, 1978 (43 FR 19095) and June 8, 1978 (43 FR 24934), respectively.

TENTATIVE DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On the basis of information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that there are no reasonable grounds to believe or suspect that the purchase price of steel wire rope from the Republic of Korea is less than fair value, and thereby the foreign market value, of such or similar merchandise.

Statement of Reasons on Which This Determination Is Based

The reasons and bases for the above tentative determination are as follows:

a. Scope of the Investigation. It appears that virtually all imports of the subject merchandise from the Republic of Korea were manufactured by Korean Iron and Steel Works, Ltd., Bookook Steel and Wire Co., Ltd., and Dong-Il Steel Manufacturing Co., Ltd. Therefore, the investigation was limited to these three manufacturers.

b. Basis of Comparison. For the purpose of considering whether the merchandise is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since the export sales compared appear to be made to non-related purchasers in the United States. Home market price, as defined in section 153.2, Customs Regulations (19 CFR 153.2), was used since merchandise appears to be sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales in the home market and to the United States during the period May 1 through October 31, 1977.

c. Purchase Price. For purposes of this tentative determination, purchase price was calculated on the basis of the c.i.f. packed price to unrelated U.S. purchasers, with deductions for ocean freight, marine insurance, inland freight, brokerage, stevedorage, and wharfage charges, as appropriate.

Additions were made, where appropriate, for the amount of the business tax imposed on home market sales, which tax was not imposed on export sales. Additions were also made for a Korean defense surtax and a customs duty imposed on raw material imported into Korea, in accordance with section 203 of the Act. The customs duty and the surtax were both rebated upon exportation of the wire rope containing these imported components.

Additions were also made for cost savings due to differences in treatment under the import deposits program. For each ship-

ment of raw materials imported into Korea for the production of steel wire rope, an amount referred to as an import deposit must be placed in the Central Bank. The deposit required for materials used in exports is lower than that for materials used in producing the same product for sale in the home market. The deposit requirement has the same effect as a duty or tax. Consequently, the interest savings on the exported merchandise has been added in accordance with the Act.

d. *Home Market Price.* For purposes of this tentative determination, the home market price has been calculated on the basis of a delivered packed price to unrelated customers in the home market. Adjustments have been made for freight and for interest and packing cost differentials, as appropriate. A claim made by respondents for an adjustment for differences in warehousing inventory costs in the home market was not allowed because the cost incurred relates to pre-sale expenses and not after-sale expenses. In the past, the Department has disallowed claims for warehousing costs which are incurred prior to the sale of the merchandise because such costs are viewed as overhead expenses not directly related to the sales under consideration, as required by section 153.10 of the Customs Regulations (19 CFR 153.10).

The petition contained an allegation that sales of the subject merchandise in the home market, or to third countries, are being made at less than the cost of producing the merchandise, within the meaning of section 205(b) of the Act. Information submitted by respondents was inadequate for resolving the issue of sales below cost for purposes of this determination. Additional cost information was requested of the respondents and has been received and verified. That information will be analyzed and a determination made as to whether sales in the home market have been made at less than the cost of production by the time a final determination is made.

e. *Results of Fair Value Comparisons.* Using the above criteria, comparisons were made on 77 percent of the sales of the subject merchandise to the United States during the representative period. In some instances, purchase price was less than the home market price of such or similar merchandise. Margins were tentatively found ranging from less than one percent to approximately 45 percent on 2 percent of the sales to the United States during the representative period. However, the weighted average margins, when weighted over 100 percent of the merchandise compared for each manufacturer amounted to 0.27 percent for Bookook, 0.06 percent for Dong-II, and 0.08 percent for Korean Iron and Steel. Those margins are considered to be *de minimis*.

In accordance with section 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than August 30,

1978. Such request must be accompanied by a statement outlining the issues wished to be discussed, which issues may be discussed in greater detail in a written brief.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in 10 copies in time to be received by his office not later than September 14, 1978. All persons submitting views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and respondent are also requested to send each other all written submissions, including nonconfidential summaries or approximated presentations of all confidential information.

This tentative determination and the statement of reasons therefor are published pursuant to section 153.34(a) of the Customs Regulations (19 CFR 153.34(a)).

Dated: August 8, 1978.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

[FR Doc. 78-22659 Filed 8-14-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 6981]

ASSIGNMENT OF HEARINGS

AUGUST 10, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 59957 (Sub-51), Motor Freight Express, now assigned for hearing on September 18, 1978, at New York, NY is canceled and reassigned for Prehearing Conference on September 11, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 121212 (Sub-2F), Cumberland Trucking Co., Inc., now assigned September 11, 1978, at Chicago, IL (2 days) in Room 3855-A, 230 South Dearborn Street.

MC 19311 (Sub-41F), Central Transport, Inc., now assigned September 18,

1978, at Lansing, MI (3 days) in Mercantile Building, 6545 Mercantile Way.

MC 19311 (Sub-40), Central Transport, Inc., now assigned September 11, 1978 (5 days) at Lansing, MI in Mercantile Building, 6545 Mercantile Way.

MC 143578 (Sub-1), and MC 143578 (Sub-2F), Wilson Bus Co., Inc., now being assigned September 13, 1978 (3 days) at Fayetteville, NC, in a hearing room to be later designated.

MC 115654 (Sub-82F), Tennessee Cartage Co., Inc., now being assigned September 18, 1978 (2 days), at Nashville, TN, in a hearing room to be later designated.

MC 140123 (Sub-5F), Graham Transfer, Inc., now being assigned September 20, 1978 (3 days), at Nashville, TN, in a hearing room to be later designated.

MC 141108 (Sub-1), D & C Express, Inc., now assigned September 6, 1978 at Omaha, NE is canceled and transferred to Modified Procedure.

MC-F 13463, the Lake Shore Motor Freight Co.—Purchase—Olsen Express, Inc., MC 135696 (Sub-34-35), the Lake Shore Motor Freight Co., now assigned September 11, 1978, at Cleveland, OH, is canceled and reassigned for Prehearing Conference on September 11, 1978, at the Offices of the Interstate Commerce, Washington, DC.

MC 107586 (Sub-25), Continental Bus System, Inc., now assigned September 18, 1978, at Dallas, TX, is canceled and application dismissed.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-22721 Filed 8-14-78; 8:45 am]

[7035-01]

[AB 7 (SDM)]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, part 1121.23, that the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. has filed with the Commission its amended color-coded system diagram map in docket No. AB 7 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram and the Commission on July 17, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.



Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission, or

similar agency, and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commis-

sion, Section of Dockets, by requesting docket No. AB 7 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

LEGEND

RED	.....	CATEGORY 1 ANTICIPATED SUBJECT OF ABANDONMENT APPLICATION WITHIN 3 YEARS 49 CFR SEC. 1121.20 (b) (1)
GREEN	.....	CATEGORY 2 POTENTIALLY SUBJECT TO ABANDONMENT. 49 CFR SEC. 1121.20 (b) (2)
YELLOW	xxxxxx	CATEGORY 3, APPLICATION PRESENTLY PENDING BEFORE COMMISSION. 49 CFR SEC. 1121.20 (b) (3)
BROWN	.....	CATEGORY 4, OPERATED UNDER SUBSIDY 49 USC SEC. 1a (6) (c) 49 CFR SEC. 1121.20 (b) (4)
BLACK	.....	CATEGORY 5, OTHER LINES OWNED AND OPERATED, DIRECTLY OR INDIRECTLY. 49 CFR SEC. 1121.20 (b) (5)
BLACK	.....	TRackage RIGHTS CONTEMPLATED
BLACK	—————	STATE BOUNDARY LINES
BLACK	—————	COUNTY BOUNDARY LINES
BLACK	—————	S M S A BOUNDARY LINES
BLACK	—————	INTERNATIONAL BOUNDARY LINES
		REFERS TO LINE DESCRIPTION
		ANY CITY WITH A POPULATION OF 5,000 OR MORE WITHIN 5 MILES OF A RAIL LINE.

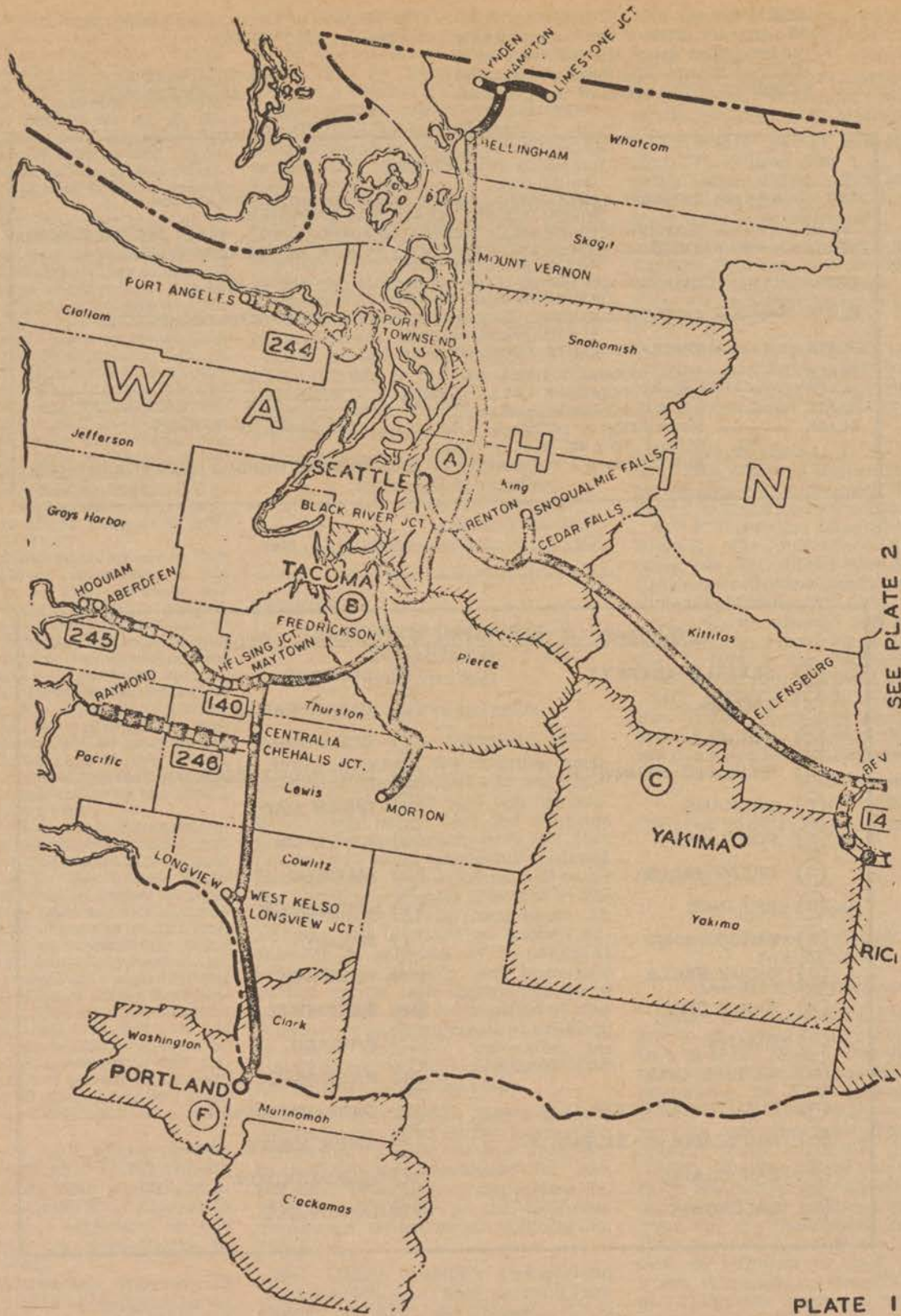
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SCALE IN MILES

JUNE 30, 1978

STANDARD METROPOLITAN STATISTICAL AREAS

(A) SEATTLE-EVERETT	(R) DUBUQUE
(B) TACOMA	(S) CEDAR RAPIDS
(C) YAKIMA	(T) DES MOINES
(D) RICHLAND-KENNWICK	(U) DAVENPORT-ROCK ISLAND
(E) SPOKANE	(V) GREEN BAY
(F) PORTLAND	(W) APPLETON
(G) GREAT FALLS	(X) MADISON
(H) BILLINGS	(Y) MILWAUKEE
(I) FARGO	(Z) RACINE
(J) SIOUX FALLS	(AA) KENOSHA
(K) SIOUX CITY	(BB) ROCKFORD
(L) OMAHA	(CC) CHICAGO
(M) KANSAS CITY	(DD) KANKAKEE
(N) DULUTH-SUPERIOR	(EE) GARY-HAMMOND
(O) MINNEAPOLIS-ST. PAUL	(FF) TERRE HAUTE
(P) EAU CLAIRE	(GG) BLOOMINGTON
(Q) LA CROSSE	(HH) LOUISVILLE



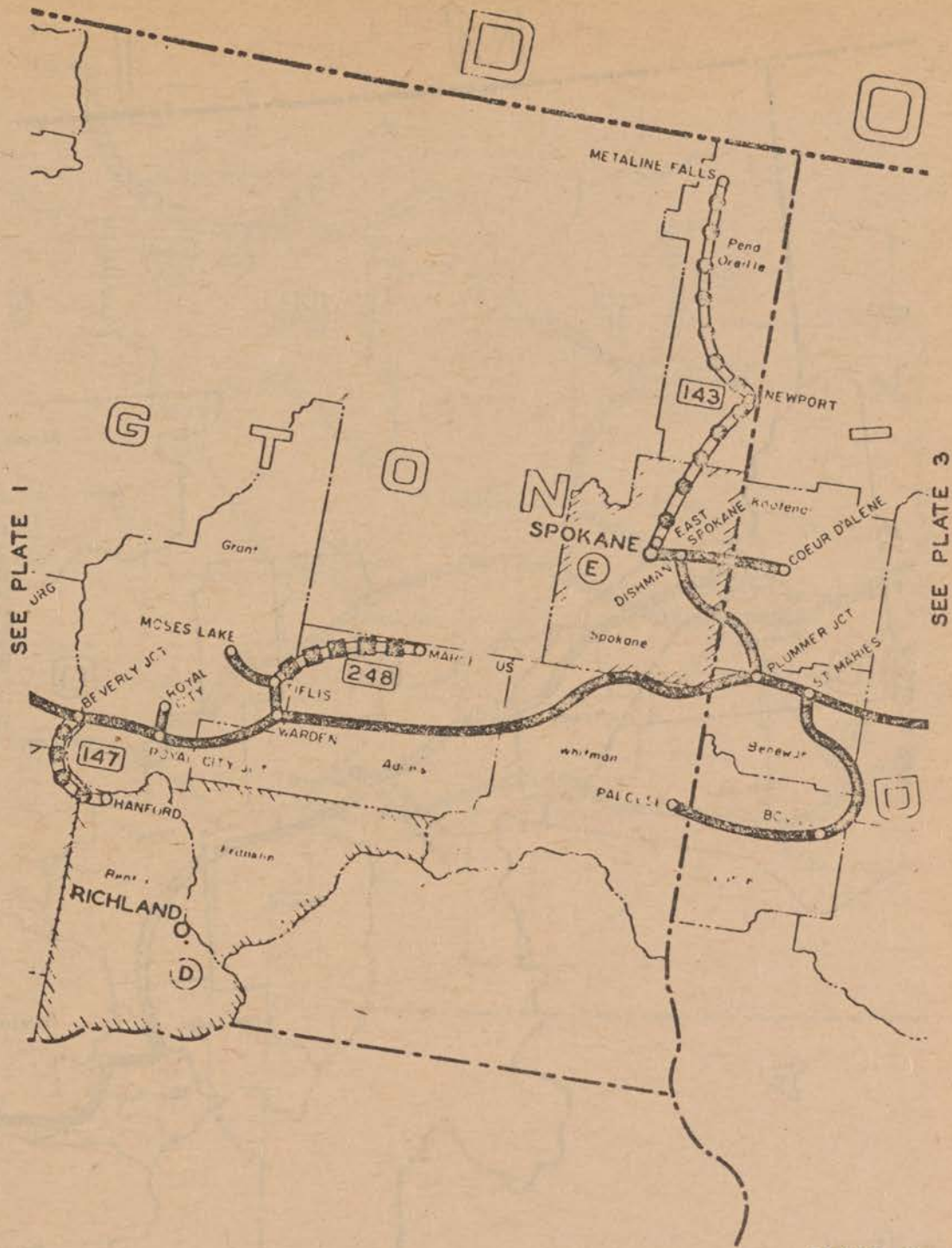
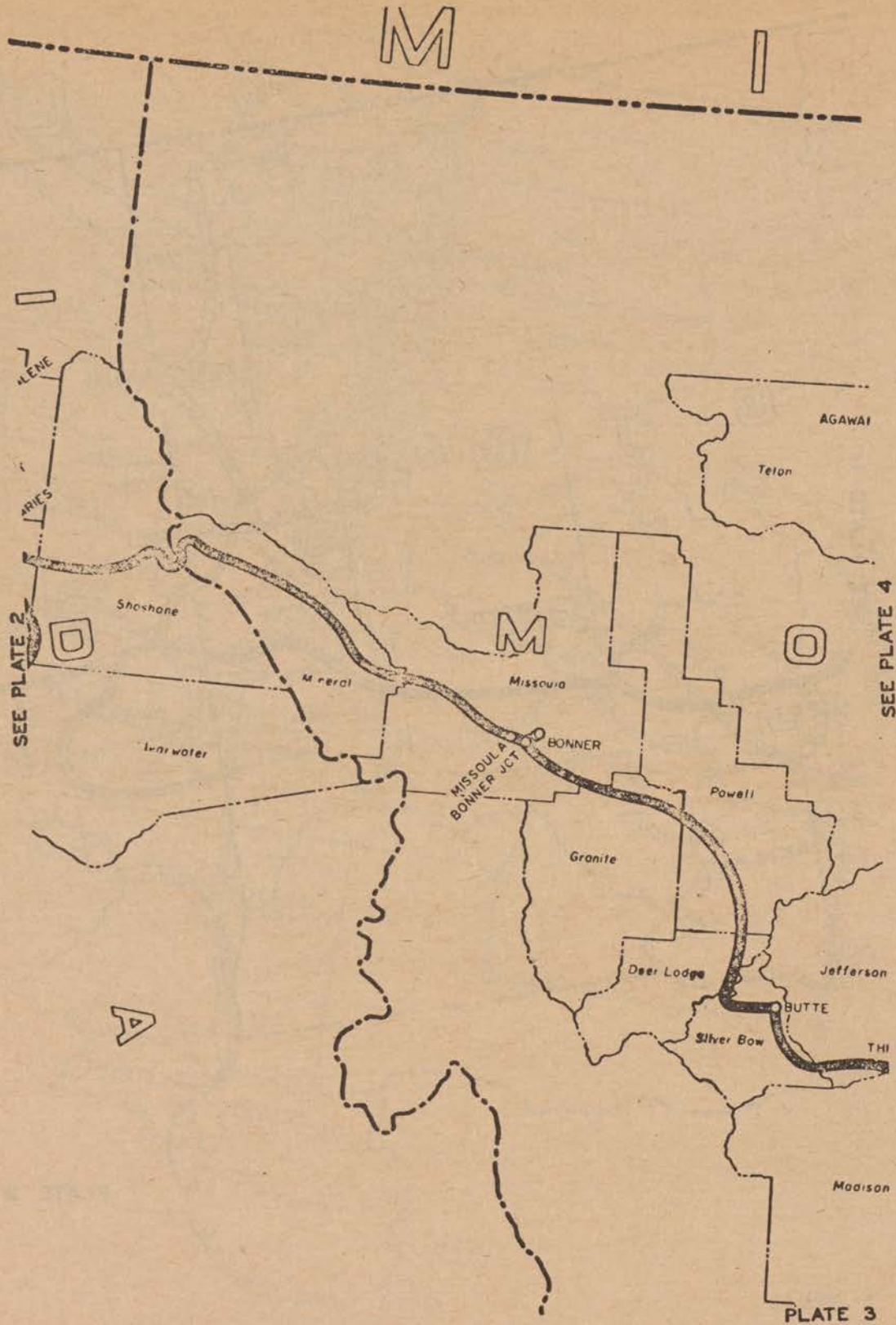
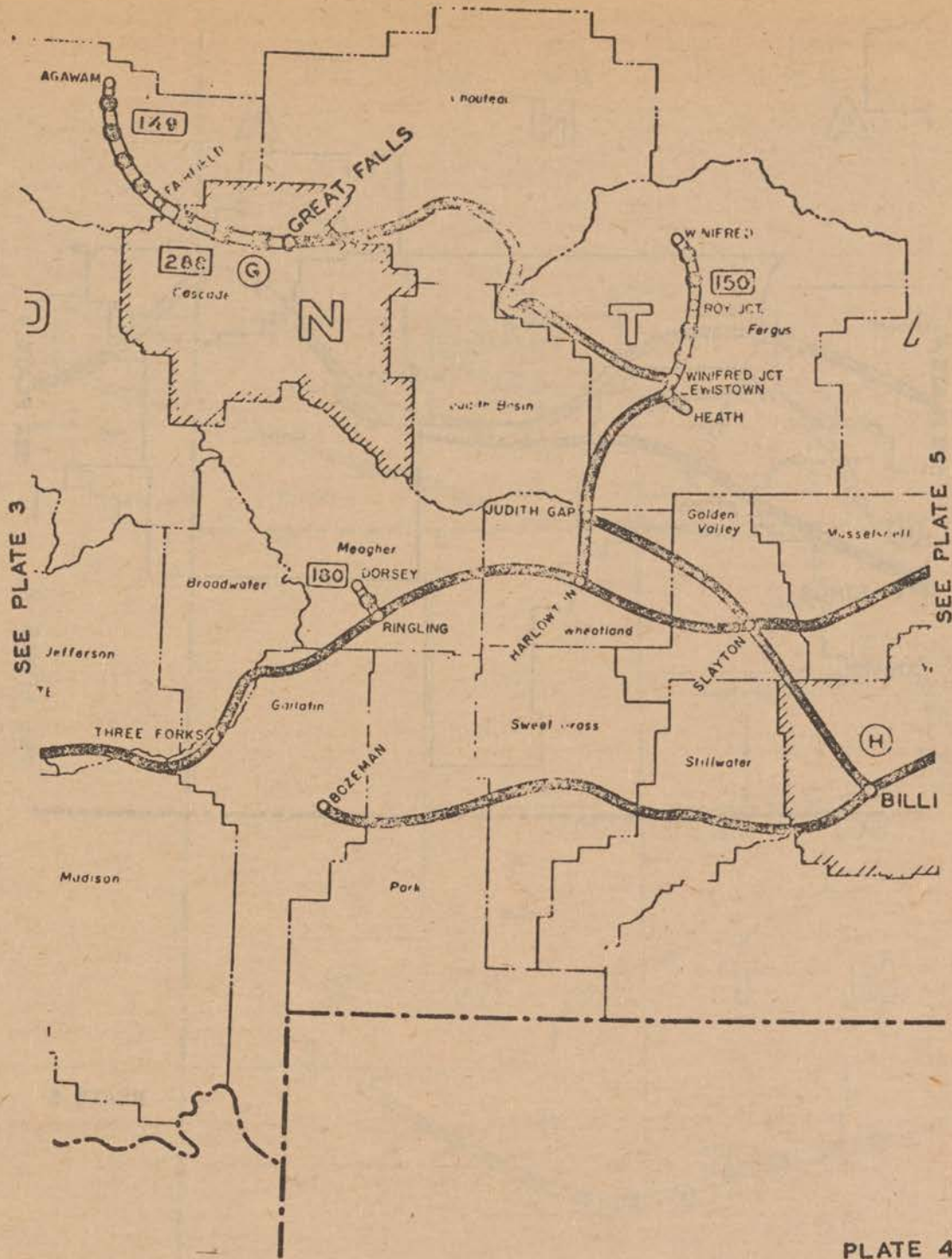


PLATE 2

NOTICES





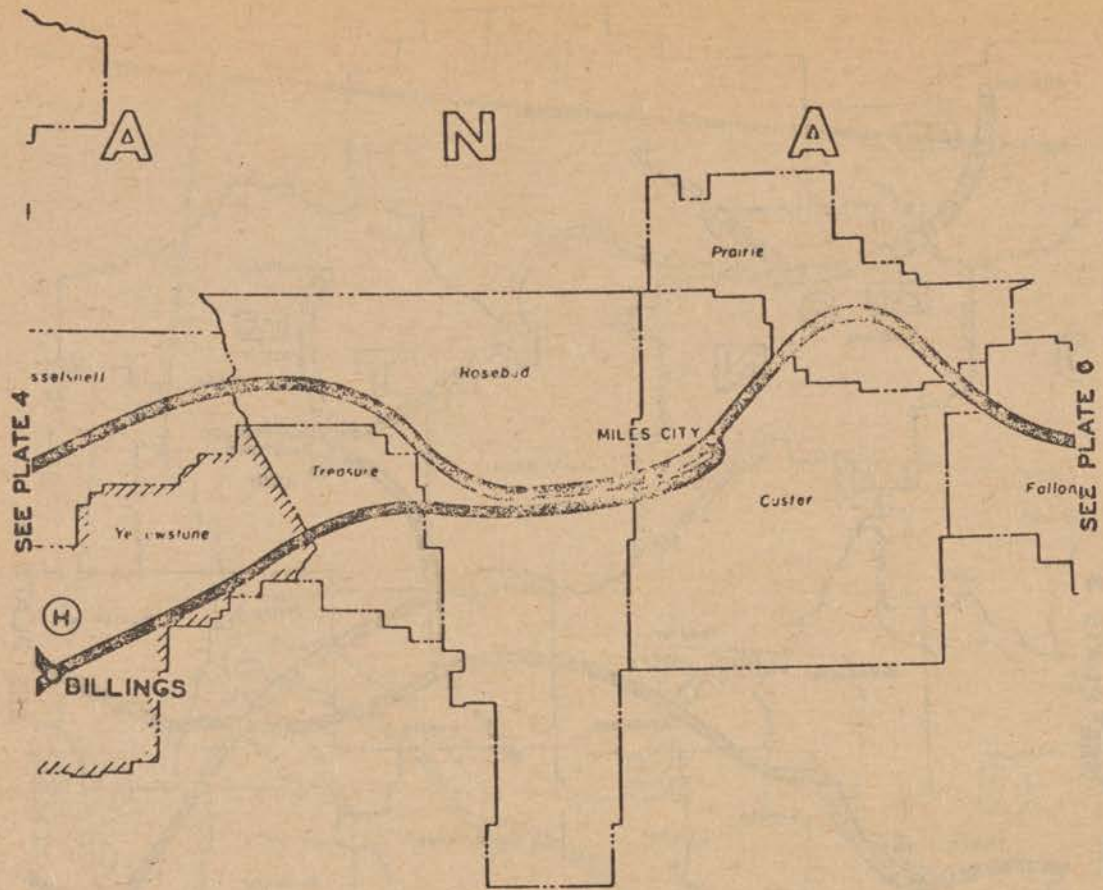


PLATE 5

N O R T H

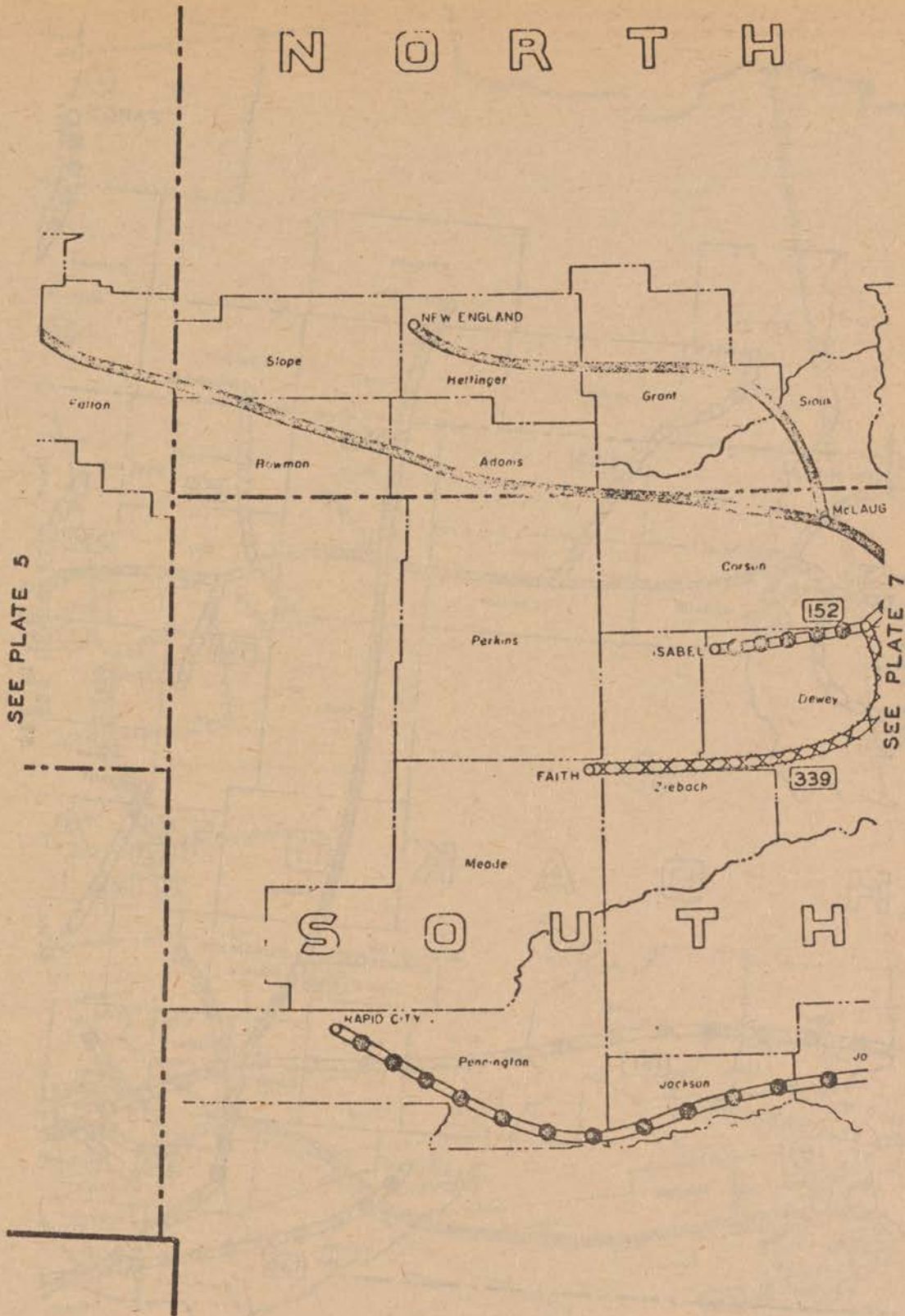
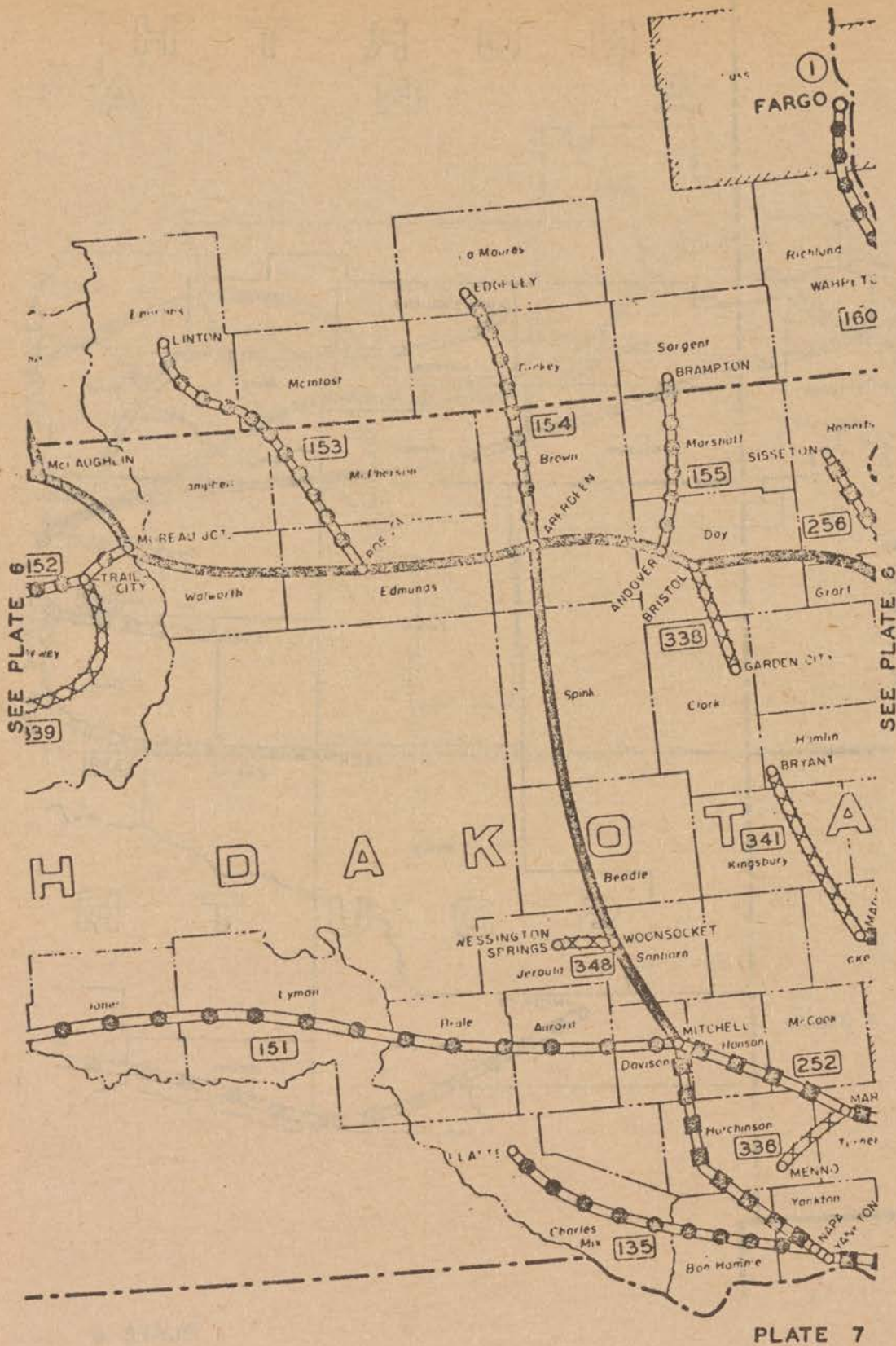
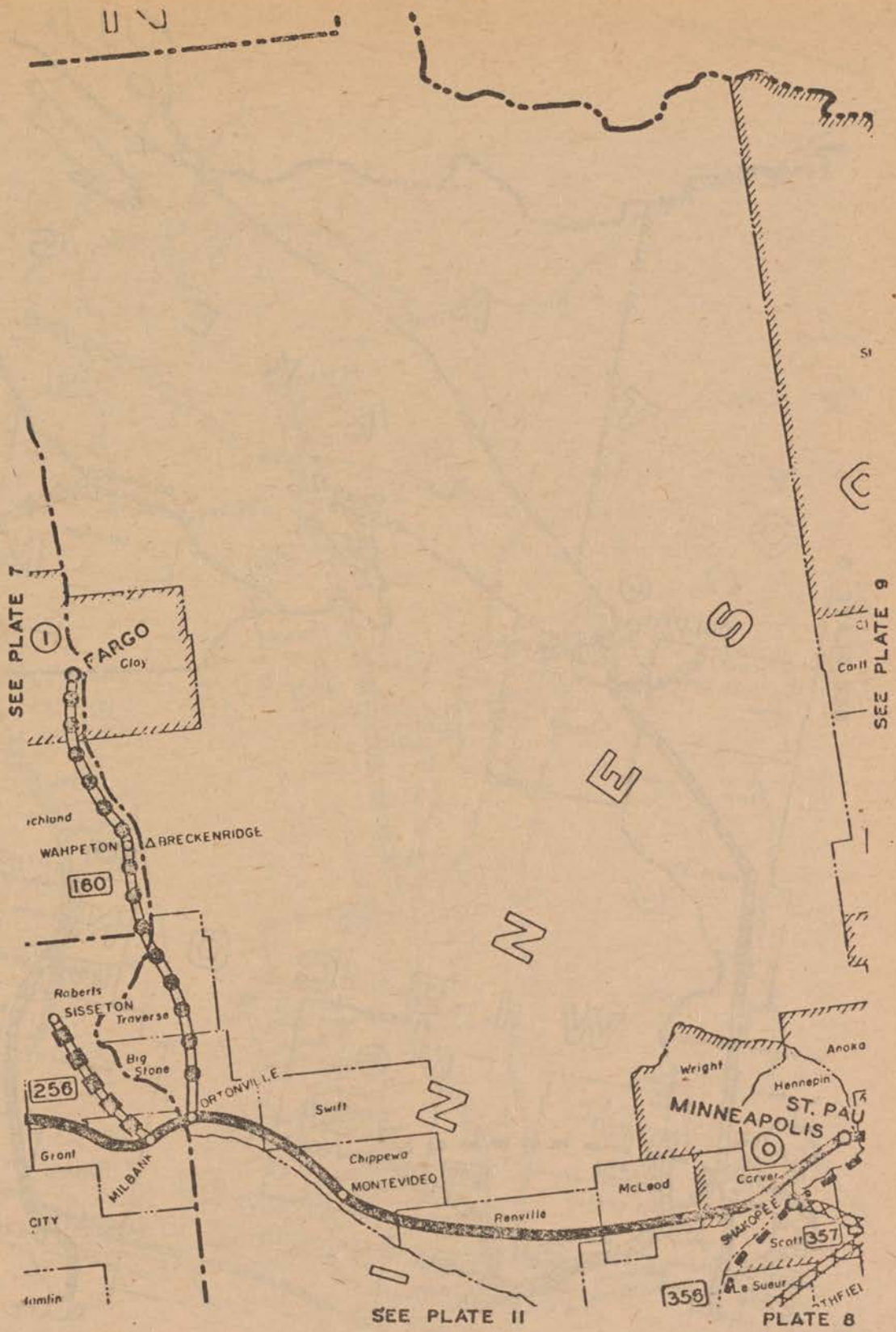
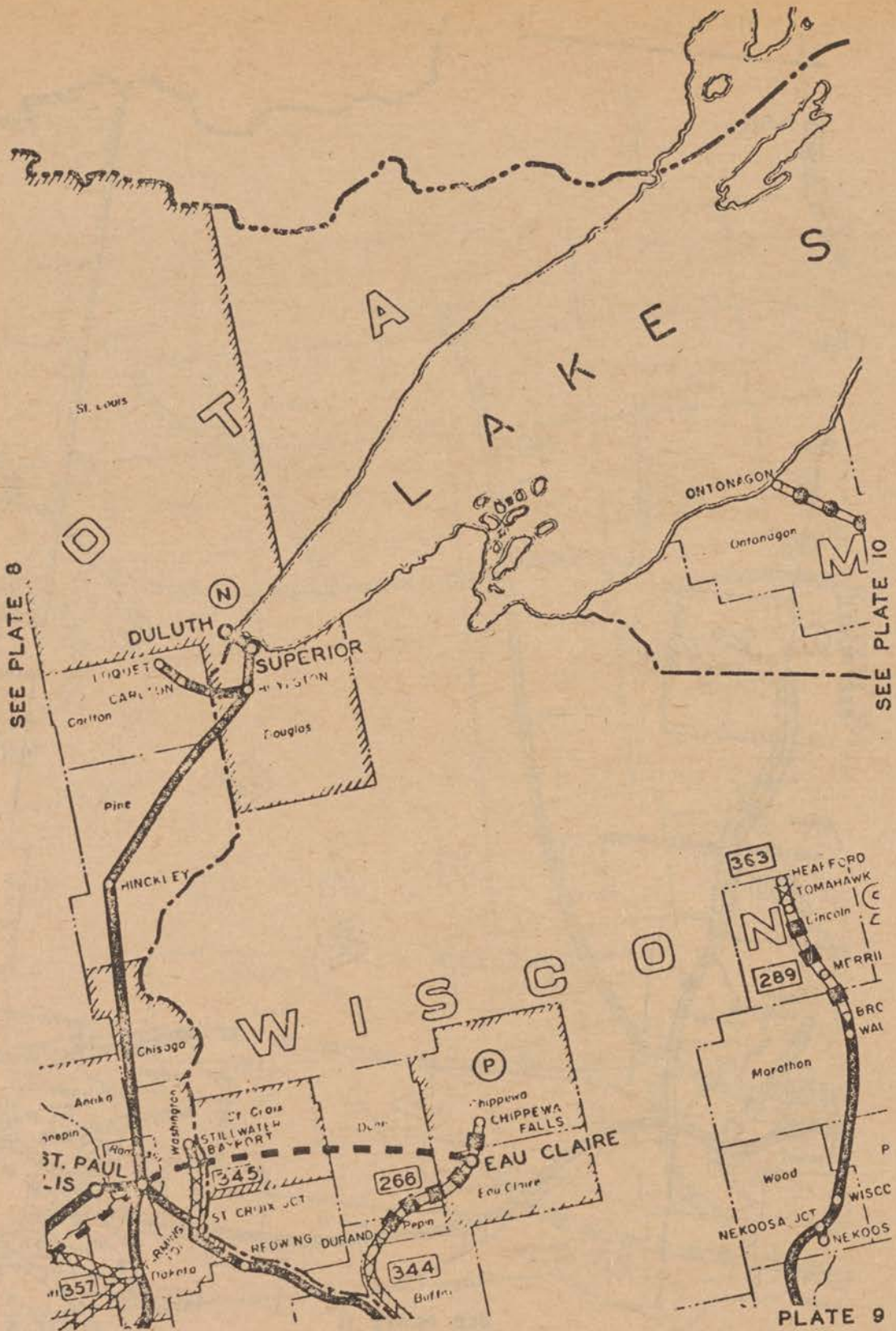


PLATE 6







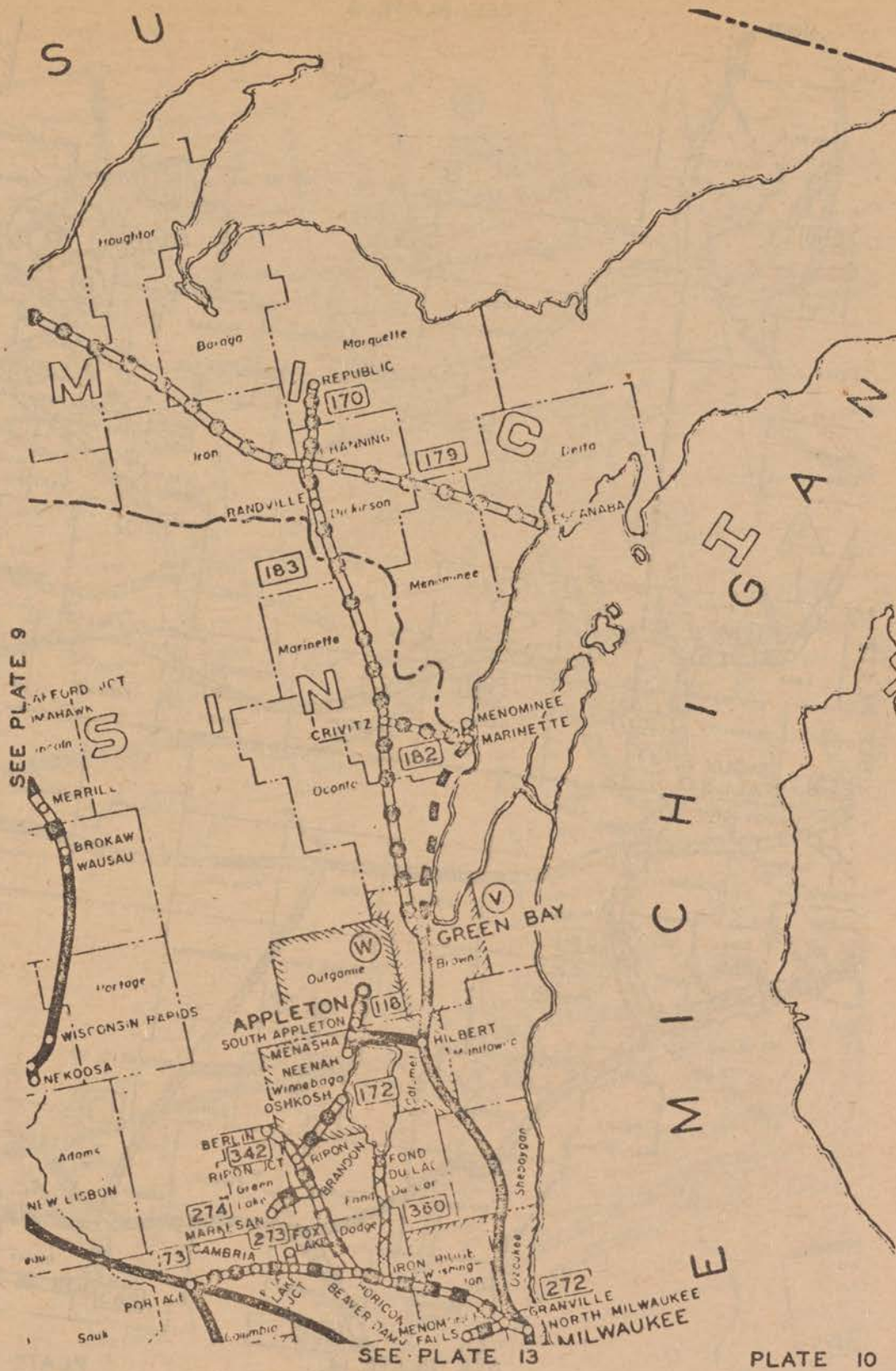
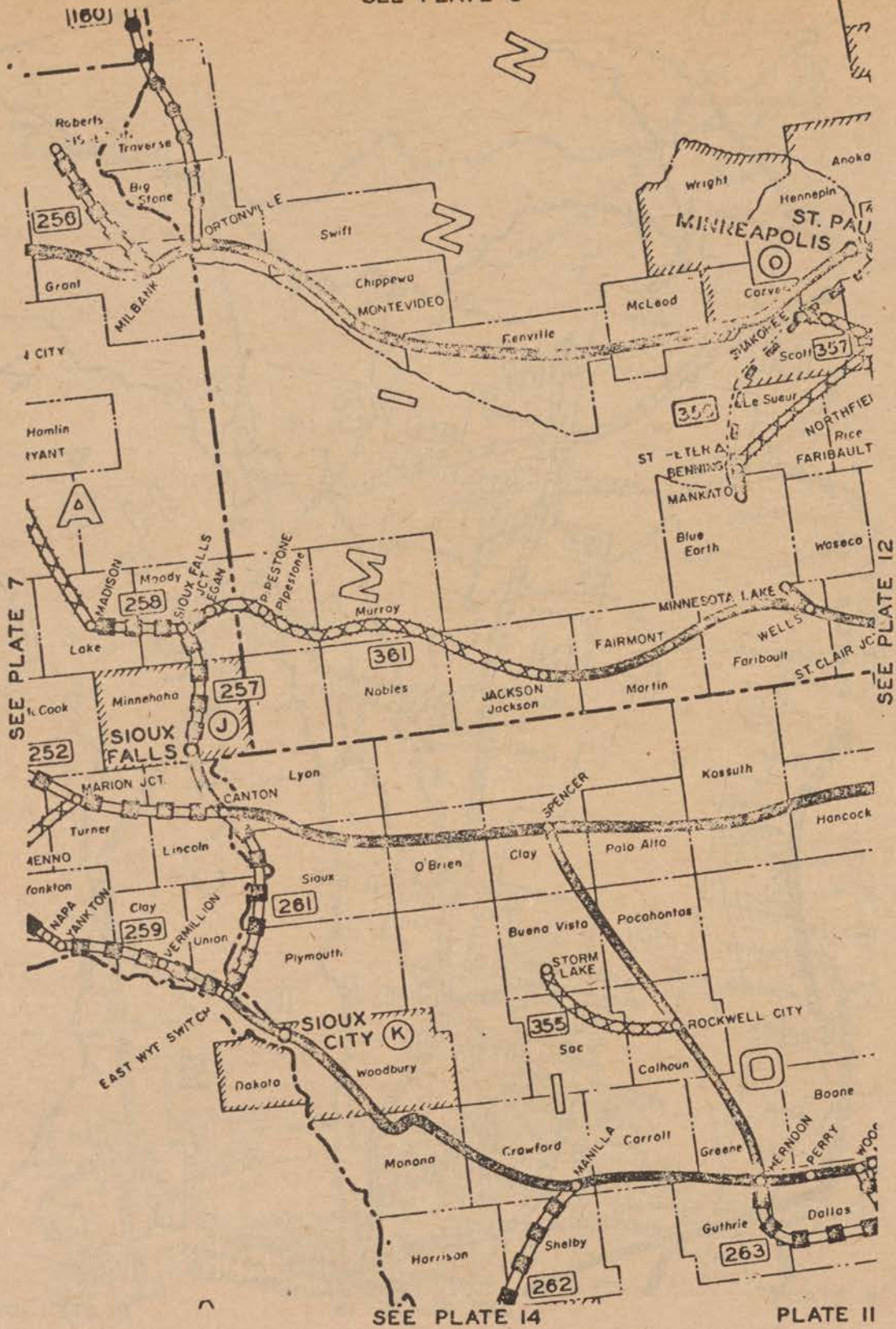


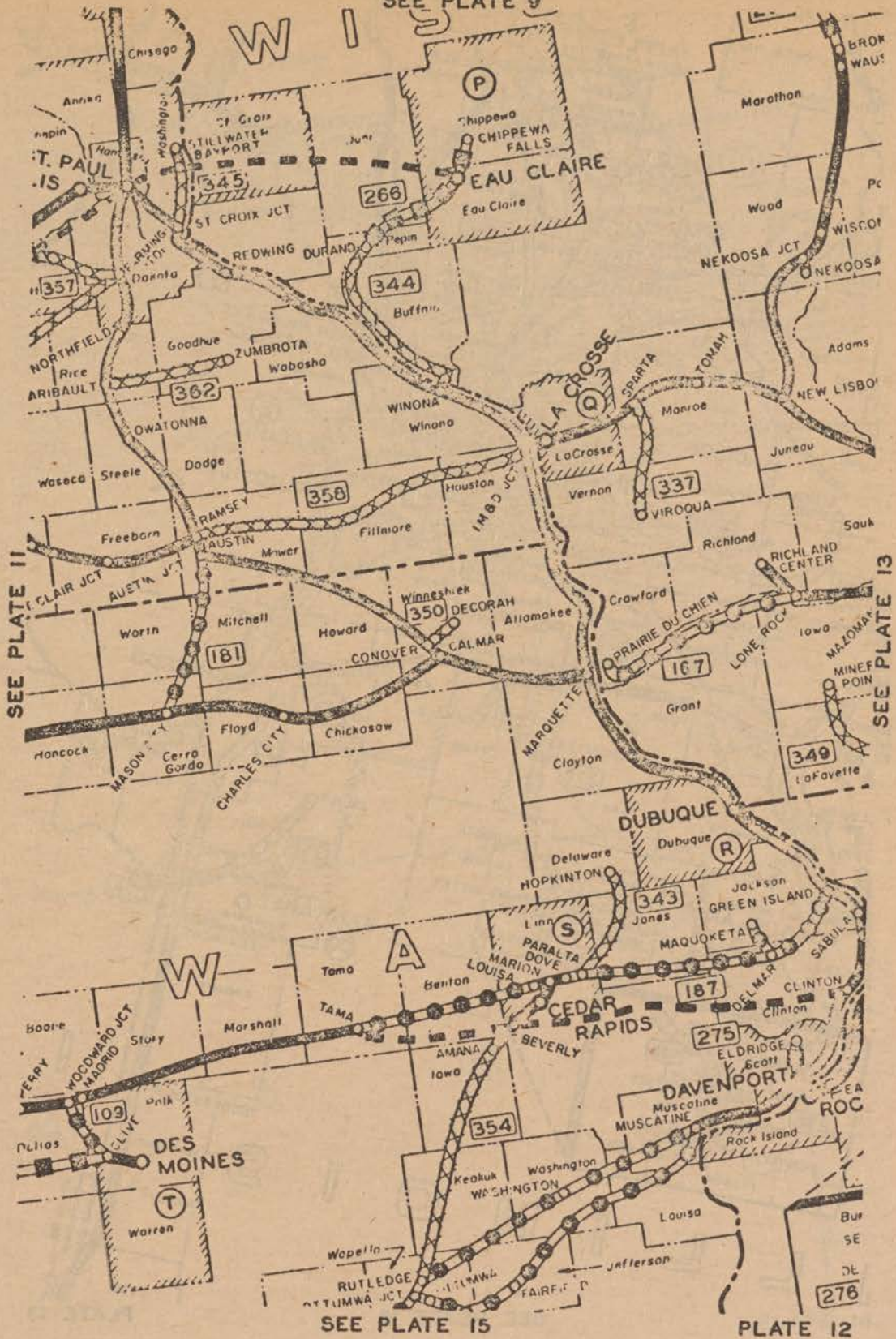
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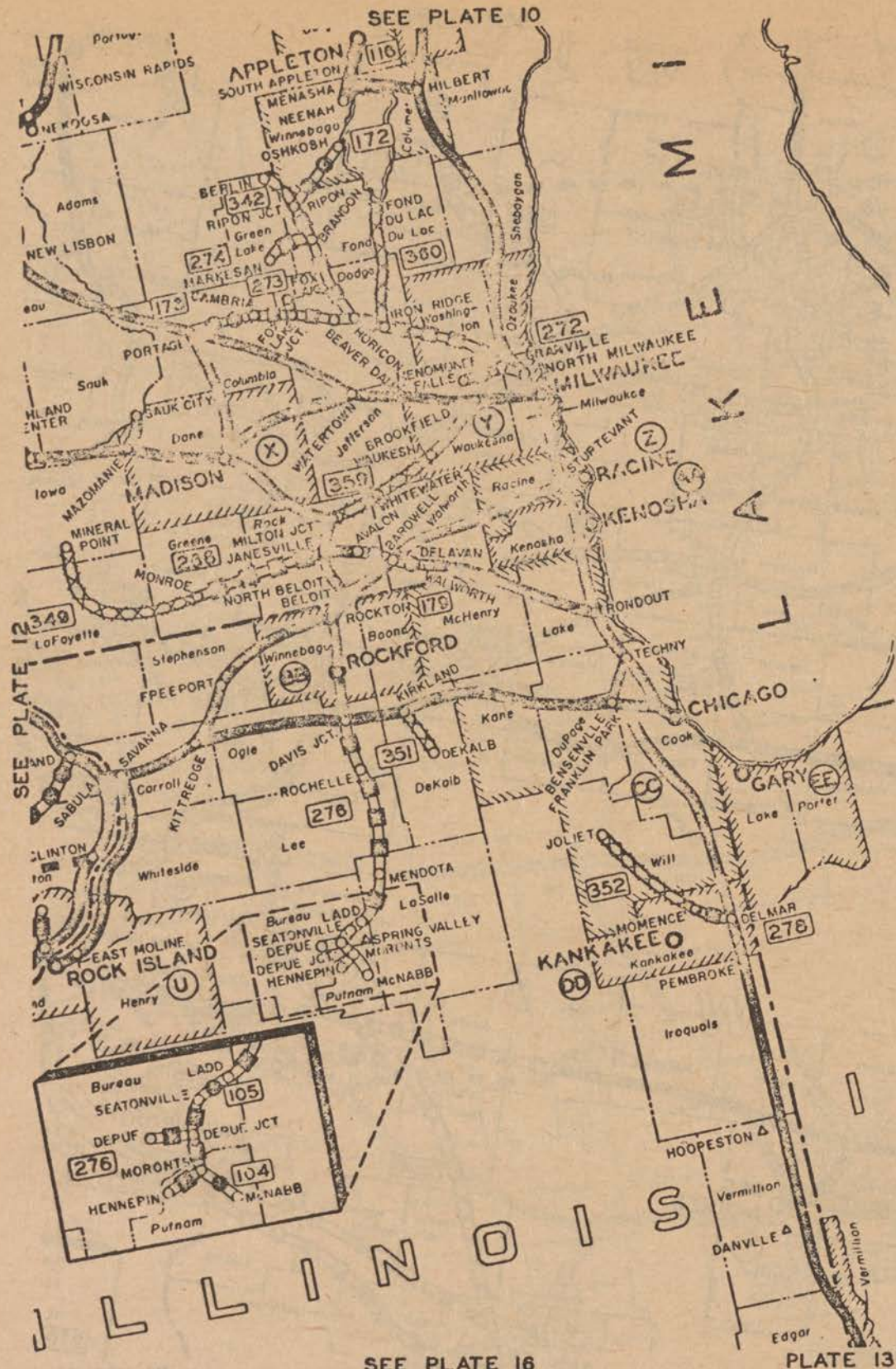
NOTICES
SEE PLATE 8



NOTICES

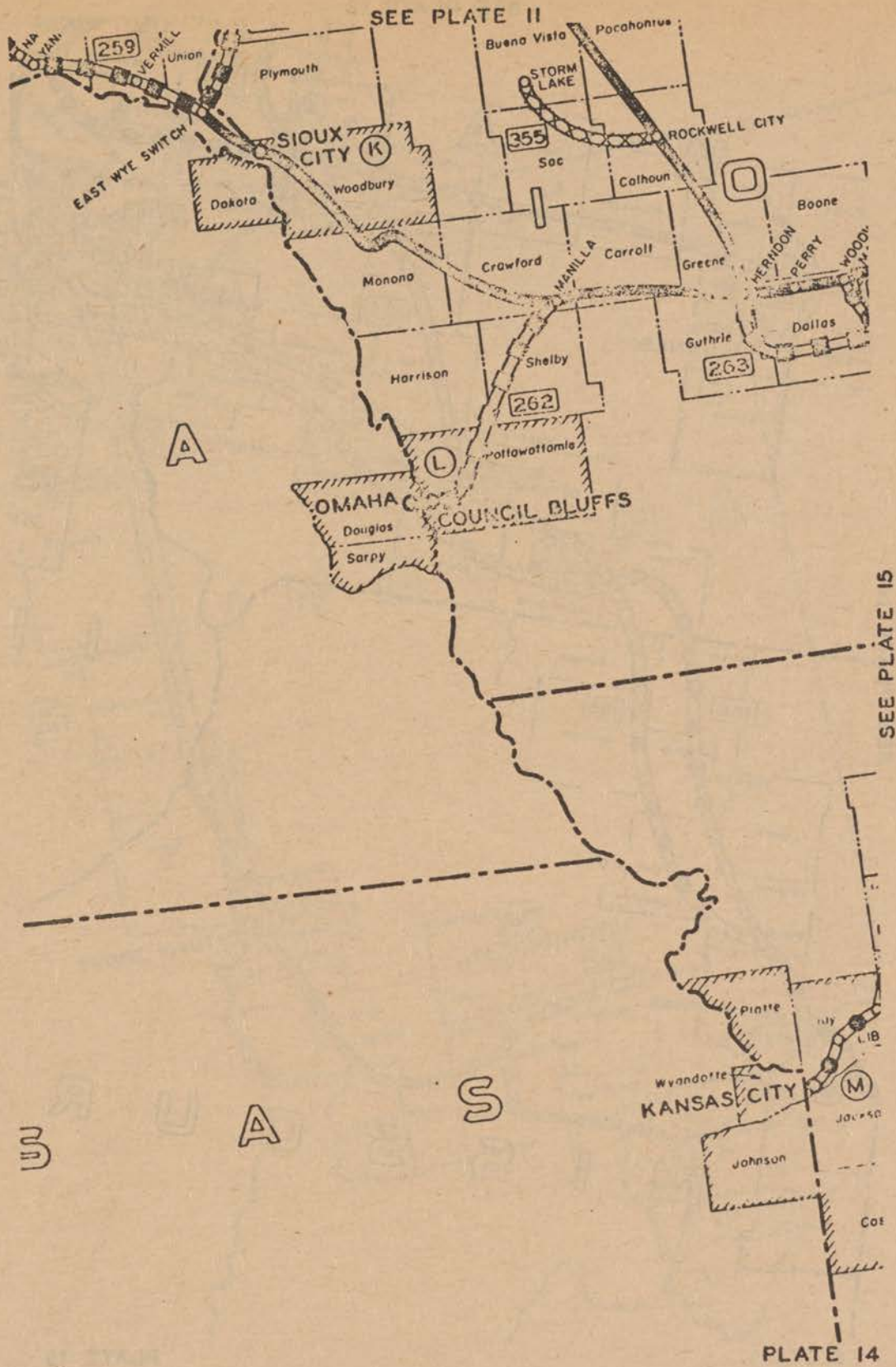
SEE PLATE 9





SEE PLATE 16

PLATE 13



IOWA

NOTICES

SEE PLATE 12

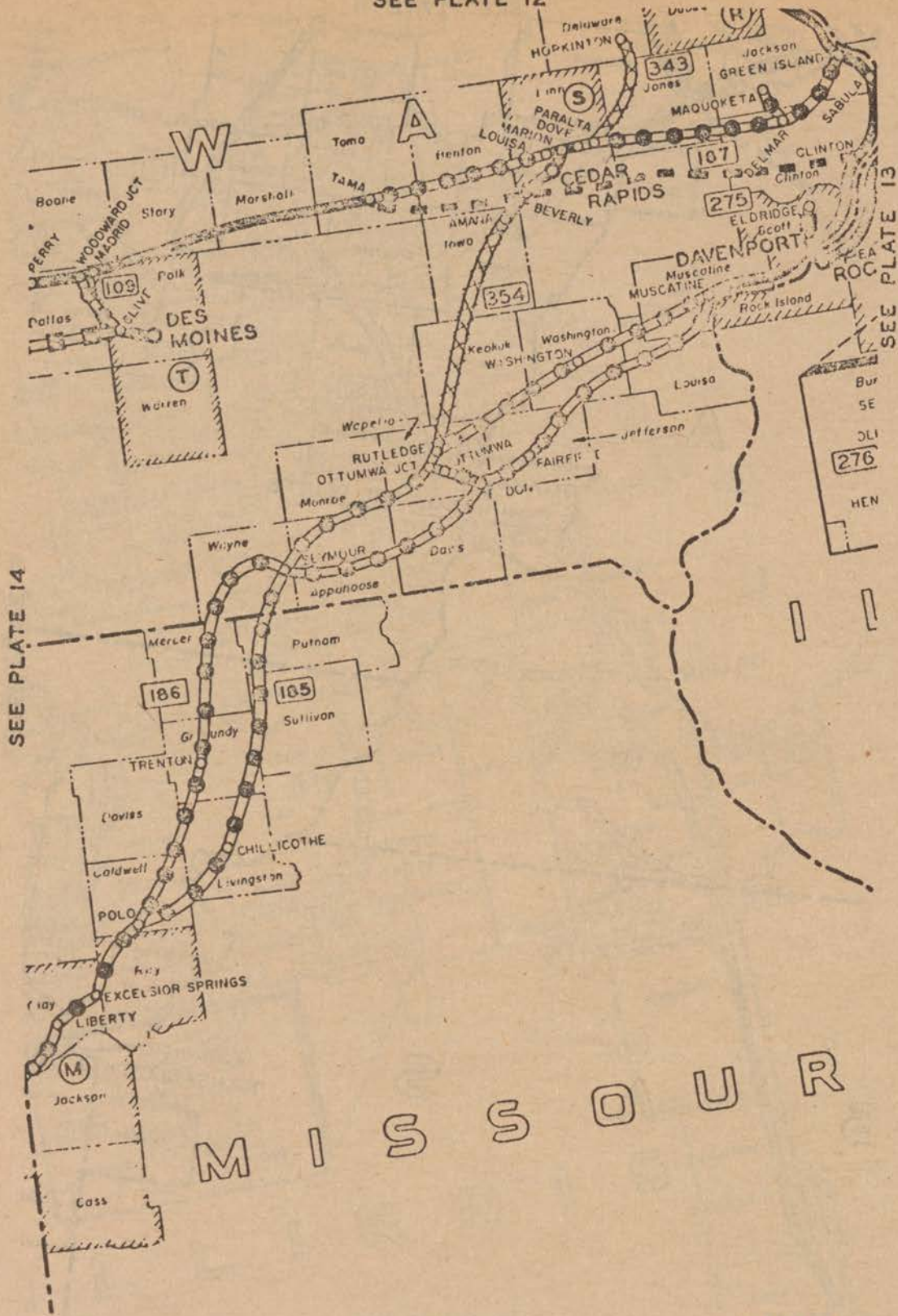


PLATE 15

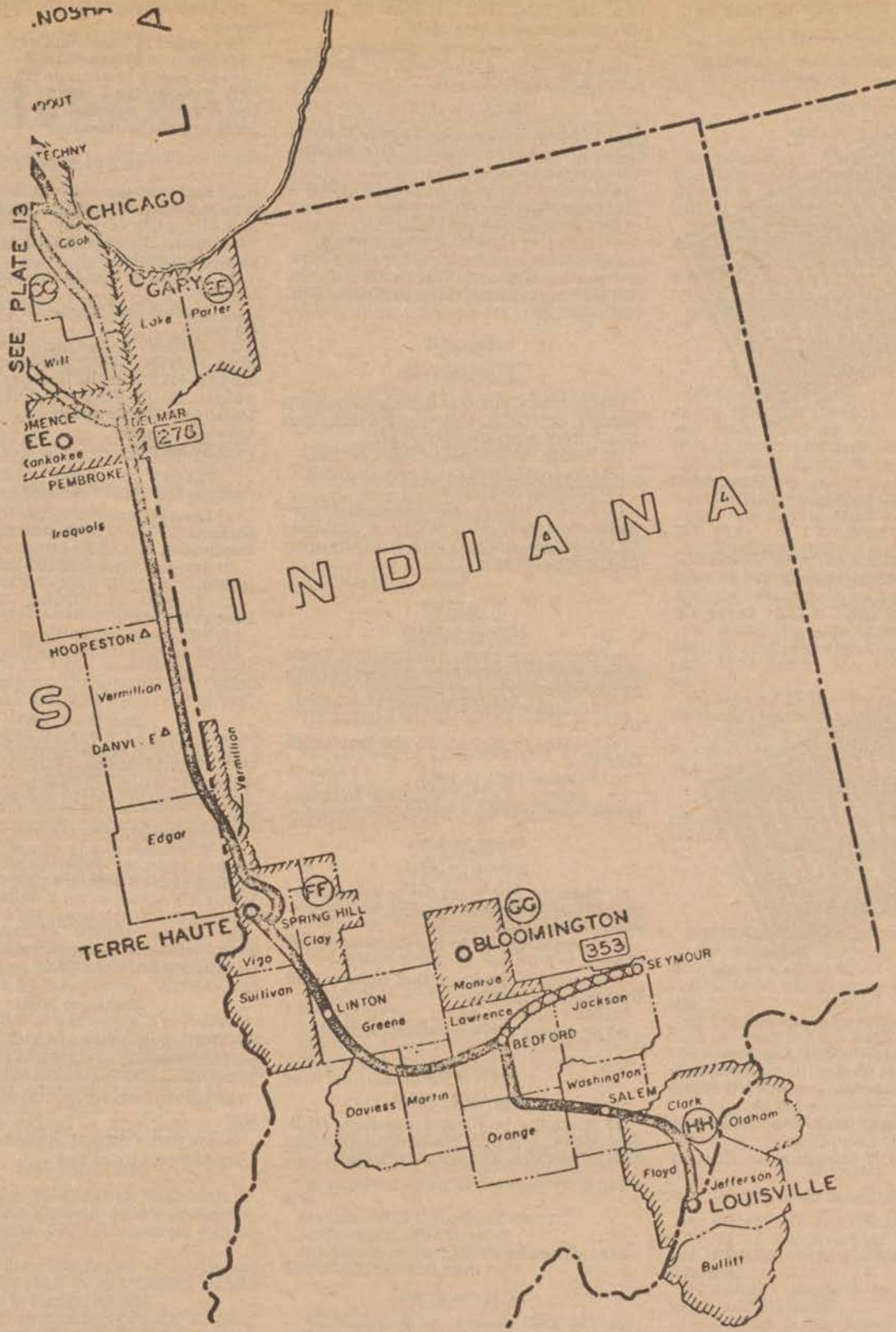


PLATE 16

NOTICES

CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD CO.

DESCRIPTION OF LINES TO ACCOMPANY
SYSTEM DIAGRAM MAP



CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD CO.

CATEGORY I

Lines or portions of lines which the carrier anticipates will be the subject of abandonment or discontinuance application to be filed within three (3) years.



ILLINOIS

Map Code [104]

- (a) Moronts to McNabb (11.0-mile segment of trackage rights of the Illinois-Iowa Division, 14th Subdivision, and related trackage).
- (b) Located wholly in the State of Illinois.
- (c) Located in Putnam County.
- (d) Milepost 91.7 (Moronts) to milepost

95.6 (Granville); and milepost 0.0 (Granville) to milepost 7.1 (McNabb).

- (e) No agency stations on this segment.
- (f) Operation authorized by trackage rights over ConRail.

Map Code [105]

- (a) Ladd to Seatonville (2.3-mile segment of the Illinois-Iowa Division, 14th Subdivision, and related trackage).
- (b) Located wholly in the State of Illinois.
- (c) Located in Bureau County.
- (d) Milepost 81.9 to 84.2 (MILW).
- (e) No agency stations on this segment.
- (f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) and Burlington Northern, Inc. (BN).

IOWA

Map Code [109]

- (a) Clive to Woodward Junction (22.0-mile segment of the Illinois-Iowa division, 27th Subdivision, and related trackage).
- (b) Located wholly in the State of Iowa.
- (c) Located in Dallas and Polk Counties.
- (d) Milepost 0.0 to 22.0.
- (e) Agency station Clive (milepost 7.5) not included. Agency station Grimes (milepost 6.5) included—dualized with Adel (milepost 22.4) not included.

WISCONSIN

Map Code [116]

- (a) South Appleton to Appleton (1.7-mile segment of the Wisconsin Division, Eighth Subdivision, and related trackage).
- (b) Located wholly in the State of Wisconsin.
- (c) Located in Winnebago and Outagamie Counties.
- (d) Milepost 188.5 to 190.2.
- (e) Agency station Menasha (milepost 185.5) serves this segment, but not included.

SOUTH DAKOTA

Map code [135]

- (a) Napa to Platte (82.9-mile segment of the Minnesota-Dakota Division, 36th Subdivision, and related trackage).
- (b) Located wholly in the State of South Dakota.
- (c) Located in Yankton, Bon Homme, and Charles Mix Counties.
- (d) Milepost 0.0 to 82.9.
- (e) No agency stations on this segment.

WASHINGTON

Map Code [140]

- (a) Maytown to Helsing Junction. (11.2-mile segment of the Washington Division, 16th Subdivision, and related trackage).

(b) Located wholly in the State of Washington.

- (c) Located in Thurston County.
- (d) Milepost 37.0 to 48.1.
- (e) No agency stations on this segment.
- (f) Contemplates coordination with the Union Pacific Railroad for operation Centralia to Helsing Junction.

Map Code [143]

- (a) East Spokane to Metaline Falls (108.6-mile segment (47.5 miles of trackage rights, and 61.1 miles of MILW trackage) of the Washington Division 22d Subdivision, and related trackage).
- (b) Located wholly in the State of Washington.
- (c) Located in Spokane and Pend Oreille Counties.
- (d) Burlington Northern, Inc., East Spokane (milepost 1479.5 to Newport (milepost 1432.0)—(47.5 miles of trackage rights). Milwaukee Road, Newport (milepost 43.6 to Metaline Falls (milepost 104.7)—(61.1 miles).
- (e) No agency stations on this segment.

Map Code [147]

- (a) Beverly Junction to Hanford (20.8-mile segment of the Washington Division, 18th Subdivision, and related trackage).
- (b) Located wholly in the State of Washington.
- (c) Located in Kittitas, Yakima, and Benton Counties.
- (d) Milepost 0.0 to 20.8.
- (e) No agency stations on this segment.

MONTANA

Map Code [149]

- (a) Fairfield to Agawam (31.3-mile segment of the Montana Division, 14th Subdivision, and related trackage).
- (b) Located wholly in the State of Montana.
- (c) Located in Teton County.
- (d) Milwaukee Road milepost 234.3 to Milwaukee milepost 244.4. Joint Milwaukee-Burlington Northern, Inc., milepost 244.4 to MILW-BN milepost 251.2. Milwaukee Road milepost 251.2 to milepost 265.6.
- (e) Agency station Fairfield (milepost 234.0) not included. Agency station Choteau (milepost 252.0) included.

Map Code [150]

- (a) Winifred Junction to Winifred (43.4-mile segment of the Montana Division, 12th Subdivision, and related trackage).
- (b) Located wholly in the State of Montana.
- (c) Located in Fergus County.
- (d) Milepost 0.0 to 43.4.

(e) No agency stations on this segment.

SOUTH DAKOTA

Map Code [151]

(a) Mitchell to Rapid City (286.0-mile segment of the Minnesota-Dakota Division, 41st and 42d Subdivisions, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Davison, Aurora, Brule, Lyman, Jones, Jackson, and Pennington Counties.

(d) Milepost 374.5 to 660.5.

(e) Agency station Mitchell (mainline milepost 373.9) not included.

Agency stations: Parker (milepost 323.2); Chamberlain (milepost 440.5); Kennebec (milepost 471.1); Murdo (milepost 516.3); Rapid City (milepost 660.2); Presho (milepost 481.0); now dualized with Kennebec, are all included.

Map Code [152]

(a) Moreau Junction to Isabel (56.5-mile segment of the Minnesota-Dakota Division, 47th Subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Corson and Dewey Counties.

(d) Milepost 0.0 to 56.5.

(e) No agency stations on this segment.

NORTH DAKOTA/SOUTH DAKOTA

Map Code [153]

(a) Roscoe, S. Dak., to Linton, N. Dak. (75.6-mile segment of the Minnesota-Dakota Division, 31st Subdivision, and related trackage).

(b) Located in the States of North Dakota and South Dakota; (34.9 miles in North Dakota; 40.7 miles in South Dakota).

(c) Located in North Dakota counties of McIntosh and Emmons. Located in South Dakota counties of Edmunds, McPherson, and Campbell.

(d) Milepost 0.0 to 75.6.

(e) Agency station at Roscoe (milepost 0.0) not included.

Map Code [154]

(a) Aberdeen, S. Dak., to Edgeley, N. Dak. (63.3-mile segment of the Minnesota-Dakota Division, 29th Subdivision, and related trackage).

(b) Located in the States of North Dakota and South Dakota (31.8 miles in South Dakota, and 31.5 miles in North Dakota).

(c) Located in Brown County, S. Dak., and in Dickey and LaMoure Counties, N. Dak.

(d) Milepost 0.0 to 63.3.

(e) Agency station at Aberdeen, S. Dak. (milepost 0.0) not included.

Map Code [155]

(a) Andover, S. Dak., to Brampton, N. Dak. (42.8-mile segment of the Minnesota-Dakota Division, 28th Subdivision, and related trackage).

(b) Located in the States of North and South Dakota (38.6 miles in South Dakota and 4.2 miles in North Dakota).

(c) Located in Sargent County, N. Dak., and in Day and Marshall Counties, S. Dak.

(d) Milepost 0.0 to 42.8.

(e) Agency station Britton (milepost 28.2) included.

MINNESOTA/NORTH DAKOTA/SOUTH DAKOTA

Map Code [160]

(a) Ortonville, Minn., to Fargo, N. Dak. (117.0-mile segment of the Minnesota-Dakota Division, 25th Sub-Division, and related trackage).

(b) Located in the States of Minnesota, North Dakota, and South Dakota (46.2 miles in Minnesota, 69.5 miles in North Dakota, and 1.3 miles in South Dakota).

(c) Located in Big Stone and Traverse Counties, Minn.; Richland and Cass Counties, N. Dak.; and Roberts County, S. Dak.

(d) Milepost 0.0 to 117.0.

(e) Agency station of Ortonville (mainline milepost 600.0) not included. Agency station Wahpeton (milepost 70.9) included. Agency station Fargo (milepost 116.1) included.

WISCONSIN

Map Code [167]

(a) Lone Rock to Prairie du Chien (54.0-mile segment of the Wisconsin Division, 22nd Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Richland, Iowa, Grant, and Crawford Counties.

(d) Milepost 182.3 to 236.3.

(e) Agency station Prairie du Chien (milepost 255.9), and agency station Boscobel (milepost 208.9) dualized with Muscoda (milepost 194.7) included.

MICHIGAN

Map Code [170]

(a) Channing to Republic (23.1-mile segment of the Wisconsin Division, 10th Subdivision, and related trackage).

(b) Located wholly in the State of Michigan.

(c) Located in Dickinson and Marquette Counties.

(d) Milepost 315.3 to 338.4.

(e) Agency station Channing (milepost 315.9) not included.

WISCONSIN

Map Code [172]

(a) Ripon Junction to Oshkosh (19.0-mile segment of the Wisconsin Division, 12th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Fond du Lac and Winnebago Counties.

(d) Milepost 169.3 to 188.3

(e) Agency station Ripon (milepost 169.5) not included. Agency station Oshkosh (milepost 188.0) included.

Map Code [173]

(a) Cambria to Portage Junction (16.7-mile segment of the Wisconsin Division, 15th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Columbia County.

(d) Milepost 182.4 to 165.7.

(e) Agency station Portage (mainline milepost 178.2) not included.

Map Code [179]

(a) Walworth to Avalon (13.5-mile segment of the Illinois-Iowa Division, Third Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Rock and Walworth Counties.

(d) Milepost 75.2 to 88.7.

(e) Agency station Walworth (milepost 73.5) not included.

MICHIGAN

Map Code [179]

(a) Channing to Excenaba (approximately 66-mile segment of operating rights over the Excenaba and Lake Superior Railroad, and related trackage).

(b) Located wholly in the State of Michigan.

(c) Located in Dickinson, Menominee, and Delta Counties.

(d) None.

(e) No agency stations on this segment.

MONTANA

Map Code [180]

(a) Ringling to Dorsey (3.49-mile segment of the Montana Division (leased, operated, and maintained by the White Sulphur Springs & Yellowstone Park Railway).

(b) Located wholly in the State of Montana.

(c) Located in Meagher County.

(d) Engineering stations 520+30.5 to 335+96.4.

(e) No agency stations on this segment.

MINNESOTA/IOWA

Map Code [181]

(a) Austin Junction to Mason City (39.5-mile segment of the Minnesota-Dakota Division, 13th Subdivision, and related trackage).

(b) Located in the States of: Minnesota—11.3 miles; Iowa—28.2 miles.

(c) Located in Mower County, Minn.; and in Cerro Gordo, Worth, and Mitchell Counties, Iowa.

(d) Milepost 0.0 to 39.5

(e) Agency station Mason City (mainline milepost 116.7) not included. Agency station Austin (mainline milepost 69.5) not included.

WISCONSIN

Map Code [182]

(a) Crivitz to Marinette (16.8-mile segment of the Wisconsin Division, Ninth Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Marinette County.

(d) Milepost 249.7 to 266.5.

(e) Agency station Crivitz (mainline milepost 248.3), and, agency station Marinette (milepost 270.4) not included.

(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT).

MICHIGAN

Map Code [183]

(a) Green Bay to Ontonagon (208.0-mile segment of the Wisconsin Division, Sixth and Seventh Subdivisions, and related trackage).

(b) Located wholly in the States of Wisconsin and Michigan.

(c) Located in the Wisconsin counties of Brown, Oconto, and Marinette and the Michigan counties of Dickinson, Iron, Baraga, Houghton, and Ontonagon.

(d) Milepost 200.0 to 408.0.

(e) Agency stations Crivitz, Wis. (milepost 248.1), Iron Mountain, Wis. (milepost 291.2), Channing, Mich. (milepost 315.3) and Ontonagon, Mich. (milepost 407.7), and joint agency station Pembine, Wis. (milepost 277.4) included. Agency station Green Bay (milepost 197.2) not included.

IOWA AND MISSOURI

Map Code [185]

(a) Muscatine, Iowa, to Kansas City, Mo. (282.2-mile segment of the Illinois-Iowa Division, 19th and 20th Subdivisions and related trackage).

(b) Located in the States of Iowa and Missouri.

(c) Located in Iowa, counties of Muscatine, Louisa, Washington, Keokuk, Jefferson, Wapello, Monroe, Appanoose, and Wayne. Located in Missouri, counties of Putnam, Sullivan, Grundy, Livingston, Caldwell, Ray, and Clay.

(d) Table follows:

	Miles
Milwaukee (milepost 28.6 to 304.8).....	276.2
Kansas City Southern (milepost 304.8 to 305.5).....	.7
Kansas City Terminal (milepost 305.5 to 310.8).....	5.3
Total.....	282.2

(e) Agency stations: Ottumwa, Iowa (milepost 109.0); Chillicothe, Mo. (milepost 228.6); Chula, Mo. (milepost 219); dualized with Chillicothe, Mo., and joint agency station Kansas City, Mo., are included.

Map Code [186]

(a) Muscatine, Iowa, to Polo, Mo.; Ottumwa, Iowa, to Eldon, Iowa (248.9-mile segment of trackage rights, Muscatine, Iowa, to Polo, Mo., and 11.9-mile segment of trackage rights Ottumwa, Iowa, to Eldon, Iowa. Total of 260.8 miles trackage rights on Rock Island Railroad).

(b) Located in the States of Iowa and Missouri.

(c) Located in Iowa, counties of Muscatine, Louisa, Washington, Jefferson, Wapello, Davis, Appanoose, and Wayne. Located in Missouri, counties of Mercer, Grundy, Davis, Livingston, and Caldwell.

(d) Rock Island milepost 211.6 to milepost 460.5 and Rock Island milepost 63.9 to milepost 75.8. Total 260.8 miles trackage rights.

(e) No Milwaukee agencies on this segment.

(f) Operation authorized by trackage rights over the Rock Island Railroad.

IOWA

Map Code [187]

(a) Green Island to Marion, Louisa to Tama, Delmar to Maquoketa (73.4-mile segment of the Illinois-Iowa Division, 16th Subdivision and related trackage; 50.1-mile segment of the Illinois-Iowa Division, 16th and 17th Subdivisions, and related trackage; 6.5-mile segment of the Illinois-Iowa Division, 23d Subdivision and related trackage). Total of 130 miles.

(b) Location wholly in the State of Iowa.

(c) Located in Jackson, Clinton, Jones, Linn, Benton, and Tama Counties.

(d) Table follows:

	Miles
Milepost 152.5 to milepost 225.9	73.4
Milepost 230.7 to milepost 280.8	50.1
Milepost 26.7 to milepost 33.2	6.5
Total.....	130.0

(e) Agency station Cedar Rapids not included. Agency station Tama (milepost 280.5) not included.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

CATEGORY 2

Lines or portions of lines potentially subject to abandonment.



WASHINGTON

Map Code [244]

(a) Port Angeles to Port Townsend (50.8-mile segment of the Washington Division, 14th Subdivision, and related trackage).

(b) Located wholly in the State of Washington.

(c) Located in Clallam and Jefferson Counties.

(d) Milepost 0.0 to 50.8.

(e) Agency at Port Angeles (milepost 50.8) included.

Map Code [245]

(a) Helsing Junction to Hoquiam (47.1-mile segment of the Washington Division, 16th Subdivision, and related trackage).

(b) Located wholly in the State of Washington.

(c) Located in Grays Harbor and Thurston Counties.

(d) Milepost 48.2 to 90.7 (joint ownership Milwaukee Road and Union Pacific RR). Milepost 90.7 to 95.3 (trackage rights over Burlington Northern, Inc.).

(e) Agency station Aberdeen (milepost 90.2) included.

Map Code [246]

(a) Chehalis Junction to Raymond (53.0-mile segment of the Washington Division, 17th Subdivision, and related trackage).

(b) Located wholly in the State of Washington.

(c) Located in Lewis and Pacific Counties.

(d) Milepost 0.0 to 53.0 on Burlington Northern, Inc. (trackage rights over the BN, Inc.).

(e) Agency station Chahal (mainline milepost 19.0) not included.

Map Code [248]

(a) Tiflis to Marcellus (39.0-mile segment of the Washington Division, 21st Subdivision, and related trackage).

(b) Located wholly in the State of Washington.

(c) Located in Grant and Adams Counties.

(d) Milepost 8.2 to 47.2.

(e) No agency stations on this segment.

SOUTH DAKOTA

Map Code [252]

(a) Canton to Mitchell (78.1-mile segment of the Minnesota-Dakota Division, 30th Subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Lincoln, Turner, Hutchinson, McCook, Hanson, and Davison Counties.

(d) Milepost 295.4 to 373.5.

(e) Agency station at Mitchell (milepost 373.9) not included. Agency station Canton (milepost 294.7) not included. Agency station Parker (milepost 323.2) included.

Map Code [256]

(a) Milbank to Sisseton (38.0-mile segment of the Minnesota-Dakota Division, 26th Subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Grant and Roberts Counties.

(d) Milepost 0.0 to 38.0.

(e) Agency station Milbank (mainline milepost 611.2) not included.

Map Code [257]

(a) Sioux Falls to Sioux Falls Junction (29.7-mile segment of the Minnesota-Dakota Division, 37th Subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Minnehaha and Moody Counties.

(d) Milepost 73.3 to 103.0.

(e) Agency station Sioux Falls (milepost 70.0) not included. Agency station Dell Rapids (milepost 90.2) included.

Map Code [285]

(a) Egan to Madison (26.0-mile segment of the Minnesota-Dakota Division, 19th Subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Moody and Lake Counties.

(d) Milepost 308.0 to 334.0.

(e) Agency stations Egan (milepost 308.3) and Madison (milepost 333.4) included.

Map Code [259]

(a) East Wye Switch to Mitchell (116.5-mile segment of the Minnesota-Dakota Division, 35th Subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Union, Clay, Yankton, Bon-Homme, Hutchinson, and Davison Counties.

(d) Milepost 533.5 to 650.0.

(e) Agency stations Vermillion (milepost 548.3); Yankton (milepost 575.1); and Parkston (milepost 627.9) included. Agency station Mitchell (mainline milepost 373.9) not included.

IOWA/SOUTH DAKOTA

Map Code [261]

(a) East Wye Switch to Canton (49.9-mile segment of the Minnesota-Dakota Division, 37th Subdivision, and related trackage).

(b) Located in Iowa (34.6 miles) and in South Dakota (15.3 miles).

(c) Located in Union and Lincoln Counties, S. Dak.; and in Lyon, Plymouth, and Sioux Counties, Iowa.

(d) Milepost 0.0 to 49.9.

(e) Agency station Canton (milepost 49.8) not included.

IOWA

Map Code [262]

(a) Manilla to Council Bluffs (61.6-mile segment of the Illinois-Iowa Division, 18th Subdivision, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Crawford, Shelby, Harrison, and Pottawatomie Counties.

(d) Milepost 422.8 to 484.4.

(e) Agency stations Manilla (milepost 422.7) and Council Bluffs (milepost 482.2) not included. Agency station Portsmouth (milepost 447.4) and Earling (milepost 435.9) dualized with Portsmouth included.

Map Code [263]

(a) Herndon to Clive (46.6-mile segment of the Illinois-Iowa Division, 25th Subdivision, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Polk, Dallas, and Guthrie Counties.

(d) Milepost 7.5 to 54.1.

(e) Agency station Clive (milepost 7.6) not included. Agency stations Adel (milepost 22.4) and Redfield (milepost 32.0) included.

Map Code [264]

(a) Tama to Louisa (50.1-mile segment of the Illinois-Iowa Division, 16th and 17th Subdivisions, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Linn, Benton, and Tama Counties.

(d) Milepost 230.7 to 280.8.

(e) Agency station Tama (milepost 280.5) not included.

Map Code [265]

(a) Green Island to Dove (73.4-mile segment of the Illinois-Iowa Division, 16th Subdivision, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Jackson, Clinton, Jones, and Linn Counties.

(d) Milepost 152.5 to 225.9.

(e) No agency stations on this segment.

WISCONSIN

Map Code [266]

(a) Durand to Chippewa Falls (44.1-mile segment of the Minnesota-Dakota Division, 5th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Pepin, Dunn, Eau Claire, and Chippewa Counties.

(d) MILW milepost 18.0 (Durand) to MILW milepost 50.5 (Eau Claire), 32.5 miles; Eau Claire to Chippewa Falls, 11.6 miles, total 44.1 miles (operated by Soo Line). MILW-SOO Line joint ownership.

Map Code [268]

(a) Janesville to Monroe (34.0-mile segment of the Wisconsin Division, 25th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Rock and Greene Counties.

(d) Milepost 10.0 to 44.0.

(e) Agency station Janesville (mainline milepost 99.0) not included. Agency station Monroe (milepost 43.4) included.

Map Code [272]

(a) North Milwaukee to Horicon, Granville to Menominee Falls, Horicon to Ripon (79.9-mile segment of the Wisconsin Division, 12th Subdivision and 17th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Milwaukee, Waukesha, Washington, Dodge, and Fond du Lac Counties.

(d) Milepost 93.7 (North Milwaukee) to milepost 139.0 (Horicon), milepost 100.5 (Granville) to milepost 104.3 (Menominee Falls); and milepost 139.0 (Horicon) to milepost 169.8 (Ripon):

	Miles
North Milwaukee to Horicon.....	45.3
Granville to Menominee Falls.....	3.8
Horicon to Ripon.....	30.8
Total.....	79.9

(e) Agency stations of: Granville (milepost 100.2), Slinger (milepost 117.2), Horicon (milepost 139.1), Waupun (milepost 153.7), Brandon (milepost 161.0) dualized with Markesan; and agency station Ripon (milepost 168.9) are included.

Map Code [273]

(a) Cambria to Horicon (26.7-mile segment of the Wisconsin Division, 15th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Dodge and Columbia Counties.

(d) Milepost 139.0 to 165.7.

(e) No agency stations on this segment.

Map Code [274]

(a) Brandon to Markesan (11.8-mile segment of the Wisconsin Division, 16th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Fond du Lac and Green Lake Counties.

(d) Milepost 161.0 to 172.6.

(e) Agency station Markesan (milepost 172.6) included. Agency station Fairwater (milepost 165.5), dualized with Markesan, included.

IOWA

Map Code [275]

(a) Davenport to Eldridge (11.4-mile segment of the Illinois-Iowa Division, 22nd Subdivision, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Scott County.

(d) Milepost 0.1 to 11.5.

(e) No agency stations on this segment.

ILLINOIS

Map Code [276]

(a) Davis Junction to Moronts (66.0-mile segment of the Illinois Division, 14th Subdivision, and related trackage).

(b) Located wholly in the State of Illinois.

(c) Located in Ogle, Lee, LaSalle, Bureau, and Putnam Counties.

(d) Milepost locations as follows:

	Miles
BN milepost 11.7 to BN milepost 0.3 (BN MP 86.3).....	11.4
BN milepost 86.3 to BN milepost 77.8 (MILW MP 46.8).....	8.5
MILW milepost 46.8 to MILW milepost 81.9.....	35.1
MILW Milepost 81.9 to MILW milepost 84.2.....	2.3
MILW milepost 84.2 (C/R ¹ milepost 191.8) to (MILW milepost 91.7, C/R milepost 184.3).....	7.5
DePue to DePue Junction (Secondary Track).....	1.2
Total.....	66.0

¹C/R—ConRail. Trackage rights on BN and ConRail.

(e) Agency stations—Rochelle (MILW mainline milepost 69.4), Mendota (MILW mainline milepost 83.3) included. Agency station Davis Junction (MILW mainline milepost 80.1) not included.

Map Code [278]

(a) Delmar to Momenca (3.1-mile segment of the Illinois-Iowa Division, Ninth Subdivision, and related trackage).

(b) Located wholly in the State of Illinois.

(c) Located in Kankakee County.

(d) Milepost 52.9 to 56.0.

(e) Agency station Delmar (mainline milepost 53.1) not included.

MONTANA

Map Code [288]

(a) Great Falls to Fairfield (33.9-mile segment of the Montana Division, 14th Subdivision, and related trackage).

(b) Located wholly in the State of Montana.

(c) Located in Cascade and Teton Counties.

(d) Milwaukee Road milepost 200 to 202.4; joint Milwaukee-Burlington Northern, Inc., 3.9 to 12.0 and 0.0 to 5.9; Milwaukee milepost 216.8 to 234.3.

(e) Agency station Fairfield (milepost 234.0) included. Agency station Great Falls (milepost 198.0) not included.

WISCONSIN

Map Code [289]

(a) Brokaw to Tomahawk (35.9-mile segment of the Wisconsin Division, 19th Subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Marathon and Lincoln Counties.

(d) Milepost 97.5 to 133.4.

NOTICES

(e) Agency station Merrill included. Agency station Brokaw not included.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

CATEGORY 3

Lines or portions of lines for which an abandonment or discontinuance application is currently pending before the Interstate Commerce Commission.



SOUTH DAKOTA

Map Code [338]

- (a) Garden City to Bristol (28.8-mile segment of the Minnesota-Dakota Division, 27th Subdivision, and related trackage).
- (b) Located wholly within the State of South Dakota.
- (c) Located in Clark and Day Counties.
- (d) Milepost 73.9 to 102.7.
- (e) Agency station Bristol (mainline milepost 668.5) not included.

Map Code [339]

- (a) Trail City to Faith (106.5-mile segment of the Minnesota-Dakota Division, 48th Subdivision, and related trackage).
- (b) Located wholly in the State of South Dakota.
- (c) Located in Dewey, Corson, Ziebach, and Meade Counties.
- (d) Milepost 0.0 to 106.5.
- (e) No agency stations on this segment.

Map Code [341]

- (a) Madison to Bryant (47.3-mile segment of the Minnesota-Dakota Division, 21st Subdivision, and related trackage).
- (b) Located wholly in the State of South Dakota.
- (c) Located in Lake, Kingsbury, and Hamlin Counties.
- (d) Milepost 0.6 to 47.9.
- (e) Agency station Madison (milepost 0.0) not included.

WISCONSIN

Map Code [342]

- (a) Ripon Junction to Berlin (11.8-mile segment of the Wisconsin Division, 13th Subdivision, and related trackage).
- (b) Located wholly in the State of Wisconsin.
- (c) Located in Fond du Lac, Winnebago, and Green Lake Counties.
- (d) Milepost 169.8 to 181.6.
- (e) Agency station Berlin (milepost 181.5) included—dualized with Oshkosh (milepost 188.1) not included.

IOWA

Map Code [343]

- (a) Paralta to Hopkinton (33.5-mile segment of the Illinois-Iowa Division, 24th Subdivision, and related trackage).
- (b) Located wholly in the State of Iowa.
- (c) Located in Linn, Jones, and Delaware Counties.
- (d) Milepost 0.0 to 33.5.
- (e) Agency station Monticello (milepost 24.2) included.

WISCONSIN/MINNESOTA

Map Code [344]

- (a) Winona, Minn., to Durand, Wis. (51.1-miles of trackage rights and line segment of the Minnesota-Dakota Division, Fifth Subdivision, and related trackage).
- (b) Located in the States of Minnesota and Wisconsin: 1.0 mile in Minnesota and 50.1 miles in Wisconsin.
- (c) Located in Pepin and Buffalo Counties of Wisconsin; and in Winona County, Minn.
- (d) Milepost 325.0 to milepost 362.0 (Burlington Northern, Inc., trackage rights) and milepost 3.9 to 18.0, Milwaukee Road.

(e) Agency stations Winona (mainline milepost 308.4) and Durand (milepost 19.1) not included.

(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Eau Claire.

MINNESOTA

Map Code [345]

- (a) St. Croix Junction to Bayport (22.5-mile segment of the Minnesota-Dakota Division, Sixth Subdivision, and related trackage).
- (b) Located wholly in the State of Minnesota.
- (c) Located in Washington County.
- (d) Milepost 0.0 to 22.5.
- (e) Agency station Bayport (milepost 21.7) not included.
- (f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Bayport.

SOUTH DAKOTA

Map Code [348]

- (a) Woonsocket to Wessington Springs (15.2-mile segment of the Minnesota-Dakota Division, 34th Subdivision, and related trackage).
- (b) Located wholly in the State of South Dakota.
- (c) Located in Sanborn and Jerould Counties.
- (d) Milepost 393.8 to 409.0.
- (e) Agency station Woonsocket (milepost 393.5) not included.

WISCONSIN

Map Code [349]

- (a) Monroe to Mineral Point (46.7-mile segment of the Wisconsin Division, 25th Subdivision, and related trackage).
- (b) Located wholly within the State of Wisconsin.
- (c) Located in Greene, LaFayette, and Iowa Counties.
- (d) Milepost 44.0 to 90.7.
- (e) Agency station Monroe (milepost 43.2) not included.

IOWA

Map Code [350]

- (a) Conover to Decorah (10.0-mile segment of the Minnesota-Dakota Division, 15th Subdivision, and related trackage).
- (b) Located wholly in the State of Iowa.
- (c) Located in Winneshiek County.
- (d) Milepost 0.0 to 10.0.
- (e) Agency station Decorah (milepost 10.0) not included—dualized with Cresco (mainline milepost 19.4).

ILLINOIS

Map Code [351]

- (a) Kirkland to De Kalb (14.5-mile segment of the Illinois-Iowa Division, 11th Subdivision, and related trackage).
- (b) Located wholly in the State of Illinois.
- (c) Located in De Kalb County.
- (d) Milepost 20.5 to 35.0.
- (e) Agency station De Kalb (milepost 34) included—dualized with Kirkland (mainline milepost 67.4) not included.

Map Code [352]

- (a) Momenue to Joliet (35.0-mile segment of the Illinois-Iowa Division, 9th Subdivision, and related trackage).

- (b) Located wholly within the State of Illinois.
 (c) Located in Will and Kankakee Counties.
 (d) Milepost 56.0 to 91.0.
 (e) No agency stations on this segment.

INDIANA

Map Code [353]

- (a) Bedford to Semour (37.5-mile segment of the Illinois-Iowa Division, 8th Subdivision, and related trackage).
 (b) Located wholly in the State of Indiana.
 (c) Located in Lawrence and Jackson Counties.
 (d) Milepost 262.5 to 300.0.
 (e) Agency station Bedford (milepost 262.4) not included.

IOWA

Map Code [354]

- (a) Amana to Rutledge (65.2-mile segment of the Illinois-Iowa Division, 21st Subdivision, and related trackage).
 (b) Located wholly in the State of Iowa.
 (c) Located in Keokuk, Iowa, and Wapello Counties.
 (d) Milepost 65.2 to 0.0.
 (e) Agency station Sigourney (milepost 24.3) included. Agency station Amana (milepost 67.0) not included.

Map Code [355]

- (a) Rockwell City to Storm Lake (38.8-mile segment of the Illinois-Iowa Division, 28th Subdivision, and related trackage).
 (b) Located wholly in the State of Iowa.
 (c) Located in Sac, Buena Vista, and Calhoun Counties.
 (d) Milepost 0.0 to 38.8.
 (e) Agency station Rockwell City (milepost 0.0) not included. Agency station Storm Lake (milepost 38.5) included.

MINNESOTA

Map Code [356]

- (a) Farmington to Benning (54.9-mile segment of the Minnesota-Dakota Division, Ninth Subdivision, and related trackage).
 (b) Located wholly in the State of Minnesota.
 (c) Located in Dakota, Scott, Rice, LeSueur, and Blue Earth Counties.
 (d) Milepost 1.2 to 56.1.
 (e) Agency station LeCenter (milepost 36.0) dualized with Montgomery (milepost 27.6) included. Agency station Farmington (milepost 0.0) not included.
 (f) contemplates coordination with Chicago North Western Transportation Co (CNWT) for operation St. Paul to Mankato.

Map Code [357]

- (a) Farmington to Shakopee (23.5-mile segment of the Minnesota-Dakota Division, 11th Subdivision, and related trackage).
 (b) Located wholly in the State of Minnesota.
 (c) Located in Carver, Scott, and Dakota Counties.
 (d) Milepost 0.5 to 24.0.
 (e) Agency station Shakopee (milepost 24.7) and Farmington (milepost 0.0) not included. Agency station Prior Lake (milepost 16.1) and Lakeville (milepost 5.1) are dualized with Farmington, and included.
 (f) Contemplates coordination with the Chicago North Western Transportation Co.

(CNWT) for operation St. Paul to Shakopee.

Map Code [358]

- (a) I.M. & D. Junction Ramsey (100.0-mile segment of the Minnesota-Dakota Division, 14th Subdivision, and related trackage).
 (b) Located wholly in the State of Minnesota.
 (c) Located in Houston, Fillmore, and Mower Counties.
 (d) Milepost 2.9 to 102.9.
 (e) Agency station Spring Valley (milepost 73.5) included. Agency station Grand Meadow (milepost 83.0) dualized with Spring Valley included.

WISCONSIN

Map Code [359]

- (a) Milton Junction to Waukesha (41.0-mile segment of the Wisconsin Division, 26th Subdivision, and related trackage).
 (b) Located wholly in the State of Wisconsin.
 (c) Located in Waukesha, Rock, Jefferson, and Walworth Counties.
 (d) Milepost 20.5 to 61.5.
 (e) Agency station Waukesha (milepost 23.0) not included.
 (f) Line between milepost 23.0 (near Waukesha) and milepost 48.86 (near Whitewater) subject to pending application for abandonment in docket AB-7 (Sub-No. 20).

Map Code [360]

- (a) Iron Ridge to Fond du Lac (28.8-mile segment of the Wisconsin Division, 14th Subdivision, and related trackage).
 (b) Located wholly in the State of Wisconsin.
 (c) Located in Dodge and Fond du Lac Counties.
 (d) Milepost 133.0 to 161.8.
 (e) Agency station Mayville (milepost 140.0) and Fond du Lac (milepost 161.0) included.

MINNESOTA/SOUTH DAKOTA

Map Code [361]

- (a) Jackson, Minn., to Egan, S. Dak. (98.0-mile segment of the Minnesota-Dakota Division, 19th Subdivision, and related trackage).
 (b) Located in the States of Minnesota and South Dakota. 86.0 miles in Minnesota and 12.0 miles in South Dakota.
 (c) Located in Minnesota counties of Nobles, Jackson, Murray, and Pipestone. Located in Moody County, S. Dak.
 (d) Milepost 210.0 to 308.0.
 (e) Agency station Jackson (milepost 209.4) and Egan (milepost 309.3) included. Agency station Pipestone (milepost 288.6) is on call from Egan, and included.

MINNESOTA

Map Code [362]

- (a) Fairbault to Zumbrota (35.0-mile segment of the Minnesota-Dakota Division, 10th Subdivision, and related trackage).
 (b) Located wholly in the State of Minnesota.
 (c) Located in Rice and Goodhue Counties.
 (d) Milepost 53.7 to 88.7.
 (e) No agency stations on this segment. Agency station Faribault (milepost 89.0) not included.

WISCONSIN

Map Code [363]

- (a) Tomahawk to Heafford Junction (5.7-mile segment of the Wisconsin Division, 19th Subdivision, and related trackage).
 (b) Located wholly in the State of Wisconsin.
 (c) Located in Lincoln County.
 (d) Milepost 133.4 to 139.1.
 (e) Agency station Heafford Junction (milepost 138.6) included.

[FR Doc. 78-22614 Filed 8-14-78; 8:45 am]

[7035-01]

[LAB 57 (SDM)]

SOO LINE RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, part 1121.23, that the Soo Line Railroad Co., has filed with the Commission its revised color-coded system diagram map in docket No. AB 57 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on July 28, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 57 (SDM).

H. G. HOMME, Jr.,
 Acting Secretary.

DESCRIPTION OF LINES TO ACCOMPANY SOO LINE RAILROAD COMPANY SYSTEM DIAGRAM MAP MAY 1, 1978

CATEGORY I

Lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within 3 years.

- 1.(a) Carrier's designation: Greenwood line.
- (b) State or States in which line is located: Wisconsin.
- (c) County or counties in which line is located: Wood and Clark.
- (d) Mileposts delineating line: 281.5 to 304.1.
- (e) Agency or terminal stations located on line with milepost designation: Spokeville, 294.6; Loyal, 297.9; and Greenwood, 303.5
- 2.(a) Carrier's designation: Glenwood City line.
- (b) State or States in which line is located: Wisconsin.
- (c) County or counties in which line is located: Dunn and St. Croix.

(d) Mileposts delineating line: 389.81 to 393.40.

(e) Agency or terminal stations located on line with milepost designation: Downing, 390.0; and Glenwood City, 393.2.

3.(a) Carrier's designation: St. Ignace to Trout Lake.

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Mackinac and Chippewa.

(d) Mileposts delineating line: 0 to 27.12

(e) Agency or terminal stations located on line with milepost designation: St. Ignace, 0.13; and Moran, 11.06.

4.(a) Carrier's designation: Newberry to Shingleton.

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Luce, Schoolcraft and Alger.

(d) Mileposts delineating line: 59.0 to 104.38.

(e) Agency or terminal stations located on line with milepost designation: McMillan, 67.26; Seney, 79.54; and Creighton, 95.10.

NOTE.—Abandonment of this line will be contingent upon coordination of certain operations with other railroads to continue service west of Marquette and between Munising Junction and Shingleton.

5. (a) Carrier's designation: Munising Junction to Marquette.

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Alger and Marquette.

(d) Mileposts delineating line: 116.83 to 152.50.

(e) Agency or terminal stations located on line with milepost designation: Ridge, 119.36; AuTrain, 125.03; Deerton, 135.71; and Siding 145, 145.1.

NOTE.—Abandonment of this line will be contingent upon coordination of certain operations with other railroads to continue service west of Marquette and between Munising Junction and Shingleton.

6. (a) Carrier's designation: Ishpeming trackage.

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Marquette.

(d) Mileposts delineating line: 169.47 to 170.97.

(e) Agency or terminal stations located on line with milepost designation: None.

7. (a) Carrier's designation: Nestoria to Bergland.

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Baraga, Houghton, and Ontonagon.

(d) Mileposts delineating line: 201.68 to 268.89.

(e) Agency or terminal stations located on line with milepost designation: Vermilac, 211.40; Covington, 215.04; Sidnaw, 224.00; Kenton, 233.42; Trout Creek, 239.12; Bruce Crossing, 250.61; and Ewen, 255.34.

NOTE.—Abandonment of this line will be contingent upon coordination of certain operations with other railroads to continue service west of Marquette, Mich.

8. (a) Carrier's designation: Remer-Bemidji.

(b) State or States in which line is located: Minnesota.

(c) County or counties in which line is located: Cass, Hubbard, and Beltrami.

(d) Mileposts delineating line: 313.79 to 369.27.

(e) Agency or terminal stations located on line with milepost designation: Tobique, 320.3; Boy River, 325.6; Federal Dam, 332.1; Portage Lake, 339.1; Schley, 344.2; Soo Junction, 345.72; and Cass Lake, 355.0.

CATEGORY II

Lines or portions of lines potentially subject to abandonment.

1. (a) Carrier's designation: McGregor-Remer.

(b) State or States in which line is located: Minnesota.

(c) County or counties in which line is located: Aitkin and Cass.

(d) Mileposts delineating line: 270.26 to 313.79.

(e) Agency or terminal stations located on line with milepost designation: Palisade, 281.3; Swatara, 296.7; Shovel Lake, 302.4; and Remer, 312.9.

2. (a) Carrier's designation: Pollock line.

(b) State or States in which line is located: North Dakota and South Dakota.

(c) County or counties in which line is located: McIntosh, N. Dak. and McPherson and Campbell, S. Dak.

(d) Mileposts delineating line: 341.87 to 410.27.

(e) Agency or terminal stations located on line with milepost designation: Danzig, 351.4; Ashley, 359.3; Ventura, 368.2; Madra, 377.8; Artas 383.8; Herreid, 397.1; and Pollock, 409.7.

CATEGORY III

Lines or portions of lines for which an abandonment or discontinuance application is currently pending before the Interstate Commerce Commission.

1. (a) Carrier's designation: North St. Paul Line (AB-57 (Sub-6)).

(b) State or States in which line is located: Minnesota.

(c) County or counties in which line is located: Washington and Ramsey.

(d) Mileposts delineating line: 428.4 to 439.77.

(e) Agency or terminal stations located on line with milepost designation: Carnelian Junction, 428.5; and Duluth Junction, 433.67.

2. (a) Carrier's designation: St. Paul (AB-57 (Sub-8)).

(b) State or States in which line is located: Minnesota.

(c) County or counties in which line is located: Ramsey.

(d) Mileposts delineating line: 18.19 to 19.17.

(e) Agency or terminal stations located on line with milepost designation: None.

3. (a) Carrier's designation: Rapid River line (AB-57 (Sub-1)).

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Delta and Alger.

(d) Mileposts delineating line: 348.69 to 379.23.

(e) Agency or terminal stations located on line with milepost designation: Trenary, 368.0; Traunik, 372.8; and Eben Junction, 379.0.

NOTE.—A final order authorizing abandonment of this line was issued by the Commission on October 13, 1976. However, that order has not been implemented.

4. (a) Carrier's designation: Calumet line (AB-57 (Sub-7)).

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Houghton.

(d) Mileposts delineating line: 0 to 14.28.

(e) Agency or terminal stations located on line with milepost designation: Hancock, 1.72; and Calumet, 14.28.

5. (a) Carrier's designation: Lake Linden line (AB-57 (Sub-7)).

(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Houghton.

(d) Mileposts delineating line: 0 to 9.53.

(e) Agency or terminal stations located on line with milepost designation: Dollar Bay, 3.4; and Lake Linden, 9.53.

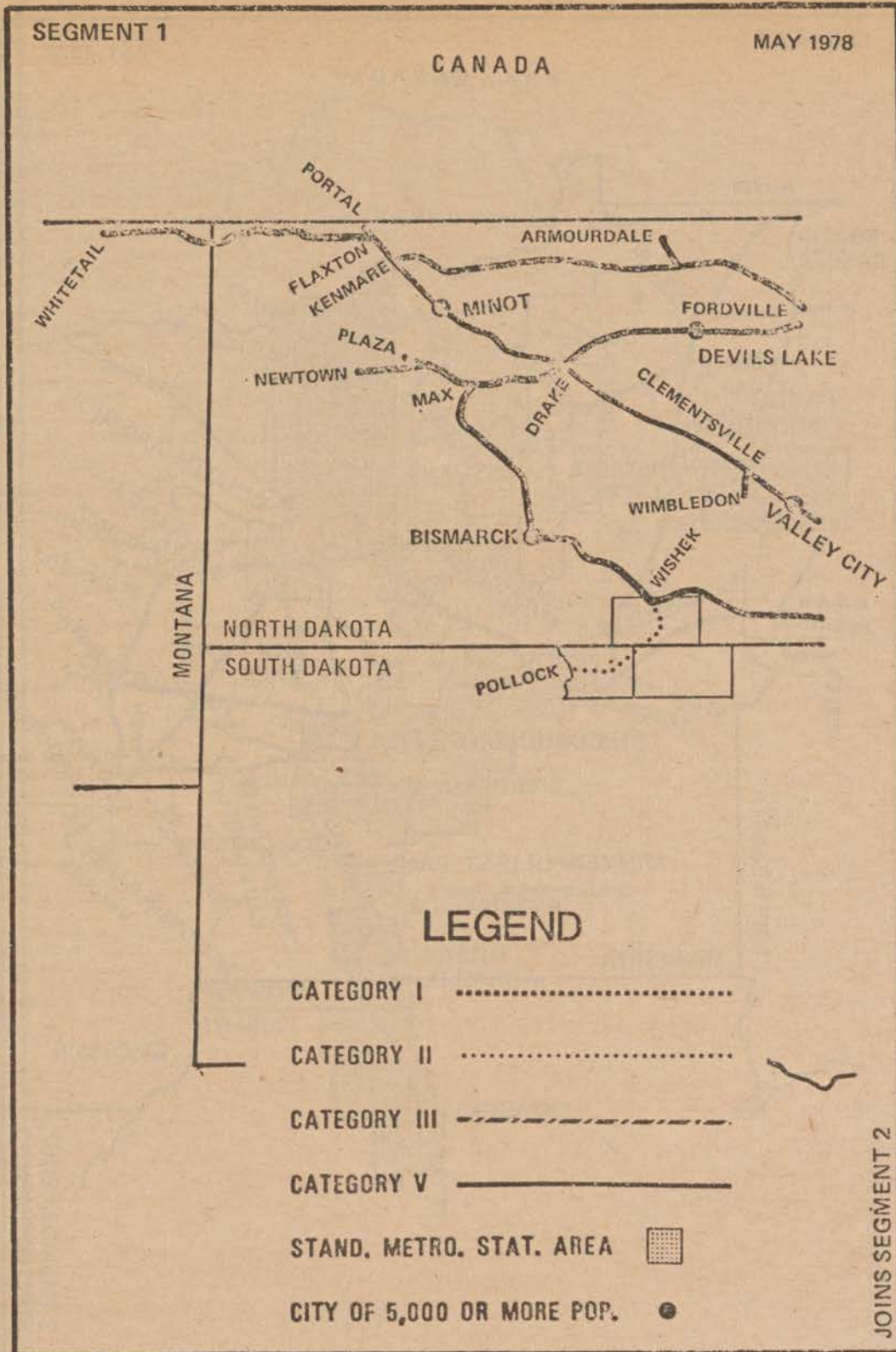
6. (a) Carrier's designation: Baraga to Houghton (AB-57 (Sub-7)).

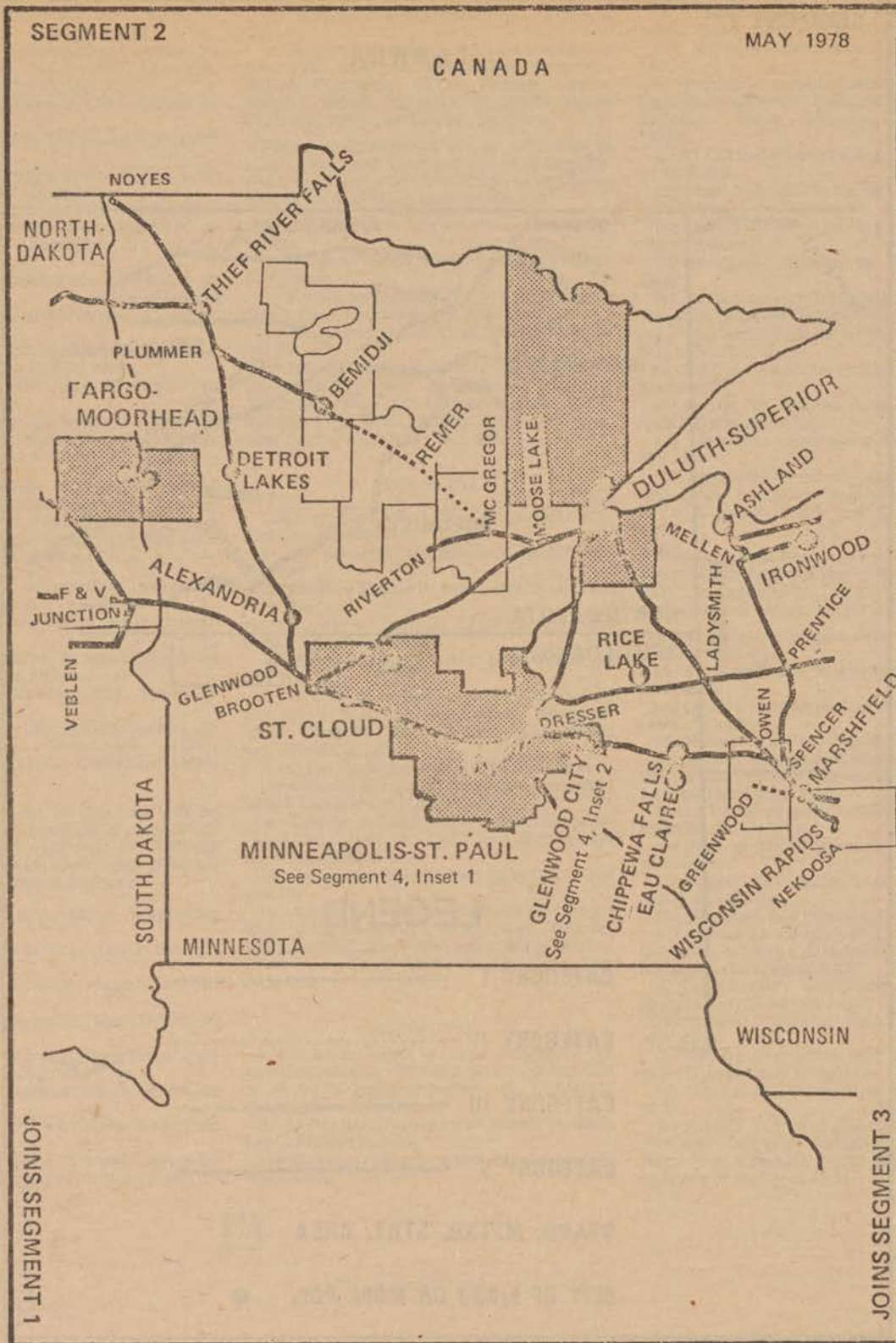
(b) State or States in which line is located: Michigan.

(c) County or counties in which line is located: Baraga and Houghton.

(d) Mileposts delineating line: 23.0 to 48.21.

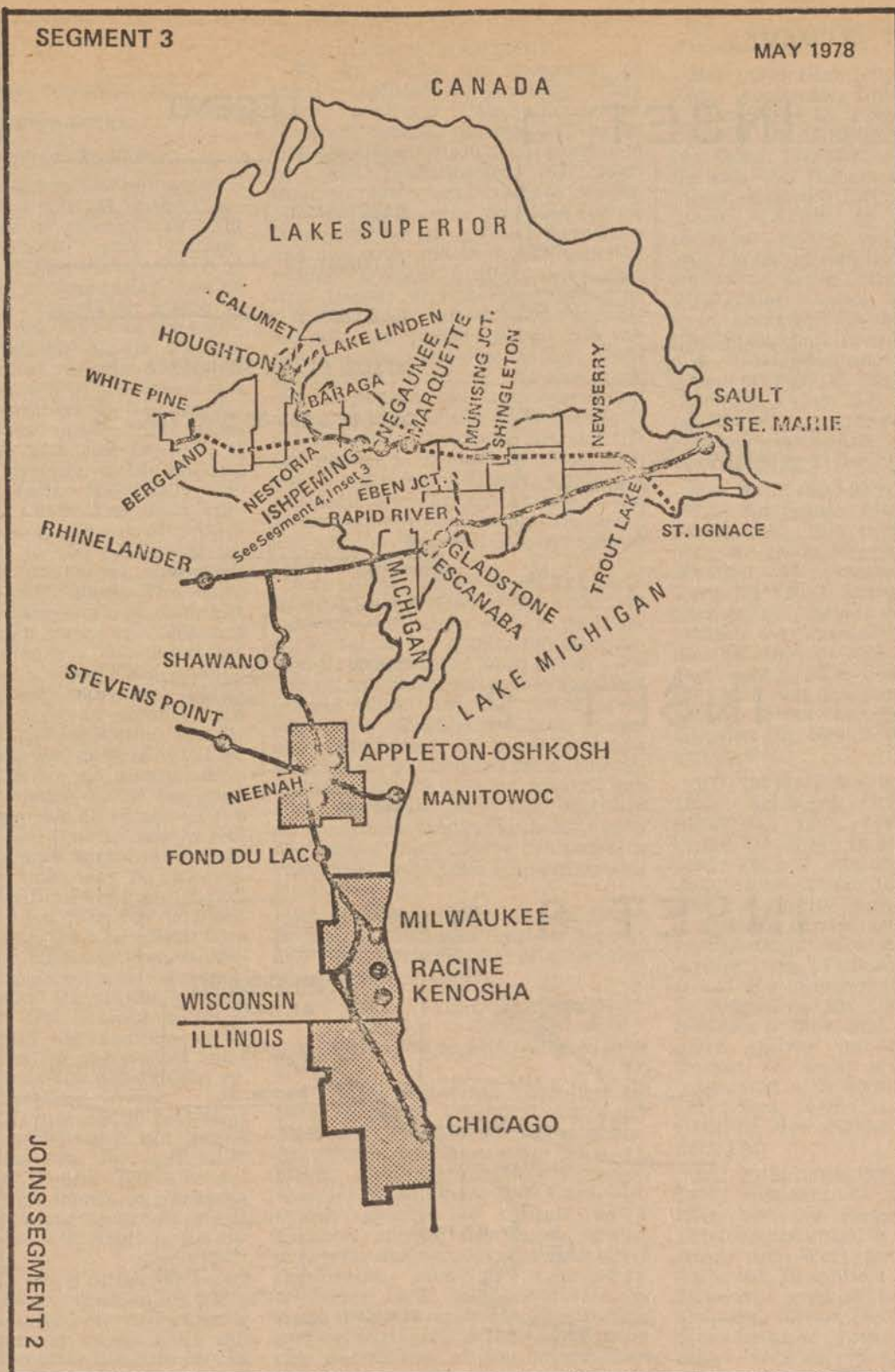
(e) Agency or terminal stations located on line with milepost designation: Keweenaw Bay, 28.2; Chassell, 40.5; East Houghton, 48.0; and Houghton, 48.21.





SEGMENT 3

MAY 1978



SEGMENT 4

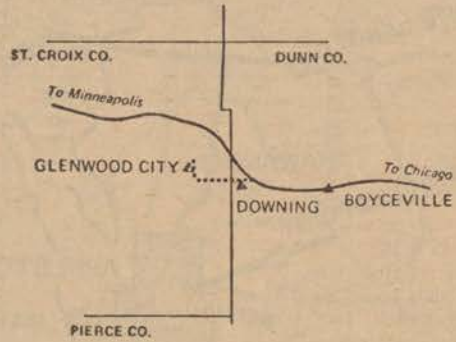
INSET 1



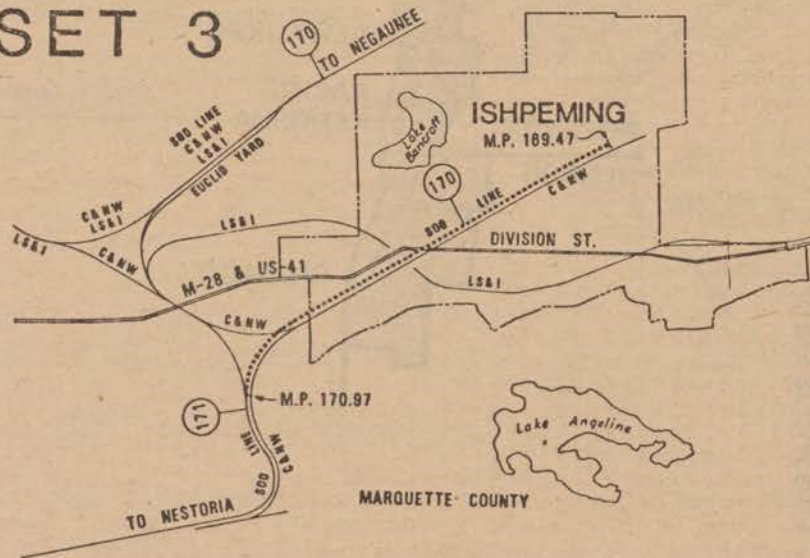
LEGEND

- CATEGORY I (dotted line)
- CATEGORY II (dotted line)
- CATEGORY III - - - - - (dashed line)
- CATEGORY V _____ (solid line)
- STAND. METRO. STAT. AREA [square symbol]
- CITY OF 5,000 OR MORE POP. (C)

INSET 2



INSET 3



[FR Doc. 78-22615 Filed 8-14-78; 8:45 am]

[7035-01]

[Decisions Volume No. 18]

DECISION-NOTICE

Decided: July 26, 1978

The following applications are governed by special rule 247 of the Commission's rules of practice (49 CFR §1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the

Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its (his) proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its (his) proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

It is ordered: In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. (Review Board Member Fortier not participating.)

H. G. HOMME, Jr.,
Acting Secretary.

*Dual operations may be involved in these proceedings.

MC 11207 (Sub-435F), filed June 16, 1978. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) Containers, container components, container ends, and container closures, and (2) materials, equipment, and supplies, used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk, and those which require the use of special equipment), between Birmingham, AL, on the one hand, and, on the other, points in FL, GA, KY, NC, SC, and TN.

NOTE.—Hearing site: Birmingham, AL, or Washington, DC.

MC 14768 (Sub-1F), filed June 30, 1978. Applicant: LANDES OZARK TRANSFER CO., a corporation, d.b.a. OZARK, TRANSFER CO., P.O. Box 294, Ozark, MO 65721. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. Authority granted to operate as a common carrier, by motor vehicle, over regular routes, transporting: General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Springfield and Mansfield, MO, over U.S. Hwy. 60, and return over the same route, serving all intermediate points. (Hearing site: Springfield or Jefferson City, MO.)

MC 16682 (Sub-93F), filed June 22, 1978. Applicant: MURAL TRANSPORT, INC., Box 1785, North Brunswick, NJ 08902. Representative: W. C. Mitchell, 370 Lexington Avenue, New York, NY 10017. Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Garden and lawn furniture and outdoor grills, from points in MA, NJ, NY, and PA, to points in the United States (except AK and HI). (Hearing site: New York, NY, or Washington, DC.)

MC 19553 (Sub-41F), filed July 3, 1978. Applicant: KNOX MOTOR SERVICE, INC., 5680 South 11th Street, Rockford, IL 61125. Representative: Paul J. Maton, 10 South La Salle Street, Room 1620, Chicago, IL 60603. Authority granted to operate as a common carrier, by motor vehicle, transporting: General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those which require special equipment), serving Durant, IA, as an off-route point in connection with applicant's presently authorized regular-route operations. (Hearing site: Chicago IL or Davenport, IA.)

MC 20722 (Sub-35F), filed June 14, 1978. Applicant: M & G CONVOY, INC., 590 Elk Street, Buffalo, NY 14240. Representative: Walter N. Bleneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Motor vehicles, in secondary movements, from Wilmington, DE, to points in CT, MA, ME, NH, RI, and VT, restricted to the transportation of traffic having a prior movement in foreign commerce. (Hearing site: Washington, DC.)

MC 22301 (Sub-26F), filed June 12, 1978. Applicant: SIOUX TRANSPORTATION CO., INC., 1230 Steuben Street, P.O. Box 3088, Sioux City, IA 51102. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Authority granted to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Sioux City, IA and Sioux Falls, SD, over Interstate Hwy 29, serving all intermediate points, and the off-route points of Vermillion and Yankton, SD. (Hearing site: Sioux City, IA, or Sioux Falls, SD.)

MC 25798 (Sub-328F), filed June 30, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses, from Horseheads and Brockport, NY, to points in FL, GA, LA, NC, and VA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Tampa, FL.)

MC 25798 (Sub-329F), filed July 5, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., A North Carolina corporation, P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium bicarbonate, sodium carbonate, and cleaning, scouring, and washing compounds* (except commodities in bulk), from the facilities of Church & Dwight Co., Inc., at Syracuse, NY, to points in AL, FL, and GA. (Hearing site: Washington, DC.)

MC 32882 (Sub-95F), filed June 22, 1978. Applicant: MITCHELL BROS. TRUCK LINES, 3841 North Columbia Boulevard, Portland, OR 97217. Representative: David R. Parker, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite and lignite*, (1) from the facilities of American Colloid Co., in (a) Butte County, SD, (b) Big Horn and Weston Counties, WY, and (c) Bowman County, ND, to points in CA, LA, OK, and TX, (2) from the facilities of American Colloid Co., in (a) Crook County, WY, and (b) Phillips County, MT, to points in the United States

(except AK and HI). (Hearing site: San Francisco, CA.)

MC 35628 (Sub-402F), filed June 30, 1978. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation, 134 Grandville Avenue SW., Grand Rapids, MI 49503. Representative: Michael P. Zell (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Chesebrough-Pond's, at or near Huntsville, AL, as an off-route point in connection with carrier's presently authorized regular-route operations. (Hearing site: New York, NY, or Washington, DC.)

MC 42011 (Sub-41F), filed June 16, 1978. Applicant: D. Q. WISE & CO., INC., P.O. Box 15125, Tulsa, OK 74115. Representative: J. G. Dall, Jr., P.O. Box 567, McLean, VA 22101. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Off-highway vehicles*, and (2) *parts, attachments, and supplies*, for the commodities in (1) above, and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, between Tulsa, OK, and Conroe and Lufkin, TX, on the one hand, and, on the other, points in the United States (except AK, CT, DE, FL, GA, HI, ME, MA, NH, NC, RI, SC, and VT), restricted to the transportation of traffic originating at or destined to the facilities of Unit Rig & Equipment Co. at Tulsa, OK, or the facilities of Kimco, Inc., at Conroe and Lufkin, TX. (Hearing site: Tulsa, OK.)

MC 48221 (Sub-17F), filed June 5, 1978. Applicant: W. N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, NE 68107. Representative: Bruce A. Bullock, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from Golden, CO, to points in IA. (Hearing site: Omaha, NE.)

MC 55896 (Sub-79F), filed June 13, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and container accessories*, from the facilities of Kerr Glass Manufacturing Corp., at or near Dunkirk, IN, to points in IL, MI, MO,

OH, PA, and WI. (Hearing site: Tulsa, OK, or Indianapolis, IN.)

MC 61403 (Sub-255F), filed June 28, 1978. Applicant: MASON AND DIXON TANK LINES, INC., Highway 11W, P.O. Box 969, Kingsport, TN 37662. Representative: W. C. Mitchell, Suite 1201, 370 Lexington Avenue, New York, NY 10017. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oil*, in bulk, between Rochester, NY and Kingsport, TN. (Hearing site: Washington, DC.)

MC 61403 (Sub-256F), filed June 30, 1978. Applicant: MASON AND DIXON TANK LINES, INC., Highway 11W, P.O. Box 969, Kingsport, TN 37662. Representative: W. C. Mitchell, Suite 1201, 370 Lexington Avenue, New York, NY 10017. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, (1) from points in Brazoria, Matagorda, and Nueces Counties, TX, to those points in the United States in and east of MN, IA, MO, AR, and LA, (2) from Houston, TX, to points in the United States (except AK and HI), and (3) between points in Brazoria County, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Houston, TX.)

MC 71642 (Sub-31F), filed June 14, 1978. Applicant: CONTRACTUAL CARRIERS, INC., Harmony Industrial Park, Newark, DE 19711. Representative: Samuel W. Earnshaw, 833 Washington Building, Washington, DC 20005. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastics* (1) between Louisville and Calvert City, KY, and Leominster, MA, on the one hand, and, on the other, Newark, DE and the facilities of Keysor-Century Corp. at or near Delaware City, DE; (2) from Nashville, TN, to Newark, DE, and the facilities of Keysor-Century Corp. at or near Delaware City, DE, under a continuing contract(s) with Keysor Century Corp., of Delaware City, DE. (Hearing site: Washington, DC.)

MC 82808 (Sub-17F), filed June 27, 1978. Applicant: C. L. HUNT d.b.a. HUNT AND SONS, P.O. Box 433, Warrensburg, MO 64093. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Insulation, insulation products, insulation materials*, from Grain Valley, MO, to points in the United States (except AK and HI); and (2) *materials, supplies, and equipment* used in the manufacture and distribution of the commodities in (1) above,

in the reverse direction. (Hearing site: Kansas City, MO.)

MC 83539 (Sub-500F), filed June 7, 1978. Applicant: C&H TRANSPORTATION CO., INC., P.O. Box 270535, Dallas, TX 75227. Representative: Douglas Anderson (same address as Applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone and cast stone products*, from points in ID, MT, and UT, to points in the United States (except AK and HI). (Hearing site: Salt Lake City, UT, or Dallas, TX.)

MC 89369 (Sub-20F), filed July 3, 1978. Applicant: JOART TRUCKING CO., a Corporation, P.O. Box 332, New Brunswick, NJ 08903. Representative: Edward F. Bowes, P.O. Box 1409, Fairfield, NJ 07006. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bulk commodities* (except sand, cement, and dry corrosives), between points in VT, NH, ME, MA, RI, CT, NY, NJ, PA, DE, MD, VA, WV, NC, SC, GA, FL, LA, OH, MI, IL, and IN. (Hearing site: New York, NY, or Newark, NJ.)

MC 103051 (Sub-444F), filed June 19, 1978. Applicant: FLEET TRANSPORT CO., INC., 934 44th Avenue, North, Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal oils and animal fats*, in bulk, in tank vehicles, and (2) *blends* of the commodities named in (1) above, in bulk, in tank vehicles, from Tupelo and West Point, MS, to points in AL, AR, FL, GA, IN, IL, LA, SC, TN (except Chattanooga), NJ, and OK. (Hearing site: Nashville, TN, or Atlanta, GA.)

MC 105461 (Sub-101F), filed June 16, 1978. Applicant: HERR'S MOTOR EXPRESS, INC., P.O. Box 8, Quarryville, PA 17566. Representative: Robert R. Herr (same address as Applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pulpboard containers and fibreboard products*, and (2) *equipment, materials, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), between the facilities of Sonoco Products Co., at or near Alpha and Dayton, OH, on the one hand, and, on the other, points in DE, NJ, NY, and PA. (Hearing site: Washington, DC, or Columbus, OH.)

MC 105501 (Sub-30F*), filed June 14, 1978. Applicant: TERMINAL WAREHOUSE CO., INC., 1851 Raddison Road NE., Blaine, MN 55434. Representative: Joseph J. Dudley, W-1260

First National Bank Building, St. Paul, MN 55101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials and particle-board*, from Virginia, MN, to points in ND, SD, NE, MO, IA, WI, and IL. (Hearing site: St. Paul or Minneapolis, MN.)

MC 106644 (Sub-263), filed May 17, 1978. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 916, Atlanta, GA 30301. Representative: Frank Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products*, and (2) *machinery, materials, equipment, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing or picking up of pipe* (except the stringing or picking up of pipe in connection with main or trunk pipelines, and pipe, pipe products, casing, valves and fittings used for main or trunk pipelines), (1) from the facilities of McJunkin Corp., at Nitro, WV, to points in ME, NH, VT, MA, CT, RI, NY, NJ, DE, NC, MD, and SC, and (2) from the facilities of McJay International at Mobile, AL, to points in ME, NH, VT, CT, and DE. (Hearing site: Charleston, WV, or Washington, DC.)

MC 107012 (Sub-268F), filed June 19, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as Applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Luggage* (1) from Nogales, AZ, to the facilities of Samsonite Corp., at or near Denver, CO, and (2) from the facilities of Samsonite Corp., at or near Denver, CO, to points in the United States (except AK and HI). (Hearing site: Denver, CO, Salt Lake City, UT, or Washington, DC.)

MC 107012 (Sub-269F), filed June 20, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as Applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Appliances*, from the facilities of Whirlpool Corp., at or near Fort Smith, AR, to points in AL, FL, GA, IA, KS, KY,

LA, MS, MN, OK, SC, TN, and TX. (Hearing site: Benton Harbor, MI, or Chicago, IL.)

MC 109708 (Sub-84F), filed June 19, 1978. Applicant: INDIAN RIVER TRANSPORT, CO., a corporation, d.b.a., INDIAN RIVER TRANSPORT, INC., P.O. Box AG, Dundee, FL 33838. Representative: Bruce A. Bullock, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cranberry juice*, in bulk, in tank vehicles, (1) from Northeast, PA, Kenosha, WI, Middleboro, MA, and Bordentown, NJ, to points in AL, and, (2) from Kenosha, WI, to Northeast, PA. (Hearing site: Boston, MA.)

MC 109708 (Sub-86F), filed June 29, 1978. Applicant: INDIAN RIVER TRANSPORT CO., a corporation, d.b.a., INDIAN RIVER TRANSPORT, INC., P.O. Box AG, Dundee, FL 33838. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fruit juice*, in bulk, in tank vehicles, from points in OH, to points in FL; and (2) *fruit juice and fruit juice concentrates*, in bulk, in tank vehicles, from points in OH, NY, and VA, to Canton, MA, Florence, NJ, Meriden, CT, and Riviera Beach, FL. (Hearing site: Miami or Orlando, FL.)

MC 111231 (Sub-238F), filed June 19, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Authority granted to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Between Atlanta, GA and Denver, CO, serving no intermediate points, and serving Oklahoma City, OK and Wichita, KS for purposes of joinder only: From Atlanta over Interstate Hwy 75 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Nashville, TN, then over Interstate Hwy 40 to Oklahoma City, OK, then over Interstate Hwy 35 to Wichita, KS, then over Interstate Hwy 135 to Salina, KS, then over Interstate Hwy 70 to Denver, and return over the same route. (Hearing site: Little Rock, AR, or Washington, DC.)

MC 112822 (Sub-457F), filed June 22, 1978. Applicant: BRAY LINES INC., P.O. Box 1191, 1401 North Little Street, Cushing, OK 74023. Representative: Charles D. Midkiff (same address as applicant). Authority granted

to operated as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by food business houses (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, (1) from the facilities of Kraft, Inc., at or near Pocatello, ID, to points in WA, OR, CA, KS, OK, MO, TX, IA, MN, WI, and IK, and (2) from points in WA, CA, NE, KS, MO (except Springfield, MO), MN, WI, and IL, to the facilities of Kraft, Inc., at or near Pocatello, ID, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 113651 (Sub-277F), filed June 15, 1978. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Muncie, IN 47305. Representative: Paul R. Bergant, 10 South LaSalle Street, Chicago, IL 60603. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen prepared foods*, from south Hackensack and Secaucus, NJ, to points in AL, GA, IL, IN, KY, LA, MO, OH, PA, TN, and TX. (Hearing site: Chicago, IL.)

MC 114273 (Sub-400F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *appliances*, and (2) *parts, accessories, equipment, materials, and supplies* used in the manufacture and distribution of the commodity named in (1) above, from (a) Newton, IA, to points in AL, DE, GA, IN, KS, KY, MI, MD, MO, NC, NE, NY, OH, PA, SC, TN, VA, WV, and DC, and (b) from points in OH, MI, IN, and MO, to Newton, IA. Condition: In view of the findings in No. MC 114273 (Subs-147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to the expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-401F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *paper and paper articles*, from Royersford, PA, and Warwick, NY, to Chicago, IL. Condition: In view of the findings in No. MC 114273 (Subs-147

and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to the expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-402F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *such commodities as are dealt in by grocery and hardware stores*, from Fort Madison, IA, and points in CT, MA, NJ, NY, PA, and RI, to points in IL, IN, IA, KY, MA, MI, MO, NJ, NY, OH, PA, and TX; (2) *chemicals*, from points in CT, MA, NJ, NY, PA, and RI, to points in IL, IN, IA, MI, and MO; and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, from points in CT, MA, NJ, NY, PA, and RI, to points in IL, IN, IA, MI, and MO (except commodities in bulk, in tank vehicles). Condition: In view of the findings in No. MC 114273 (Subs-147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to the expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for joint-line service.

MC 114273 (Sub-407F), filed June 29, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *chemicals* (except in bulk, in tank vehicles), from Boonton and Springfield, NJ, and Philadelphia, PA, to Chicago, IL. Condition: In view of the findings in No. MC 114273 (Subs-147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months

prior to the expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-408F), filed June 29, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *Plastic sheeting and plastic film*, from Paterson and Yardville, NJ, and Brooklyn, NY, to Des Moines, Fairfield, Jefferson, and Monticello, IA; and (2) *aluminum foil*, from Cleveland, OH, to Des Moines, IA. Condition: In view of the findings in No. MC 114273 (Subs-147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to the expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 14273 (Sub-409F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *such commodities as are dealt in by food business houses*, from Chicago, IL, to points in OH. Condition: In view of the findings in MC 114273 (Subs 147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to the expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-410F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting such commodities as are used by appliance manufacturers (except commodities in bulk, in tank vehicles), from Bellville, Cleveland, Fremont, Huron, Spencerville, and Urbana, OH, Philadelphia, PA, and Bridgeport, CT, to Newton, IA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. Condition: In view of the findings in MC 114273 (Subs 147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-411F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting plastic containers, (1) from Medina and Jackson Center, OH, to Muscatine, IA, (2) from Jackson Center, OH, to Council Bluffs, IA, Kansas City, KS, and Minneapolis, MN, and (3) from St. Marys, OH, to Council Bluffs and Muscatine, IA, Kansas City, KS, and Minneapolis, MN, restricted to the transportation of shipments originating at the facilities of Plasti Pak Packaging, Division of Beatrice Foods Co. Condition: In view of the findings in MC 114273 (Subs 147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration, applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-412F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting iron and steel articles, (except in bulk, in tank vehicles), from Cleveland, OH, Detroit, MI, Franklin Park, IL, and Riverton, NJ, to Cozad, NE.

Condition: In view of the findings in MC 114273 (Subs 147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration, applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-413F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting confectionery and confectionery products, in vehicles equipped with mechanical refrigeration, from Norwalk, OH, to Hopkins, MN. Condition: In view of the findings in MC 114273 (Subs 147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-414F), filed June 30, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: such commodities as are used and distributed by shoe polish manufacturers (except commodities in bulk, in tank vehicles), from Douglasville, PA, to Chicago, IL. Condition: In view of the findings in MC 114273 (Sub-147 and 252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114552 (Sub-164F), filed June 14, 1978. Applicant: SENN TRUCKING CO., a corporation, P.O. Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 North

Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) Pipe, fittings, accessories, and materials and supplies used in the installation of the commodities in (1) above, from the facilities of Charlotte Pipe & Foundry Co., at or near Charlotte, Monroe, and Bakers, NC, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; and (3) materials, equipment and supplies used in the manufacture, distribution, or installation of commodities in (1) above, in the reverse direction. (Hearing site: Charlotte, NC.)

MC 114552 (Sub-165F), filed June 14, 1978. Applicant: SENN TRUCKING CO., a corporation, P.O. Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) Pipe, valves, fittings, hydrants, and (2) parts and accessories, for the commodities named in (1) above, from the facilities of United States Pipe & Foundry Co., at or near Birmingham and Bessemer, AL, to points in AL, AR, CT, DE, FL, GA, KY, LA, ME, MD, MA, MS, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and DC. (Hearing site: Birmingham, AL.)

MC 11452 (Sub-167F), filed June 21, 1978. Applicant: SENN TRUCKING CO., a corporation, P.O. Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Iron and steel articles, from the facilities of Armco Steel Corp., at or near Ashland, KY, to points in AL, FL, GA, NC, SC, TN, and VA. (Hearing site: Cincinnati, OH.)

MC 115162 (Sub-419F), filed June 14, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Authority granted to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Insulating materials and mineral wool, from the facilities of Rock Wool Manufacturing Co., at Leeds, AL, to points in AR, LA, those in TX on and east of a line beginning at the TX-OK State line and extending along Interstate Hwy 35 to San Antonio, then along Interstate Hwy 37 to Corpus Christi, and those in FL on and west of the Apalachicola River. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 115311 (Sub-288F), filed June 9, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Millledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: (1) *Pipe, fittings, valves, hydrants, and castings*, and (2) *materials and supplies* used in the installation of the commodities named in (1) above, from the facilities of Clow Corp., at or near (1) Birmingham, AL and (2) Lincoln, AL, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Birmingham, AL or Atlanta, GA.)

MC 115841 (Sub-636F), filed June 18, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Suite 110, 9041 Executive Park Drive, Knoxville, TN 37919. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the facilities of J. M. Smucker Co., at or near Memphis, TN, to points in AL, AR, NM, CO, NE, IA, KS, MO, MN, WI, IL, LA, MS, FL, SC, NC, KY, IN, TX, and OK. (Hearing site: Memphis, TN.)

MC 116457 (Sub-34F), (correction), filed May 22, 1978, published in the FEDERAL REGISTER issue of June 29, 1978, and republished this issue. Applicant: GENERAL TRANSPORTATION, INC., 1804 South 27th Avenue, Phoenix, AZ 85005. Representative: D. Parker Crosby, P.O. Box 6484, Phoenix, AZ 85005. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Waste paper, waste cardboard, waste newsprint, and waste paper products*, for reuse or recycling (except commodities in bulk, in tank vehicles), between points in AZ, CA, NV, UT, CO, NM, TX, and OK. (Hearing site: Phoenix, AZ.)

NOTE.—The purpose of this republication is to show the State of TX in the territorial description which was omitted in the previous FEDERAL REGISTER publication.

MC 117639 (Sub-18F), filed July 3, 1978. Applicant: PICK'S PACK HAULER, INC., 1214 East South Street, Hastings, NE 68901. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick and clay products*, from Adel, IA, to points in NE, under continuing contract with Sioux City Brick & Tile, of Sioux City, IA. (Hearing site: Omaha, NE or Lincoln, NE.)

MC 118263 (Sub-73F), filed June 29, 1978. Applicant: COLDWAY CARRIERS, INC., P.O. Box 2038, Clarksville, IN 47130. Representative: William P. Whitney, Jr., 708 McClure Building, Frankfort, KY 40601. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery products* (except in bulk), from the facilities of R. M. Palmer Co., at West Reading and Wyomissing, PA, to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, TN, VT, VA, WV, and WI. (Hearing site: Reading or Allentown, PA.)

MC 118638 (Sub-5F), filed June 30, 1978. Applicant: GCS AIR SERVICE, INC., 8240 State Route 309, Gallion, OH 44833. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Shelby, OH, and points in Crawford, Marion, Morrow, Huron, Ashland, Richland, and Wyandot Counties, OH, on the one hand, and, on the other, the Port Columbus International Airport, at Columbus, OH, restricted to the transportation of traffic having an immediately prior or immediately subsequent movement by air. (Hearing site: Columbus, OH.)

MC 119493 (Sub-216F), filed July 3, 1978. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Lawrence F. Kloeppel (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture*, from the facilities of La-Z-Boy Midwest Co. at or near Neosho, MO, and La-Z-Boy Arkansas Co. at or near Siloam Springs, AR, to points in AR, FL, IA, KS, LA, MS, NE, NM, OK, TN, and TX, and (2) *materials and supplies* used in the manufacture and distribution of the commodity named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Joplin, MO, or Fort Smith, AR.)

MC 119631 (Sub-26F), filed June 16, 1978. Applicant: DEIOMA TRUCKING CO., a corporation, P.O. Box 3315, Mount Union Station, Alliance, OH 44610. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, in containers (1) from the facilities of

Revere Sugar Corp., at or near Boston, MA, to points in OH, IN, IL, MI, and PA, and (2) from the facilities of Revere Sugar Corp., at Brooklyn, NY, to points in OH (except those in Carroll, Columbiana, Harrison, Jefferson, Mahoning, Medina, Portage, Stark, Summit, Trumbull, Tuscarawas, and Wayne Counties), IN, IL, MI, and PA. (Hearing site: Washington, DC.)

MC 119632 (Sub-75F), filed June 19, 1978. Applicant: REED LINES, INC., 634 Ralston Avenue, P.O. Box 807, Defiance, OH 43512. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared and preserved foodstuffs* (except frozen), *cooking oils, shortening, and matches*, from the facilities of Hunt-Wesson Foods, Inc., at or near Toledo, OH, to points in MI, restricted to the transportation of traffic originating at the named origin. (Hearing site: Columbus, OH.)

MC 119670 (Sub-35F), filed June 8, 1978. Applicant: THE VICTOR TRANSPORT CORP., 5250 Este Avenue, Cincinnati, OH 45232. Representative: Robert H. Kinker, 314 West Main Street, Frankfort, KY 40602. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and accessories for glass containers*, from Huntington, WV, to Gas City, IN. (Hearing site: Cincinnati, OH.)

MC 119789 (Sub-487F), filed July 5, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey, P.O. Box 226188, Dallas, TX 75266. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Graphite*, in containers, from points in Burnet County, TX, to points in CA, IL, CT, GA, IN, LA, MI, NJ, NY, NC, OH, PA, TN, TX, and VA; (2) *graphite*, from Jersey City and Lakehurst, NJ, to points in Burnet County, TX; and (3) *steel*, from points in AR and CO, to points in Burnet County, TX. (Hearing site: San Antonio, TX.)

MC 123069 (Sub-25F), filed July 7, 1978. Applicant: ALLER & SHARP, INC., 817 West Fifth Avenue, Columbus, OH 43212. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, additives, and materials and supplies* used in the manufacture and distribution of animal feeds, from Terre Haute and Indiana

polls, IN, to points in IN, KY, MI, NJ, OH, PA, TN, WV, and those in NY on and west of U.S. Hwy 81. (Hearing site: Columbus, OH, or Washington, DC.)

MC 123407 (Sub-468F), filed June 16, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr., (same address as applicant. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Northwestern Steel and Wire Co., at Sterling, IL, to points in AZ, CA, CO, ID, LA, MT, NV, NM, ND, OK, OR, TX, UT, WA, WI, and WY. (Hearing site: Chicago, IL.)

MC 123819 (Sub-66F), filed July 6, 1978. Applicant: ACE FREIGHT LINE, INC., P.O. Box 16589, Memphis, TN 38116. Representative: Bill R. Davis, Suite 101, Emerson Center, 2814 New Spring Road, Atlanta, GA 30339. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* (except in bulk), from Memphis, TN, to Greenwood, MS. (Hearing site: Memphis, TN.)

MC 124078 (Sub-827F), filed June 30, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601 Milwaukee, WI 53201. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, from Macon, GA, to points in AL, NC, SC, TN, and VA. (Hearing site: Atlanta, GA.)

MC 124078 (Sub-830F), filed July 3, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime, limestone, and limestone products*, from the facilities of National Lime Stone Co., at or near Carey, OH, to points in IL, IN, KY, MI, MO, NJ, NY, PA, TN, WV, and WI. (Hearing site: Columbus, OH.)

MC 124078 (Sub-831F), filed July 3, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nitrogen solution*, from Aurora, IN, to points in OH and IN. (Hearing site: Columbus, OH.)

MC 124078 (Sub-832F), filed July 3, 1978. Applicant: SCHWERMAN

TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from Kingston, NY, to points in CT, MA, NH, NJ, NY, PA, RI, and VT. (Hearing site: Albany, NY, or Washington, DC.)

MC 124211 (Sub-325F), filed June 15, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in and used by manufacturers and distributors of rubber and rubber products (except commodities in bulk, in tank or hopper vehicles), (1) from Tupelo, MS, Shelby and Mansfield, OH, and Memphis, TN, to points in the United States (except AK and HI), and (2) from points in the United States (except AK and HI), to Tupelo, MS, and Mansfield, OH. (Hearing site: Washington, DC.)

MC 124236 (Sub-90F), filed June 13, 1978. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 1200 Simons Building, Dallas, TX 75201. Representative: Sam Hallman, 4555 First National Bank Building, Dallas, TX 75202. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from San Antonio, TX, to ports of entry on the international boundary line between the United States and the Republic of Mexico, at or near Hidalgo, TX.

MC 124251 (Sub-51F), filed May 29, 1978. Applicant: JACK JORDAN, INC., Highway 41 South, P.O. Box 689, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Latex, latex compounds, polypropylene glycol, and isocyanate*, in bulk, in tank vehicles, from points in Hamilton County, TN, to points in AR, LA, MN, NE, OK, and TX, and those points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the United States and Canada; and (2), *Boiler cleansing liquid compounds, and rubber preservatives*, in bulk, in tank vehicles, from points in Hamilton

County, TN, to points in GA, IL, KY, LA, MA, NE, NJ, NC, OH, PA, SC, TX, and VA. (Hearing site: Atlanta, GA.)

MC 126042 (Sub-6F*), filed June 16, 1978. Applicant: C. ARTHUR FOSSE, d.b.a., FOSSE TRANSPORT, P.O. Box 187, Rothsay, MN 56579. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from the facilities of Williams Brothers Pipe Line Co., at West Fargo, ND, to the facilities of Farmers Grain & Mercantile Co., at Rothsay, MN, under continuing contract with Farmers Grain & Mercantile Co., of Rothsay, MN. (Hearing site: Fargo, ND, or Minneapolis, MN.)

MC 127042 (Sub-221F), filed June 15, 1978. Applicant: HAGEN, INC., P.O. Box 98-Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning, washing, polishing, and scouring compounds, waxes, janitor supplies, weed killers, and sodium hypochloride solutions* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Industrial Chemical Labs, Inc., at or near Omaha, NE, to points in AZ, CO, MN, OR, and WA. (Hearing site: Omaha, NE.)

MC 128791 (Sub-11F), filed June 16, 1978. Applicant: JOULE YACHT TRANSPORT, INC., 12290 Automobile Boulevard, Clearwater, FL 33520. Representative: M. Craig Massey, P.O. Drawer J, Lakeland, FL 33802. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Boats*, (2) *boat parts*, (3) *equipment and supplies* used in connection with the commodities in (1) and (2), and (4) *personal effects* moving in the same shipment as boats, from points in Orange and Los Angeles Counties, CA, to those points in the United States in and east of MN, IA, MO, OK, and TX. (Hearing site: Los Angeles, CA.)

MC 129621 (Sub-63F), filed June 19, 1978. Applicant: PACK TRANSPORT, INC., 3975 South 300 West, Salt Lake City, UT 84107. Representative: G. D. Davidson (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and construction materials*, between points in ID, MT, and WY, on the one hand, and, on the other, points in UT. (Hearing site: Missoula, MT.)

MC 129749 (Sub-6F), filed July 5, 1978. Applicant: FOUNDRY SERVICE CORP., South 15th Street, Millville, NJ 08332. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand and gravel*, (1) from Winslow Township and Buena Vista Township, NJ, to points in NH, and (2) from South Vineland and Mauricetown, NJ, to points in CT, DE, MD, MA, NH, NY, PA, RI, VA, and DC, under continuing contract(s) with Jesse S. Morie & Son, Inc., of Mauricetown, NJ. (Hearing site: New York, NY.)

MC 133296 (Sub-10F), filed June 13, 1978. Applicant: YULE TRANSPORT, INC., P.O. Box 42, Medford, MN 55040. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. Authority granted to operate as a *contract carrier*, by motor vehicles, over irregular routes, transporting: *Malt beverages*, from Peoria, IL, to points in Owatonna and Rochester, MN, under continuing contract(s) with Shea Distributing Co., of Owatonna, MN (Hearing site: St. Paul, MN.)

MC 133684 (Sub-26F), filed May 30, 1978. Applicant: GORDON FAST FREIGHT, INC., 2205 Pacific Highway East, Tacoma, WA 98424. Representative: Michael D. Duppenthaler, 515 Lyon Building, 607 3d Avenue, Seattle, WA 98104. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, and *materials and supplies for the brewing and packaging of malt beverages*, between Vancouver, WA, on the one hand, and, on the other, points in CA and NV. (Hearing site: Seattle, WA.)

MC 134134 (Sub-28F), filed May 30, 1978. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Avenue, Omaha, NE 68106. Representative: Gailyn L. Larsen, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer, tree killing compounds, and pesticides in containers*, from East St. Louis, IL, to points in IA, KS, MN, NE, ND, OK, and SD. (Hearing site: St. Louis, MO, or Omaha, NE.)

MC 134501 (Sub-29F), filed June 15, 1978. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, OK 73112. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Baltimore and Salisbury, MD, to

points in the United States (except AK, AR, AZ, CA, CO, HI, LA, NV, NM, OR, OK, TX, and Shelby County TN). (Hearing site: Baltimore, MD or Washington, DC.)

MC 134501 (Sub-30F), filed June 15, 1978. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, OK 73112. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *air purification systems*, from Albuquerque, NM, to points in the United States (except AK in HI). (Hearing site: Albuquerque, NM or Dallas, TX.)

MC 135152 (Sub-24F), filed June 20, 1978. Applicant: CASKET DISTRIBUTORS, INC., Rural Route No. 2, P.O. Box 327, West Harrison, IN 45030. Representative: Jack B. Josselson, 700 Atlas Bank Building, Cincinnati, OH 45202. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture knocked down and in cartons*, from the facilities of Fame Furniture at (1) Florence, KY, and (2) Union Township, OH, to those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: Washington, DC.)

MC 135410 (Sub-25F), filed June 8, 1978. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, 700 South Main, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, additives, and materials and supplies*, used in the manufacture and distribution of animal feeds, (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in CT, DE, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC, restricted to the transportation of shipments originating at or destined to the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL. (Hearing site: Chicago, IL or St. Louis, MO.)

MC 135598 (Sub-12F), filed June 27, 1978. Applicant: SHARKEY TRANSPORTATION, INC., P.O. Box 3156, Quincy, IL 62301. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, (1) from Pabst, GA, Milwaukee, WI, Peoria, IL, Evansville, IN, La Crosse, WI, and Omaha, NE, to Hannibal, MO, (2) from Milwaukee, WI, Peoria, IL, and

Pabst, GA, to Mexico, MO, and (3) from Pabst, GA, to Quincy, IL. (Hearing site: Chicago, IL.)

MC 135982 (Sub-22F), filed June 19, 1978. Applicant: S. L. HARRIS, d.b.a. P.B.I., P.O. Box 7130, Longview, TX 75601. Representative: Bernard H. English, 6270 Firth Road, Fort Worth TX 76116. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from the facilities of Midland Glass Co., at or near (1) Henrietta, OK, and (2) Terre Haute, IN, to points in Alamance, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties, NC, and Bedford, Campbell, Carroll, Floyd, Franklin, Halifax, Henry, Montgomery, Patrick, Pittsylvania, Pulaski, and Roanoke Counties, VA. (Hearing site: Dallas or Fort Worth, TX.)

MC 136728 (Sub-4F), filed June 30, 1978. Applicant: HUB FREIGHT SYSTEMS, INC., P.O. Box 729, Marietta, OH 45750. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Precast concrete products*, and (2) *materials and supplies* used in erecting and assembling the commodities in (1) above, moving in mixed shipments with the commodities in (1) above, (a) from points in OH, to points in IN, KY, MD, MI, NC, PA, TN, VA, and WV, and (b) from points in WV, to points in IN, KY, MD, MI, NC, OH, PA, TN, and VA. (Hearing site: Columbus, OH.)

MC 136989 (Sub-18F), filed July 5, 1978. Applicant: R. F. BOX INC., 500 Kinley, NE., Albuquerque, NM 87104. Representative: Edwin E. Piper, Jr., 1115 Sandia Savings Building, Albuquerque, NM 87102. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Floor Coverings* (except carpeting and rugs), from ports of entry on the International Boundary Line between the United States and Canada, at or near Champlain, NY, to points in CA, OR, WA, MT, ID, NV, AZ, NM, UT, WY, CO, TX, OK, NE, and KS, under continuing contract(s) with Donco Industries, Ltd., of Farnham, PQ, Canada. (Hearing site: Albuquerque, NM, or Washington, DC.)

NOTE.—Applicant states that shipments in foreign commerce are originated at points in PQ, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary.

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the

policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of AB, SK, and MB regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 138308 (Sub-50F*), filed July 3, 1978. Applicant: KLM, INC., A Texas Corporation, 2102 Old Brandon Road, P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *clay products* (except in bulk), from Jackson, MS, to points in CA, NV, OR, and WA. (Hearing site: Jackson, MS.)

MC 138861 (Sub-10F*), filed June 19, 1978. Applicant: C-LINE, INC., Tourtellot Hill Road, Chepachet, RI 02814. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Jewelers Shipping Association, at or near Cranston, RI, on the one hand, and, on the other, points in MN. Restricted to the transportation of traffic moving on the bills of lading of shippers' associations as defined in sec. 402 of the Interstate Commerce Act. (Hearing site: Providence, RI, or Boston, MA.)

MC 138875 (Sub-95F*), filed June 30, 1978. Applicant: SHOEMAKER TRUCKING CO., a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk) from the facilities of Ore-Ida Foods, Inc., at or near Greenville, MI, to points in CT, DE, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC. (Hearing site: Boise, ID, or Washington, DC.)

MC 138882 (Sub-96F*), filed June 20, 1978. Applicant: WILEY SANDERS, INC., P.O. Box 707, Troy, AL 36081.

Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood*, from the facilities of Furniture Veneers, Inc., at or near Conway, SC, to Salem and Huntingburg, IN. (Hearing site: Birmingham or Montgomery, AL.)

MC 139495 (Sub-362F*), filed June 30, 1978. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shelving*, from the facilities of Estey Corp., at or near Tinton Falls, NJ, to those points in the United States east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC.)

MC 139495 (Sub-363F*), filed July 3, 1978. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in and used by producers and distributors of alcoholic beverages (except commodities in bulk), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in the United States (except AK, HI, and KY). (Hearing site: Washington, DC.)

MC 139534 (Sub-4F*), filed May 30, 1978. Applicant: BLALOCK WAREHOUSE, INC., 1512 South MacArthur, Oklahoma City, OK 73108. Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer* (except in tank vehicles and except petroleum based fertilizer) from Houston, TX, to points in OK. (Hearing site: Oklahoma City, OK.)

MC 140033 (Sub-59F*), filed June 28, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft, Inc., at Lakeland, FL, to points in MO, MS, LA, and TX, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated

destinations. (Hearing site: Jacksonville, FL, or Oklahoma City, OK.)

MC 140241 (Sub-14F*), filed June 14, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Moundridge, KS 67107. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Penn-Dixie Steel Corp., at or near Joliet, IL, to points in AR, CO, IA, KS, MN, MO, NE, OK, SD, and TX. (Hearing site: Chicago, IL, or Kansas City, MO.)

MC 140829 (Sub-117F*), filed June 28, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy. 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, toilet preparations, health care products, magnesium hydroxide, and alumina calcinate* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, (1) from Lewes, DE; Lakewood, NJ; and Philadelphia, PA, to points in AL, AR, AZ, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NE, NC, NM, NV, OH, OK, SC, SD, TN, TX, UT, and WI; (2) from Friendship, NC, to points in AL, AR, AZ, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NM, NV, OH, SD, TN, TX, UT, and WI; (3) from San Leandro, CA, to points in GA, IN, NJ, and PA; and (4) from Reno, NV, and Round Rock, TX, to Philadelphia, PA, and Lakewood, NJ, restricted in (1), (2), (3), and (4) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 140829 (Sub-121F*), filed July 6, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy. 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Artificial Christmas trees, Christmas novelties, and Christmas tree accessories*, from the facilities of the American Tree & Wreath, Division of American Technical Industries, Inc., at Aurora, IL, to points in IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, and WI. Restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC.)

MC 141195 (Sub-5F*), filed June 29, 1978. Applicant: CAL-ARK, INC.,

Rural Route 2, Prairie Grove, AR 72753. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Power tools, power tool attachments, and equipment and supplies for power tools*, from Heber Springs and Walnut Ridge, AR, to points in the United States (except AR, AK, and HI); and (2) *power tools, and materials, equipment, and supplies used in the manufacture and distribution of the commodities named in (1) above*, from Berkeley, Chicago, Elk Grove Village, Skokie, and Wheeling, IL, to Heber Springs and Walnut Ridge, AR, under continuing contract(s) in (1) and (2) above, with Skil Corp., of Elk Grove Village, IL. (Hearing site: Chicago, IL, or Little Rock, AR.)

MC 141402 (Sub-14F), filed June 19, 1978. Applicant: LINCOLN FREIGHT LINES, INC., Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles*, from the facilities of Aim Packaging, Inc., near Port Clinton, OH, to points in IL, IN, KY, MN, MO, and WI, under continuing contract(s) with Aim Packaging, Inc., of Port Clinton, OH. (Hearing site: Chicago, IL or Indianapolis, IN.)

MC 141532 (Sub-22F), filed June 16, 1978. Applicant: PACIFIC STATES TRANSPORT, INC., 35443 16th Avenue South, Federal Way, WA 98003. Representative: Miles L. Kavalier, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cold storage walk-in coolers and freezers*, knocked down, from Portland, OR, to points in AZ and CA. (Hearing site: Portland, OR.)

MC 141921 (Sub-15F*), filed June 16, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03103. Representative: John A. Sykas (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts, and articles distributed by meatpacking houses*, as described in sections A and C of appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 M.C.C. 209 and 766 (except hides, skins, and commodities in bulk), from Bedford and Manchester, NH, to points in CT, FL, ME, MA, NY, PA, RI, SC, and VT. (Hearing site: Concord, NH or Boston, MA.)

MC 141921 (Sub-16F*), filed June 14, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03103. Representative: John A. Sykas (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen bakery products and frozen onion rings*, and (2) *frozen fish and seafood and frozen prepared fish and seafoods* otherwise exempt from regulation when moving in mixed shipments with frozen onion rings and frozen bakery products, from the facilities of Boston Bonnie, Inc., at or near Boston, MA, to points in CO, DE, IL, IN, IA, KS, ME, MD, MI, MN, MO, NE, NH, NJ, NY, OH, PA, WV, WI, and DC. (Hearing site: Concord, NH or Boston, MA.)

MC 142271 (Sub-3F), filed June 15, 1978. Applicant: WAYNE E. WATKINS, d.b.a. WATKINS REFRIGERATED DISTRIBUTING SERVICE, 36316 85th Street East, Little Rock, CA 93543. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid plastic*, in vehicles equipped with mechanical refrigeration, from the facilities of Furane Plastics, Inc., at Los Angeles, CA, to Coquille, Sutherlin and Portland, OR, Corrigan, TX, and Aberdeen, WA; (2) *liquid plastic, and chemicals* used in the manufacture or processing of liquid plastic (except commodities in bulk), in vehicles equipped with mechanical refrigeration, (a) from the facilities of Delta Petroleum, at New Orleans, LA, to the facilities of Furane Plastics, Inc., at Los Angeles, CA, (b) from the facilities of Dow Chemical Corp., at Freeport, TX, to the facilities of Furane Plastics, Inc., at Los Angeles, CA, (c) from the facilities of Archem Co., at Houston, TX, to the facilities of Furane Plastics, Inc., at Los Angeles, CA; and (3) *molding compound* used in the manufacture of plastic resistors, in vehicles equipped with mechanical refrigeration, from the facilities of Furane Plastics, Inc., at Los Angeles, CA, to the facilities of Union Ice & Cold Storage and the facilities of General Electric, at Shreveport, LA, under continuing contract(s) with Furane Plastics, Inc., of Los Angeles, CA. (Hearing site: Los Angeles, CA.)

MC 142811 (Sub-3F), Filed June 1, 1978. Applicant: S.R.I. TRUCKING CO., a corporation, 1000 North Cindy Lane, Carpinteria, CA 93013. Representative: J. W. Conner, 431 Keith Avenue, Akron, OH 44313. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat*

products, and meat byproducts, and articles distributed by meatpacking houses, as described in sections A and C of appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 M.C.C. 209 and 766 (except hides, and commodities in bulk), from the facilities of Beef Processors of Arizona, Inc., at or near Phoenix, AZ, to Los Angeles, CA, under continuing contract(s) with Beef Processors of Arizona, Inc., of Phoenix, AZ. (Hearing site: Phoenix, AZ.)

MC 143215 (Sub-4F*), Filed June 21, 1978. Applicant: CYCLES LIMITED, a Mississippi Corporation, P.O. Box 649, West Memphis, AR 72301. Representative: Morton E. Kiel, Suite 6193, Five World Trade Center, New York, NY 10048. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, toilet preparations, health care products, magnesium hydroxide, and alumina calcined* (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from Philadelphia, PA, Lakewood, NJ, and Lewes, DE, to points in AZ, CA, CO, ID, NV, NM, OR, TX, UT, and WA; (2) from Reno, NV, to points in PA; and (3) from San Leandro, CA, to points in IN, GA, and PA, restricted to the transportation of traffic originating at the named origins, and restricted against traffic moving from or to the facilities of Manufacturing Division of Richardson-Merrell, Inc., Noxell Corp., Gillette Co., or Parke, Davis & Co. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 143471 (Sub-5F), Filed June 19, 1978. Applicant: SHERIDAN HEIGHTS, INC., d.b.a. DAKOTA PACIFIC TRANSPORT, 301 Mount Rushmore Road, Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in by manufacturers, distributors, wholesalers, and retailers of building materials, building supplies, hardware, plumbing supplies, electrical supplies, cement materials, and landscaping materials (except commodities in bulk in tank vehicles), between points in MT, NE, ND, SD, and WY, on the one hand, and, on the other, points in AR, IL, KS, MO, OK, and WI, under continuing contract(s) with Knecht Industries, Inc., of Rapid City, SD, and (2) *lumber and lumber products*, from Sturgis, SD, to points in IA, MN, MT, NE, ND, AR, IL, KS, MO, OK, and WI under continuing contract(s) with Dickson Forest Products, Inc., of Sturgis, SD. (Hearing site: Rapid City or Pierre SD.)

MC 143701 (Sub-3F), Filed June 12, 1978. Applicant: WILLIAM OBERSTE, INC., 628 Walnut, P.O. Box 394, Blue Springs, MO 64015. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper bags*, from the facilities of Westvaco Corp., Bag Division, at New Orleans, LA, to points in AR, AZ, CA, CO, NM, OK, TX, TN, MO, KY, IL, IN, MI, NE, IA, KS, GA, WI, and OH; and (2) *Materials used in the production of paper bags*, from points in AR, AZ, CA, CO, NM, OK, TX, TN, MO, KY, IL, IN, MI, NE, IA, KS, GA, WI, and OH, to the facilities of Westvaco Corp., Bag Division, at New Orleans, LA, restricted in (2) above to the transportation of traffic originating at the indicated origins and destined to the named destination. (Hearing site: Kansas City, MO, or New Orleans, LA.)

MC 143831 (Sub-1F), Filed June 19, 1978. Applicant: CLIFF VIESSMAN, INC., Clarkfield, MN 56223. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Peoria, IL, to New Prague, MN, under continuing contract(s) with Tri-County Beverage Service, Inc., of New Prague, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 143909 (Sub-3F), filed July 3, 1978. Applicant: KIRBY TRANSPORT, INC., 6677 North Northwest Hwy., Chicago, IL 60631. Representative: Stuart R. Mandel, 315 South Beverly Drive, Beverly Hills, CA 90212. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corn and soybean products, food ingredients, animal and poultry feed and feed ingredients, fruit juices and fruit juice concentrates, fabric finishers and softeners, water softening compounds, cleaning compounds, syrups, dextrine, and starch*, (1) from Decatur, Galesburg, and Champaign, IL, to points in AL, AZ, AR, CA, CO, FL, GA, ID, KS, LA, ME, MD, MA, MT, NV, NJ, NM, NY, NC, OK, OR, PA, SC, TX, UT, WA, and WY, (2) from Los Angeles, Oakland, and Berkeley, CA, Dallas and Houston, TX, and Phoenix, AZ, to Decatur, IL, (3) from Chicago, Cicero, and Broadview, IL, to Decatur, IL, and points in AR, AZ, CA, CO, ID, KS, MO, MT, NV, NE, NM, OK, OR, SD, TX, UT, WA, and WY, and (4) from Morrisville, PA, to Chicago, and Decatur, IL, Lewisville, ID, Seattle, WA, and points in CA, OR, and TX, under continuing contract(s) in (1), (2), (3),

and (4), above, with A. E. Staley Co., of Decatur, IL. (Hearing site: Chicago, IL, or Los Angeles, CA.)

MC 143963 (Sub-2F), filed June 19, 1978. Applicant: P. J. LOMBARDI TRUCKING INC., 1308 71st Street, Brooklyn, NY 11228. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical conduit fasteners and fittings*, and (2) *materials, equipment, and supplies used in the manufacture of the commodities named in (1) above*, between Hauppauge and New York, NY, Chicago, IL, Denver, CO, Sacramento and Los Angeles, CA, Dallas, TX, Seattle, WA, Tampa, FL, East Braintree, MA, Atlanta, GA, New Castle, Sharon, Wheatland, Lancaster, Palmerton, and Pittsburgh, PA, West Jefferson and Cleveland, OH, New York, NY, and ports of entry on the International Boundary Line between the United States and Canada, at points in NY and MI, under continuing contracts with Could, Inc., of East Farmingdale, NY. Condition: Prior receipt from applicant of an affidavit setting forth its appropriate Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: New York, NY, or Washington, DC)

NOTE.—Applicant states that some of the traffic will move in single-line service to Mississauga, Canada.

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority To Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of the Provinces of Alberta, Saskatchewan, and Manitoba regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 144094 (Sub-1F), filed May 30, 1978. Applicant: ALADDIN, INC., a Delaware corporation, P.O. Box 10110, Newark, NJ 07101. Representative: Edward F. Bowes, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hair cosmetics, shampoos, and conditioning caps*, from Englewood and Teterboro, NJ, to Los Angeles, Commerce, Fullerton, Santa Fe Springs, and Brisbane,

CA, Sparks, NV, Omaha, NE, Lawrence, KS, Dallas, Fort Worth, Tyler, Wichita Falls, Waco, Houston, San Antonio, Beaumont, Orange, and Amarillo, TX, Chicago, Hillside, Itasca, and Vandalia, IL, Fort Wayne and Indianapolis, IN, Detroit and Plymouth, MI, Maple Heights, Mayfield, and Stow, OH, New Castle, DE, St. Louis, MO, Dumas, AR, Nashville and Memphis, TN, Forest Park and Newnan, GA, Jacksonville, Lakeland, and Miami, FL, under a continuing contract with Wella Corp., of Englewood, NJ. (Hearing site: New York, NY, or Newark, NJ.)

MC 144122 (Sub-14F*), filed June 5, 1978. Applicant: CARRETTA TRUCKING INC., South 160 Route 17 North, Paramus, NJ 07652. Representative: Joseph Carretta (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Staples and staple guns*, from the facilities of Arrow Fastener Co., Inc., at Saddle Brook, NJ, to Akron, Cleveland, Columbus, Cincinnati, and Toledo, OH, Louisville, KY, Indianapolis, Terre Haute, and Fort Wayne, IN, Chicago, Springfield, and Decatur, IL, St. Louis and Cape Girardeau, MO, Kansas City, Wichita, Lawrence, Salina, and Topeka, KS, Omaha and Lincoln, NE, Des Moines, and Waterloo, IA, Minneapolis and Mankato, MN, Milwaukee, WI, and Detroit, Lansing, Grand Rapids, Flint, and Kalamazoo, MI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: New York, NY, or Washington, DC.)

MC 144572 (Sub-2F*), filed June 15, 1978. Applicant: MONFORT TRANSPORTATION CO., a corporation, P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages and mixes for alcoholic beverages*, from points in CA, FL, IL, IN, KY, MA, MI, MO, NJ, NY, OH, PA, TN, and TX, to Cheyenne, WY, restricted to the transportation of traffic destined to the facilities of the Wyoming Liquor Commission, at Cheyenne, WY. (Hearing site: Denver, CO, or Cheyenne, WY.)

MC 144754 (Sub-1F), filed May 30, 1978. Applicant: LAWRENCE WARD TRUCKING, INC., P.O. Box 1842, Hereford, TX 79045. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1)(a) *Dry animal and poultry feeds*, and (b) *equipment and supplies used in the raising of live-*

stock, (except liquid commodities in bulk, in tank vehicles), when moving in mixed loads with the commodities described in (a) above, from Hereford, TX, to points in OK, NE, NM, KS, and CO, and (2) *materials, equipment, and supplies used in the manufacture and distribution of dry animal and poultry feeds* (except liquid commodities, in bulk, in tank vehicles), from points in OK, NE, NM, KS, and CO, to Hereford, TX, under a continuing contract(s) with Moorman Manufacturing Company, of Quincy, IL. (Hearing site: Amarillo or Dallas, TX.)

MC 144785 (Sub-1F), filed June 30, 1978. Applicant: F. W. NEWCOMB, SR. and F. W. NEWCOMB, JR., a partnership, d.b.a., F. W. NEWCOMB TRUCKING, Rural Route 4, Muscatine, IA 52761. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand and gravel*, in bulk, in dump vehicles, from the facilities of Northern Gravel Co., at or near Muscatine, IA, to points in IL, IN, KS, MN, MI, MO, NE, OH, SD, and WI, under continuing contracts with Northern Gravel Co., of Muscatine, IA. (Hearing site: Davenport, IA or St. Louis, MO.)

MC 144895 (Sub-1F), filed June 22, 1978. Applicant: DONALD G. BROWN, Route 3, Box 1375, Libby, MT 59923. Representative: William E. O'Leary, 631 Helena Avenue, Helena, MT 59601. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *commodities which because of size or weight require special equipment*, (2) *heavy machinery, mining equipment and supplies, farm equipment, contractors' equipment and materials (except building materials)*, (3) *contractors' supplies when moving in*

mixed loads with commodities moving in (2) above, and (4) culverts, between Spokane, WA, those points in ID north of Idaho County, and those in Lincoln, Flathead, Lake, Sanders, and Mineral Counties, MT. (Hearing site: Kalispell or Missoula, MT.)

MC 144932F, filed June 22, 1978. Applicant: JIMKEN, INC., Route 1, Box 380, Ellensburg, WA 98926. Representative: James T. Johnson, 1610 IBM Building, Seattle, WA 98101. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts*, as described in section A of Appendix I to the report in Descriptions in Motor Carrier Certificate, 61 MCC 209 and 766, from Ellensburg, WA, to points in OR, under a continuing contract with Schaae Packing Co. of Ellensburg, WA. (Hearing site: Seattle, WA, or Portland, OR.)

MC 144978F, filed June 28, 1978. Applicant: MIDWESTERN PLASTICS & CHEMICALS, INC., 1025 Avenue M, Grand Prairie, TX 75050. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic resins* (except in bulk), (1) from Big Spring and Houston, TX, and Lake Charles, LA, to points in AL, AR, CA, FL, GA, IL, IN, KS, MO, MS, NM, and OK, (2) from Calumet City, IL, and Hammond, IN, to points in NM, OH, TX, and WI, and (3) from Wichita, KS, to points in TX, under a continuing contract(s) with Lone Star Chemical Co., of Richardson, TX. (Hearing site: Houston, TX, or Washington, DC.)

PASSENGER AUTHORITY

MC 144881 (Sub-12F), filed June 12, 1978. Applicant: OZARK MOUNTAIN SIGHTSEEING, INC., 123 East Main Street, Branson, MO, 65616. Representative: Charles J. Fain, 333 Madison, Jefferson City, MO 65101. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Taney and Stone Counties, MO, and extending to points in Boone, Marion, Baxter, Newton, and Carrol Counties, AR. (Hearing site: Branson, MO, or Harrison, AR.)

BROKER AUTHORITY

MC 130171 (Sub-2F), filed June 15, 1978. Applicant: AUTOMOBILE CLUB OF MISSOURI, a corporation, 201 Progress Parkway, Maryland Heights, MO 63043. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Authority granted to engage in operations, in interstate or foreign commerce, as a *broker*, at Boonville, Cape Girardeau, Chillicothe, Clayton, Columbia, Flat River, Florissant, Hannibal, Independence, Jefferson City, Joplin, Kansas City, Kirksville, Maryland Heights, Mexico, Moberly, Poplar Bluff, Rolla, St. Charles, Sedalia, Springfield, and Washington, MO, and Alton, Belleville, Cartersville, Edwardsville, and Mount Vernon, IL, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in all-expense round-trip tours, in special and charter operations, beginning and ending at points in IL, KS, and MO, and extending to points in the United States (including AK and HI). (Hearing site: St. Louis, MO, and Chicago, IL.)

[FR Doc. 78-22616 Filed 8-14-78; 8:45 am]

sunshine act meetings

This section of the Federal Register contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

1

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., August 17, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items by notation.
2. Docket 29165—Consumer Protection for Charter Participants (Memo 6399 C, OGC, BCP, BPDA, OEA, BIA).
3. Docket 32271—Inomotivator, Inc. Acquisition of Control of McCulloch International Airlines, Inc. (OGC).
4. Docket 32602—Advance notice of proposed rulemaking announcing the Board's intention to amend Part 312 of its Procedural Regulations to adjust for the Board's recent policy initiatives and conform with the Council on Environmental Quality's new regulations (Memo 8108, OGC, BPDA, BIA).
5. Part 288—Rulemaking to eliminate Logair/Quicktrans minimum rate provisions from Part 288 of the Economic Regulations (Memo 8083, 8083-A, 8083-B, OGC).
6. Docket 30662 (*The Flying Tiger Line v. Scandinavian Airlines System*)—Petitions for review of initial decision granting summary judgment against SAS for applying incorrect tariff rate and denying summary judgment on charge that SAS provided air transportation to unauthorized points (Memo 8105, OGC).
7. Docket 31038 (*Pan American World Airways v. United Air Lines*)—Third-party complaint alleging that United-JAL agreement for division of joint rate unlawfully prefers JAL and prejudices Pan Am. (Memo 8111, OGC).
8. Docket 28672—IATA Agreements Concerning Agency Matters—Uniform Commission Rates (OGC).
9. Docket 32784—Exemption of Air Carriers for Military Transportation, Amendment of Part 288, Final Rule to permit Categories A and Z passenger services at commercial fares whenever the minimum Categories A and Z rates would result in higher charges (Memo 4658-N, BPDA).
10. Docket 27918—North Atlantic Fares Investigation, Petitions of Pan American and TWA for reconsideration of Order 78-5-

157; which terminated the investigation (Memo 5317 I, BPDA).

11. Docket 33053—Suspension of TWA's normal economy fares proposed for November travel (BPDA).

12. Dockets 32116 et al. National's petition for reconsideration of Order 78-3-106, which permitted Western's reduced "No Strings" fares between Miami and Los Angeles to become effective. National requests the Board to revoke the DPFI modifications of that order thus requiring the fares to be canceled (BPDA).

13. Docket 32820—Application of Pan American for an exemption from condition 7 of its certificate for route 117 Pan American seeks authority to file standby fares in the Honolulu Los Angeles/San Francisco market not subject to the Hawaii common fare requirement (BPDA).

14. Proposing to reject Northwest Airlines Local Military passenger fares Tariff No. MAC 3 (C.A.B. No. 529 filed July 19, 1978 (BPDA)).

15. Docket 32920—*St. Louis Denver Las Vegas, Reno Route Investigation* (Memo 7908 C, OGC).

16. Docket 31697—Application of United Air Lines, Inc. for an exemption to operate nonstop service between San Jose, California and Reno, Nevada (Memo 8112, OGC).

17. Docket 29001—*TWA Southern Route Exchange* (OGC).

18. Dockets 33105 and 33071—Exemption applications of Braniff and TWA to provide service in the Las Vegas-Reno market (OGC).

19. Dockets 31414 and 29991—*Service to Kamuela Case, and Aloha Airlines, Inc., Application to Suspend Service at Kamuela* (Memo 6321 E, OGC).

20. Dockets 30587 and 30591—Colonial Airlines, Inc. (OGC).

21. Dockets 28183, 31678—Frontier/Ozark applications for Louisville-Kansas City authority (Memo 8104, BPDA, BALJ).

22. Docket 32778—Ozark's Petition for Show-Cause Order, or motion for hearing on St. Louis-Little Rock-New Orleans authority (Memo 8113, BPDA, BALJ).

23. Dockets 31412 and 29366—Pan American's applications for certificate amendment to allow fill-up authority and exemption under section 416(b) of the Act (Memo 7728-C, BPDA).

24. Docket 31177—Piedmont Boston Entry Application, responses to order to show cause, Order 78-4-69 (Memo 7902-A, BPDA, OGC).

25. Docket 29139—Denied boarding and boarding priority rules filed in response to Board Regulation ER-1050 (BPDA).

26. Docket 32088—Application and petition of Travelair A.G. (Switzerland) for an order to show cause for an indirect foreign air carrier permit (Memo 8109, BIA, OGC).

27. Docket 32629—Application of Saudi Arabian Airlines Corporation for an initial foreign air carrier permit and petition for either disclaimer or jurisdiction on an order to show cause (BIA, OGC).

28. Dockets 32731, 32695 and 32913—Applications of Braniff Airways, Northwest Airlines and United Air Lines for authority between various U.S. Yucatan points (BIA, OGC, BALJ).

29. Delta Airlines, Inc., BCP's Proposed Settlement of Enforcement Proceeding (BCP).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary,
202 673 5068.

[S 1644-78 Filed 8-11-78; 3:35 am]

[8010-01]

2

SECURITIES AND EXCHANGE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 34863, August 7, 1978.

STATUS: Open meeting; closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

TIME AND DATE PREVIOUSLY ANNOUNCED: Wednesday, August 9, 1978; Thursday, August 10, 1978.

CHANGES IN THE MEETING:

The following item was not considered by the Commission at a closed meeting scheduled for Wednesday, August 9, 1978:

Institution of injunction action.

The following additional items will be considered by the Commission at the open meeting scheduled for Thursday, August 10, 1978, at 10 a.m.:

1. Consideration of comments to be transmitted to the Office of Management and Budget with respect to draft legislation prepared by the Department of Justice which would replace class actions presently brought under Rule 23(b)(3) with two procedures: (1) a public penalty action, brought on behalf of the United States to deter unlawful conduct causing minor, but widespread economic damage, and establishing a mechanism for the repayment of victims; and (2) a class compensatory action for the compensation of persons suffering more substantial damages as a result of unlawful conduct. Issues likely to be discussed include the potential impact of the proposed public penalty action upon the Commission's law enforcement actions and the likely effect which the proposed class compensatory procedure will have upon private class actions

SUNSHINE ACT MEETINGS

brought pursuant to the federal securities laws.

2. Consideration of (1) an order, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, continuing the Commission's temporary approval of the joint industry plan governing the implementation and operation of the Intermarket Trading System for an additional 12 months; and (2) an order continuing for an additional 12 months a conditional exemption from Rule 17a-15 under the Act to permit elimination of market identifiers in connection with dissemination of last sale reports pursuant to that Rule by means of moving ticker displays.

The following additional items will be considered at the closed meeting following the 10 a.m. open meeting on Thursday, August 10, 1978:

1. Formal orders of investigation.
2. Regulatory matters bearing enforcement implications.
3. Settlement of unjunctive actions.
4. Litigation matters.

Chairman Williams and Commissioners Pollack and Karmel determined that Commission business required consideration of these matters and that no earlier notice thereof was possible.

AUGUST 10, 1978.

[S-1643-78 Filed 8-11-78; 2:46 pm]

[4410-01]

3

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: August 9, 1978, 3:00-5:30 p.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING:

Pursuant to the Government in the Sunshine Act—Pub. L. 94-409.

On August 9, 1978, the Commission determined in view of the time requirements of the items at the beginning of the agenda, that the date and time for the completion of the agenda of the above meeting be changed to Thursday, August 10, 1978, at 12 noon; and that Commission business requires that this continuation of an open business meeting be held at the date and time designated on less than one week's notice, and that no earlier announcement of the change is possible.

CONTACT PERSON FOR MORE INFORMATION:

Billie Richards, 724-3117.

[S-1642-78 Filed 8-14-78; 2:46 pm]

[6210-01]

4

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 11 a.m., Friday, August 18, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed salary structure adjustments at several Federal Reserve Banks.
2. Proposed rescission of a Board policy prohibiting payment of extra compensation to Reserve Bank employees.
3. Proposed negotiation of a competitive purchase of an electronic system for the Federal Reserve Bank of Chicago.

Proposed negotiation of competitive purchase of computer equipment within the Federal Reserve System.

5. Procedures relating to destruction of currency at Federal Reserve Banks.

6. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Date: August 11, 1978.

[S-1645-78 Filed 8-11-78; 3:57 pm]

[6210-01]

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10:00 a.m., Friday, August 11, 1978.

The business of the board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTER CONSIDERED:

Comments to be communicated to the House Committee on Banking, Finance and Urban Affairs concerning bills dealing with Federal Reserve membership

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: August 11, 1978.

GRIFFITH L. GARWOOD
Deputy Secretary of the Board.

[S-1646-78 Filed 8-11-78; 3:57 pm]

**Register
Federal Order**

**TUESDAY, AUGUST 15, 1978
PART II**



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

Office of the Secretary



**Regulations Implementing the
Authority of the Secretary of
the Department of Housing and
Urban Development over the
Conduct of the Secondary
Market Operations of the
Federal National Mortgage
Association (FNMA)**

[4210-01]

**Title 24—Housing and Urban
Development**

**SUBTITLE A—OFFICE OF THE SECRETARY,
DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT**

[Docket No. R-78-509]

**PART 81—REGULATIONS IMPLEMENTING
THE AUTHORITY OF THE SECRETARY OF THE
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT OVER THE CONDUCT OF
THE SECONDARY MARKET OPERATIONS
OF THE FEDERAL NATIONAL MORTGAGE
ASSOCIATION (FNMA)**

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rulemaking.

SUMMARY: The Secretary has determined that the proper discharge of the responsibilities placed on her by the Federal National Mortgage Association Charter Act (1) requires her to develop a regulatory framework for the conduct of FNMA's secondary market operations. This final rulemaking therefore revises existing Part 81 (2) to: (1) Codify the statutory approval functions concerning the operations of FNMA which the Charter Act has vested in the Secretary; (2) establish standards and goals with respect to the conduct of FNMA's secondary market operations; (3) assure that FNMA is complying with nondiscrimination standards; (4) require from FNMA, on a regular basis, reports which are necessary to enable the Secretary to discharge the oversight responsibilities placed on her by the Charter Act; (5) provide for annual audits of FNMA's books and financial transactions; and (6) make minor technical changes to the existing provisions of Part 81. (3)

EFFECTIVE DATE: September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Irving P. Margulies, Room 10244, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-7203.

SUPPLEMENTARY INFORMATION: On February 23, 1978, as a result of a Departmental review of FNMA's secondary market operations and Congressional hearings related thereto, the Secretary published for comment regulations implementing the authori-

ty vested in her by the FNMA Charter Act.

In view of the public interest in these regulations and the numerous comments submitted on the proposed regulations, the Department has prepared a comprehensive preamble to the final rule. It describes the public purposes Congress intended to be achieved by FNMA's conduct of its secondary market operations, the statutory authority conferred upon the Secretary to regulate FNMA, a summary of the comments submitted on the proposed regulations, and a detailed explanation of the changes adopted in this final rule.

I. THE HISTORY OF FNMA

FNMA came into being as a "Government-sponsored private corporation" as a result of the enactment of title VIII of the Housing and Urban Development Act of 1968. Previously, it was a Government corporation within the Department of Housing and Urban Development, a cabinet-level Department comprised of the numerous constituent entities that had been established to carry out the Nation's housing goals. The statutory language of FNMA's Charter, the legislative history, and the historical antecedent of the corporation make clear that the change in FNMA's status from a Government corporation to a Government-sponsored private corporation did not alter the public purposes to be accomplished by FNMA. Rather, the change in FNMA's status reflected the conclusion of the Congress, acting at the request of the Johnson administration and with the general concurrence of the housing industry, that those purposes could be most effectively realized by placing FNMA's secondary market operations in a Government-sponsored private corporation not subject to Federal budgetary constraints.

A. ORIGINS

The seminal concept of FNMA arose in the Great Depression, when it became imperative to develop a financing method that would overcome the weaknesses in the Nation's then-existing mortgage financing system. In the early 1930's, the typical instrument for financing home purchases was the 3-to-5-year unamortized mortgage. This instrument was inadequate because of the recurring need to refinance the mortgage under conditions unanticipated at the time the mortgage was created. The inadequacy of the basic mortgage instrument and the wide variations in availability, terms, and cost of mortgage financing—between the relatively capital rich northeastern and northcentral regions of the United States and the relatively capital poor regions elsewhere in the coun-

try—impeded the recovery of the national homebuilding industry from the Great Depression.

In response to this situation, President Roosevelt on November 17, 1933, established the National Emergency Council. (4) The Council identified three basic problems:

1. The short-term (3-to-5-year) unamortized mortgage which, in the view of the Council, resulted from the need for liquidity among mortgage lenders;
2. High interest rates, particularly in developing areas of the country, where the supply of capital was inadequate to meet expanding needs; and
3. The lack of investor confidence that resulted from the collapse of existing credit systems during the Depression.

The Council recommended the establishment of a long-term, federally insured mortgage. Federal insurance of the mortgage alone, however, was considered to be insufficient to induce lenders to tie up their funds in long-term mortgages. The Council therefore proposed the Federal chartering of a few large, privately organized and privately financed National Mortgage Associations designed to provide liquidity for the new mortgage instrument and "to * * * transfer * * * funds from capital rich to capital poor areas." (5) These National Mortgage Associations were expected to purchase, service, and sell only federally insured mortgages and to borrow the operating funds necessary to conduct their business through sales of debt obligations to the public under close Government supervision. Investor confidence in these Associations was to be enhanced by these characteristics, together with the imposition of minimum capital requirements of \$5,000,000. (6)

The Council's proposals were incorporated in the first National Housing Act (1934), (7) which authorized the FHA-insured mortgage and the Federal chartering of the National Mortgage Associations. Although that act provided ample legislative authority, no private National Mortgage Associations were formed because, in the 1934-1935 period, private investment capital was not drawn to the financing of such institutions. (8)

The establishment of the Reconstruction Finance Corporation Mortgage Co. in 1935 (9) partially satisfied the need for a secondary market facility for the new FHA-insured home mortgages. However, its capacity to meet the demand for funds for FHA-insured home mortgages was inadequate. Thus, in anticipation of even higher demands for funds expected to arise as a result of the new FHA-insured moderate income rental program (section 207 of the National Housing Act), (10) President Roosevelt

urged enactment of legislation to broaden the provisions of title III of the National Housing Act (1934) under which the chartering of National Mortgage Associations was authorized, "to give these associations explicit authority to make loans on large scale properties that are subject to special regulation by the Federal Housing Administrator * * * (11)

Upon enactment of the legislation which authorized FHA insurance of mortgages on rental properties, the first National Mortgage Association was chartered on February 10, 1938. It was a subsidiary of the Reconstruction Finance Corp., designed to provide liquidity for the new FHA/insured rental mortgages. The Association was originally named the "National Mortgage Association of Washington," but the name was changed to the Federal National Mortgage Association in April 1938.

The original FNMA was a Government corporation which utilized appropriated Federal funds to provide its initial capital. (12) With funds obtained through the issuance of its debentures, FNMA provided liquidity to mortgage lenders by purchasing the new, relatively long-term, FHA-insured mortgages. FNMA's activities drew a more stable flow of capital for FHA-insured and—after 1948—VA-guaranteed residential mortgages, attracted non-traditional sources of capital to investment in these mortgages, and facilitated the transfer of funds "from capital rich to capital poor areas," exactly as the National Emergency Council in 1933 had expected the National Mortgage Associations to do.

FNMA's operations expanded at an accelerated rate after 1945 (13) because of its extensive purchase of the 4-percent VA mortgages authorized by the Servicemen's Readjustment Act of 1944. The increasing dollar volume of mortgage purchases by FNMA led to fears that the creation of numerous National Mortgage Associations, as authorized by the National Housing Act (1934), could lead to an overexpansion of mortgage credit. (14) As early as 1939, Congress had given the Federal Housing Administrator discretion to refuse to charter new National Mortgage Association. (15) Congress completely eliminated this chartering authority in 1948, replacing it with a "statutory charter" which gave FNMA its unique status as the sole national secondary mortgage market facility. (16) On September 7, 1950, FNMA was transferred from RFC to the Housing and Home Finance Agency (later to become the Department of Housing and Urban Development) in order to insure better coordination of the secondary mortgage functions of the As-

sociation with related housing matters. (17)

B. FNMA CHARTER ACT OF 1954

As the volume of FNMA's operations increased, traditional mortgage lenders complained that FNMA's participation in the mortgage-lending field depressed mortgage interest rates to unreasonably low levels and competed unfairly with private enterprise. In the early 1950's various organizations of traditional mortgage lenders advocated winding up FNMA or replacing it with a secondary market facility which would ultimately become privately financed and operated. (18) These traditional mortgage lenders pointed out that they could not afford to deal in the low-interest-rate, long-term mortgages purchased by FNMA. These lenders stated that FNMA was able to purchase such mortgages only because "it raised its investible funds under the protection of the Treasury at rates below the rates private investors paid for their funds." They urged that the only type of Government-sponsored secondary market facility that would not disrupt the continued private financing of mortgages would be a facility which received "no subsidy, direct or indirect" from the Government. (19)

The result was the 1954 Charter Act which represented a compromise between the competing interests of those who wished to abolish FNMA completely, those who wished to recharter FNMA as a totally private corporation, those who wished to continue and extend FNMA, and those who wished to place FNMA in a standby position while private enterprise was given an opportunity to solve secondary market problems. (20) President Eisenhower proposed that FNMA be rechartered as part of the Housing Act of 1954 to serve three distinct functions:

(1) to provide assistance to the secondary market for FHA-insured and VA-guaranteed home mortgages in order to furnish additional liquidity for mortgage investments and thereby improve the distribution of mortgage investment funds;

(2) to provide Government assistance for certain types of these mortgages, or for mortgages generally, if necessary to retard or stop a decline in homebuilding activities which threatens the stability of a high-level national economy; and

(3) to manage and liquidate, in an orderly manner, the mortgages held in the portfolio of the present FNMA. (21)

The Charter Act contemplated the eventual transfer of the secondary market operations of FNMA to a privately financed and operated organization and anticipated the use of the secondary market operations of FNMA only as a "reserve facility." (22) Determinations of the volume of purchases and sales, of prices, and of charges or

fees were to "be consistent with the objectives" that "excessive use of the Association's facilities" should be avoided. In addition, the operations of FNMA's secondary market facility should be "within its income derived from such operations and * * * should be fully self-supporting." (23)

By requiring sellers of mortgages to FNMA to make a capital contribution equal to 3 percent of their sales to FNMA and to pay a fee for its services, the Charter Act provided a major disincentive for private lenders or mortgage originators to use FNMA's secondary market facilities. (24) The 1954 Charter Act also prohibited FNMA from making any advance contracts or commitments to purchase mortgages except on a very limited one-for-one basis with a lender who purchased a loan from it. (25)

However, Government support of the secondary market operations of FNMA was continued by the 1954 Charter Act over the objections of the traditional mortgage lenders. Their injunction that there be "no subsidy, direct or indirect, by the Government to such a corporation [FNMA]" was not followed by the Congress. FNMA's ability to raise "its investible funds under the protection of the Treasury at rates below the rates private investors paid" was continued by the 1954 Charter Act. By authorizing FNMA to obtain funds for its secondary market operations under the protection of Treasury and at rates below those paid by private investors, Congress expressly rejected the notion that the secondary market operations authorized by the Charter Act were to be carried out solely as they would be by a private, profit-making corporation.

The disincentives to doing business with FNMA, which were put into the Charter Act at the behest of traditional mortgage lenders to insure FNMA's operation as a "reserve facility," were substantially reduced by subsequent amendments to the Charter Act. In 1956, Congress removed the prohibition against the issuance of standby commitments adopted in 1954 for the purchase of mortgages on newly constructed properties and reduced the stock purchase requirements imposed on lenders doing business with FNMA. (26)

FNMA's impact on mortgage financing in the United States was not reduced by the requirements of the Charter Act of 1954. Purchases of mortgages increased substantially from 1954 to 1956. In 1957, when tight credit conditions prevailed, FNMA purchased more than 11 percent of all single-family residential mortgages originated in that year. The relatively easy credit conditions that prevailed in 1958 marked the first year of significant FNMA sales of mortgages from

its portfolio. (27) However, with tighter credit conditions in 1960, FNMA again entered the market in a substantial way and purchased almost 9 percent of all single-family mortgages originated in that year. During the credit shortage of 1966, FNMA purchased fully 18 percent of all home mortgages originated.

Thus, in 14 years of operation under the Charter Act of 1954, FNMA became the single most important factor in mortgage finance, (28) accomplishing through the conduct of its secondary market operations the very goals envisioned in 1933 by the National Emergency Council for secondary market facilities. (29)

C. THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

Prior to 1968, Congress undertook no steps to implement the 1954 Charter Act design of converting FNMA's secondary market operations to private ownership. Treasury stock was not retired as contemplated by the 1954 Charter Act; rather it was increased on three separate occasions, bringing the Government's capital investment up to more than \$163,000,000 in 1968. (30) Nevertheless, the goal of turning the secondary market operations of FNMA over to private management was realized in 1968 when President Johnson was persuaded to propose the transfer to avoid the effect of an accounting principle that would have required inclusion of FNMA's secondary market operations in the Federal budget. (31)

Under the new statutory scheme, set forth in title VIII of the Housing and Urban Development Act of 1968, FNMA was partitioned into two separate corporations. It became "a Government-sponsored private corporation" and retained all the assets, liabilities, and functions that it had carried out under section 304 (Secondary Market Operations) of the FNMA Charter Act. (32) The other corporation, designated GNMA, remained in the Government and retained all the assets, liabilities, and functions that FNMA had carried out under sections 305 (Special Assistance) and 306 (Management and Liquidation) of the Charter Act.

Moreover, just as the basic secondary market activities to be carried out by FNMA remained intact, so did the public purposes to be achieved by these activities. Nothing either in the language of the 1968 Act or in its legislative history indicates that the long-awaited transfer to private ownership was intended in any way to constrict or alter the public purposes to be achieved by the operation of FNMA's secondary market activities. On the contrary, to permit the accomplishment of public purposes, Congress con-

ferred upon FNMA certain benefits not available to private corporate entities. To insure that those benefits were used to accomplish public purposes, Congress conferred upon the Secretary of Housing regulatory control over the new entity.

The Congressional scheme is apparent from a careful examination of the statute and its legislative history. Under section 309(h) of the Charter Act, Congress specifically authorized the Secretary to require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low-and-moderate-income families. In addition, Congress deleted the provision in the 1954 Charter Act which would have terminated backstop authority to assist FNMA subsequent to the retirement of the Treasury stock, and instead affirmatively conferred backstop authority. Finally, Congress gave the Secretary general regulatory authority over FNMA to insure that the purposes of the Charter Act were accomplished.

The Senate committee report on the proposed Charter Act explained that retention of the backstop authority for FNMA was designed to "enhance the corporation's credit standing," and to "constitute Government recognition of the significance of the corporation's operations to the national interest aspects of the mortgage financing industry." (33) The committee stated that it has imposed safeguards "to assure that the privately owned FNMA will continue the secondary mortgage market operations in a manner consistent with the best interests of the public." (34) Thus, the congressional scheme conferred benefits to insure that the public purposes could be effectively realized, combined with regulations to insure that they were realized.

II. FNMA: THE GOVERNMENT-SPONSORED PRIVATE CORPORATION

A. BENEFITS CONFERRED UPON FNMA

At the outset, Congress realized that it must take the steps necessary to enable FNMA to assume immediately the conduct of its secondary market activities. Accordingly, section 302(a)(2)(B) of the Charter Act permitted FNMA to retain, after it was transformed into a privately owned corporation, all the assets and liabilities of the secondary market operations which it had acquired during the 30 years of its operations as a Government corporation. A large, ongoing, and profitable business was turned over to FNMA. (35) Its stature in the secondary mortgage market in 1968, and other benefits provided by the Charter Act, assured FNMA it could have no effective competition from the private sector.

1. *Backstop Treasury Borrowing.* Section 304(c) of the Charter Act authorized the Secretary of the Treasury to buy up to \$2,250,000,000 in FNMA obligations. This authority, which is similar to that granted on behalf of the Federal home loan banks, enhances the corporation's credit standing and constitutes "Government recognition of the significance of the corporation's operations to the national interest aspects of the mortgage financing industry." (36)

2. *FNMA Obligations as Lawful Investments for Fiduciary Trusts and Public Funds.* Section 311 of the Charter Act makes FNMA obligations lawful investments and security for all fiduciary trusts and public funds under the control of the United States, thereby making these obligations far more salable than the obligations of private corporations.

3. *The Federal Reserve Banks are FNMA's Fiscal and Paying Agent.* Under section 309(g) of the Charter Act, FNMA uses the Federal Reserve Banks as its depository custodian and paying agent, thereby reinforcing the view that FNMA debt securities are in some way connected with the Federal Government.

4. *Exemption from State taxes.* Section 309(c)(2) of the Charter Act exempts FNMA from all taxation imposed by any State (except real property tax)—a provision usually applicable only to governmental entities under the doctrine of intergovernmental tax immunity. In addition to the economic advantage afforded FNMA by the provision, it reinforces the widely held view of FNMA as a government entity.

5. *SEC exemptions.* Under section 311 of the Charter Act, FNMA issuances are treated as exempt securities for purposes of SEC requirements "to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States." (37) This exemption reinforces the view that FNMA is in some way connected with the Federal Government.

The combined effect of these benefits assured the immediate and unqualified acceptance of FNMA's obligations. FNMA's debentures and discount notes are regarded as "federal agency securities." As a result, FNMA has borrowed and continues to borrow the funds necessary to carry the mortgages it purchases at interest rates substantially lower than it would have to pay if it were a private corporation with the highest available credit rating. (38)

B. REGULATORY AUTHORITY

Despite the transfer of ownership and Board control into private hands, Congress recognized that safeguards

were needed to insure that the public purposes of FNMA would be carried out by the newly created "Government sponsored-private corporation." (39) The Charter Act, together with its legislative history, indicates that Congress intended one such safeguard to be the authority of the Secretary of Housing and Urban Development to regulate FNMA after its transfer to private ownership.

As the Senate report states:

The Secretary would have general regulatory powers over FNMA to assure that the purposes of the Charter Act are served. The issuance of all securities or obligations by FNMA would have to receive the prior approval of the Secretary. Through this and other authority, the Secretary would participate in the decision making process as to the level of mortgage purchases at various times. In addition, the Secretary could require that a reasonable portion of FNMA's mortgage purchases be related to housing for low-and-moderate income families, but with reasonable economic return. (40)

Both House and Senate committee reports accompanying the Housing and Urban Development Act of 1968 state that title VIII gives the Secretary of Housing and Urban Development "general regulatory authority over FNMA," and add:

The new FNMA would be a "Government-sponsored private corporation" regulated by the Secretary of the Department of Housing and Urban Development and would have a status analogous to that of the Federal land banks and the Federal home loan banks. (41)

The Senate report also emphasizes that:

The committee feels that adequate safeguards have been provided to assure that the privately owned FNMA will continue the secondary mortgage market operations in a manner consistent with the best interest of the public * * * Finally, the Secretary's regulatory powers over FNMA would be sufficient to protect against abuses of the public interest. (42)

In accordance with these views, the Charter Act requires FNMA to obtain the approval of the Secretary of Housing and Urban Development for the following specific activities:

1. Any issuance of stock, obligations, securities, or other instruments. (Sec. 309(h).)
2. The purchase, servicing, sale, or lending on the security of, or otherwise dealing in conventional mortgages. (Sec. 302(b)(2).)
3. Determination of the amount of nonrefundable capital contributions required to be made by each mortgage seller (not to exceed 2 per centum of the unpaid principal amount of mortgages purchased or to be purchased). (Sec. 303(b).)
4. Determination of the level of stock retention requirements imposed on each servicer of its mortgages (not to exceed 2 per centum of the aggregate

outstanding principal balances of all mortgages of the Corporation which have been purchased subsequent to September 1, 1968, and which are then serviced by such servicer for the Corporation). (Sec. 303(c).)

5. Allowing the obligations of the Corporation to exceed 15 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings. (Permitted only if the Secretary fixes higher ratio.) (Sec. 304(b).)

6. Payment of cash dividends to stockholders. (Permitted only if the annual aggregate amount does not exceed the rate determined to be a fair rate of return by the Secretary after consideration of the current earnings and capital condition of the Corporation. (Sec. 303(c).)

In addition to these specific powers, the Secretary was given the power to issue such rules and regulations as she determines to be necessary and proper to assure that the purposes of the Charter Act are carried out. The Senate Report indicates that the general regulatory power of the Secretary over FNMA is plenary. (43)

The general regulatory powers conferred upon the Secretary by the Charter Act are, however, subject to two limitations:

(1) Regulation must be consistent with the maintenance of a "reasonable economic return" to FNMA, and a "fair rate of return" to its shareholders; (44) and

(2) Regulation may not extend to FNMA's internal affairs, such as personnel, salary, and other usual corporate matters, *except where the exercise of such powers is necessary to protect the financial interests of the government or [is] otherwise necessary to assure that the purposes of the Charter Act are carried out.* (45) [Emphasis added.]

In addition to the enumerated specific powers and general regulatory authority granted to the Secretary, Congress conferred additional authority upon the executive branch. The President of the United States, under section 308(b) of the Charter Act, is authorized to appoint 5 public members to the 15 member Board of Directors of the Corporation, and to remove both the Presidential appointees and the 10 private members of the Board elected by the shareholders for "good cause." Further, section 304(b) of the Charter Act gives the Secretary of the Treasury total control over the maturity and the rate of interest of any obligations proposed to be issued by FNMA, and the times during which FNMA may have access to the capital markets. By expressly reserving many specific controls to the President of the United States, the Secretary of Treasury, and the Secretary of Hous-

ing and Urban Development, Congress indicated that in turning the secondary market operations of FNMA over to private management, it intended to preserve to the Federal Government the power to assert the public interest to be served by FNMA's operation of these secondary market functions.

In addition to the controls it conferred on the executive branch, Congress restricted the rights of FNMA shareholders over the operations of the Corporation. As noted above, the shareholders elect only 10 out of 15 members of the Board of Directors, and the President may remove any of the 15 Board members for good cause. (Sec. 308(b)). Shareholder rights involving merger, dissolution, and the power to amend the certificate of incorporation (the Charter Act) were retained by Congress (sec. 302(a)(1)). Furthermore, Congress expressly retained the right to dissolve the Corporation, and thereby has implicitly retained the right to alter the composition of its Board of Directors. (46)

Nor does the Charter Act provide for shareholder control over director discretion, the right of shareholders to present proposals for consideration by the Board, or the right of shareholders to inspect corporate books—a right conferred upon the Secretary of Housing and Urban Development (sec. 309(h)). Besides conferring many shareholder rights upon entities outside the Corporation, the Charter Act expressly vests in the Board of Directors the right to approve or amend the bylaws (sec. 308) and the right to set shareholder voting and director quorum requirements.

The provisions of the Charter Act make clear that Congress did not create FNMA in the image of the usual private, profitmaking corporation. The congressional redistribution of FNMA's corporate powers was designed to assure that its secondary market operations were conducted in accordance with the public purposes of the Charter Act.

C. FNMA'S CONDUCT OF ITS SECONDARY MARKET OPERATIONS

In carrying out its "Free Market" auctions, FNMA sells commitments guaranteeing that it will purchase a stated amount of a particular type of home mortgage (conventional or FHA-VA) at a given price and within a given time. Actual delivery of mortgages, however, is at the option of the purchaser of the commitment. If the purchaser can obtain a higher price than FNMA contracted to pay under the commitment, the purchaser will abandon the commitment and sell the mortgages elsewhere.

To support the conduct of its secondary market operation, FNMA is the second largest borrower in the

United States. Only the U.S. Treasury exerts a greater demand on the capital markets. (47) Because of the benefits it has received from Congress, FNMA is able to secure funds from sources in the capital markets that would not otherwise be available to housing, and at the favorable interest rate accorded Federal agency securities. This enables FNMA to perform both successfully and very profitably its function of providing liquidity for mortgage originators and investors.

However, FNMA does not fully meet the public purpose objectives of the Charter Act unless: (1) Some reasonable percentage of its Federal agency rate borrowings flows into areas that have difficulty in obtaining mortgage money; and (2) some reasonable percentage of these borrowings benefits low- and moderate-income families.

On December 9, 10, and 13, 1976 and on June 7 and 8, 1977 the Senate Committee on Banking, Housing and Urban Affairs conducted hearings dealing with FNMA's secondary market operations. (48) During the course of those hearings, the committee uncovered substantial dissatisfaction with FNMA's practices and policies. (49)

Throughout the hearings witnesses testified that FNMA's conduct of its secondary market operations are inadequate to accomplish the public purposes of the Charter Act with respect to urban lending, mortgage interest rates, and the purchase of low- and moderate-income mortgages. (50) FNMA's representatives defended the Corporation's policies in these areas by stressing the need for profits. (51) In addition, they argued that FNMA's purpose is simply "to help finance housing by supplementing the supply of mortgage funds." (52)

Following the hearings, the Senate committee staff concluded that FNMA's management and Board "generally seem to view the Corporation's sole public responsibilities as providing liquidity to the mortgage market and complying with other direct mandates under the charter," and suggested that "FNMA's unique and favored position as a Government-linked Corporation gives it a responsibility to pursue the public interest more broadly." (53)

FNMA's conduct of its secondary market activities has not accomplished the public purposes of the Charter Act. In its secondary market program for conventional mortgages, FNMA has failed to assure that (1) a reasonable percentage of its Federal agency rate borrowings which support the conventional mortgage program flows into central cities—areas that have difficulty in obtaining mortgage credit, and (2) a reasonable percentage of these borrowings benefits low- and

moderate-income families who live in central cities.

1. *FNMA Policies Affecting Urban Areas.* In the conduct of its conventional mortgage program, FNMA has failed to accomplish the public purposes of the Charter Act because it has not adequately encouraged and assisted sound urban lending. (54) Its failure to seek sound urban conventional loans has played a major role in the reluctance of private lenders to make mortgage loans in central city areas. (55) In fact, the underwriting guidelines adopted by FNMA prior to its entry into the conventional market together with its conventional mortgage underwriting policies have adversely affected urban mortgage lending. (56) There is a "conventional" and "urban" mortgage market, with conventional loans concentrated in suburbs and FHA-insured and VA-guaranteed loans left to fill the void in urban centers. FNMA has attributed this practice, in part, to a traditional suburban bias on the part of mortgage lenders. (57) However, separate mortgage markets are largely the result of factors such as the underwriting guidelines adopted by FNMA when it entered the conventional market. The withdrawal of conventional mortgage funds from urban neighborhoods unfairly stigmatizes them as "high risk" areas, frequently on a racially discriminatory basis. (58)

To the extent that FNMA addressed urban lending, it geared its programs to the mortgage needs of affluent white professional families who are part of the "back-to-the-city" movement and ignored the needs of long-term city residents many of whom are moderate income families. (59)

2. *FNMA's Policies Affecting Housing for Low- and Moderate-Income Families.* FNMA has failed to assume any responsibility to direct its growing conventional mortgage purchases to the needs of low- and moderate-income families. The median sales price of homes financed by conventional mortgages which FNMA purchases substantially exceeds the median sales price of homes financed by FHA or VA mortgages which FNMA purchases. (60)

3. *FNMA's Policies Affecting the Auction System.* In the conduct of its bi-weekly auctions FNMA has followed pricing procedures which contribute to increases in mortgage interest rates in periods of generally rising interest rates. (61) FNMA pegs its acceptance of bids to borrowing costs, so that the dollar amount and yield of bids accepted indicate an arbitrary profit decision on the part of FNMA rather than a response to market needs. The result is that FNMA's pricing leads the market when interest rates are rising. (62)

4. *FNMA's Policy on Mortgage Sales and the Size of Its Portfolio.* FNMA maintains a mortgage portfolio larger than necessary to accomplish the public purposes of the Charter Act. Moreover, it has failed to balance mortgage purchases with sales when this was feasible. (63)

III. THE REGULATIONS

A. THE PROPOSED REGULATIONS

The Department's proposed regulations were addressed to these substantial problems in FNMA's conduct of its secondary market operations. Prior to the publication of the proposed regulations, no previous administrations had attempted to clarify the relationship between HUD and FNMA by developing the detailed regulatory framework mandated by Congress in the 1968 Charter Act amendments. In fact, most of the Department's specific regulatory actions with respect to FNMA had been undertaken informally through personal correspondence and meetings between the Secretary of Housing and Urban Development and the President of FNMA.

Before the proposed regulations were issued on February 24, 1978, Congress had indicated dissatisfaction with HUD's failure to exercise general oversight responsibility over FNMA. At hearings before the Senate Committee on Banking, Housing, and Urban Affairs, Senator Proxmire stated:

... FNMA's charter is entirely clear that it has public responsibilities including the support of low- and moderate-income housing. The conduct of these responsibilities is to be overseen through the appointment of one-third of the FNMA board of directors by the President of the United States and, more importantly, through oversight by HUD.

... It is the Committee's impression that, in the case of FNMA, this public oversight function has been neglected by HUD, leaving this massive corporation to conduct its affairs in any manner it sees fit. (64)

The proposed regulations sought to discharge the Department's statutory mandate by clarifying its regulatory relationship with FNMA in accordance with the requirements of the Charter Act. The proposed regulations generally covered those areas in which Congress requires that FNMA obtain HUD's approval prior to implementing a determination or taking an action. (See §81.12 dealing with issuance of stock and implementing provisions in sections 303 (b) and (c) of the Charter Act; §81.14 dealing with issuance of debt and implementing provisions in sections 309(h) and 311 of the Charter Act; §81.15 dealing with maximum debt-to-capital ration and implementing provisions in section 304(b) of the

Charter Act; §§ 81.16 and 81.17 dealing with conventional mortgages on housing for low-and-moderate income families and implementing section 309(h) of the Charter Act; and §§ 81.31-81.34 dealing with examinations and audits of FNMA's books and financial transactions and implementing section 309(h) of the Charter Act.) (65) This general regulatory framework is maintained in the final rule.

In addition § 81.23 of the proposed regulations set up definitive and regular reporting requirements to enable the Department to obtain the data required to carry out its oversight functions. These reporting requirements are included in the final rule.

In response to FNMA's policies on growth, mortgage sales, and the size of its portfolio, the proposed regulations (§ 81.22) would have required FNMA to develop a general plan for the conduct of its secondary market operations detailing FNMA's proposed method for (1) providing liquidity for mortgage lenders, (2) conducting its stabilization functions (both bringing new sources of mortgage funds into mortgage investments and generally being a net purchaser of mortgage loans in periods of credit stringency and a new seller of mortgage loans in periods of credit ease), (3) transferring mortgage funds from areas of capital surplus to areas of capital shortage (both on a national basis and within Standard Metropolitan Statistical Areas), and (4) providing support for sound market-rate Government-insured mortgages for low- and moderate-income housing. Similar requirements are contained in the final rule.

The proposed regulations addressed the problems raised by FNMA's operation of the biweekly auction. The provisions of § 81.24 would have required FNMA, prior to the close of business on the last business day prior to the day on which FNMA is scheduled to hold commitment auctions, to submit to the Secretary an estimate of the dollar amounts of purchase commitments it expected to issue in its FHA-VA mortgage auction and in its conventional mortgage auction. A similar provision is contained in the final rule.

Because FNMA's underwriting guidelines were causing certain urban areas to be redlined, the proposed regulations (§ 81.18) would have required that HUD approve FNMA's underwriting guidelines to assure that they were nondiscriminatory in effect. This provision sought to implement HUD's general regulatory powers (sec. 309 (h)) under the Charter Act, so that HUD's exercise of its oversight responsibilities with respect to FNMA were conducted in accordance with the Congressional mandate that all HUD programs relating to housing and urban

development affirmatively further the policy of fair housing throughout the United States. (66) The provision is continued in modified form in the final rule.

The proposed regulations (§ 81.19) made explicit equal employment opportunity requirements imposed on FNMA, its contractors and vendors by reasons of FNMA's status as a contractor, subject to the provisions of E.O. 11246. The provision is contained in the final rule.

Finally, the proposed regulations attempted to ensure that a reasonable percentage of the borrowings FNMA is enabled to make at the federal agency rate flowed into central city areas and benefited low- and moderate-income families. (67) Those provisions (§§ 81.16 (d) and (e), and 81.17) were intended to implement sections 302(b)(2) and 309(h) of the Charter Act and to insure that FNMA's conduct of its secondary market operations achieved the purposes of the Charter Act. The final rule contains revised provisions addressing these same problems.

B. THE COMMENTS

Although most of the comments received in response to the proposed regulations were critical half came from mortgage bankers, commercial and investment bankers, and thrift institutions. In addition, a substantial percentage of the comments came from FNMA shareholders who had received from FNMA's management information which characterized the effect of the proposed regulations and informed them of management's view of the proposed regulations. Eight percent of the comments were from non-financial private participants in the housing industry—real estate brokers, and developers, builders and material suppliers.

On the other hand, Senators and Representatives from urban areas who submitted formal comments and large local governments, generally approved the thrust of the proposed regulations. Labor and public interest groups also supported the proposed regulations.

Critical comments focused on four major areas. First, the greatest amount of comment was generated by the provisions of §§ 81.16 (d) and (e), and 81.17 which mandated the use of an absolute percentage of all commitments sold by FNMA and an absolute percentage of all mortgages purchased by it. (Sections 81.16 (d) and (e) would have required that ultimately 30 percent of the aggregate principal amount of commitments to purchase conventional home mortgages issued by FNMA during each calendar year be for the purchase of mortgages secured by properties located in a central city or property improved by a previously occupied home. Section

81.17 would have required that 30 percent of the aggregate principal amount of all mortgages purchased by FNMA in any calendar year consist of mortgages secured by housing for low- and moderate-income families.)

Second, there was substantial opposition to § 81.14(b) which would have prohibited FNMA from issuing any obligation convertible into common stock and § 81.14(c), which would have required FNMA to submit a request for approval to the Secretary of Housing and Urban Development at least 15 days prior to the proposed date of issuance of FNMA debt obligations. Third, numerous commentators objected to § 81.18 which would have required FNMA to obtain HUD approval of a revised statement of home mortgage underwriting guidelines—and required that these guidelines make clear that FNMA would not discriminate in purchasing conventional mortgages; and § 81.19, which would have imposed equal employment opportunity requirements on FNMA, its contractors and vendors. Fourth, FNMA objected to § 81.22 which would have required it to develop a plan for the conduct of its secondary market operations covering a period of at least three years. Moreover, many commentators objected to the twenty-three separate reports which the provisions of § 81.23 would have required FNMA to submit on a regular basis.

In response to the voluminous comments received, revisions and modifications have been made in almost every section of the proposed regulations. Specifically, §§ 81.16 and 81.17 previously imposed absolute percentage requirements on the issuance of commitments in central cities, and absolute percentage requirements for purchases of low- and moderate-income mortgages. These sections have been revised to impose goals for the purchases of mortgages in each of these areas.

The provisions of § 81.14 have been extensively modified. Under the final regulations, FNMA's authority to borrow, the form of borrowing, and other matters relating to its borrowings will be regulated only by the Secretary of the Treasury. The Secretary of Housing and Urban Development will exercise her approval authority only with respect to FNMA's purchase of mortgages or issuance of commitments to purchase mortgages.

Finally, the number of reports required in § 81.23 has been reduced from 23 to 9.

The numerous changes made in the regulations as a result of the many comments received and as a result of HUD's reexamination of the proposed regulations are discussed in detail in the following section-by-section analysis.

C. SECTION-BY-SECTION ANALYSIS OF
FINAL REGULATIONS

SUBPART A—GENERAL PROVISIONS

Section 81.1 *Scope of part.* This section is unchanged from the proposed regulations. No adverse comments were received.

Section 81.2 *Definitions.* Changes have been made in most of the terms contained in § 81.2 of the proposed regulations, and eight new definitions have been added. With respect to each new or revised definition, a summary of the change or revision and the reasons therefore, are set forth. The letter designations preceding the defined term correspond to the paragraphs contained in § 81.2 of the final regulations.

(d) "Debt-to-capital ratio"—This term was defined in the proposed regulations to mean the ratio of the outstanding amount of FNMA obligations issued under section 304(b) of the Charter Act (general obligations) to the sum of FNMA's net worth accounts plus the outstanding amount of FNMA obligations issued under section 304(e) of the Charter Act (subordinated obligations). Since section 304(e) provides that subordinated obligations are deemed to be capital of FNMA if "entirely subordinated" to FNMA general obligations, and since section 304(e) provides for the issuance of partially subordinated obligations, language has been added to the definition to provide that section 304(e) obligations will be treated as capital only if entirely subordinated to all FNMA general obligations.

(e) "Home mortgage"—In the proposed regulations this term was defined as a mortgage loan secured by a single-family house. This definition has been extended to include mortgage loans on two-to-four family properties.

(f) "Project mortgage"—The proposed regulations contained no definition of this term. In the final regulations, "project mortgage" means a mortgage loan on a building containing five or more dwelling units.

(g) "Single-family mortgage"—This term was not defined in the proposed regulations because the term "home mortgage" was defined as a mortgage loan on a single-family house. In the final regulations, this term is defined as a mortgage loan on a house containing a single dwelling unit.

(h) "Unit mortgage"—This term is used in both the proposed and final regulations to refer to a mortgage loan on a condominium unit or a unit in a planned unit development project. However, in the final regulations, the definitional language referring to leasehold interests has been deleted since leaseholds are treated in a new definition of "mortgage loan."

(j) "Mortgage loan"—Although this term was used in several instances in the proposed regulations it was not defined. To clarify the final regulations, a definition of "mortgage loan" has been provided. Since similar language relating to mortgages on leasehold interests was contained in two separate definitions in the proposed regulations ("home mortgage" and "unit mortgage"), this language was consolidated in the final regulations in a new definition of "mortgage loan". In this new provision, the term is defined as a loan secured by a first mortgage or first deed of trust on any of three types of interests in real property. The first two—a fee simple estate and a leasehold interest extending or renewable at least 10 years beyond the maturity of the mortgage—are taken from the definitions of "home mortgage" and "unit mortgage" in the proposed regulations. The third interest—a leasehold interest of any duration together with the resulting fee simple estate—was included in response to a comment submitted by FNMA, which noted that "FNMA's contract with mortgage sellers provides that a leasehold estate may expire earlier than the term of the mortgage, provided that fee simple title then vests in the homeowner or owners' association."

(k) "Dwelling unit"—This term was used in several definitions in the proposed regulations, but was not itself defined. In the final regulations, the term has been defined to mean a single, unified combination of rooms designed for residential use by one family.

(l) "Housing for low- and moderate-income families"—In the proposed regulations, this term was defined to include any residential property falling within one of the following three categories:

(1) Any housing financed by a mortgage loan insured by FHA under certain sections of the National Housing Act;

(2) Any housing project having 25 percent or more of its units eligible for rental assistance under section 8 of the U.S. Housing Act of 1937; and

(3) Any single-family dwelling purchased at a price below the current median price for such housing in the geographical area in which the dwelling is located.

Comments received by the Department indicated that the first part of the proposed definition should include a reference to section 237 of the National Housing Act. While the requirements of § 81.17 (purchase of mortgages secured by housing for low- and moderate-income families) are not applicable to FHA-insured mortgages in the final regulations, the first definitional category has been retained and modified as suggested by the com-

ments received. The revised definition remains useful as part of the revised reporting requirements under § 81.23 and will help the Department ascertain the extent to which FNMA purchases of FHA mortgages benefit low- and moderate-income families.

Comments stated that the second part of the proposed definition was ambiguous, in that it was unclear whether the definition would include any project in which 25 percent or more of the units have rents below the applicable existing fair market rent or whether a unit must actually be subjected to a section 8 reservation or contract to qualify. The ambiguity has been resolved by revising the second category to include only those housing projects where the owner has entered into or agreed to enter into a Housing Assistance Contract under which eligible families in not less than 25 percent of the units will receive housing assistance payments under section 8.

Comments on the third section of the proposed definition pointed out the difficulty in determining the current median price for single-family housing in each Standard Metropolitan Statistical Area (SMSA) or county not in an SMSA. Accordingly, this category has been revised to employ a data base of median family income, which is regularly compiled by HUD and will be made available to FNMA. As revised, this section includes any single-family dwelling (including a condominium or planned unit development unit) purchased at a price not in excess of 2.5 times the median family income for the appropriate geographical area in which the dwelling is located. It was pointed out in the comments that there is no assurance that a house priced within the means of a low or moderate income family will be occupied by a low or moderate income family. The Department, however, believes that the regulation will be effective in furthering national housing goals if it results in additional financing for houses which low- and moderate-income families can afford.

(m) "Central city"—The omission of a definition for this term in the proposed regulations was the subject of a number of comments. Accordingly, the term has been defined to mean each of the political subdivisions named in the title of an SMSA as most recently determined by the U.S. Census Bureau. In addition, a current list of such central cities is set forth in Appendix A to these regulations.

(n) "Suburban"—This term, not used in the proposed regulations, is defined as those areas of an SMSA which are not within any census tract located wholly or partially in a central city.

(o) "Debt instrument"—This term, used but not defined in the proposed regulations, is defined as applying to

obligations and securities issued by FNMA under sections 304 (b), (d), and (e) of the Charter Act.

(p) "Obligational authority"—This term which did not appear in the proposed regulations is defined to mean the dollar amount of authority conferred by the Secretary upon FNMA to purchase mortgage loans, issue commitments or otherwise deal in mortgage loans.

SUBPART B—OPERATIONS OF FNMA

Section 81.11 General. This section identifies the specific grants of statutory authority which authorize the Secretary to promulgate these regulations. Minor editorial changes have been made in the proposed regulations and references to title VIII of the Civil Rights Act of 1968 and section 7(d) of the Department of Housing and Urban Development Act have been included.

Section 81.12 Issuance of Common Stock. As in the proposed regulations, the final regulations codify the present temporary suspension of the requirement for FNMA's mortgage sellers to make capital contributions to FNMA. In addition, paragraph (a) has been revised to refer to the Secretary's approval of FNMA determinations to suspend these requirements.

Under the mandate in section 303(b) of the Charter Act that FNMA "shall at all times require each servicer of its mortgages to own a minimum amount of common stock," the proposed regulations would have allowed FNMA to reduce the servicer stock retention requirement to one share of common stock for each \$100,000 of FNMA held mortgages serviced by such servicer. A number of comments pointed out that the present servicer stock retention requirement is one share of common stock for each \$10,000 of FNMA owned mortgages serviced, and that a large number of FNMA shares of common stock would be available for sale if this requirement were reduced to one share for each \$100,000. FNMA expressed the fear that the market price of FNMA stock could be adversely affected if this large number of shares immediately became available for sale. Accordingly, this provision has been revised to recite the Secretary's approval of the one share per \$10,000 requirement which is presently in effect.

The proposed section would also have provided that common stock sold to sellers or servicers be sold at an issue price determined by FNMA with the Secretary's approval. FNMA commented that the Secretary has no statutory authority to approve the issue price of its stock. Although the Secretary does not agree with FNMA's position, this provision has been deleted since the revised regulations do not provide for the issuance of new stock

to mortgage sellers, and since stock retention requirements for mortgage servicers can be met by the purchase of FNMA shares on the open market at the market-determined price.

Paragraph (c) of § 81.12 of the final rule provides a means for Secretarial approval of any change in FNMA's determinations as to stock purchase or retention requirements for FNMA mortgage sellers and servicers.

The proposed regulations provided a procedure for the adoption by FNMA shareholders of a resolution denying shareholders preemptive rights in all stock issuances. Because FNMA shareholders have already adopted such a resolution, this language has been deleted.

The proposed regulations required Secretarial approval prior to the issuance of any common stock by FNMA, except for stock issued to mortgage sellers or servicers to meet stock purchase or retention requirements. The requirements of this section are modified in the final regulations. First, the information to be submitted to the Secretary has been changed. Under the final regulations, the proposed stock offering period rather than the issuance date must be disclosed, and the issue price and number of shares to be offered rather than the amount of stock to be issued must be stated. In addition, the description of the proposed use of the proceeds has been modified, and the requirement for a FNMA assessment of current conditions in the capital market has been eliminated. Finally, a new provision has been added requiring the Secretary to act on any stock issuance request within 30 workdays of its receipt.

[Section 81.13 Reserved]

Section 81.14 Issuance of Obligations. The proposed regulations would have required that not less than 15 days prior to the proposed date of the issuance of any obligations, securities or other debt instruments, FNMA submit to the Secretary a written request for approval of the issuance. Included with the request would be information as to the proposed date of issuance, interest rate, maturity, and principal amount; whether the debt is to be secured by mortgages or subordinated to other obligations; and the proposed use of the proceeds. The regulations would also have precluded the issuance by FNMA of any obligation convertible into common stock.

A number of commentators criticized § 81.14 asserting that its requirements were unrealistic and failed to recognize the fluid character of the market for securities. The comments further stated that any procedure under which FNMA must submit the terms of any obligation to HUD for approval 15 days prior to its date of is-

suance deprives FNMA of the flexibility to react to changing market conditions. Without the flexibility to wait until the last possible moment to assess the impact of the size and terms of its borrowings, some commentators feared that FNMA would make marketing decisions which would have a disruptive influence on the money market.

Comments from mortgage bankers, savings and loan associations, and security brokers also criticized the proposed regulation of FNMA's marketing of long-term debt instruments as both a duplication and disruption of FNMA's carefully developed process of coordination with the Department of the Treasury. Several comments focused on the fact that because the Treasury Department is unlikely to approve the terms of a FNMA issuance 15 days in advance, the proposed regulations pose the danger of a disagreement between HUD and Treasury, barring FNMA from timely access to the capital markets.

The Department of the Treasury also stated its concerns that the provisions of § 81.14 would interfere with its relationship with FNMA.

Paragraph (b) of § 81.14, which would have prohibited the issuance by FNMA of any obligation convertible into common stock, was criticized by FNMA as beyond HUD's authority and as an unwise restriction limiting FNMA's ability to raise equity capital.

Major changes have been made in this provision to accommodate these adverse comments.

The provision which would have precluded issuance by FNMA of any obligation convertible into common stock has been deleted. The requirement for HUD approval of individual debt issuances by FNMA has been deleted and the final rule requires only that FNMA submit to the Secretary of Housing and Urban Development a copy of any written communication submitted by it to the Secretary of Treasury concerning the issuance of its debt instruments.

In response to comments by FNMA, the final regulations provide a regular procedure for the approval of FNMA's requests for increases in the Corporation's total obligational authority. Based on the new definition in § 81.2(p) this requirement relates only to FNMA's authority to purchase mortgages or offer commitments.

Section 81.15 Debt-to-Capital Ratio. Section 304(b) of the Charter Act provides that FNMA's debt-to-capital ratio may not exceed 15 to 1 unless a greater ratio is fixed by the Secretary. The present level fixed by the Secretary is 25 to 1. The proposed and final regulations would provide procedures to be followed in altering the debt-to-capital ratio.

Several comments were received on the debt-to-capital ratio provisions of the proposed regulations. First, it was pointed out that the prohibition on the issuance of any debt which would cause FNMA's debt-to-capital ratio to exceed 25 to 1 could work a great hardship if there were a need to issue obligations sufficient to finance payments of principal and interest due on outstanding subordinated debentures. While this contingency is very remote the final regulations have been revised to accommodate this possibility. Several commentators asserted that the proposed regulations could be interpreted as authorizing the Secretary to reduce FNMA's maximum debt-to-capital ratio below 15 to 1. The final rule has been revised to reflect that the Secretary may not reduce debt-to-capital ratio to less than 15 to 1.

Some commentators suggested that the Secretary lacks any authority to decrease the debt-to-capital ratio, once a specific ratio above 15 to 1 has been approved. These comments were rejected. The grant of authority to increase the debt-to-capital ratio above 15 to 1 contains the implicit authority to reduce the debt-to-capital ratio back to 15 to 1 if conditions warrant.

In paragraph (c) of the proposed regulations FNMA was required to submit to the Secretary any request to increase its debt-to-capital ratio not less than 30 days prior to the effective date of the increase. In the final regulations the request may be submitted at any time and the Secretary is required to act within 30 workdays after submission.

Under paragraph (e) of the proposed regulations, in order to authorize a decrease in the debt-to-capital ratio the Secretary would have been required to find that the decrease would not be detrimental to the holders of subordinated obligations under section 304(e). The final regulations require, instead, the Secretary to find that the proposed decrease will not impair FNMA's ability to discharge its obligations to the holders of its debt instruments. Finally, the final regulations require 60 workdays notice of the effective date of any decrease in the FNMA's debt-to-capital ratio. The proposed regulations required only that the Secretary give FNMA a reasonable opportunity to comment on any decrease.

Section 81.16 Conventional Mortgages in Central Cities. The proposed regulations required a fixed percentage of commitments to purchase conventional mortgages to be used for mortgages secured by properties in central cities (§81.16(d)) and properties improved by previously occupied houses (§81.16(e)). In each category the annual percentage requirement

would have been 10 percent in 1978 and 30 percent thereafter.

The comments on these provisions (and the provisions of §81.17 which mandated low- and moderate-income mortgage purchase requirements) fall into two broad categories: (1) Those relating to the Secretary's legal authority to impose the requirements; and (2) those objecting to the proposed regulations as being impracticable or harmful to FNMA's business.

(1) *Legal Authority.* FNMA, the Mortgage Bankers Association, and a number of others questioned the Secretary's authority to impose the requirements contained in §§81.16 (d) and (e) and 81.17. FNMA asserted that the authority provided the Secretary by section 302(b)(2) of the Charter Act with respect to FNMA's dealings in conventional mortgages did not provide a basis for the imposition of the requirements in §81.16 (d) and (e), and that the grant of general regulatory authority provided the Secretary by section 309(h) of the Charter Act did not authorize her to impose these requirements.

FNMA also denied that the Secretary had legal authority to assert the requirement of section 309(h)—that she may require that a reasonable portion of FNMA's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families; but with reasonable economic return to the Corporation—as to FNMA's dealings in conventional mortgages. FNMA claimed that the provision of section 309(h) which speaks to the national goal of providing adequate housing for low- and moderate-income families is applicable only to FNMA's dealings in FHA-insured or VA-guaranteed mortgages.

The Secretary has considered and rejected all comments that she lacks the authority to assert the requirements of §§81.16 (d) and (e) and 81.17 of the proposed regulations. The language of the provisions of section 302(b)(2) and section 309(h) of the Charter Act and the legislative history attendant to the enactment of the Charter Act provide the statutory authority necessary for the Department to impose the requirements contained in §§81.16 and 81.17 of the regulations.

(2) *Impracticability and Harmful Effect.* Numerous comments asserted that the requirements of §§81.16 (d) and (e), and §81.17 would seriously disrupt the FNMA auction system. Some comments asserted that FNMA's ability to provide liquidity for the mortgage market would be impaired by the requirements of §§81.16 (d) and (e), and 81.17 of the proposed regulations. These comments pointed out that a failure of demand in the mandated categories would prevent FNMA

from being able to serve liquidity needs in nonmandated categories because the aggregate amount of all its commitments and purchases would have to be reduced in order to achieve the mandated percentage in the favored categories.

It was also pointed out that §§81.16 (d) and (e) and 81.17 would require FNMA to abandon the forward commitment procedure by which mortgage bankers are able to buy FNMA's commitments to purchase large blocks of mortgages without identifying the individual loans to be delivered. The abandonment of the forward commitment procedure would, it was argued, force many lenders to buy their commitments from FNMA only after specified properties and borrowers had been identified. Therefore, according to the commentators, loans would have to be originated with a higher-than-normal yield in order to cover possible upward interest rate movements in the interim between loan origination and loan transfer. Commentators asserted that the resulting warehousing of loans would cause higher operating costs for originators and higher interest rates for mortgagors. It was also asserted that such a procedure would unnecessarily tie up large amounts of mortgage capital for extended periods. The requirements in the proposed regulations have been substantially modified in view of these comments.

A number of commentators pointed out the §81.16 of the proposed regulations failed to authorize transactions in conventional mortgages secured by two-to-four family homes, even though the secretary had already given approval to FNMA's dealing in such mortgages. Accordingly, paragraph (b) of §81.16 of the final regulations will permit FNMA to deal in conventional mortgages on one-to-four family homes, as well as on condominium or PUD units.

Paragraph (b) of the proposed §81.16 contained provisions which would have codified the limitations now found in the FNMA Conventional Selling Contract Supplement with respect to loan-to-value ratio and maximum principal amount. These provisions were, however, eliminated in response to comments that fixing the details of FNMA's conventional loan programs in the regulations would reduce FNMA's flexibility to adjust its programs to meet changing market needs.

All requirements that some of the commitments issued be used with respect to conventional mortgages secured by existing homes have been eliminated from the final regulations. The requirement that an absolute percentage of all commitments to purchase conventional mortgages be used

in central cities has been eliminated. The final rule asserts only that at the start of any year following a year in which FNMA's purchases of central city conventional mortgages have been less than 30 percent of its aggregate purchases of conventional mortgages, the Secretary may establish an annual goal for the purchase of central city conventional mortgages. In establishing this annual goal the Secretary will consider: (i) The total number of such purchases of conventional mortgages in central cities by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by properties located in central cities purchased by FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the ratio of the number of properties in central cities of the type which may secure conventional mortgages purchased by FNMA to the total number of properties of that type in the United States, as determined by the Secretary; (iv) the condition of the housing market; and (v) general economic factors.

Section 81.17 *Conventional Mortgage Purchases Related to Housing for Low- and Moderate-Income Families*. The provisions of §81.17 of the proposed regulations would have required that at least 30 percent of the dollar amount of FNMA's mortgage purchases in any calendar year consist of mortgages secured by housing for low- and moderate-income families. As in the case of §81.16, fixed percentage requirements have been abandoned and §81.17 in the final rule utilizes precisely the same goal setting procedures as adopted in §81.16. Moreover, because the Department's review of the sales prices of properties financed with FHA insured and VA guaranteed mortgages revealed they were overwhelmingly within the price range of low- and moderate-income families, the final rule does not subject FHA insured or VA guaranteed mortgages to the provisions of §81.17. If FNMA's regular reports for the first two quarters of any year for which the Secretary has established an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families show a level of purchases for such mortgages below the level needed to reach the goal, FNMA will be required to submit to the Secretary a plan of special actions it proposes to increase its level of purchases of such mortgages or a statement of reasons why the goal should be suspended or altered. The Secretary could approve, reject, or seek modification of the plan of special actions proposed by FNMA or suspend the goal. If the Secretary rejects the special actions proposed by FNMA or

refuses to suspend the goal, she may: (1) Require FNMA to conduct a separate auction for the purchases of sound conventional mortgages which are secured by housing for low- and moderate-income families and which meet regular FNMA standards (with a reasonable rate of return to FNMA); (2) require FNMA to hold open an offer to purchase such mortgages; (3) condition her approval of increase in FNMA's obligational authority upon use of a portion of such authority for the purchase of such mortgages; or (4) any combination of the three. However, the final rule makes clear that the Secretary may take no action which denies FNMA a reasonable rate of return or which requires FNMA to auction commitments to purchase conventional mortgages or to purchase conventional mortgages (1) which fail to meet FNMA's underwriting standards, or (2) which are not deemed by FNMA to be of such quality, type, and class as to meet generally the purchase standards imposed by private institutional mortgage investors, or (3) which can not be purchased within the range of market prices by the particular class of mortgages involved, as determined by the Corporation.

Section 81.18 *Home Mortgage Underwriting Guidelines*. The provisions of §81.18 were criticized as being unnecessarily duplicative and beyond the authority of the Secretary. While the Department rejected the assertion that the Secretary lacked authority to promulgate the provisions of §81.18, in response to the comments several modifications were made in the proposed regulations.

Paragraph (a) was revised to include a reference to the Secretary's responsibilities under section 808(e)(5) of the Civil Rights Act of 1968 and her general regulatory authority under section 7(d) of the Department of Housing and Urban Development Act. In paragraph (b), the date by which FNMA must submit revised home mortgage underwriting guidelines to the Secretary (for review and comment) has been changed from May 1, 1978 to January 1, 1979 to accommodate the length of time required to complete rulemaking. In addition, discrimination on the basis of the religious composition of the area in which security property is located has been added as a prohibition.

The final regulation contains a new paragraph (d) requiring the Secretary to take action on proposed revised guidelines or guideline amendments within 10 workdays after submission by FNMA for approval.

While some of the provisions in §81.18 which relate to the granting of credit to individuals overlap requirements imposed on credit granting agencies, such as FNMA, by the Equal

Credit Opportunity Act, the provisions of §81.18 relate not only to the granting of credit to individuals but also the standards utilized to judge the value of real property and to possible race-related judgments relating to the making of mortgage loans. In these respects, and in particular with respect to subsection §81.18(b)(iii) of the final rule, relating to neighborhoods and age of property, the provisions do not overlap ECOA requirements and are necessary to properly implement the congressional mandate to the Secretary in section 808(e)(5) of title VII of the Civil Rights Act of 1968.

Furthermore, the general regulatory authority contained in the Department of Housing and Urban Development Act is sufficient to permit the Secretary to implement the responsibilities imposed on her by section 808(e)(5) of Title VIII of the Civil Rights Act of 1968 by requiring review of FNMA appraisal and credit evaluation standards for the limited purpose of assuring the elimination of race (religious, sex) related judgments in such evaluations.

Section 81.19 *Equal Employment Opportunity*. The proposed regulations made explicit the equal employment opportunity requirements imposed on FNMA, its contractors and vendors by reason of FNMA's status as a Federal contractor, subject to the provisions of E.O. 11246.

FNMA's comments on the proposed regulation asserted that these requirements though inapplicable under the Charter Act already apply to the internal employment practices of FNMA through contract provisions contained in the FNMA-GNMA Combined Services Agreement and that the Corporation's internal practices are in compliance with these provisions. In addition, FNMA asserted that the requirement that it apply these provisions to its contractors and vendors interferes with the internal affairs of FNMA and "equates FNMA with a Government agency."

The provisions contained in §81.19 of the proposed regulations have, since promulgation of E.O. 11246 in 1965, been required to be included in all direct contracts for goods and services between private corporations and agencies of the Federal Government and in all contracts for federally assisted construction programs. They are now contained in substantially the same form in the FNMA-GNMA Combined Services Agreement pursuant to HUD regulations at 24 CFR Part 130. As in the case of private corporations contracting with HUD, the Combined Services Agreement and §81.19 of the regulations require FNMA to include the standard E.O. 11246 clause in contracts with vendors and servicers. FNMA's comments on the proposed

regulations establish that FNMA does not understand and has failed to implement the legal obligations with regard to the national policy of non-discrimination in employment imposed on it as on all major Government contractors. The Secretary has, therefore, rejected FNMA's comments on this provision.

The Secretary has determined as a matter of national policy to impose equal employment opportunity requirements identical to those § 81.19 requires FNMA to impose on its contractors and vendors on all GNMA servicers and sellers.

SUBPART C—REPORTING REQUIREMENTS

All of the reporting requirements contained in the proposed regulations have been reexamined and substantial modifications have been made to take into account the various comments received. The total number of reports required has been substantially reduced.

Section 81.21 *General*. This section is unchanged from the proposed regulations. No adverse comments were received.

Section 81.22 *Business Activities Report*. The proposed regulations would have required FNMA to develop a general 3-year plan for the conduct of its secondary market operations. The plan would have addressed FNMA's proposed methods for providing secondary mortgage market liquidity, conducting its stabilization functions, transferring capital and providing support for low- and moderate-income housing. Under § 81.22(c) an annual budget plan would also have been required setting forth estimated dollar amounts of commitments to be purchased and estimated purchase and sales of home and project mortgages. FNMA in its comments asserted that the provisions of § 81.22 were beyond the Secretary's authority to the extent that they required reporting on prospective activities.

This assertion was rejected. The authority to require both retrospective and prospective reporting is clearly contained in § 309(h) of the Charter Act. Section 309(h) places no limitation upon the nature of the report which may be requested, but states only that the Secretary may " * * * require (FNMA) to make such reports on its activities as he deems advisable." In addition, the general regulatory authority conferred upon the Secretary by section 309(h) of the Charter Act provides authority for the Secretary to require information necessary to enable her to "make such rules and regulations * * * to insure that the purposes of (the Charter Act) are accomplished."

The Secretary has deemed it necessary to require, in order to insure that the public purposes of the Charter Act

are being carried out, reports on: (1) FNMA's plans for the conduct of its secondary market operations; (2) FNMA's mortgage acquisition and borrowing plans; and (3) the general conduct of its business.

In addition, FNMA asserted that market forces determine the level and distribution of its commitments and purchases and that it has no control over, and cannot predict, how market forces will change from month to month let alone over the 3-year period of the proposed plan.

In response to these comments, in the final rule the 3-year general plan has been reduced to a 1-year plan to be set out in the new Business Activities Report.

The new Business Activities Report requires FNMA to provide a general plan for the conduct of its secondary market operations containing an assessment of: (1) The amount of supplementary assistance FNMA will provide to the secondary market, (2) the amount of additional obligational authority it will require, and (3) projected increases or decreases in the size of its mortgage portfolio. FNMA will also be required to estimate its future annual need for additional equity financing, indicate its target for return on equity and the incremental and average cost of its debt.

The provisions of § 81.22(b) of the proposed regulations which required FNMA to submit to the Secretary information it currently submits to the OMB have been eliminated and pursuant to Appendix B, item 1(b)(iii) of the final rule FNMA will only have to provide to the Secretary a copy of the report submitted to OMB.

The provisions of § 81.22(c) of the proposed regulations which required a budget plan setting forth calendar year estimates of certain activities by FNMA have been replaced by provisions contained in Appendix B, item 1(b)(ii) of the final rule which require that similar information be reported on a quarterly basis only.

Section 81.23 *Regular Reports*. The proposed regulation would have required the submission of 23 different regular reports at various times during the year. These reports would in general have addressed: the results of FNMA's auctions, its borrowing and debt authority, its loan portfolio, its debt portfolio, investors and mortgage purchasers, yields on mortgages purchased and sold, expenditures, revenues and income, and stock prices.

In general, comments received expressed the opinion that the reporting requirements of § 81.23 were excessive or unnecessary, would result in excessive paperwork, and would be time consuming and costly to FNMA. The comments stated that the end result of these requirements would be to in-

crease the cost of mortgage credit to the Nation's homeowners. Several comments suggested that the report's time requirements were unrealistically short in certain instances and that the information required in some reports was available to HUD from other sources. Further concern was expressed that the release of certain information to HUD would in turn result in a release of the information by HUD through the Federal Freedom of Information Act. FNMA stated that several of the reports would require changes in their current internal reporting forms; that section f of report 4 contained a typographical error; that report 9 required the disclosure of information similar to that published in the Treasury Department's Survey of Ownership, and that report 22 requiring a disclosure of the ownership of FNMA stock did not consider that two-thirds of the stock was held in street names or by nominees.

In response to these comments, in the final rule the number of reports required has been reduced from 23 to 9. In addition, all reporting deadlines suggested by FNMA have been adopted. A typographical error in report 4 has been corrected. Report 9 (previously report 22) accepts the fact that the names of the beneficial owners may not currently be available to FNMA. Finally, proposed report 7 which requested the reporting of allegedly confidential information has been deleted.

The comment that report 9 (now report 3) requests the same type of information as is required in the Treasury Department's survey of ownership was rejected. A review of this survey showed that the information required in present report 3 is significantly different from the information reported to the Treasury. The comment that a reporting category for "mutual savings bank" be eliminated was considered but it was determined that significant numbers of mutual savings banks do exist and that their situation is sufficiently different from that of other banks and savings and loan associations so as to justify separate treatment. Therefore this reporting category was maintained.

Section 81.23(b) is unchanged. No adverse comments were received.

Section 81.24 *Estimates of Amount of Purchase Commitments at FNMA Auctions*. The provisions of § 81.24 would have required FNMA, one business day before each commitment auction, to submit to the Secretary an estimate of the dollar amounts of purchase commitments it expected to issue in its FHA-VA mortgage auction and in its conventional mortgage auction. Comments submitted by FNMA stated that reliable estimates of the amount of such commitments are

rarely available because of the speculative nature of the market. In addition, it was stated that public disclosure of the estimates in advance of the auction could unnecessarily affect the auction while advance knowledge of the estimates by only a few potential bidders would place these bidders in an unfair competitive advantage.

In response to these comments, § 81.24 has been revised to provide security for the information supplied to the Secretary. Under the final regulation the information will be submitted in a sealed envelope which will be maintained in a safe until the day following the day on which the auction is held. In this manner there will be no opportunity for advance public knowledge of the estimate.

Section 81.25 *Minutes of Meetings*. The proposed regulation (§ 81.25) would have required the submission of completed minutes to the Secretary within 10 days after each meeting of the FNMA Board of Directors or any committee of FNMA.

FNMA commented that with respect to meetings of its Board of Directors the completed minutes could not be submitted to the Secretary within 10 days because minutes do not exist until they are formally approved and this cannot occur until the next regular meeting of the Board. In addition, FNMA stated that the proposed rule was unnecessary because HUD's representative on the Board is provided copies of all minutes. FNMA also stated that the requirements of the proposed rule, to the extent it was interpreted as requiring minutes of all meetings, was an unwarranted intrusion into the day-to-day internal operations of FNMA and would require making public or making available to the Secretary information which was of an internal nature. Finally, FNMA stated that indiscriminate filing of committee minutes would have a chilling effect on the free exchange of ideas within FNMA.

In response to these comments, the requirement that minutes be regularly transmitted to the Secretary has been withdrawn. In the final rule, the provisions of § 81.32(b), relating to maintenance of books and records by FNMA, requires that FNMA maintain a stenographic record of the minutes of each meeting of the Board of Directors available for inspection by duly authorized representatives of the Secretary. Any particular matter in such minutes which FNMA determines contains information the availability of which outside the corporation might financially injure FNMA or adversely affect the conduct of its business will, at the request of FNMA be limited to examination (without copying) by the Secretary or her designated representative at the offices of FNMA.

Section 81.25 *Other Information*. In the proposed regulation this section was designated § 81.26 "Other Reports" and required FNMA to furnish to the Secretary, in addition to the reports and information required by the other provisions of Subpart C, such further reports and other information concerning its activities as the Secretary may request. As revised, this section requires FNMA to furnish only "information concerning its activities", upon written request by the Secretary.

SUBPART D—EXAMINATIONS AND AUDITS

Section 81.31 *General*. This section is unchanged from the proposed regulations. No adverse comments were received.

Section 81.32 *Examination of Books, Records, and Documents*. This section has been revised to reflect more closely the language contained in section 309(h) of the Charter Act. As revised, the section requires FNMA to make available for examination by HUD representatives its books and financial transactions and all records and documents relating to them. This section now also requires the maintenance of minutes discussed under § 81.25.

Section 81.33 *Annual Audit of FNMA*. As contained in the proposed regulations, this section would have required HUD representatives each year to conduct an audit of FNMA's affairs for the preceding calendar year following submission of the annual report by FNMA's independent auditors. In the final regulation, the annual audit of FNMA by HUD representatives will be at the option of the Secretary. In addition, the revised regulation provides that the Secretary may accept the report of FNMA's independent auditors for a particular year in lieu of all or any part of a secretarial audit.

Section 81.34 *Special Audits*. A new § 81.34 has been added to subpart D of the final regulations to provide for limited audits of specific financial transactions of FNMA. This provision is substantively similar to the prior existing regulation governing audits by the Secretary.

SUBPART E—BOOK-ENTRY PROCEDURES FOR FNMA SECURITIES

Subpart E of the regulations governs book-entry procedures for FNMA securities. This subpart was present in the old regulations and is included here as an accommodation to FNMA. Two proposed sections in this subpart, §§ 81.45 and 81.46, provided that definitive securities would be issued in certain situations. In comments received from FNMA, however, it was pointed out that FNMA discontinued issuing definitive securities on March 10, 1978, and from that date securities have

been issued in book-entry form only. Sections 81.45 and 81.46 have been revised to reflect this.

The only other change made in subpart E is in § 81.48, which provided in the proposed regulation that interest due on FNMA securities was to be charged to the general account of the Treasurer of the United States and that such securities were to be redeemed and charged to the general account of the Treasurer of the United States on the date of maturity, call, or advance refunding. In another comment from FNMA, it was pointed out that FNMA no longer has an account with the Treasurer of the United States but, instead, uses an account with the New York Federal Reserve Bank. Section 81.48 has therefore been revised to refer exclusively to the account at the New York Federal Reserve Bank.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Part 81 is revised by amending the entire text to read as follows:

Subpart A—General Provisions

- Sec. 81.1 Scope of Part.
- 81.2 Definitions.

Subpart B—Operations of FNMA

- 81.11 General.
- 81.12 Issuance of Common Stock.
- 81.13 Dividends on Common Stock. [Reserved]
- 81.14 Issuance of Debt Instruments and Obligational Authority.
- 81.15 Debt-to-Capital Ratio.
- 81.16 Conventional Mortgages in Central Cities.
- 81.17 Conventional Mortgage Purchases Related to Housing for Low-and-Moderate Income Families.
- 81.18 Home Mortgage Underwriting Guidelines.
- 81.19 Equal Employment Opportunity.

Subpart C—Reporting Requirements

- Sec. 81.21 General.
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APPENDIX A—Central Cities.

APPENDIX B—Business Activities Report.

APPENDIX C—Reporting Requirements.

AUTHORITY: Section 7d of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 81.1 Scope of part.

This part contains a codification of regulations implementing the authority of the Secretary of the Department of Housing and Urban Development with respect to the secondary market operations of the Federal National Mortgage Association (FNMA), as authorized by the Federal National Mortgage Association Charter Act. Subpart A contains definitions relating to this entire part. Subpart B contains regulations governing the conduct of FNMA's secondary market operations. Subpart C contains regulations requiring FNMA to prepare and submit certain reports on its activities to the Secretary on a regular basis. Subpart D contains regulations governing examinations and audits of FNMA by the Secretary. Subpart E contains regulations governing book-entry procedures for FNMA securities and related matters.

§ 81.2 Definitions.

As used in this part, the term—

- (a) "Charter Act" means the Federal National Mortgage Association Charter Act (Title III of the National Housing Act, 12 U.S.C. 1716, et seq.).
 (b) "FNMA" means the Federal National Mortgage Association.
 (c) "Secretary" means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary.
 (d) "Debt-to-capital ratio" means the ratio of (1) the aggregate principal amount outstanding at any one time of obligations issued by FNMA under section 304(b) of the Charter Act to (2) the sum at such time of FNMA's capital, capital surplus, general surplus, reserves, undistributed earnings, and the outstanding total principal amount of obligations issued by

FNMA under section 304(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 304(b).

(e) "Home mortgage" means a mortgage loan secured by real property upon which is located a structure containing not less than one nor more than four dwelling units.

(f) "Project mortgage" means a mortgage loan secured by real property upon which is located a structure containing five or more dwelling units.

(g) "Single-family mortgage" means a mortgage loan secured by real property upon which is located a structure containing a single dwelling unit.

(h) "Unit mortgage" means a mortgage loan secured by: (1) Real property consisting of a dwelling unit in a condominium or planned unit development project and (2) an undivided interest in the common areas and facilities of the project or a stock interest in an association having title to the common areas and facilities of the project.

(i) "Conventional mortgage" means a mortgage loan not insured or guaranteed by the United States or any agency or instrumentality thereof.

(j) "Mortgage loan" means a loan secured by a mortgage or a deed of trust which creates a first mortgage on one of the following interests in real property:

- (1) An estate in fee simple;
- (2) A leasehold or subleasehold extending or renewable (automatically or at the option of the leaseholder) for a period of at least 10 years beyond the maturity of the loan; or
- (3) A leasehold or subleasehold of any duration and the remaining estate in fee simple.

(k) "Dwelling unit" means a single, unified combination of rooms designed for residential use by one family.

(l) "Housing for low-and-moderate-income families" means—

- (1) Any housing financed by a mortgage loan insured by FHA under section 221, 235, 236, or 237 of the National Housing Act;
- (2) Any housing project with respect to which the owner has entered into a Housing Assistance Payment Contract, or an agreement to enter into such a contract, pursuant to which eligible families in not less than 25 percent of the dwelling units in the project will receive Housing Assistance Payments under section 8 of the United States Housing Act of 1937; and
- (3) Any single-family dwelling (including a dwelling unit in a condominium or planned unit development project) purchased at a price not in excess of 2.5 times the median family income (as most recently determined by the Secretary) for the Standard Metropolitan Statistical Area so designated

by the Department of Commerce, or county not in such Area, in which the dwelling is located.

(m) "Central city" means each of the political subdivisions named in the title of Standard Metropolitan Statistical Areas so designated by the Office of Federal Statistical Policy and Standards of the Department of Commerce. A list of these political subdivisions is Appendix A to these regulations. The list will be amended from time to time, to add or delete political subdivisions, as designations are made or withdrawn by the Department of Commerce.

(n) "Suburban" means any part of a Standard Metropolitan Statistical Area which is not a part of any census tract in such area which is (or any part of which is) included in a central city.

(o) "Debt instrument" means any obligation or security of FNMA issued under subsections (b), (d), and (e) of section 304 of the Charter Act.

(p) "Obligational authority" means the dollar amount of authority conferred by the Secretary upon FNMA to purchase mortgage loans, issue commitments to purchase mortgage loans, or otherwise deal in mortgage loans, as authorized by the Charter Act.

Subpart B—Operations of FNMA

§ 81.11 General.

(a) Specific provisions of the Charter Act require FNMA to obtain the prior approval of the Secretary before it issues any stock, obligations, securities, participations, or other instruments (sections 309(h), 311), and require FNMA to obtain the approval of the Secretary with respect to the following specific activities: (1) The purchase, service, sale, or lending on the security of or otherwise dealing in conventional mortgages (section 302(b)(2)); (2) FNMA's determination of the amount of nonrefundable capital contributions required to be made by mortgage sellers (which by statute may not exceed 2 per centum of the unpaid principal amount of mortgages purchased or to be purchased) (section 303(b)); (3) FNMA's determination of the level of stock retention requirements imposed on each servicer of its mortgages (which by statute may not exceed 2 per centum of the aggregate outstanding principal balances of all mortgages of the corporation which have been purchased subsequent to September 1, 1968, and which are then serviced by each servicer for the corporation) (section 303(c)); and (4) allowing the aggregate amount of FNMA's securities outstanding at any one time to exceed 15 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings (section 304(b)). In addition, specific provisions of the Charter Act au-

thorize the Secretary of the Department of Housing and Urban Development to (i) require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation; (ii) examine the books and financial transactions of the corporation; and (iii) require the corporation to make such reports on its activities as she deems advisable.

(b) Finally, section 309(h) of the Charter Act provides that the Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of the Charter Act are accomplished.

(c) This subpart is promulgated pursuant to the Secretary's authority, as set forth above, to implement the foregoing provisions of the Charter Act; to insure, pursuant to the Secretary's general regulatory authority, as set forth in section 309(h) of the Charter Act, that the purposes of the Charter Act are accomplished; and to implement requirements imposed on the Secretary by section 808(e)(5) of the civil rights Act of 1968 (82 Stat. 84; 42 U.S.C. 3608, et seq.).

§ 81.12 Issuance of common stock.

(a) The first sentence of section 303(c) of the Charter Act directs FNMA to issue shares of its common stock to each seller of mortgage loans who makes capital contributions to FNMA. Under section 303(b) of the Charter Act, such capital contributions may be required by FNMA in such amounts as may be determined from time to time by FNMA with the approval of the Secretary. The Secretary has approved the determinations of FNMA that, with respect to home mortgages purchased by FNMA pursuant to commitments issued on or after February 7, 1977, and project mortgages purchased by FNMA pursuant to commitments issued on or after April 25, 1973, the sellers of such mortgage loans are not required to make any capital contributions to FNMA.

(b) Section 303(c) of the Charter Act directs FNMA to require each servicer of its mortgage loans to own a minimum amount of FNMA common stock, as determined from time to time by FNMA with the approval of the Secretary. The Secretary has approved the determination of FNMA to require each servicer of its mortgage loans to own one share of its common stock (stated value of \$6.25) for each \$10,000, or fraction thereof, of the aggregate outstanding principal balance

of all mortgage loans held by FNMA which have been purchased by FNMA on or after January 26, 1976, and which are being serviced by such servicer for FNMA.

(c)(1) Not less than 30 workdays prior to the date on which FNMA proposes to change its determination that, with respect to home mortgages purchased by FNMA pursuant to commitments issued on or after February 7, 1977, and project mortgages purchased by FNMA pursuant to commitments issued on or after April 25, 1973, the sellers of such mortgage loans are not required to make any capital contributions to FNMA, or its determination to require each servicer of its mortgage loans to own one share of its common stock for each \$10,000, or fraction thereof of the aggregate outstanding principal balance of all mortgage loans held by FNMA which have been purchased pursuant to commitments issued by FNMA on or after January 26, 1976, and which are being serviced by such servicer, FNMA shall request approval of the Secretary for its proposed changed determination and submit to the Secretary together with its request for such approval a statement of the reasons for its proposed changed determination and such supporting data as it deems necessary.

(2) Within 30 workdays after the submission of a request by FNMA under subparagraph (1) of this paragraph, the Secretary shall approve, reject, or request additional information as to FNMA's proposed changed determination.

(d) In addition to authorizing FNMA to issue shares of stock to each seller of mortgages required to make capital contributions to FNMA, section 303(c) of the Charter Act authorizes FNMA to issue shares of its common stock in return for appropriate payments into capital or capital and surplus. Sections 309(h) and 311 of the Charter Act provide that the prior approval of the Secretary is required for all issuances of stock by FNMA.

(e)(1) Except as authorized by paragraph (a) or (b) of this section, the approval of the Secretary is required prior to the issuance by FNMA of any stock. Any request for such approval shall be submitted to the Secretary in writing not less than 30 workdays prior to the date on which FNMA proposes to offer any shares of common stock for sale, and such request shall contain the following information:

(i) The proposed date and duration of the offering period for such shares, the proposed issue price for each share, and the number of shares proposed to be offered, and

(ii) The proposed use of the proceeds from the sale of such shares.

(2) Within 30 workdays after the submission of a request by FNMA pursuant to subparagraph (1) of this paragraph, the Secretary shall approve, reject, or request additional information as to FNMA's proposed offering of shares of common stock.

§ 81.13 Dividends on common stock.

[Reserved]

§ 81.14 Issuance of debt instruments and obligational authority.

(a) Section 309(h) of the Charter Act provides that no stock, obligation, security, or other instrument shall be issued by FNMA without the prior approval of the Secretary. Section 311 of the Charter Act provides that all issuances of stock, obligations, securities, participations, or other instruments by FNMA shall be made only with the approval of the Secretary.

(b)(1) FNMA is authorized, upon the approval of the Secretary of the Treasury, to issue its debt instruments from time to time in such amounts as may be necessary to finance its mortgage purchases and its obligations incurred in the conduct of its secondary market operations. In the event at any time of a maturity or other event requiring the payment or redemption of any of FNMA's outstanding debt instruments, the corporation is hereby authorized, upon the approval of the Secretary of the Treasury, to issue its debt instruments at such time in an amount sufficient to provide the proceeds required to pay the principal of and the interest on the debt instruments so required to be paid or redeemed at such time.

(2) FNMA shall submit to the Secretary, at the same time the original is delivered to the Secretary of the Treasury, a copy of any written communication submitted by it to the Secretary of Treasury concerning the issuance of its debt instruments.

(c) Whenever FNMA determines that an increase in the amount of its obligational authority is necessary to the effective conduct of its secondary market operations, it shall submit to the Secretary a written request for the approval of increased obligational authority in such amount as it determines to be necessary. Each such request for approval shall set forth the amount of obligational authority available to FNMA at the time the request is made; the amount of authority that FNMA expects will accrue to it in the next 30 workdays by reason of the expiration of commitments to purchase mortgages, mortgage payments, and other factors; and the projected uses of the requested obligational authority, including the amount expected to be committed for conventional mortgages, or insured or guaranteed mortgages.

§ 81.15 Debt-to-capital ratio.

(a) Under section 304(b) of the Charter Act, FNMA's debt-to-capital ratio may not exceed 15 to 1, unless a greater maximum ratio is fixed by the Secretary. Effective December 8, 1969, the maximum debt-to-capital ratio for FNMA, was fixed at 25 to 1 by the Secretary.

(b) Except as provided in paragraph (f) of this section, FNMA shall not issue any debt instrument if such issuance would cause its debt-to-capital ratio to exceed 25 to 1.

(c) Any request by FNMA to change the maximum debt-to-capital ratio fixed in paragraph (b) of this section shall be submitted in writing to the Secretary, together with a justification for such change (including possible alternatives thereto) and supporting financial data.

(d) Within 30 workdays after the submission of a request by FNMA under paragraph (c) of this section, the Secretary shall approve, reject, or request additional information as to FNMA's proposed change in its maximum debt-to-capital ratio.

(e) The Secretary may decrease the maximum debt-to-capital ratio fixed in paragraph (a) of this section (but not below a ratio of 15 to 1), if she determines that such action (1) will not adversely affect the fiscal integrity of or limit the availability of credit to the corporation, and (2) will not impair FNMA's ability to discharge its obligations to the holders of FNMA's debt instruments and holders of subordinated debentures issued under section 304(e) of the Charter Act. The Secretary shall provide FNMA 60 workdays written notice of the effective date of any decrease in its maximum debt-to-capital ratio.

(f) In the event at any time of a reduction in the sum of the corporation's capital, capital surplus, general surplus, reserves, and undistributed earnings, the maximum debt-to-capital ratio is automatically increased to such ratio as may be necessary to include all obligations issued pursuant to section 304(b) of the Charter Act and outstanding at such time. In the event at any time of a maturity or other event requiring the payment or redemption of any of the obligations issued under section 304(e) of the Charter Act, the maximum debt-to-capital ratio is automatically increased to such ratio as may be necessary to permit the issuance of obligations under section 304(b) of the Charter Act in an amount sufficient to provide the proceeds required to pay the principal of and interest on the obligations outstanding under such section 304(e) and so required to be paid or redeemed at such time.

§ 81.16 Conventional mortgages in central cities.

(a) section 302(b)(2) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in section 301(a) of the Charter Act. Section 309(h) of the Charter Act provides that the Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and that she may require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation.

(b) Subject to the limitations and requirements contained in this section and those limitations or requirements expressed in prior written approvals (as required by section, 302(b)(2) of the Charter Act) by the Secretary of FNMA's entry into programs with respect to conventional home and unit mortgages under its secondary market operations, the approval of the Secretary is hereby given for FNMA, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional home and unit mortgages.

(c)(1) FNMA shall submit to the Secretary a written request for approval prior to undertaking, under its secondary market operations, any program with respect to conventional mortgages not approved by the Secretary under paragraph (b) of this section. A FNMA request for approval under this paragraph shall set forth the full content of the program with respect to conventional mortgages proposed, the purposes of the program, and the anticipated effect of the program on other programs being conducted by FNMA under its secondary market operations.

(2) Within 90 workdays from the date of the submission of a request by FNMA under paragraph (c)(1) of this section, the Secretary shall approve, reject, or request additional information as to the program with respect to conventional mortgages which FNMA proposes to undertake.

(d)(1) Beginning on March 1, 1979 and annually thereafter, whenever in the preceding calendar year the number of FNMA's purchases of conventional mortgages secured by properties located in central cities is less than 30 percent of the corporation's aggregate number of purchases of conventional mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conven-

tional mortgages secured by properties located in central cities.

(2) In establishing the annual goal with respect to FNMA purchases of conventional mortgages secured by properties located in central cities, the Secretary shall consider: (i) The total number of such purchases of conventional mortgages in central cities by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by properties located in central cities purchased by FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the ratio of the number of properties located in central cities of the type which may secure conventional mortgages purchased by FNMA to the total number of properties of that type in the United States, as determined by the Secretary; (iv) the condition of the housing market; and (v) general economic factors.

§ 81.17 Conventional mortgage purchases related to housing for low- and moderate-income families.

(a) Section 302(b)(2) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in section 301(a) of the Charter Act. Section 309(h) of the Charter Act authorizes the Secretary to require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation.

(b)(1) Beginning on March 1, 1979 and annually thereafter, whenever in the preceding calendar year FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families, as defined in paragraph (1) of § 81.2 is less than 30 percent of the corporation's aggregate number of purchases of such mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families.

(2) In establishing the annual goal with respect to FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families the Secretary shall consider: (i) The total number of such purchases of conventional mortgages by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by housing for low- and moderate-income families purchased by

FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the relationship of the average sales price of conventionally financed homes in the various sections of the United States to the median income of families in these sections of the United States; (iv) the condition of the housing market; and (v) general economic factors.

(c)(1) In any year for which the Secretary has established and published an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families, the Secretary shall, whenever she determines that FNMA's regular reports covering its secondary market operations for the first two quarters of that year reveal that FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families will fall below the annual goal established pursuant to paragraph (b)(1) of this section, require FNMA to provide, within 30 workdays, after her determination is made and communicated to FNMA, a plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or a statement of reasons why the annual goal should be altered or suspended.

(2) Within 15 days after receipt of the FNMA plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or FNMA's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FNMA plan of special actions proposed, or approve or reject its proposed alteration or suspension of the annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FNMA to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, the Secretary may: (i) Require FNMA to conduct a separate auction, or auctions, of commitments to purchase conventional mortgages secured by housing for low- and moderate-income families or (ii) require FNMA to hold open an offer to purchase newly originated conventional mortgages secured by housing for low- and moderate-income families, or (iii) condition the approval of any increase in obligational authority upon use of a designated amount of increased obligational authority for the purchase of conventional mortgages secured by housing for low- and moderate-income

families. FNMA shall not be required to auction commitments to purchase conventional mortgages, or to purchase conventional mortgages, which: (a) Fail to meet FNMA's underwriting standards applicable to such mortgages, or (b) which are not deemed by the corporation to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors, or (c) which cannot be purchased within the range of market prices for the particular class of mortgages involved, as determined by the corporation.

(d) If in any calendar year the programs authorized to be conducted under paragraph (c)(2) of this section are implemented by FNMA and FNMA is nevertheless unable to accomplish the purchase of conventional mortgages secured by housing for low- and moderate-income families in such numbers as will enable it to meet the annual goal announced by the Secretary pursuant to paragraph (b)(1) of this section, the requirements of paragraph (b)(1) of this section shall be deemed satisfied for that calendar year.

§ 81.18 Home Mortgage underwriting guidelines.

(a) This section is promulgated pursuant to the Secretary's general authority to issue rules and regulations, as set forth in section 7(d) of the Department of Housing and Urban Development Act (79 Stat. 667; 42 U.S.C. 3531 et seq.), and to implement section 808(e)(5) of the Civil Rights Act of 1968.

(b) On or before January 1, 1979 FNMA shall submit to the Secretary for review and comment revised home mortgage underwriting guidelines which make clear that FNMA will not decline to purchase any conventional mortgage, or sell a commitment to purchase any such mortgage, or discriminate in the fixing of the amount, interest rate, duration, or other terms or conditions of any such mortgage: (1) Because of the race, color, religion, sex, marital status, or national origin, (i) of the borrower, (ii) of any persons associated with the borrower in connection with such mortgage or the purposes thereof, or (iii) of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings securing such mortgage; or (2) because of (i) the racial, ethnic or religious composition of the area in which the property which would secure the mortgage is located, or (ii) the age of the area or the housing stock in such area.

(c)(1) Not less than 30 workdays prior to the adoption of any proposed revision to that portion of its underwriting guidelines which contains the

material specified in the nondiscrimination standards set forth in paragraph (b) of this section, FNMA shall submit such proposed revision to the Secretary for review and comment.

(2) Within 10 workdays after receipt of any proposed revision of FNMA's underwriting guidelines submitted for review and comment pursuant to the requirements of subparagraph (1) of this paragraph, the Secretary shall inform FNMA of any modification required to be made to the proposed revision to assure that FNMA's underwriting guidelines remain consistent with the nondiscrimination standards set forth in paragraph (b) of this section.

§ 81.19 Equal employment opportunity.

(a) This section is promulgated pursuant to the Secretary's general authority to issue rules and regulations, as set forth in section 7(d) of the Department of Housing and Urban Development Act.

(b) FNMA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. FNMA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following:

- (1) Employment, upgrading, demotion or transfer;
- (2) Recruitment or recruitment advertising;
- (3) Layoff or termination;
- (4) Rates of pay or other forms of compensation; and
- (5) Selection for training programs.

(c) FNMA shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of paragraph (b) of this section.

(d) FNMA shall, in all solicitations or advertisements for employees placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) FNMA shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of FNMA's obligations under this section, and shall request that such union or representative post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) FNMA shall comply with all provisions of Executive Order 11246, and the applicable rules, regulations, and

orders of the Secretary of Labor promulgated thereunder.

(g) FNMA shall furnish all information and reports required by Executive Order 11246, and by the applicable rules, regulations, and orders of the Secretary of Labor promulgated thereunder, and shall permit access to its books, records, and accounts by the Secretary and by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) Unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, FNMA shall include the provisions of paragraphs (b) through (g) of this section in each of its contracts or purchase orders so that such provisions will be binding upon each contractor or vendor. FNMA will take such action with respect to any contract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event FNMA becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Secretary, FNMA may request the United States to enter into such litigation to protect the interest of the United States.

Subpart C—Reporting Requirements

§ 81.21 General.

Section 309(h) of the Charter Act provides that the Secretary may require FNMA to make reports on its activities as the Secretary deems advisable. This subpart contains a codification of the requirements of the Secretary as to the information on FNMA's activities to be provided in reports submitted to the Secretary.

§ 81.22 Business Activities Report.

(a) On or before October 15, 1978 for the calendar year ending December 31, 1977 and not later than 60 workdays following the end of such calendar year thereafter (unless otherwise indicated), a report on the business activities of FNMA as specified in Appendix B to this section (and as may be amended from time to time) shall be submitted to the Secretary.

(b) The report required to be submitted to the Secretary under the provisions of this section shall be signed by a principal officer of FNMA. In addition, one copy of the report shall be sent to the Assistant Secretary-FHA Commissioner and one copy shall be sent to the General Counsel, HUD.

§ 81.23 Regular reports.

(a) FNMA shall submit to the Secretary on a regular basis such reports on the activities and operations of FNMA as are prescribed in this paragraph.

Each such report shall contain the information required for the activity or operation which is the subject of the report, as specified in Appendix C to this section (and as it may be amended from time to time).

(1) A report on each auction of commitments to purchase loans shall be submitted within 5 workdays after the date of each such auction;

(2) A report on stand-by commitments issued during each month shall be submitted within 10 workdays after the end of each month;

(3) A report on investors purchasing FNMA securities issued during each calendar quarter shall be submitted within 15 workdays after the end of each such calendar quarter;

(4) A statement of the composition of FNMA's loan portfolio as of the end of each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(5) A report on the characteristics of home loans purchased during each calendar quarter shall be submitted within 30 working days after the end of each such calendar quarter;

(6) A report on average yields of mortgage loans purchased by FNMA during each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(7) A report on the lender groups from whom mortgage loans were purchased and to whom loans were sold during each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(8) A report on the composition of revenues received, expenditures made, and net income earned by FNMA during each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(9) A report on the distribution of the holdings of FNMA common stock as of the end of each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter.

(b) Each report required to be submitted to the Secretary under the provisions of this section shall be signed by a principal officer of FNMA. In addition, one copy of each such report shall be sent to the Assistant Secretary-FHA Commissioner, and one copy shall be sent to the General Counsel, HUD.

§ 81.24 Estimates of amount of purchase commitments at FNMA auctions.

Prior to the close of business on the last business day prior to the day on which FNMA is scheduled to hold commitment auctions, FNMA shall submit to the Secretary in a sealed envelope an estimate of the dollar amounts of purchase commitments it expects to issue in its FHA-VA mortgage auction and in its conventional

mortgage auction. The Secretary shall place the sealed envelope submitted by FNMA in a safe and retain it there unopened until the first business day following the day on which the commitment auctions are held.

§ 81.25 Other information.

In addition to the regular reports required by the other provisions of this subpart, FNMA shall furnish to the Secretary such information concerning its activities as the Secretary may request in writing from time to time.

Subpart D—Examinations and Audits

§ 81.31 General.

Section 309(h) of the Charter Act provides that the Secretary may examine and audit the books and financial transactions of FNMA. This subpart provides for such examinations and audits.

§ 81.32 Examination of books, records, and documents.

(a) FNMA shall, at all times during its regular business hours and at its several offices, make its books and financial transactions, and all records and documents necessary to a complete examination and audit of such books and financial transactions, available for examination by duly authorized representatives of the Secretary.

(b) FNMA shall maintain a stenographic record of the minutes of each meeting of the Board of Directors of FNMA available at its headquarters for examination by duly authorized representatives of the Secretary. Any particular matter included in such stenographic minutes which FNMA determines contains information the availability of which outside the corporation might financially injure it or adversely affect the conduct of its business will be available only for examination (without copying) by the Secretary or her designated representative at the headquarters of FNMA.

§ 81.33 Annual audit of FNMA.

Within 120 workdays following the submission by FNMA's independent auditors of their report on FNMA's activities for any calendar year, the Secretary may, through duly authorized representatives, conduct an audit of FNMA's books and financial transactions for such calendar year, including such tests of FNMA's accounting records and such other auditing procedures as such representatives may consider necessary in the circumstances. The Secretary may accept a copy of the report of FNMA's independent auditors for a particular calendar year, if voluntarily submitted to her by FNMA, in full or partial satisfaction of the Secretarial audit authorized by

this section and limit her audit to any areas not covered by such report.

§ 81.34 Special audits.

The Secretary may at any time, through duly authorized representatives, conduct a special audit of such books and financial transactions of FNMA as the Secretary shall specify in writing.

Subpart E—Book-entry Procedures for FNMA Securities

§ 81.41 Definitions.

- As used in this subpart, the term—
- (a) "Reserve bank" means a Federal Reserve bank and its branches acting as Fiscal Agent of FNMA and, when indicated, acting in its individual capacity or as Fiscal Agent of the United States.
- (b) "FNMA security" means any obligation of FNMA (except short-term discount notes and obligations convertible into shares of common stock) issued under 12 U.S.C 1719 (b), (d), and (e) in the form of a definitive FNMA security or a book-entry FNMA security.
- (c) "Definitive FNMA security" means a FNMA security in engraved or printed form.
- (d) "Book-entry FNMA security" means a FNMA security in the form of an entry made as prescribed in this part on the records of a Reserve bank.
- (e) "Pledge" includes a pledge of, or any other security interest in, FNMA securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.
- (f) "Date of call" is, with respect to FNMA securities issued under 12 U.S.C. 1719 (d) and (e), the date fixed in the authorizing resolution of the Board of Directors of FNMA on which the obligor will make payment of the security before maturity in accordance with its terms, and, with respect to FNMA securities issued under 12 U.S.C. 1719(b), the date fixed in the offering notice issued by FNMA.
- (g) "Member bank" means any National bank, State bank, or bank or trust company which is a member of a Reserve bank.

§ 81.42 Authority of Reserve Bank.

- Each Reserve bank is hereby authorized, in accordance with the provisions of this part, to:
- (a) Issue book-entry FNMA securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date;
- (b) Effect conversions between book-entry FNMA securities and definitive FNMA securities;
- (c) Otherwise service and maintain book-entry FNMA securities; and

(d) Issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred, and the date of the transaction.

§ 81.43 Scope and effect of book-entry procedure.

- (a) A Reserve bank as Fiscal Agent of FNMA may apply the book-entry procedure provided for in this part to any FNMA securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:
 - (1) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it;
 - (2) By a member bank for its sole account;
 - (3) By a member bank held for the account of its customers;
 - (4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or
 - (5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposits under this paragraph. Whenever the book-entry procedure is applied to such FNMA securities, the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligations as depositary with respect to such FNMA securities.

(b) A Reserve bank as Fiscal Agent of the corporation may apply the book-entry procedure to FNMA securities deposited as collateral pledged to the United States under Treasury Department Circulars Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other FNMA securities deposited with a Reserve bank, as Fiscal Agent of the United States.

(c) Any person having an interest in FNMA securities which are deposited with a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) for any purpose

shall be deemed to have consented to their conversion to book-entry FNMA securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 81.44 Transfer or pledge.

(a) A transfer or pledge of book-entry FNMA securities to a Reserve bank (in its individual capacity or as Fiscal Agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under §§ 81.41 through 81.48 is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

- (1) Have the effect of a delivery in bearer form of definitive FNMA securities;
- (2) Have the effect of a taking of delivery by the transferee or pledgee;
- (3) Constitute the transferee or pledgee a holder; and
- (4) If a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry FNMA securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable FNMA securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as Fiscal Agent of the United States) in a book-entry account under §§ 81.41 through 81.48, including securities in book-entry form under § 81.43(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the FNMA securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry FNMA securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry FNMA securities either in its individual capacity or as Fiscal Agent of the United States is not a bailee for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfer

thereof under this paragraph. Where transferable FNMA securities are recorded on the books of a depository (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business FNMA securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) or account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account, hereunder, such depository shall, for purposes of perfecting a pledge of such securities or affecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry FNMA securities or any interest therein.

(d) A Reserve bank shall, upon receipt of appropriate instructions, convert book-entry FNMA securities and deliver them in accordance with such instructions; no such conversion shall affect existing interest in such FNMA securities.

(e) A transfer of book-entry FNMA securities within a Reserve bank shall be made, in accordance with procedures established by the Reserve bank not inconsistent with this part. The transfer of book-entry FNMA securities by a Reserve bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 81.45 Withdrawal of FNMA securities.

(a) For all book-entry FNMA securities issued prior to March 10, 1978:

(1) A depositor of book-entry FNMA securities may withdraw them from a Reserve bank by requesting delivery of like definitive FNMA securities to itself or on its order to a transferee.

(2) FNMA securities which are actually to be delivered upon withdrawal may be issued either in registered or in bearer form.

(b) Notwithstanding any other provision in this subpart, no definitive securities will be issued or available for any debenture issued on or after March 10, 1978. Debentures issued on or after March 10, 1978, will be issued in book-entry form only.

§ 81.46 Delivery of FNMA securities.

A Reserve bank which has received FNMA securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. Customers of a member bank or other depository (other than a Reserve bank) may obtain FNMA securities only by causing the depositor of the Reserve bank to order the withdrawal thereof from the Reserve bank under the conditions set forth in paragraph (a) of § 81.45.

§ 81.47 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry FNMA securities of registered FNMA securities held by a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) on the effective date of this part for any purpose specified in § 81.43(a). Registered FNMA securities deposited thereafter with a Reserve bank for any purpose specified in § 81.43 shall be assigned for conversion to book-entry FNMA securities. The assignment, which shall be executed in accordance with the provisions of Subpart F of 31 CFR Part 306, so far as applicable, shall be to "Federal Reserve Bank of _____, as Fiscal Agent of the Federal National Mortgage Association, for conversion to book-entry FNMA securities."

§ 81.48 Servicing book-entry FNMA securities; payment of interest; payment at maturity or upon call.

Interest becoming due on book-entry FNMA securities shall be charged to the Federal National Mortgage Association's account at the New York Federal Reserve Bank on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged to the Federal National Mortgage Association's account at the New York Federal Reserve Bank on the date of maturity, call or advance refunding, and the redemption proceeds, principal and interest, shall dispose of in accordance with the depositor's instructions.

§ 81.49 Treasury Department regulations; applicability to FNMA.

The provisions of Treasury Department Circular No. 300, 31 CFR part 306 (other than Subpart O), as amended from time to time, shall apply, insofar as appropriate, to obligations of FNMA for which a Reserve bank shall act as Fiscal Agent of FNMA and to the extent that such provisions are consistent with agreements between FNMA and the Reserve banks acting as Fiscal Agents of FNMA. Definitions and terms used in Treasury Department Circular No. 300 should read as though modified to effectuate the application of the regulations to FNMA.

Issued at Washington, D.C., August 9, 1978.

PATRICIA ROBERTS HARRIS,
Secretary, Department of
Housing and Urban Development.

FOOTNOTES

1. Title III of the National Housing Act; 12 U.S.C. 1716 et seq.

2. 24 CFR Part 81.

3. 43 FR 7659.

4. Executive Order No. 6443 A (November 17, 1933).

5. The Associations were designed to "provide an effective means of attracting funds from financial centers in which there is a surplus of capital for investment to areas in which local savings are insufficient to meet the requirements of home financing, and in which the local cost of such financing is therefore unduly high. In this manner the advantages of low-cost, long-term financing can be spread to communities throughout the country." Unpublished Memorandum of the National Emergency Council dated May 14, 1934 at page 4.

6. Unpublished Memorandum of the National Emergency Council dated April 17, 1934.

7. Pub. L. 479 (June 27, 1934), 48 Stat. 1252.

8. See Hearings on H.R. 8520 Before the House Committee on Banking and Currency, 75th Cong., 2d Sess. at 36 (1937) (Testimony of Jesse Jones, Chairman, Board of Directors of RFC).

9. Pub. L. 1, January 31, 1935, 49 Stat. 1. Section 5(c) authorized the RFC, with the approval of the President, to subscribe for, or make loans upon the non-assessable stock of any National Mortgage Association organized under Title III of the National Housing Act, and of any mortgage loan company or other financial institution principally engaged in making loans secured by real estate mortgages. Between September 1935 and 1948 (when it was dissolved), the RFC Mortgage Co., purchased 63,424 FHA-insured mortgages in the aggregate amount of \$252.2 million. *Background and History*, published by FNMA, 1975 at 3.

10. Pub. L. 424 (February 3, 1938), 52 Stat. 16.

11. The President's message requesting the legislation stated that in order that one or more such associations may be promptly organized, "I shall ask the Reconstruction Finance Corporation to make available, out of the funds already allocated to the RFC Mortgage Company, \$50,000,000 for capital purposes. Under the amendments here pro-

posed, this would provide the basis for \$1,000,000,000 of private funds obtainable through the sale of National Mortgage Association debentures." Message from the President on H.R. 8730, H. Doc. No. 406, 75th Cong., 3d. Sess. (November 29, 1937) at 4-5.

12. The Association began operations with initial capital of \$10 million and paid in surplus of \$1 million provided by the RFC which maintained supervisory control over the Association. *Background and History*, supra n. 9, at 3.

13. Although the FNMA portfolio was quickly inundated with these below-market rate GI mortgages, FNMA continued to defray operating expenses and prosper on its earnings from all its activities. In the period from 1938 to 1953, FNMA paid the Treasury interest and dividends aggregating \$91 million, and in addition, accumulated a surplus of \$42.5 million. *Recommendations on Government Housing Policies and Programs, A Report of the President's Advisory Committee on Housing Policies and Programs*, December 1953, p. 362. (Hereinafter *President's Advisory Committee Report*.)

14. See H. Rep. No. 313, 76th Cong. 1st Sess. (March 25, 1939) at 3: "The Committee feels that it would be a serious mistake to leave the act in such a state that the Administrator would have to charter these Associations indiscriminately and without regard to the need for them with the danger that there may be outstanding a large number of issues of debentures which would not be properly supported in the market, and would lead to a repetition of our experience with the joint-stock land banks."

15. Pub. L. 111 (June 3, 1939), 53 Stat. 808.

16. Pub. L. 864 (July 1, 1948), 62 Stat. 1206.

17. 1950 Reorganization Plan No. 22, 15 FR 4365, 64 Stat. 1277, effective July 9, 1950, in operation September 7, 1950.

18. The secondary market facility proposals advocated by these segments of the housing industry were among the programs that were considered by the President's Advisory Committee on Government Housing Policies and Programs during the latter part of 1953. See *President's Advisory Committee Report*, supra n. 13.

19. The viewpoint of traditional mortgage lenders with respect to continuation of FNMA was best expressed by Charles A. Wellman, Executive Vice President of the Glendale Federal Savings and Loan Association: "The postwar FNMA purchased loans of a type and at a price higher than the private market offered; hence, it became loaded with what the President termed 'frozen investments'. The reason it could purchase at terms and conditions other than those offered by the private market was because its operations were animated by motives other than the pecuniary incentives which dominated the investment decisions of the private secondary market. It raised its investable funds under the protection of the Treasury at rates below the rates private investors paid for their funds. A successful Government-sponsored mortgage facility must therefore be reasonably held to the same profit and loss bookkeeping as is a large insurance company or any other purchaser of mortgages. This means there can be no subsidy, direct or indirect, by the Government to such a corporation. Such a subsidy can only operate to weaken, if not to completely destroy, the pecuniary motives which must dominate the facility's oper-

ations and, consequently, compel the facility to operate as a primary lender." (Emphasis added). Hearings on H.R. 7839 before the House Committee on Banking and Currency, 83rd Cong. 2d Sess. 657 (1954) (Hereinafter 1954 House Hearings).

20. *President's Advisory Committee Report*, supra n. 13, at 11-12, 341-366.

21. Conf. Rep. No. 2271 on H.R. 7839, 83rd Cong. 2d Sess. 81 (1954). These three functions are set forth in section 301 of the Charter Act:

"(a) Provide supplementary assistance to the secondary market for home mortgages by providing a degree of liquidity for mortgage investments, thereby improving the distribution of investment capital available for home mortgage financing;

"(b) Provide special assistance (when, and to the extent that, the President has determined that it is in the public interest) for the financing of (1) selected types of home mortgages (pending the establishment of their marketability) originated under special housing programs designed to provide housing of acceptable standards at full economic costs for segments of the national population which are unable to obtain adequate housing under established home financing programs, and (2) home mortgages generally as a means of retarding or stopping a decline in mortgage lending and home building activities which threatens materially the stability of a high level national economy; and

"(c) Manage and liquidate the existing mortgage portfolio of the Federal National Mortgage Association in an orderly manner, with a minimum of adverse effect upon the home mortgage market and minimum loss to the Federal Government." (*Id.* at 25.)

The language of the statute as well as the legislative history makes clear that FNMA's secondary market operations were intended to "provide supplementary assistance" by tapping non-traditional sources of funds through the issuance of its debt instruments which would be more liquid and entail less risk than investments in individual mortgages. These funds would then be transferred to housing purposes by FNMA's use of them to purchase mortgages. "Improving the distribution of investment capital available for home mortgage financing" would be accomplished by FNMA's willingness to purchase "sound" mortgages in areas where traditional mortgage lenders, for any number of reasons, were not functioning effectively. The Administration's spokesman testifying on behalf of the 1954 Charter Act, Mr. Albert Cole, then Housing and Home Finance Administrator, explained the concept during a colloquy with Congressman McDonough:

"Mr. McDonough. * * * Do I understand you to say that Fannie May should purchase only those marketable mortgages that the banks and other financial institutions will not purchase?

"Mr. Cole. No, not on the basis of soundness, but on the basis of not being willing to go into the areas, let us say, as one reason. You see, a bank located at remote—[Emphasis added.]

"Mr. McDonough. In other words, they are mortgages in which the normal financial institutions do not want to invest, although they are sound mortgages, in your opinion? [Emphasis added.]

"Mr. Cole. The best evidence of that is the record of practically no loss which FNMA or the FHA has had on these mortgages." (1954 House Hearings, supra n. 19, at 107-108.)

FNMA as an institution survived in the 1954 legislation only because FNMA supporters successfully argued that there were legitimate governmental functions which could be exercised only through its auspices. See, "Minority Report of the President's Advisory Committee Report," supra n. 13, at 359.

22. H. Rept. No. 1429, Part 2, 83rd Cong., 2d Sess., 3 (1954). The transfer of FNMA to private ownership was to take place after the gradual replacement of public funds by private capital. (Approximately \$70 million of preferred stock owned by the Secretary of the Treasury was to be retired by capital to be contributed for this purpose by users of FNMA's secondary market facilities after enactment of the Charter Act). As soon as the Treasury stock was retired, the Housing and Home Finance Administrator was directed to submit recommendations for legislation to transfer the assets and liabilities, and the management and control, of the FNMA secondary market operations to the private owners of its capital stock. In connection with its secondary market operations, FNMA was authorized to issue non-guaranteed obligations at a debt-equity ratio of 10 to 1, with a \$1 billion Treasury "backstop".

23. National Housing Act, section 304(a)(1); 12 U.S.C. 1719(a)(1). The secondary market operation FNMA was authorized to conduct by the charter Act of 1954 was expected to be an enterprise of modest dimensions. A 10-year projection of expected activity, prepared by FNMA at the time the Charter Act was being considered by Congress, indicated that by the 10th year of operations FNMA would have a total mortgage portfolio (under its secondary market operations) of \$1 billion, and that this portfolio would be carried by the issuance of \$900 million in debentures and the availability of \$100 million of equity capital. The projection showed annual purchases of mortgages in a \$400-450 million range and annual sales of mortgages in a \$300-330 million range. Hearings on S. 2938, before the Senate Committee on Banking and Currency, 83rd Cong., 2d Sess., 140-143 (1954).

24. These disincentives were estimated to be the equivalent of a discount of 6.5 to 7 percent. 1954 House Hearings, supra n. 19, at 606.

25. Section 304(d) of the Housing Act of 1954, Pub. L. 560, August 2, 1954, 68 Stat. 590, 616. The purpose of this provision is discussed in Hearings on S. 2889 and S. 2949, 83d Cong., 2d Sess., 939 (1954).

26. Sections 204(d), 203 and 202 of the Housing Act of 1956, Pub. L. 1020, August 7, 1956, 70 Stat. 1091, 1096. However, Congress refused to repeal the provision of the Charter Act limiting the maximum price of housing eligible for purchase by FNMA in the conduct of its secondary market operations, stating that FNMA's activities "should be directed toward the support of homes priced to suit the needs of the great bulk of American families concentrated in the middle and lower income ranges." H. Rept. No. 2363, 85th Cong., 2d Sess., 22 (1956).

27. FNMA was a significant and consistent seller of mortgages between 1961-1963. In that period FNMA sold more than \$1.5 bil-

lion in mortgages; these sales combined with payments made on mortgages it retained resulted in a decrease in the FNMA portfolio, despite moderate purchases, from \$2.9 billion at the end of 1960 to \$2 billion at the end of 1963. The failure of FNMA to be a net seller of mortgages, even during periods of credit ease, since 1968 has embroiled the corporation in controversy with traditional mortgage lenders and Congressional committees which exercise oversight over housing programs. "Background and History," *supra* n. 9, at 8.

28. Tables found at pages 51 and 52 of a FNMA publication, "FNMA, Background and History, 1970," demonstrate the enormous growth of FNMA's mortgage portfolio during this period.

29. For an excellent discussion of the function of a secondary market facility under the Charter Act of 1954 See "FNMA, Background and History," *supra* n. 9, at 6-7.

30. Independent Offices and Department of Housing and Urban Development Appropriations for 1970, Hearings Before a Subcommittee of the House Committee on Appropriations, 91st Cong., 1st Sess., 999 (1969).

31. See "Report of the President's Commission on Budget Concepts," 54, 59-60 (1967); Hearings on Housing and Urban Development Legislation of 1968 before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 2d Sess., 1419 (1968).

32. Pub. L. 90-448, August 1, 1968, 82 Stat. 536, section 303 of the amended Charter Act provided for the rapid retirement of the preferred stock held by the Secretary of the Treasury. On September 30, 1968, FNMA retired all of this preferred stock. FNMA Annual Report 1968, note 5, page 10. FNMA's common stock was changed from nonvoting, \$100 par value, to voting, no par value, conferring (after a 2-to-5-year transition period) the right to elect 10 members of the 15 member board of directors. Sections 303 and 308(b) of the Charter Act. Section 810(b) of the 1968 Amendments provided that during the transition period the board of directors would consist of nine persons, all of whom were appointed by the Secretary of HUD until the first shareholders' meeting was held, and a majority of whom were appointed by the Secretary of HUD until the end of the transitional period. Since the end of the transitional period, the five directors' positions which are not subject to shareholder control have been filled annually by appointments made by the President.

33. S. Rept. No. 1123, 90th Cong., 2d Sess., 81 (1968).

34. *Id.* at 82.

35. Treasury held preferred stock worth \$163,820,304.97 on August 31, 1968. "Background and History," *supra* n. 9, at 21. FNMA held a portfolio of 586,634 mortgages worth \$7,170,313,000 at the end of 1968. *Id.* at 52.

36. H. Rept. No. 1585, 90th Cong., 2d Sess., 70 (1968). Similar language appears in the Senate Report, S. Rept. No. 1123, *supra*, n. 33, at 81.

37. Section 311 of the Charter Act; 12 U.S.C. 1723c.

38. The "1976 Annual Report of FNMA" recognizes this fact at page 9: "These factors give FNMA access to a market for its debt instruments that is broader than that available to other corporations. This makes

it possible for FNMA to borrow at costs lower than other corporate borrowers."

39. Hearings on Proposed Housing Legislation for 1968 Before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 2d Sess., 1420 (1968). When some witnesses expressed reservations that private ownership would change the public interest policies of FNMA, Senator Sparkman wrote to then Secretary Weaver asking him whether these concerns were justified. Secretary Weaver assured Senator Sparkman that changes in the functions of the secondary market operations would be "relatively few and of a minor nature."

40. S. Rept. No. 1123, *supra*, n. 33, at 82.

41. H. Rept. No. 1585, *supra*, n. 36, at 69; S. Rept. No. 1123, *supra*, n. 33, at 79.

42. S. Rept. No. 1123, *supra*, n. 33, at 82.

43. *Id.*

44. See sections 303(c) and 309(h) of the Charter Act; 12 U.S.C. 1718(c), 1723a(h).

45. S. Rept. No. 1123, *supra*, n. 33, at 82.

46. Opinion of the Attorney General of the United States, June 3, 1977. The subject of the opinion was the constitutionality of S. 1397, a bill to enlarge the board of directors of FNMA.

47. In calendar year 1977, FNMA issued \$10,845,000,000 in commitments to purchase home mortgages; \$6,240,000,000 were for commitments to purchase Government-insured or guaranteed mortgages, and \$4,605,000,000 were for commitments to purchase conventional mortgages. FNMA actually purchased home mortgages in the amount of \$4,650,000,000; \$2,284,000,000 were for purchase of Government-insured or guaranteed mortgages and \$2,366,000,000 were for purchases of conventional mortgages.

During calendar year 1977, FNMA issued total debt in the amount of \$8,840,000,000. During the 12-month period ending June 30, 1978, FNMA issued total debt in excess of \$13 billion.

As of June 30, 1978, FNMA had general and secured obligations outstanding in amounts exceeding \$35 billion, and the size of its mortgage and loan portfolio exceeded \$38 billion.

48. Hearings on the Secondary Operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation Before the Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. (1976) (Hereinafter cited as Hearings on FNMA); Hearings on S. 1397 Before the Senate Committee on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. (1977) (Hereinafter cited as Hearings on S. 1397).

49. Memorandum Regarding the Policies and Performance of the Federal National Mortgage Association, 95th Cong., 1st Sess. (1977) (Hereinafter cited as Committee Memorandum).

50. Hearings on FNMA, *supra*, n. 48, at 62, 76; Hearings on S. 1397, *supra*, n. 49, at 69, 76 and 78.

51. Hearings on FNMA, *supra*, n. 48, at 280, 295, 298, 415-416, 428, 446, 529-530; Hearings on S. 1397, *supra*, n. 48, at 81.

52. Hearings on FNMA, *supra*, n. 48, at 295.

53. Committee Memorandum, *supra*, n. 49, at 33-34.

54. Hearings on FNMA, *supra*, n. 48, at 75; Committee Memorandum, *supra*, n. 49, at 2. In 1975, Congress found a "growing disparity between the availability of mortgage

credit for new and for existing housing—particularly existing housing in neighborhoods that happen to be urban, racially integrated, built prior to World War II, or all three."

"The result of this disparity, ironically, is to discourage revitalization of cities just at a time when the energy shortage, the increase in housing costs, and a shift in values is leading many Americans to reconsider older, established communities as attractive places to live." S. Rept. No. 94-187, 94th Cong., 1st Sess., at 3 (1975).

55. Hearings on FNMA, *supra*, n. 48, at 34, Hearings on S. 1397, *supra*, n. 48, at 44, 55; Committee Memorandum, *supra*, n. 49, at 8.

56. Hearings on FNMA, *supra*, n. 48, at 255, 259-261, 268-271; Hearings on S. 1397, *supra*, n. 48, at 6, 60; Committee Memorandum, *supra*, n. 49, at 2, 8-22.

57. Hearings on FNMA, *supra*, n. 48, at 415; Hearings on S. 1397, *supra*, n. 48, at 137-138, 200.

58. Hearings on S. 1397, *supra*, n. 48, at 65, 211.

59. Hearings on S. 1397, *supra*, n. 48, at 45, 51-53, 59, and 78-79; Committee Memorandum, *supra*, n. 50, at 25-26.

60. Hearings on FNMA, *supra*, n. 48, at 259; Witnesses complaining of effect of this attitude, Hearings on S. 1397, *supra*, n. 48, at 65, 221.

61. Hearings on FNMA, *supra*, n. 48, at 78, 109, 121, 773.

62. *Id.* at 120-121; Committee Memorandum, *supra*, n. 49, at 41.

63. A number of witnesses at the hearings questioned the propriety of FNMA's policy of constantly increasing the size of its mortgage portfolio. Hearings on FNMA, *supra*, n. 48, at 74-78, 399-400. In addition, they pointed out that a failure to balance mortgage purchases with sales, when this was feasible, was inconsistent with the Charter Act. See comments of Mortgage Bankers Association, *Id.* at 171.

Profit motives underlie FNMA's desire to maintain a large portfolio. The income generated from the spread between earnings on its portfolio and its costs of borrowing is FNMA's largest source of income. The Library of Congress Congressional Research Service, "The Role of the Federal National Mortgage Association in the Secondary Mortgage Market," *Id.* at 735. The substantial increases in FNMA's earnings have been caused primarily by a continually growing mortgage portfolio. *Id.* at 737. Portfolio earnings, of course, are a function of the positive spread between portfolio income and borrowing costs and the size of the portfolio. In 1977, this spread was 1.3 percent (1977 average portfolio return was 8.2 percent and 1977 average borrowing cost was 6.9 percent.) On a 1977 year-end portfolio of \$33,187,560, FNMA therefore obtained a gross return in excess of \$400 million.

64. Hearings on FNMA, *supra*, n. 49, at 3.

65. HUD has not conducted an audit of FNMA during the last 10 years. And although the Charter Act originally authorized GAO to conduct audits of FNMA, the provision which granted GAO that authority was repealed in 1974. See section 810(c) of the Charter Act, as enacted, repealed by Housing and Community Development Act of 1974 (Pub. L. 93-383, 88 Stat. 728.)

66. See section 808(e)(5) of the Civil Rights Act of 1968; 18 U.S.C. 245 et seq.

67. There is a clear nexus between the goal in § 81.16 which is designed to produce more FNMA supported mortgage activity in central cities and the goal in § 81.17 which is designed to assure that a percentage of FNMA's borrowings are used to finance housing for low- and moderate-income families. The maximum mortgage limits for FNMA's conventional mortgage purchase program, and the disproportionately large proportion of low- and moderate-income housing located in central city areas, assure that a central city conventional mortgage purchase program will be related to the goal of providing adequate housing for low- and moderate-income families. The legislative history of the Charter Act establishes the connection between housing for low- and moderate-income families and FNMA's support of sound mortgages in central cities. (See exchange of correspondence between Senator Sparkman and Secretary Weaver cited in the text.)

APPENDIX A—CENTRAL CITIES

- ALABAMA**
 - Anniston
 - Birmingham
 - Florence
 - Gadsden
 - Huntsville
 - Mobile
 - Montgomery
 - Tuscaloosa
- ALASKA**
 - Anchorage
- ARIZONA**
 - Phoenix
 - Tucson
- ARKANSAS**
 - Fayetteville
 - Fort Smith
 - Little Rock
 - North Little Rock
 - Pine Bluff
 - Springdale
 - Texarkana
- CALIFORNIA**
 - Anaheim
 - Bakersfield
 - Fairfield
 - Fresno
 - Garden Grove
 - Lompoc
 - Long Beach
 - Los Angeles
 - Modesto
 - Monterey
 - Napa
 - Oakland
 - Ontario
 - Oxnard
 - Riverside
 - Sacramento
 - Salinas
 - San Bernardino
 - San Diego
 - San Francisco
 - San Jose
 - Santa Ana
 - Santa Barbara
 - Santa Cruz
 - Santa Maria
 - Santa Rosa
 - Seaside
 - Simi Valley
 - Stockton
 - Vallejo
 - Ventura (San Buenaventura)
- COLORADO**
 - Boulder
 - Colorado Springs
 - Denver
 - Fort Collins
 - Greeley
 - Pueblo
- CONNECTICUT**
 - Bridgeport
 - Bristol
 - Danbury
 - Hartford
 - Meriden
 - New Britain
 - New Haven
 - New London
 - Norwalk
 - Norwich
 - Stamford
 - Waterbury
 - West Haven
- DELAWARE**
 - Wilmington

- DISTRICT OF COLUMBIA**
 - Washington
- FLORIDA**
 - Boca Raton
 - Bradenton
 - Cocoa
 - Daytona Beach
 - Fort Lauderdale
 - Fort Myers
 - Gainesville
 - Hollywood
 - Jacksonville
 - Lakeland
 - Melbourne
 - Miami
 - Orlando
 - Panama City
 - Pensacola
 - St. Petersburg
 - Sarasota
 - Tallahassee
 - Tampa
 - Titusville
 - West Palm Beach
 - Winter Haven
- GEORGIA**
 - Augusta
 - Albany
 - Atlanta
 - Columbus
 - Macon
 - Savannah
- HAWAII**
 - Honolulu
- IDAHO**
 - Boise City (Boise)
- ILLINOIS**
 - Bloomington
 - Champaign
 - Chicago
 - Decatur
 - Kankakee
 - Moline
 - Normal
 - Peoria
 - Rantoul
 - Rockford
 - Rock Island
 - Springfield
 - Urbana
- INDIANA**
 - Anderson
 - Bloomington
 - East Chicago
 - Evansville
 - Fort Wayne
 - Gary
 - Hammond
 - Indianapolis
 - Kokomo
 - Lafayette
 - Muncie
 - South Bend
 - Terre Haute
 - West Lafayette
- IOWA**
 - Cedar Falls
 - Cedar Rapids
 - Davenport
 - Des Moines
 - Dubuque
 - Sioux City
 - Waterloo
- KANSAS**
 - Kansas City
 - Lawrence
 - Topeka
 - Wichita
- KENTUCKY**
 - Ashland
 - Hopkinsville
 - Lexington
 - Louisville
 - Owensboro
- LOUISIANA**
 - Alexandria
 - Baton Rouge
 - Lafayette
 - Lake Charles
 - Monroe
 - New Orleans
 - Shreveport
- MAINE**
 - Auburn
 - Lewiston
 - Portland
- MARYLAND**
 - Baltimore
- MASSACHUSETTS**
 - Boston
 - Brockton
 - Chicopee
 - Fall River
 - Fitchburg
 - Leominster
 - Lowell
 - New Bedford
 - Pittsfield
 - Springfield

- Haverhill**
- Holyoke**
- Lawrence**
- Whitman**
- Worcester**
- MICHIGAN**
 - Ann Arbor
 - Battle Creek
 - Bay City
 - Detroit
 - East Lansing
 - Flint
 - Grand Rapids
 - Jackson
 - Kalamazoo
 - Lansing
 - Muskegon
 - Muskegon Heights
 - Norton Shores
 - Portage
 - Saginaw
- MINNESOTA**
 - Duluth
 - Minneapolis
 - Moorhead
 - Rochester
 - St. Cloud
 - St. Paul
- MISSISSIPPI**
 - Biloxi
 - Gulfport
 - Jackson
 - Moss Point
 - Pascagoula
- MISSOURI**
 - Columbia
 - Kansas City
 - St. Joseph
 - St. Louis
 - Springfield
- MONTANA**
 - Billings
 - Great Falls
- NEBRASKA**
 - Lincoln
 - Omaha
- NEVADA**
 - Las Vegas
 - Reno
- NEW HAMPSHIRE**
 - Manchester
 - Nashua
- NEW JERSEY**
 - Asbury Park
 - Atlantic City
 - Bridgeton
 - Clifton
 - Jersey City
 - Long Branch
 - Millville
 - Newark
 - New Brunswick
 - Passaic
 - Paterson
 - Perth Amboy
 - Sayreville
 - Trenton
 - Vineland
- NEW MEXICO**
 - Albuquerque
- NEW YORK**
 - Albany
 - Binghamton
 - Buffalo
 - Elmira
 - Nassau
 - New York
 - Poughkeepsie
 - Rochester
 - Rome
 - Schenectady
 - Suffolk
 - Syracuse
 - Troy
 - Utica
- NORTH CAROLINA**
 - Asheville
 - Burlington
 - Charlotte
 - Durham
 - Fayetteville
 - Gastonia
 - Greensboro
 - High Point
 - Raleigh
 - Wilmington
 - Winston-Salem
- NORTH DAKOTA**
 - Fargo
 - Grand Forks
- OHIO**
 - Akron
 - Canton
 - Cincinnati
 - Lorain
 - Mansfield
 - Marietta

Cleveland	Middletown
Columbus	Springfield
Dayton	Steubenville
Elyria	Toledo
Hamilton	Warren
Lima	Youngstown
OKLAHOMA	
Lawton	Tulsa
Oklahoma City	
OREGON	
Eugene	Salem
Portland	Springfield
PENNSYLVANIA	
Allentown	Lancaster
Altoona	Philadelphia
Bethlehem	Pittsburgh
Easton	Reading
Erie	Scranton
Harrisburg	Wilkes-Barre
Hazleton	Williamsport
Johnstown	York
PUERTO RICO	
Caguas	Ponce
Mayaguez	San Juan
RHODE ISLAND	
Pawtucket	Warwick
Providence	
SOUTH CAROLINA	
Charleston	North Charleston
Columbia	Spartanburg
Greenville	
SOUTH DAKOTA	
Sioux Falls	
TENNESSEE	
Bristol	Kingsport
Chattanooga	Knoxville
Clarksville	Memphis
Johnson City	Nashville
TEXAS	
Abilene	Longview
Amarillo	Lubbock
Austin	McAllen
Beaumont	Midland
Brownsville	Odessa
Bryan	Orange
College Station	Pharr
Corpus Christi	Port Arthur
Dallas	San Angelo
Denison	San Antonio
Edinburg	San Benito
El Paso	Sherman
Fort Worth	Temple
Galveston	Texarkana
Harlingen	Texas City
Houston	Tyler
Killeen	Waco
Laredo	Wichita Falls
UTAH	
Salt Lake City	Orem
Ogden	Provo
VIRGINIA	
Colonial Heights	Petersburg
Hampton	Portsmouth
Hopewell	Richmond
Lynchburg	Roanoke
Newport News	Virginia Beach
Norfolk	

Everett	Spokane
Kennewick	Tacoma
Richland	Yakima
Seattle	

WEST VIRGINIA

Charleston	Weirton
Huntington	Wheeling
Parkersburg	

WISCONSIN

Appleton	Madison
Eau Claire	Milwaukee
Green Bay	Oshkosh
Kenosha	Racine
La Crosse	Superior

APPENDIX B—BUSINESS ACTIVITIES REPORT

Pursuant to 24 CFR 81.22, FNMA shall supply the Secretary with a report containing the following information:

In order to avoid reporting potentially misleading information, FNMA shall supply, where necessary, information in addition to that requested. Wherever information is requested as to FNMA, the same information shall be separately supplied as to any subsidiaries or other persons in which FNMA has a substantial interest (other than as mortgage owner). Except where information is required to be given on a calendar year basis, or as of a specified date, it shall be given as of the latest practicable date.

As soon as is practicable FNMA shall inform the Secretary of the occurrence of any material change in the information provided in this report.

ITEM 1—BUSINESS

(a) Description of business activities:

(i) Describe the business done and intended to be done by FNMA (not as set out in the Charter Act but as actually or intended to be done).

(ii) Describe any material changes and developments since the beginning of the calendar year in the business activities done and intended to be done by FNMA. Describe any significant developments or trends in FNMA's business occurring over the preceding five years.

(iii) Describe in detail any planned or proposed new business activities or services to be undertaken by FNMA including the investment in such activities to date and any market survey or other studies undertaken relating to the activities or services.

(iv) Describe the competitive position of FNMA in the marketplace including, to the extent reasonably known: (i) FNMA's principal methods of competition; (ii) positive and negative factors affecting that position; and (iii) all competitors actual or proposed and their effect on that position.

(b) Reports on business activities:

(i) Provide a general plan for the conduct of FNMA's secondary market operations including but not limited to FNMA's assessment of: (a) The amount of supplementary assistance it will provide to the secondary market or residential mortgages; (b) the amount of additional obligational authority it will require; (c) the amount of increase or decrease, in the size of its mortgage portfolio expected over the year; (d) any action (other than the regular auction of commitments) it proposes to take to facilitate the transfer of mortgage funds from areas of credit surplus to areas of credit shortage; (e) any actions it proposes to take to increase

the use of its facilities in connection with mortgages secured by properties in central cities; (f) its needs for additional equity financing; (g) its target for return on equity; (h) its need to issue additional debt instruments; (i) the average and incremental cost of debt necessary to carry the mortgage portfolio; (j) the average and incremental return expected on the mortgage portfolio for the ensuing year; and (k) such other eventualities as prudent managers would consider and plan to deal with in the ensuing calendar year.

(i) Provide not less than 15 workdays before the beginning of each calendar quarter, a special budget plan for the secondary market operations of FNMA for the following quarter. This plan shall include but not be limited to the following information with separate figures given for FHA-insured, VA-guaranteed, and conventional loans in the data relating to home loans:

(a) Estimated commitments to purchase home mortgage loans expected to be (i) offered to and (ii) accepted by FNMA under the Free Market System auctions and otherwise;

(b) Estimated FNMA purchases and sales of home mortgage loans or participation or other interests in such loans;

(c) Estimated commitments to purchase multifamily residential or other project loans expected to be (i) offered to and (ii) accepted by FNMA;

(d) Estimated purchases and sales of multifamily residential and other project loans or participation or other interests in such loans;

(e) Estimated amounts expected to be borrowed through issuance of debt securities, other than discount notes, (i) for repayment of maturing debt securities and (ii) for expected loan purchases.

(iii) Submit to the Secretary, simultaneously with delivery to the Office of Management and Budget, its report setting forth the dollar volume of its loan purchases and sales during the Federal fiscal year, together with projections of these data for the current calendar year, the following calendar year, and the current Federal fiscal year.

ITEM 2—PROPERTIES

State briefly the location and general character of the principal operating sites of FNMA and its subsidiaries whether held in fee or leased, and if leased, the expiration dates of material leases.

ITEM 3—PARENTS AND SUBSIDIARIES

Furnish a list of all parents and subsidiaries of FNMA and after each person named indicate the percentage of voting securities owned, or other basis of control, by its immediate parent, if any.

The list shall include FNMA and shall be prepared so as to show clearly the relationship as to each person named to FNMA and to the other persons named. If any person is controlled by means of the direct ownership of its securities by two or more persons so indicate by appropriate cross-reference. Include the jurisdiction in which each subsidiary is organized or does business.

ITEM 4—LEGAL PROCEEDINGS

Briefly describe any material pending legal proceedings other than routine litigation incidental to its business, to which FNMA is a party or of which any of its property is the subject. Include the name of

the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any proceedings known to be contemplated by governmental authorities.

ITEM 5—EXECUTIVE OFFICERS

(a) List the names and ages of all executive officers of FNMA and all persons chosen to become executive officers. State the nature of all family relationships between them. Indicate all positions and offices with FNMA held by each such person. State his or her term of office; the period during which he or she has served as an officer; and briefly describe any arrangement or understanding between the officer and any other person pursuant to which he or she was selected.

The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function and any other person who performs similar policy making functions for FNMA.

The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(b) Give a brief account of the business experience during the past five years of each executive officer, including the officer's principal occupation and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer has been employed by FNMA for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. The information supplied should relate to the level of the officer's professional competence, which may include such specific information as the size or type of operation supervised.

ITEM 6—INDEMNIFICATION OF DIRECTORS AND OFFICERS

State the general effect of any bylaw, contract, arrangement or statute under which any director or officer of FNMA is insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such an officer or director.

ITEM 7—SECURITY OWNERSHIP OF MANAGEMENT

Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of FNMA or of any of its parents or subsidiaries, other than director's qualifying shares beneficially owned by all directors and executive officers of FNMA individually and all directors and officers as a group without naming them. Show in column (2) the total number of shares beneficially owned and in column (3) the percent of total shares so owned. Of the number of shares shown in column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership.

- (1) Name of Executive Officer, Director, or Title of Class.
- (2) Amount Beneficially Owned.
- (3) Percent of Total.

ITEM 8—DIRECTORS AND OFFICERS

(a) List the name and age of each director of FNMA, the date on which the director's present term of office will expire and the nature of all other positions and offices with FNMA presently held by the director. The same information shall be provided with respect to each person chosen to become a director.

(b) If not previously reported, state the nature of any family relationship between each such director and any other director or any executive officer and give a brief account of his or her business experience during the past 5 years, including, principal occupations and employment during that period, and the name and principal business of any corporation or other organization in which such occupation or employment was carried on. Where a person has been on FNMA's board for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in previous positions to provide adequate disclosure of prior business experience.

(c) Describe any of the following events which may have occurred during the past 10 years with respect to any director or executive officer of FNMA:

(i) A petition filed by or against such person under the Bankruptcy Act or any state insolvency law; the court appointment of a receiver, fiscal agent or similar officer for business or property of such person, or any partnership in which he or she was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he or she was an executive officer at or within 2 years before the time of such filing; or

(ii) Conviction in a criminal proceeding (excluding traffic violations and other

minor offenses) or being the subject of a pending similar criminal proceeding; or

(iii) Being subject to any order, judgment or decree of any court or agency of competent jurisdiction permanently or temporarily enjoining or restricting him or her from acting as an investment adviser, underwriter, broker or dealer in securities; or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company; or from engaging in or continuing any conduct or practice in connection with any such activity;

(iv) Identify all director committees or subcommittees. Set forth the functions and composition of any audit, nominations, executive compensation and/or conflict of interest committees or subcommittees;

(v) Identify the reasons for the resignation of any director within the period covered by this report.

ITEM 9—REMUNERATION OF DIRECTORS AND OFFICERS

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by FNMA and its subsidiaries during FNMA's last calendar year to the following persons for services in all capacities:

(1) Each director and each executive officer, naming each such director and officer. As to directors, include the basis on which the remuneration was paid and the number and date of each director meeting or other meeting attended by each director.

(2) All directors and officers of FNMA as a group, stating the number of persons in the group, without naming them.

This information shall be provided on an accrual basis. Any contracts of employment for these persons shall be attached.

Name of individual or number of persons in group	Capacities in which remuneration was received	Aggregate direct remuneration
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(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at normal retirement date pursuant to any existing plan provided or contributed to by FNMA or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph (a)(1), naming each such person.

(2) All directors and officers of FNMA who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

(A) Name of individual or number of persons in group	(B) Amount set aside or accrued during registrant's last fiscal year	(C) Estimated annual benefits upon retirement
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Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors or officers as a group. The information called for by Column (C) may be given in the form of a table showing the

annual benefits payable upon retirement to persons in specified salary classifications. In the case of any plan (which must be reported under this section) where the amount set aside each year depends upon the amount of earnings of the registrant or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information

RULES AND REGULATIONS

called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than accrued payments reported under paragraph (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration pay-

ments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

ITEM 10—OPTIONS GRANTED TO MANAGEMENT TO PURCHASE SECURITIES

Furnish the following information, in substantially the tabular form indicated, as to all options to purchase any securities from FNMA or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the calendar year, and as to all options held by such persons as of the latest practicable date regardless of when such options were granted: (a) Each director and officer named in answer to Item 10(a)(1), naming each such person; and (b) all directors and officers of FNMA as a group, without naming them:

	Insert name	Insert name	Insert name	All directors and officers as a group
Options granted:				
Number of shares				
Average option price per share				
Options exercised:				
Number of shares				
Aggregate option price of shares purchased				
Aggregate market value of shares on date options were exercised				
Unexercised options held at (insert date):				
Number of shares				
Average option price per share				

ITEM 11—INTEREST OF MANAGEMENT AND OTHERS

(a) Describe briefly any transactions since the beginning of the last calendar year or any presently proposed transactions, to which FNMA or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his or her relationship to FNMA, the nature of his or her interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of FNMA;
- (2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person who is a director or officer of FNMA.

It should be noted that this item calls for disclosure of indirect, as well as direct material interests in transactions.

A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with FNMA or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. A person who is a director, executive officer, partner, limited partner, trustee or fiduciary for or the holder of more than two percent of any class of ownership indicia in any such firm, corporation or entity shall be deemed to have a material interest in any transactions with FNMA.

(b) State as to each of the following per-

sons who was indebted to FNMA or its subsidiaries at any time since the beginning of the last calendar year of FNMA, (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon:

- (1) Each director or officer of FNMA; and
- (2) Each associate of any such director or officer.

This subparagraph does not apply to any person whose indebtedness was incurred in the regular course of FNMA's business.

(c) Describe briefly any transactions since the beginning of FNMA's last calendar year or any presently proposed transaction, to which any pension, retirement, savings or similar plan provided by FNMA or any of its parents or subsidiaries, was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his or her relationship to FNMA, the nature of his or her interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of FNMA;
- (2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person who is a director or officer of FNMA; or
- (3) FNMA or any of its subsidiaries.

No information need be given in answer to subparagraph (c) with respect to payments to the plan or payments to beneficiaries, pursuant to the terms of the plan or to any interest of FNMA or any of its subsidiaries which arises solely from its general interest in the success of the plan.

APPENDIX C—REGULAR REPORTS

Pursuant to 24 CFR 81.23, FNMA shall submit certain regular reports to the Secre-

tary. All dollar figures shall be in millions of dollars, unless otherwise specified.

1. AUCTIONS OF COMMITMENTS TO PURCHASE LOANS

Provide the results of each Free Market System auction of commitments to purchase home mortgage loans, including the status of obligational authority using the following form:

Results of free market system auctions

	Received			Accepted		
	FHA-VA loans	Conventional loans	Total loans	FHA-VA loans	Conventional loans	Total loans
(a) Date of auction.....						
(b) Number of offers.....						
(c) Dollar value of offers						
(d) Number of competitive offers.						
(e) Number of noncompetitive offers.						
(f) Dollar value of noncompetitive offers.						
(g) Highest yield on offers.....						
(h) Lowest yield on offers.....						
(i) Average yield on offers.....						
(j) Median yield on offers.....						
(k) Total value offered by mortgage companies.						
(l) Total value offered by mutual savings banks.						
(m) Total value offered by savings and loan associations.						
(n) Total value offered by other lender groups.						
(o) Total value offered by all lender groups.						
(p) Number of offers from sellers who made two or more offers.						
(q) Number of such sellers who made two or more offers.						
(r) Dollar value of offers from sellers who made two or more offers.						

RESULTS OF FREE MARKET SYSTEM AUCTIONS

STATUS OF OBLIGATIONAL AUTHORITY

- (a) Total obligation authority.
- (b) Per (date of latest authorization).
- (c) Obligational authority committed.
- (d) Obligational authority available.
- (e) Expected mortgage repayments over next calendar month.
- (f) Commitments outstanding.
- (g) Expected run off of commitments over next calendar month.
- (h) New commitments expected to be accepted during next calendar month.

2. STANDBY COMMITMENTS

Provide a tabulation of convertible standby commitments issued during the month for home and project mortgage loans, including the following data with separate figures for (a) FHA insured-VA guaranteed home loans (b) conventional home loans and (c) FHA insured project loans:

- (a) Month, year.
- (b) Number of commitments issued.
- (c) Dollar value of commitments issued.
- (d) Highest yield required.
- (e) Lowest yield required.
- (f) Average yield.
- (g) Median yield required.

3. INVESTORS PURCHASING FNMA SECURITY ISSUES

Provide a tabulation showing which investor groups purchased the securities issued by FNMA during the quarter. For the report filed following the last annual quarter, this information shall be provided on a cumulative basis for all securities issued.

Separate figures should be shown for purchases of long-term securities (greater than six month maturity) and short-term securities as well as total securities purchased by each of the following investor groups:

- (a) Commercial banks (excluding trust departments).
- (b) Mutual savings banks.
- (c) Savings and loan associations.
- (d) Life insurance companies.
- (e) State and local government retirement funds.
- (f) State and local governments.
- (g) Private, non-insured pension funds.
- (h) Credit unions.
- (i) Bank administered personal trusts and estates.
- (j) Fire and casualty insurance companies.
- (k) Non-financial corporations.
- (l) Individuals and others.
- (m) Retained by members of selling group classified by the Federal Reserve Bank of

New York as "Government Security Dealers".

(n) Retained by other members of selling group not so classified.

4. STATEMENT OF LOAN PORTFOLIO

Provide a statement of the FNMA loan portfolio, indicating both aggregate dollar amounts of mortgages and the number of mortgages, as of the end of each calendar quarter in the following categories:

- (a) Quarter, year.
- (b) VA guaranteed.
- (c) Conventional.
- (d) FHA Section 203.
- (e) FHA Section 221 (d)(2).
- (f) FHA Section 235.
- (g) Other FHA insured home loans.
- (h) Total dollar amount and number of mortgages reported in (b)-(g).
- (i) In central cities.
- (j) In suburbs.
- (k) In other areas.
- (l) FHA insured project mortgages (indicate number of dwelling units covered by each project mortgage).

NOTE: For each of the categories enumerated above indicate:

- (1) Number of loans with one monthly debt service payment due at the end of the quarter.
- (2) Number of loans with two monthly debt service payments due at the end of the quarter.
- (3) Number of loans with three or more monthly debt service payments due at the end of the quarter.
- (4) Number of loans assigned, repurchased, or foreclosed during the quarter.

5. CHARACTERISTICS OF CURRENT MORTGAGE PURCHASES

Provide a print-out of all mortgages purchased by FNMA during the quarter indicating the following:

- (a) Geographic location by Standard Metropolitan Statistical Area (SMSA) or county if outside an SMSA location by census tract, (indicate for each property within an SMSA whether the location is in a central city or a suburb), (b) purchase price of home, (c) mortgage amount, (d) age of property, (e) income of owner-occupant, (f) median income of SMSA or non SMSA county in which property is located and (g) type of financing (FHA, VA or conventional loan).

Provide a summary of all mortgages purchased in the following categories:

- (a) Central city.
- (b) Suburban.
- (c) Other.

HOUSING FOR LOW AND MODERATE INCOME FAMILIES

- (d) FHA § 221.
- (e) FHA § 235.
- (f) FHA § 236.
- (g) FHA § 237.
- (h) Total number of units in housing projects defined in § 81.2(1)(2) which are not reported under clauses (d) or (f) above.
- (i) Single family dwellings defined in § 81.2(1)(3) which are not reported under clauses (e) or (g) above.

NOTE: The information requested by clauses (a), (b), (c), and (i) should be presented separately for:

- (1) Conventional home loans.
- (2) VA guaranteed home loans.

- (3) FHA § 203 loans.
 (4) All other FHA insured home loans.

6. YIELDS ON LOANS PURCHASED

Provide a tabulation showing the average yield (gross of loan servicing) of (a) the home mortgage loans, and (b) project loans purchased during the quarter. If the loans were purchased via a FNMA Tandem Plan, the purchase price and yield should reflect the effective price at which the loans were purchased.

NOTE: The distribution by average yield should be provided separately (where applicable) for

- (a) Conventional loans.
 (b) VA guaranteed loans.
 (c) FHA Section 203 loans.
 (d) All other FHA insured home loans.
 (e) Total home loans.
 (f) All FHA project loans.

7. SELLERS AND PURCHASERS OF MORTGAGE LOANS

Provide a tabulation by lender (group) of the dollar amount and number of loans purchased from and sold to during the quarter, with separate information for home mortgage loans and project loans. The lender groups include:

- (a) Mortgage companies.
 (b) Commercial banks.
 (c) Mutual savings banks.
 (d) Savings and loans associations.
 (e) Government National Mortgage Association.
 (f) All other financial institutions.
 (g) Total institutions and agencies.

8. REVENUES, EXPENDITURES AND NET INCOME

Provide a tabulation of the revenues, expenditures and net income (measured in thousands of dollars) during the quarter, including the following:

I. REVENUES

- (a) Quarter, year.
 (b) Interest and discounts on home mortgage loans.
 (c) Interest and discounts on project mortgage loans.
 (d) Income from investments in securities,

- (e) Commitment fees for home mortgage loans.
 (f) Commitment fees for project mortgage loans.
 (g) Capital gains on sales of mortgages.
 (h) Compensation for services performed for Government National Mortgage Association.
 (i) Foreclosure claims collected.
 (j) Other income (explain in footnotes).
 (k) Total revenues.

In addition, the quarterly report should also show a breakdown of the commitment fees, measured in thousands of dollars, as follows:

- (a) Underwriting revenue fees.
 (b) Offer fees for competitive Free Market System bids.
 (c) Commitment fees for Free Market System offers accepted.
 (d) Proceeding fees for Convertible Standby Commitment Offers.
 (e) Commitment fees for Convertible Standby Commitment offers accepted.
 (f) Commitment fees upon delivery of a non-converted Convertible Standby Commitment.
 (g) Commitment fees upon receipt of a conversion of Convertible Standby Commitments.

II. EXPENDITURES

- (a) Quarter, year.
 (b) Interest cost on discount notes.
 (c) Interest cost on all other debt securities.
 (d) Capital losses on sales of mortgages.
 (e) Loan servicing fees paid to servicers of home mortgage loans.
 (f) Loan servicing costs attributable to project mortgage loans holdings.
 (g) Actual losses suffered because of foreclosure actions.
 (h) Provisions for possible future losses on mortgage portfolio (amounts credited to reserves for losses).
 (i) Costs attributable to fiscal agent department and other costs associated with issuance of debt securities.
 (j) Costs associated with sale or issuance of common stock.

- (k) Payments to transfer agents and registrars for FNMA securities.
 (l) Payments to independent public auditors.
 (m) Payments for office space and equipment.
 (n) Total salary payments to principal FNMA officers.
 (o) Other salaries and expenses for FNMA staff.
 (p) Total expenditures.

III. NET INCOME

- (a) Quarter, year.
 (b) Total revenues (line I (k)).
 (c) Total expenditures (line II (p)).
 (d) Net income (line b minus line c).
 (e) Adjusted net income before taxes (adjustments for non-deductible items plus other adjustments, which should be explained in footnotes to table).
 (f) Federal income taxes paid or payable.
 (g) Transfers to retained earnings.
 (h) Dividend payments.

9. COMMON STOCK

Provide a tabulation showing the distribution of the holdings of FNMA's outstanding common stock, as of the end of each calendar quarter, including the following:

- (a) Quarter, year.
 (b) Number of shares held by sellers of mortgage loans.
 (c) Number of shares held by financial institutions.
 (d) Number of shares held by individuals.
 (e) Number of shares held by security dealers.
 (f) Number of shares held by others.
 (g) Total number of shares outstanding.
 (h) Changes in number of shares outstanding (including date of change).
 (i) Per share earnings, dividends.

Where information reported under this section as to the beneficial ownership of stock is unavailable to FNMA, it may be supplied by "street name" or nominee identifications. The basis for the computation of per share earnings shall also be set forth including the number of shares used in the computation.

[FR Doc. 78-22570 Filed 8-14-78; 8:45 am]

**Register
Federal Order**

**TUESDAY, AUGUST 15, 1978
PART III**



**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

Office of Education



**EMERGENCY SCHOOL
AID**

**Magnet Schools,
University/Business Cooperation,
and Neutral Site Planning**

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION,
DEPARTMENT OF HEALTH, EDUCA-
TION, AND WELFAREPART 185—EMERGENCY SCHOOL
AIDMagnet Schools, University/Business
Cooperation, and Neutral Site Plan-
ning

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: This amendment to the Emergency School Aid Act regulations governs the award of grants for the planning and operation of magnet schools, cooperative programs between local educational agencies and universities or businesses, and the planning of neutral site schools. These activities are authorized by amendments to the Emergency School Aid Act contained in the Education Amendments of 1976.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the FEDERAL REGISTER. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION
CONTACT:

Dr. Thomas W. Fagan, Room 2017,
FOB-6, 400 Maryland Avenue SW.,
Washington, D.C. 20202, telephone
202-245-0931.

SUPPLEMENTARY INFORMATION: Under the authority of the Emergency School Aid Act (20 U.S.C. 1601 et seq.) and, in particular, the 1976 amendments to that statute contained in section 321(c) of Pub. L. 94-482, the Commissioner of Education (to whom the Assistant Secretary for Education has delegated functions under the ESAA) amends the regulations in 45 CFR part 185 as set forth in this document. The regulatory amendments are based on, and are for the purpose of implementing, those statutory amendments. Except to the extent that these regulations have been revised since they were published as proposed regulations, a fuller description of their provisions may be found in the preamble to the proposed regulations.

As a first step in the development of these regulations, the Commissioner published in the FEDERAL REGISTER on

November 22, 1976, a notice of intent to issue regulations to implement the 1976 amendments to the ESAA (41 FR 51550). The public was invited to comment on identified issues and to raise other issues relating to the development of regulations under the 1976 statute. After considering comments from the public on these issues, the Commissioner published interim final regulations on July 1, 1977, to govern the award of fiscal year 1977 grants (42 FR 33874). The interim final regulations were published with the understanding that the Commissioner would republish them as proposed regulations to allow for public comment. The Commissioner republished these regulations, with minor changes, as proposed regulations on February 3, 1978 (43 FR 4639).

The public was given 45 days to submit written comments on the proposed regulations. During this period the Office of Education also held four public hearings around the country to take comments on the proposals. The comments received are summarized below, together with a statement of whether the regulations have been changed because of the comments and the reasons for making or not making the changes. In addition to changes made in response to comments, minor changes have been made for technical purposes. Among these changes is a revision of § 185.108(b)(2) to conform it to similar provisions applicable to other ESAA programs. The change is intended to permit the Assistant Secretary to look behind an applicant's "grantsmanship" and not approve its application where there is strong evidence that it would not successfully carry out its proposed activities. An example of this evidence would be repeated failure to carry out activities under previous awards.

SUMMARY OF COMMENTS AND RESPONSES

(1) *Definitions of "magnet school" and "neutral site school"* (§ 185.101).—*Comment.* One commenter suggested that the definitions of "magnet school" and "neutral site school" be revised to require economic, as well as racial, diversity among students.

Response. No change has been made in the regulations. The definitions of "magnet school" and "neutral site school" are taken verbatim from the 1976 amendments to the Emergency School Aid Act.

(2) *Definition of "special curriculum"* (§ 185.101).—*Comment.* Two commenters objected to paragraph (1) of the definition because they read it to prohibit the funding of bilingual and language development programs under a magnet school grant.

Response. The definition and a related provision of the regulations (§ 185.103(a)(1)(ii)) have been changed

to make it clear that bilingual and language development programs may be funded so long as they are not designed solely to provide basic educational services to students of limited English-speaking ability. The revised definition excludes programs with this purpose from the term "special curriculum." The other revised provision authorizes the use of magnet school funds for the "special curriculum" of the school and for programs directly related and necessary to that curriculum. Thus, special language services to students of limited English-speaking ability may be funded if they are closely tied to the particular curriculum offered by the school. They may not be funded if they are not directly related and necessary to that curriculum.

It should be noted that a school district may receive a magnet school grant for a "special curriculum" consisting of bilingual or other language development programs, so long as the school meets the other requirements for a magnet school.

(3) *Examples of a "special curriculum"* (§ 185.101).—*Comment.* One commenter suggested that examples of a "special curriculum" be included in the definition of that term.

Response. No change has been made in the regulations. There are a great number of programs that could properly be included in a "special curriculum." The Commissioner does not wish to encourage or appear to encourage particular kinds of curricula by setting out examples in the regulations.

(4) *Definition of "local educational agency"*.—*Comment.* One commenter suggested that the regulations include a definition of "local educational agency".

Response. No change has been made in the regulations. The definition of "local educational agency," as that term is used in these regulations, is set out at § 185.02(e) of the ESAA regulations.

(5) *Effective date for enrollment requirements for a magnet school* (§ 185.102(c)).—*Comment.* Two commenters suggested that the enrollment requirements relating to a racially diverse student body take effect later than the date set in the proposed regulations (60 days after the beginning of the school term). One of the two commenters recommended a later date for school districts that receive awards shortly before the beginning of the school term. The other commenter recommended an effective date either 90 or 120 days into the school term for all award recipients. A third commenter recommended that the magnet school enrollment requirements take effect before the beginning of the school term.

Response. The regulations have been revised to set the effective date of the enrollment requirements either 60 days after the beginning of the school term or 90 days after the effective date of the grant, whichever is later. This revision is intended to accommodate school districts which receive grants at a relatively late date. The Commissioner has rejected a requirement that the enrollment tests be met before the term begins for the reasons set out in the preamble to the proposed regulations, and because he wishes to permit recipients a reasonable period of time to meet those tests.

In addition, the regulations have been reworded to make it clear that the 60-day provision relates to the first school term in which assistance is provided, not necessarily a term which begins after the assistance is awarded.

Finally, the regulations have been revised to authorize the Assistant Secretary to allow a recipient an additional period of time to comply with the enrollment requirements relating to the percentage of minority group students and the ratios of students from each minority group in a magnet school (redesignated as § 185.102(c)(2) (i) and (ii), respectively). As revised, the regulations provide that a recipient may submit a request for an additional period of time, accompanied by a description of its plans to attain full compliance. The Assistant Secretary may allow an additional period only upon a determination that the recipient had substantially complied with those requirements on their effective date and that it will speedily attain full compliance. This change has been made to accommodate those recipients which have made a concerted good faith effort to comply with the enrollment requirements, are in substantial compliance as of the effective date of those requirements, and demonstrate a strong likelihood of speedily attaining full compliance. The Commissioner expects that this authority will rarely be exercised.

(6) *Fifty-percent limit on the enrollment of minority group students in a magnet school (§ 185.102(c)).—Comment.* Several commenters objected to the provision limiting minority group student enrollment in a magnet school to a maximum of 50 percent. Some suggested that in school districts where minority group students are in the majority, their enrollment in a magnet school be permitted to reflect their percentage throughout the district, or be limited to some figure above 50 percent. One commenter suggested that the enrollment of members of any one minority group not be permitted to exceed 50 percent, but that the enrollment of all minority group members generally reflect the

districtwide minority group enrollment.

Other commenters supported the 50-percent limit on minority group student enrollment. One commenter stated that a 60-percent or 70-percent figure would be too high and that a school with more than 50-percent minority group students is not really desegregated.

Response. No change has been made in the regulations. In view of the purposes of the statute, the Commissioner has determined that funds may not be used in connection with a minority group isolated school, as that term is defined in the statute. (See 20 U.S.C. 1619(11) and § 185.02(g) of the ESAA regulations.) Therefore, the 50-percent limit on minority group enrollment in a magnet school has been retained.

The Commissioner would point out that this limit does not preclude the funding of magnet schools under this subpart in districts where minority group students are in the majority, nor does it necessarily mean that the establishment of a magnet school in such a district will increase minority group isolation in other schools. A magnet school in a school district of this type may, for example, attract nonminority students from schools in which they are in the majority, or from nearby cooperating districts with high percentages of nonminority group students. If a district cannot insure that the enrollment of a magnet school will be within the 50-percent limit, it may nevertheless be able to receive funds for activities in the school under other ESAA programs to which different requirements apply.

(7) *Prohibition against compulsory magnet school enrollments (§ 185.102(c)).—Comment.* One commenter suggested that the prohibition against compulsory enrollments be revised to permit a student who, before the grant, was compelled to enroll in a school, to remain there when it is converted to a magnet school.

Response. The regulations have been revised to make it clear that the prohibition is against compulsory enrollments only for the magnet school grant period. Nothing in the regulations prohibits the student described by the commenter from voluntarily enrolling in the magnet school for the grant period. However, the school district could not give preference to the student on the basis of his or her previous enrollment in the school.

In addition, the regulations have been revised to clarify the effect of compulsory enrollments. The prohibition against compulsory enrollments applies to the entire magnet school grant period. The compulsory enrollment of any student for any part of that period constitutes grounds for

terminating and voiding the grant insofar as it relates to that school, after notice and an opportunity for a hearing.

The regulations have been changed to authorize the Assistant Secretary to allow a recipient an additional period of time to meet the enrollment requirements relating to the percentage of minority group students and the ratios of students from each minority group. For a fuller description of this change, see paragraph (5) above.

(8) *Termination of a magnet school grant for failure to meet enrollment requirements (§ 185.102(c)).—Comment.* One commenter proposed that the Assistant Secretary retain discretion not to terminate a grant in certain cases where a school failed to meet enrollment requirements.

Response. The regulations have not been changed to adopt the commenter's suggestion, but have been changed to clarify the effect of non-compliance. The Commissioner believes that § 185.102(c) gives a recipient enough time to insure that the magnet school enrollment requirements are met. See paragraph (5) above. Failure to meet them by the applicable date constitutes grounds for terminating and voiding the grant as of that date, insofar as it relates to the noncomplying school, after notice and an opportunity for a hearing.

(9) *Multiple-year funding for magnet schools.—Comment.* Two commenters suggested that funding for educational programs in magnet schools be guaranteed for more than one year.

Response. No change has been made in the regulations. First: The Commissioner's judgment is that magnet school assistance should be provided in connection with new plans for desegregation or the reduction of minority group isolation. The objective criteria in § 185.105 reflect this judgment. Multiple-year funding would strain the relationship between assistance for magnet schools and the implementation of new plans.

Second: The costs of a magnet school program are highest in the first year of operation. Therefore, if the school is established as a part of a new plan for desegregation or the reduction of minority group isolation, funds are most likely to be available under this subpart when they are most needed. However, the regulations do not prohibit a district from competing for assistance after the first year of funding.

(10) *Use of funds for advisory committee activities (§ 185.103).—Comment.* One commenter suggested that recipients be permitted to use funds awarded under this subpart for activities of the advisory committee required by § 185.109, including some

type of honorarium for committee members.

Response. No change has been made in the regulations. Under cost principles applicable to grants under this subpart, costs associated with the advisory committee's statutory function (20 U.S.C. 1609(a)(3)) are allowable if they are necessary and reasonable. However, it has been the Commissioner's position under other ESAA programs that salaries, honoraria, and other compensation to committee members do not meet this test and are therefore not allowable.

(11) *Use of funds for activities that "would not otherwise be funded"* (§ 185.103).—*Comment.* One commenter suggested deleting this limitation on the grounds that it is unnecessary because of the "maintenance of effort" requirement applicable to assistance under this subpart.

Response. No change has been made in the regulations. This limitation, taken from 20 U.S.C. 1606(a), is significantly different from the "maintenance of effort" requirement found at 20 U.S.C. 1609(a)(13) and 45 CFR 185.13(i). It insures that specific activities which a recipient would fund in the absence of an ESAA grant are not funded with assistance provided under the grant.

(12) *Computation of "net change in isolation"* (§ 185.105).—*Comment.* Two commenters stated that they found the description of how the Assistant Secretary computes net change in isolation difficult to understand, and recommended that it be clarified or that examples be provided.

Response. No change has been made in the regulations. The Commissioner believes that the step-by-step description is sufficiently clear. Persons interested in the application of the regulations to a particular case may obtain assistance from Office of Education personnel. However, it should be noted that it is the Assistant Secretary and not the applicant who must perform the computation.

(13) *Educational criteria for magnet schools and university/business cooperation.* (§ 185.106).—*Comment.* Commenters suggested a variety of modifications of the criteria. Among the suggestions were the following:

- (1) Increase the weight for an applicant's need assessment;
- (2) Give more weight to the coordination of magnet school activities with related efforts;
- (3) Increase the number of possible points for the racial and ethnic composition of project staff; and
- (4) Allow more points for the inclusion of staff training in proposed activities.

Response. No change has been made in the regulations. The Commissioner believes the proposed criteria properly

balance a great number of factors bearing on the likelihood that proposed activities will be successful.

Accordingly, 45 CFR Part 185 is amended as set forth below.

(Catalog of Federal Domestic Assistance Program Nos. 13.589 and 13.590, Emergency School Aid Act—Magnet Schools, University/Business Cooperation, and Neutral Site Planning.)

Dated: June 14, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: June 22, 1978.

MARY F. BERRY,
Assistant Secretary
for Education.

Approved: August 6, 1978.

HALE CHAMPION,
Acting Secretary of Health,
Education, and Welfare.

1. The table of contents is amended as follows:

Subpart K—Magnet Schools, University/Business Cooperation, and Neutral Site Planning

Sec.	
185.101	Definitions.
185.102	Eligibility.
185.103	Authorized activities.
185.104	Applications.
185.105	Objective criteria—magnet schools and university/business cooperation.
185.106	Educational criteria—magnet schools and university/business cooperation.
185.107	Neutral site planning criteria.
185.108	Funding procedures.
185.109	Public and advisory committee participation.
185.110	Nonpublic school participation.

2. Subpart K is amended to read as follows:

Subpart K—Magnet Schools, University/Business Cooperation, and Neutral Site Planning

§ 185.101 Definitions.

The following definitions apply to terms used in this subpart:

"Magnet school" means a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

"Neutral site school" means a school that is located so as to be accessible to substantial numbers of students of different racial backgrounds.

"Special curriculum" means a course of study embracing subject matter or a teaching methodology that is not generally offered to students of the same age or grade level, and in the same local educational agency, as the students to whom the special curriculum

is offered. This term does not include—

(1) A course of study or a part of a course of study designed solely to provide basic educational services to handicapped students or to students of limited English-speaking ability; or

(2) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited English-speaking ability; or

(3) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited financial resources; or

(4) A course of study or a part of a course of study which fails to provide for a participating student's meeting the requirements for completion of elementary or secondary education in the same period as other students enrolled in the applicant's schools.

(20 U.S.C. 1603(d), 1619(9), 1619(12).)

§ 185.102 Eligibility.

(a) Any local educational agency may apply for a grant under this subpart.

(20 U.S.C. 1603(d), H.R. Rep. No. 94-1701, 94th Cong., 2d Sess. 231 (1976).)

(b) The provisions of § 185.43 (limitations on eligibility), § 185.44 (waivers of ineligibility), and § 185.46 (determinations of ineligibility prior to award of assistance) apply to any local educational agency seeking a grant under this subpart.

(20 U.S.C. 1603(d), 1605(d).)

(c) In the case of a grant for activities described in § 185.103(a) relating to the conduct of educational programs in a magnet school, the Assistant Secretary will consider the curriculum of a magnet school to be capable of attracting substantial numbers of students of different racial backgrounds only if—

(1) The recipient does not compel any student to enroll in the magnet school for any part of the grant period; and

(2) Sixty days after the beginning of the first school term, any part of which falls within the grant period, or 90 days after the effective date of the grant, whichever is later, the enrollment of the school meets the following requirements:

(i) Minority group students constitute no less than 20 percent and no more than 50 percent of the enrollment;

(ii) The ratios of the number of students from each minority group to the total number of minority group students enrolled in the magnet school generally reflect the ratios among minority group students enrolled in all the schools of the recipient; and

(iii) The recipient has not compelled any student to enroll in another school after enrolling in the magnet school.

If the recipient compels any student to enroll in a magnet school in violation of subparagraph (1) of this paragraph, the Assistant Secretary shall, in accordance with § 185.45, terminate and void the grant as of the date of the violation insofar as it relates to that school. If the enrollment of any magnet school does not meet the requirements of paragraph (c)(2) of this section, the Assistant Secretary shall, in accordance with § 185.45, terminate and void the grant as of the applicable date described in that subparagraph insofar as it relates to that school. However, if the enrollment of a school does not meet the requirements of paragraph (c)(2) (i) or (ii), or both, the Assistant Secretary may allow the recipient an additional period of time to comply with those requirements. The Assistant Secretary may allow an additional period of time only upon a determination that the recipient attained substantial compliance as of the applicable date described in paragraph (c)(2), and that it will speedily attain full compliance if the additional period is allowed. If the Assistant Secretary allows an additional period of time, the recipient shall inform the Assistant Secretary of its progress in attaining full compliance as of dates specified by the Assistant Secretary, including the final date of that period. If the recipient does not attain full compliance by the final date of that period, the Assistant Secretary shall terminate and void the grant as of that date insofar as it relates to a non-complying school or allow a further period of time. The Assistant Secretary may allow a further period of time only upon a determination that the recipient made substantial progress during the previous additional period and that it will speedily attain full compliance if the further period is allowed. If the enrollment of any school did not meet the requirements of paragraph (c)(2) (i) or (ii), or both, as of the applicable date, the recipient may include in its report a request for an additional period of time to comply with those requirements. A recipient making such a request shall include in its report a description of its plans to attain full compliance.

(d) A recipient of a grant for activities described in § 185.103(a) relating to the conduct of educational programs in a magnet school shall submit to the Assistant Secretary a report showing the number of nonminority group students and the number of students from each minority group who were enrolled at each magnet school to which the grant relates on the ap-

plicable date described in paragraph (c)(2) of this section. The recipient shall submit this report within 15 days after the applicable date unless the Assistant Secretary, for good cause shown, sets a later date for submission.

(20 U.S.C. 1603(d), 1607(a)(13), 1619(9).)

§ 185.103 Authorized activities.

Funds awarded under this subpart may be used for the activities described in this section if those activities would not otherwise be funded and if they are designed to carry out the purposes described in § 185.01 (relating, generally, to the elimination of minority group segregation, discrimination, and isolation and their effects). No more than 10 percent of the funds awarded under this subpart may be used for the repair and minor remodeling or alteration of facilities.

(a) *Magnet schools.* (1) Funds may be used for the following three activities:

(i) The planning and design of one or more magnet schools, as described in § 185.102(c) (1) and (2);

(ii) The conduct of educational programs in one or more magnet schools where these programs are a part of, or directly related and necessary to, the special curriculum of a magnet school; and

(iii) The repair and minor remodeling or alteration (as defined in § 185.12(d)) of existing school facilities in connection with the conduct of educational programs described in paragraph (a)(1)(ii).

(2) The planning and design of a magnet school includes, but is not limited to, the following activities:

(i) Planning and design of educational programs for the school;

(ii) Architectural design of new or modified facilities to house the school;

(iii) Surveys and studies relating to the establishment or improvement of the school; and

(iv) Recruitment of students and staff for the school.

(3) Where the cost of equipment (as defined in § 185.02(c)) exceeds 10 percent of funds awarded for the conduct of educational programs in one or more magnet schools, the recipient may not obligate more than one-half of the funds available for equipment until the Assistant Secretary determines that each school to which the equipment relates meets the enrollment requirements set out in § 185.102(c)(2).

(4) The Assistant Secretary shall award funds for the conduct of educational programs in a magnet school only if the applicant's fiscal effort per student for students enrolled at a magnet school is no less than its fiscal effort per student for students enrolled at all schools serving students of the same age or grade level operated

by the applicant in the fiscal year for which it seeks assistance under this subpart. For the purpose of this subparagraph, "fiscal effort per student" means the expenditure for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities (but not including expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance) divided by the number of students with respect to whom the computation is made.

(b) *University/business cooperation.* Funds may be used for—

(1) The conduct of educational programs by the applicant, in cooperation with one or more colleges, universities, or leading businesses, for the benefit of students enrolled, or staff employed, in—

(i) A magnet school assisted under this subpart;

(ii) A school affected by a plan or project described in § 185.11 or § 185.31(a); or

(iii) A minority group isolated school (as defined in § 185.02(g)); and

(2) The repair and minor remodeling or alteration (as defined in § 185.12(d)) of facilities in connection with the conduct of these educational programs.

(c) *Neutral site planning.* (1) Funds may be used for the development of plans for one or more neutral site schools, including but not limited to the following activities:

(i) Surveys and studies to determine the location of the school;

(ii) Planning educational programs for the school;

(iii) Architectural design of facilities to house the school; and

(iv) The repair and minor remodeling or alteration (as defined in § 185.12(d)) of facilities in connection with the development of plans for the school.

(2) Funds may be used only in connection with a school planned to have the following characteristics:

(i) Minority group students will constitute no less than 20 percent and no more than 50 percent of the enrollment of the school;

(ii) The ratios of the number of students from each minority group to the total number of minority group students who will be enrolled in the school generally reflect the ratios among minority group students who will be enrolled in all the schools of the recipient; and

(iii) The school will be equally accessible to nonminority group students

and students from each minority group who will be enrolled in it.

(3) Funds may not be used for—

- (i) The acquisition or improvement of a site for the school;
- (ii) The construction of facilities to house the school;
- (iii) The acquisition of equipment for the school; or
- (iv) Any activity related to the operation of the school.

(20 U.S.C. 1601(b), 1603(d), 1606(a) (12)-(15), 1619 (10) and (12); 122 CONG. REC. S16870, S16872 (daily ed. Sept. 28, 1976), H11691, H11699 (daily ed. Sept. 29, 1976).)

§ 185.104 Applications.

(a) An applicant for a grant under this subpart shall include in its application a description of the activities for which it seeks assistance and the information described in §§ 185.109 and 185.110.

(b) The provisions of § 185.13 (a) through (n), relating to applications, apply to any applicant for a grant under this subpart. An applicant shall include in its application the information and assurances required by those provisions.

(c) In the case of an application for a grant to carry out activities described in § 185.103 (a) or (b) relating to magnet schools and university/business co-operation respectively, the applicant shall include in its application the information described in this paragraph.

(1) Except as provided in subparagraph (2) of this paragraph, the applicant shall include—

(i) The number of minority group students and the total number of students enrolled or to be enrolled in each of its schools in the following years:

(A) "Base year I" (meaning the third fiscal year prior to the fiscal year for which an applicant seeks assistance under this subpart);

(B) "Base year II" (meaning the fiscal year immediately prior to the fiscal year for which an applicant seeks assistance under this subpart); and

(C) The "project year" (meaning the fiscal year for which an applicant seeks assistance under this subpart); and

(ii) A description of the basis for its enrollment projections for the project year.

(2) (i) If an applicant is eligible for assistance under this part under a plan described in § 185.11(b)(3) or a project described in § 185.11(d) and chooses to rely on that plan or project in its application for assistance under this subpart, it shall include the number of minority group students and the total number of students who would be enrolled, in the project year, in each of its schools—

(A) If the plan or project were implemented; and

(B) If the plan or project were not implemented.

(ii) If the applicant chooses to rely solely on that plan or project, it is not required to include the information described in subparagraph (1) of this paragraph.

(d) Both an applicant for a grant under this subpart and the Assistant Secretary shall make the application and all correspondence and other written materials relating to it readily available to the public.

(20 U.S.C. 1603(d), 1609 (a) and (b), 1612, 1605(d), 1228.)

§ 185.105 Objective criteria—magnet schools and university/business cooperation.

(a) (1) In evaluating an application for a grant under this subpart to carry out activities described in § 185.103 (a) or (b) relating to magnet schools and university/business cooperation respectively, the Assistant Secretary shall assign the application up to 90 points for the net change in isolation in the applicant's schools between base year I and the project year, and between base year II and the project year. ("Base year I," "base year II," and "project year" are defined at § 185.104.)

(2) The Assistant Secretary shall assign points for net change in isolation on the basis of the procedure described in this section.

(b) From the information required to be included in an application under § 185.104(c), the minority group percentage of the enrollment of each of the applicant's schools in base year I is computed. The number of minority group students enrolled in schools within each percentage range in column A of table I is determined. The number of students in each percentage range is then multiplied by the corresponding weight in column B of table I. The resulting weighted numbers are added. The sum is then divided by the total number of minority group students enrolled in the applicant's schools for that year.

TABLE I

Column A, minority group percentage	Column B, Weight
95 or more.....	0.0
At least 90 but less than 95.....	.1
At least 85 but less than 90.....	.2
At least 80 but less than 85.....	.3
At least 75 but less than 80.....	.4
At least 70 but less than 75.....	.5
At least 65 but less than 70.....	.6
At least 60 but less than 65.....	.7
At least 55 but less than 60.....	.8
More than 50 but less than 55.....	.9
50 or less.....	1.0

(c) The computation described in paragraph (b) of the section is repeated using the number of minority group students to be enrolled in the applicant's schools in the project year.

(d) The result of the computation for base year I is subtracted from the result of the computation for the project year to determine the net change in isolation between base year I and the project year. Using table II, the Assistant Secretary assigns the application the number of points in column B which corresponds to the applicant's net change in isolation in column A.

TABLE II

Column A, net change in isolation	Column B, points
96 to 100.....	30
91 to 95.99.....	29
86 to 90.99.....	28
81 to 85.99.....	27
76 to 80.99.....	26
71 to 75.99.....	25
66 to 70.99.....	24
61 to 65.99.....	23
56 to 60.99.....	22
51 to 55.99.....	21
48 to 50.99.....	20
45 to 47.99.....	19
42 to 44.99.....	18
39 to 41.99.....	17
36 to 38.99.....	16
33 to 35.99.....	15
30 to 32.99.....	14
27 to 29.99.....	13
24 to 26.99.....	12
21 to 23.99.....	11
19 to 20.99.....	10
17 to 18.99.....	9
15 to 16.99.....	8
13 to 14.99.....	7
11 to 12.99.....	6
9 to 10.99.....	5
7 to 8.99.....	4
5 to 6.99.....	3
3 to 4.99.....	2
1 to 2.99.....	1
0 to 0.99.....	0

(e) The computation described in paragraph (b) of this section is repeated using the number of minority group students enrolled in the applicant's schools in base year II. The result of this computation is subtracted from the result of the computation for the project year to determine the net change in isolation between base year II and the project year. Using table II, the Assistant Secretary assigns the application the number of points in column B which corresponds to the applicant's net change in isolation in column A multiplied by two.

(f) If the applicant relies on either a plan described in § 185.11(b)(3) or a project described in § 185.11(d), or both, and on the reduction or elimination of minority group isolation, the Assistant Secretary assigns the application points on the basis of the computations described in paragraphs (b) through (e) of this section using as project year data the enrollment data based on implementation of the plan or project.

(g) If the applicant relies solely on a plan described in § 185.11(b)(3) or a project described in § 185.11(d), or both, the Assistant Secretary assigns the application points on the basis of the computations described in paragraphs (b) through (e) of this section—

(1) Using as base year I and base year II data the enrollment data based on no implementation of the plan or project; and

(2) Using as project year data the enrollment data based on implementation of the plan or project.

(20 U.S.C. 1601(b), 1603(d), 1606(a) (12-14), 1609(c) (1)-(4).)

§185.106 Educational criteria—magnet schools and university/business cooperation.

In evaluating an application for a grant under this subpart to carry out activities described in §185.103 (a) or (b) relating to magnet schools and university/business cooperation respectively, the Assistant Secretary shall assign the application up to 70 points on the basis of the following criteria:

(a) *Need assessment (10 points)*. (1) The magnitude of the need for the activities proposed in the application (5 points); and

(2) The extent to which the need is supported by objective evidence (5 points).

(b) *Statement of objectives (10 points)*. (1) The extent to which the applicant sets out specific, measurable objectives related to the need assessed (4 points);

(2) The extent to which the objectives realistically address the need assessed (3 points); and

(3) The extent to which the objectives were developed by persons with relevant experience and persons from all racial and ethnic populations to be served by the proposed activities (3 points).

(c) *Activities (36 points)*.—(1) *Project design (24 points)*. (i) The extent to which the proposed activities are unique (4 points);

(ii) The thoroughness of the applicant's planning for the proposed activities and the extent to which those activities will be coordinated with other efforts by the applicant to eliminate, reduce, or prevent minority group isolation (4 points);

(iii) The extent to which the proposed activities will promote interracial and intercultural contact and understanding (3 points);

(iv) The extent to which the proposed activities will meet the needs of individual students, including students of varying levels of achievement (4 points);

(v) The extent to which the proposed activities will reflect the interests of parents, students, and other members of the community (3 points);

(vi) The extent to which the curriculum to which the proposed activities relate includes materials pertinent to the racial and ethnic composition of the schools or community to be served (2 points);

(vii) The extent to which instruction in basic skills is integrated into the proposed activities (2 points); and

(viii) The extent to which the proposed activities provide for cooperative planning among teachers and other staff to meet the needs of individual students (2 points).

(2) *Staffing (6 points)*. (i) The extent to which the applicant sets out an adequate staffing plan, including specific job responsibilities and provisions for making maximum use of present staff capabilities (2 points);

(ii) The extent to which the proposed activities will be conducted by staff which reflect the racial and ethnic composition of the schools or community to be served (2 points);

(iii) The extent to which the proposed activities include necessary staff training (2 points).

(3) *Parent and community involvement (6 points)*. (i) The extent to which the applicant will involve parents and students in carrying out the proposed activities, as by employing parents as instructional aides in the classroom and informing parents and students of progress made in carrying out the proposed activities (2 points);

(ii) The extent to which the applicant will involve in the proposed activities public and private agencies in the community which have previously been involved in activities related to the elimination, reduction, or prevention of minority group isolation (2 points); and

(iii) The extent to which the applicant delineates specific opportunities for the participation in the proposed activities of the advisory committee described in § 185.41 (2 points).

(d) *Management (8 points)*. (1) The extent to which the amount of funds requested is of sufficient magnitude in relation to the number of participants to be served to give substantial promise of achieving the stated objectives, and is reasonable in relation to the expected benefits (2 points);

(2) The extent to which the applicant has made all possible efforts to minimize the amount of funds requested for the purchase of equipment to carry out the proposed activities (2 points);

(3) The extent to which the applicant sets out a detailed and realistic schedule of implementation (2 points); and

(4) The extent to which the applicant sets out a plan for meeting the logistical requirements for the proposed activities, including a description of adequate and conveniently available facilities and equipment (2 points).

(e) *Evaluation (6 points)*. The extent to which the applicant sets out a format for objective, quantifiable measurement of the success of the

proposed activities in achieving the stated objectives, including—

(1) A timetable for the compilation of data for evaluation and a method for continuing review of the proposed activities in the light of that data (2 points);

(2) A description of instruments to be used for evaluation of the proposed activities (and of the method for validating these instruments where necessary), or a description of the procedure to be employed in selecting these instruments (2 points); and

(3) Provisions for the comparison of evaluation results with norms, control group performance, results of other programs, or other external standards (2 points).

(20 U.S.C. 1601(b), 1603(d), 1606(a) (12)-(14), 1609(c) (1), (2), (4), and (6).)

§ 185.107 Neutral site planning criteria.

In evaluating an application for a grant under this subpart to carry out activities described in § 185.103(c) relating to neutral site planning, the Assistant Secretary shall assign the application up to 100 points on the basis of the following criteria:

(a) *Need assessment (20 points)*. (1) The magnitude of the need for the activities proposed in the application (10 points); and

(2) The extent to which the need is supported by objective evidence, including demographic data (10 points).

(b) *Statement of objectives (5 points)*. (1) The extent to which the applicant sets out specific, measurable objectives related to the need assessed (2 points);

(2) The extent to which the objectives realistically address the need assessed (1 point); and

(3) The extent to which the objectives were developed by persons with relevant experience and persons from all racial and ethnic populations to be served by the proposed activities (2 points).

(c) *Activities (60 points)*.—(1) *Project design (35 points)*. (i) The extent to which the proposed activities will be coordinated with other efforts by the applicant to eliminate, reduce, or prevent minority group isolation (5 points);

(ii) The extent to which the proposed activities will be coordinated with the applicant's other planning activities, including those related to building use (5 points);

(iii) The extent to which the proposed activities will be coordinated with the planning activities of both other governmental agencies and the private sector to ensure that a neutral site school to which the proposed activities relate will have the characteristics described in § 185.103(c)(2) for an extended period (10 points);

(iv) The extent to which the proposed activities will assist in eliminating, reducing, or preventing minority group isolation in the schools of more than one local educational agency (5 points);

(v) The extent to which the proposed activities, including any educational planning activities, will reflect the interests of parents, students and other members of the community (5 points); and

(vi) The extent to which the applicant provides evidence of a commitment to implement any plan developed with assistance under this subpart (5 points).

(2) *Staffing (10 points)*. (i) The extent to which the applicant sets out an adequate staffing plan, including specific job responsibilities and provisions for making maximum use of present staff capabilities (4 points);

(ii) The extent to which the proposed activities will be conducted by staff which reflect the racial and ethnic composition of the community to be served (3 points); and

(iii) The extent to which the proposed activities include necessary staff training (3 points).

(3) *Parent and community involvement (15 points)*. (i) The extent to which the applicant will involve parents and students in carrying out the proposed activities (5 points);

(ii) The extent to which the applicant will involve in the proposed activities public and private agencies which have previously been involved in activities related to the elimination, reduction, or prevention of minority group isolation (5 points); and

(iii) The extent to which the applicant delineates specific opportunities for the participation in the proposed activities of the advisory committee described in § 185.41 (5 points).

(d) *Management (10 points)*. (1) The extent to which the amount of funds requested is of sufficient magnitude in relation to the stated objectives to give substantial promise of achieving those objectives, and is reasonable in relation to the expected benefits (2 points);

(2) The extent to which the applicant has made all possible efforts to minimize the amount of funds requested for the purchase of equipment to

carry out the proposed activities (2 points);

(3) The extent to which the applicant sets out a detailed and realistic schedule of implementation (2 points); and

(4) The extent to which the applicant sets out a plan for meeting the logistical requirements for the proposed activities, including a description of adequate and conveniently available facilities and equipment (4 points).

(e) *Evaluation (5 points)*. The extent to which the applicant sets out a format for objective, quantifiable measurement of the success of the proposed activities in achieving the stated objectives, including—

(1) A timetable for the compilation of data for evaluation and a method for continuing review of the proposed activities in the light of that data (3 points); and

(2) A description of instruments to be used for evaluation of the proposed activities (and of the method for validating these instruments where necessary), or a description of the procedure to be employed in selecting these instruments (2 points).

(20 U.S.C. 1601(b), 1603(d), 1606(a) (12) and (15), 1609(c) (1)-(4) and (6).)

§ 185.108 Funding procedures.

(a) The Assistant Secretary shall make any grant under this subpart from funds appropriated under section 704(d) of the Act. The Assistant Secretary will announce, by publication of a notice in the *FEDERAL REGISTER*:

(1) The amount of funds, if any, available for grants under this subpart in any fiscal year;

(2) The proportion of those funds which the Assistant Secretary will reserve for grants to carry out activities described in § 185.103(c) relating to neutral site planning;

(3) The project period for grants under this subpart; and

(4) The deadline for receipt of applications for these grants.

(b) (1) The Assistant Secretary shall separately evaluate applications for grants to carry out—

(i) Activities described in § 185.103 (a) or (b) relating to magnet schools and university/business cooperation respectively; and

(ii) Activities described in

§ 185.103(c) relating to neutral site planning.

(2) The Assistant Secretary shall make grants to eligible applicants in each category on the basis of their ranking under the criteria in this subpart. However, the Assistant Secretary shall not be required to approve any application which contains proposed activities that afford insubstantial promise of achieving the purposes described in § 185.01.

(c) The Assistant Secretary shall fix the amount of each grant on the basis of the additional cost (as defined in § 185.13(a)(1)) of carrying out authorized activities. However, if in any fiscal year at least five applicants have submitted applications for grants to carry out activities described in § 185.103 (a) or (b) relating to magnet schools and university/business cooperation respectively, and if their applications are otherwise approvable, the Assistant Secretary shall make no fewer than five grants for those activities. If the amount needed to fund all authorized activities proposed by the five highest ranking applicants exceeds the amount of funds available, the Assistant Secretary shall reduce the amount of each grant by an equal proportion.

(d) The Assistant Secretary shall not finally disapprove in whole or in part an application for a grant under this subpart without first notifying the applicant of the specific reasons for disapproval and affording the applicant an appropriate opportunity to modify its application.

(20 U.S.C. 1601(b), 1603(d), 1606(a) (12)-(15), 1609(a)(4), 1609(c), 1609(d)(2), 1609(e).)

§ 185.109 Public and advisory committee participation.

The provisions of § 185.41 apply to any applicant for a grant under this subpart. An applicant shall include in its application the information and assurances required by those provisions.

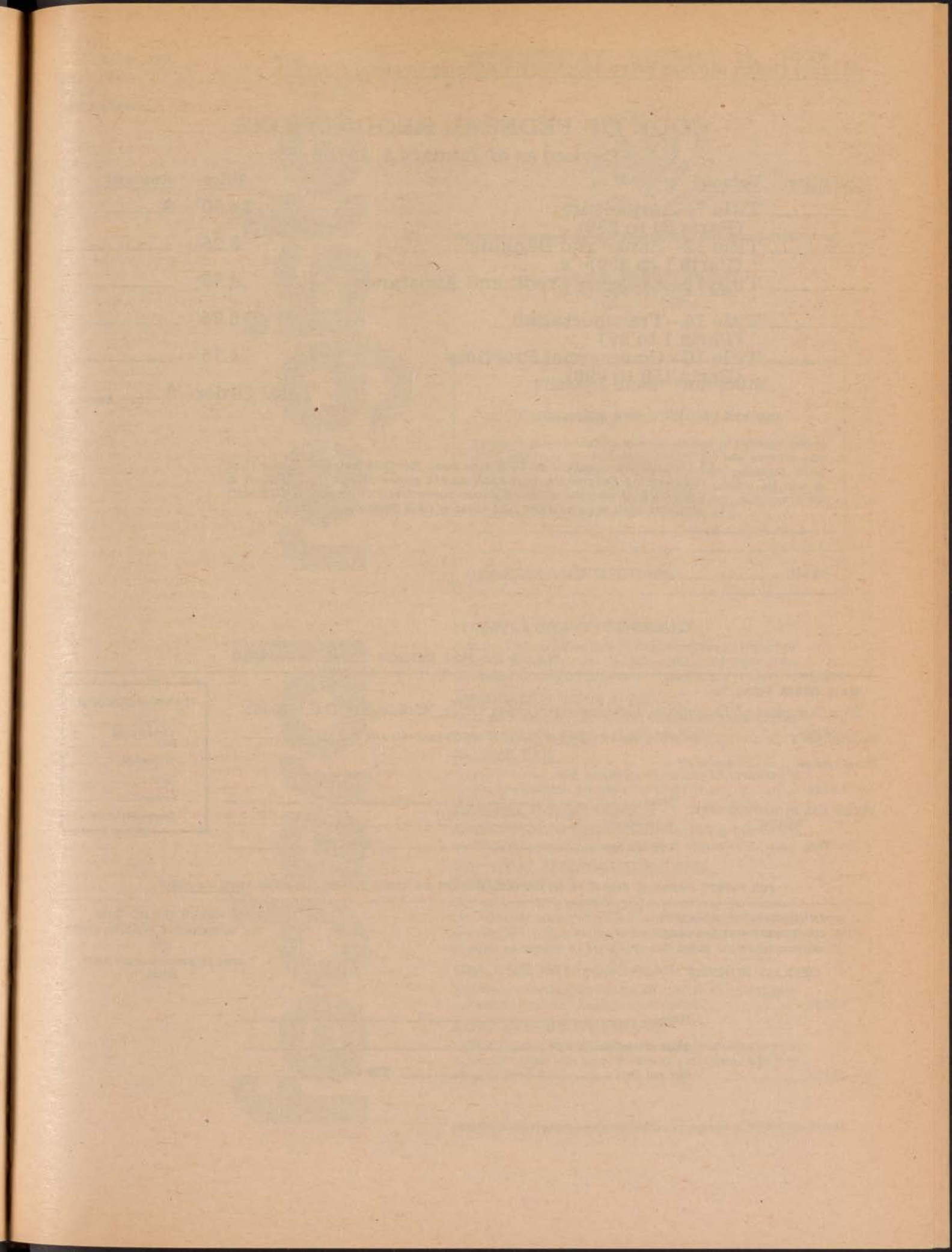
(20 U.S.C. 1609(a)(2), 1609(a)(3), 1609(b).)

§ 185.110 Nonpublic school participation.

The provisions of § 185.42 apply to any applicant for a grant under this subpart. An applicant shall include in its application the information and assurances required by those provisions.

(20 U.S.C. 1609(a)(12), 1605(d), 1611(c).)

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