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PAGES
3625-3826

federal register

WEDNESDAY, JANUARY 19, 1977

highlights

PART I:

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled 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.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235

PUBLIC LAWS:

Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

contents

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:

442 ... 1267

3 CFR

EXECUTIVE ORDERS:

10480 (Amended by EO 11956) ... 2947
11490 (Amended by EO 11953) ... 2491
11651 (Amended by EO 11951) ... 1453
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295

5 CFR

213 ... 1455, 2949, 3297
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665
910 ... 1476, 2977, 3297
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308
971 ... 2666, 3626
981 ... 3159
1430 ... 3
1473 ... 2977
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308

PROPOSED RULES:

52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503

7 CFR—Continued

PROPOSED RULES—Continued

1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1421 ... 2328
1434 ... 2980
1701 ... 1479
1473 ... 2977

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:

92 ... 1483

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
203 ... 3814
212 ... 1036, 1456, 2308

FEA RULINGS:

1977–1 ... 3628

PROPOSED RULES:

2 ... 3178
51 ... 3178
212 ... 2646
215 ... 3652

11 CFR

PROPOSED RULES:

2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

12 CFR—Continued

PROPOSED RULES:

226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:

112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
37 ... 19
39 ... 1217, 1218, 2053–2055, 3170
71 ... 300, 2055, 2056, 3170, 3171
73 ... 300
75 ... 300
97 ... 1219, 2056, 3171
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668

PROPOSED RULES:

39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179
152 ... 2850
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:

920 ... 2507

16 CFR

2 ... 3300
13 ... 3–5, 3636, 3640
1201 ... 1428

PROPOSED RULES:

1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181, 3655
1301 ... 1484

17 CFR

1 ... 2628
180 ... 3433
200 ... 753
211 ... 2058

50 CFR

FEDERAL REGISTER PAGES AND DATES—JANUARY

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Rules Going Into Effect Jan. 20, 1977

DOT/CG—Anchorage ground establishment; Hampton Roads, Va. 55344; 12–20–76

FAA—Standard instrument approach procedures; changes and additions. 54166; 12–13–76

HUD—Low Income housing; operating subsidy performance funding system. 55676; 12–21–76

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

Milk in Des Moines, Iowa and certain other marketing areas; recommended decision, opportunity to file exceptions; comments by 1–26–77..... 1356; 1–6–77

Commodity Credit Corporation—

Upland and extra long staple cotton; determinations for 1977 crops; comments by 1–28–77..... 56204; 12–27–76

Forest Service—

Forest system lands; grazing livestock; comments by 1–28–77. 56210; 12–27–76

Rural Electrification Administration—

Guaranteed loan program for bulk power facilities; revision of REA bulletin; comments by 1–27–77. 56331; 12–28–76

Rural Telephone Program; new specification for type A telephone sets; comments by 1–27–77..... 56331; 12–28–76

CIVIL AERONAUTICS BOARD

Freight loss and damage claims by certain air carriers and foreign route air carriers; reporting data; comments by 1–24–77..... 55891; 12–23–76

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

Coastal zone management interstate grants; comments by 1–24–77. 55786; 12–22–76

Draft foreign fishing regulations; comments by 1–23–77..... 55904; 12–23–76

DEFENSE DEPARTMENT

Corps of Engineers—

Navigation regulations; St. Marys Falls canal and locks, Michigan; comments by 1–27–77..... 56339; 12–28–76

ELECTRONIC FUND TRANSFER, NATIONAL COMMISSION

Privacy Act regulations; comments by 1–29–77..... 1267; 1–6–77

ENVIRONMENTAL PROTECTION AGENCY

Environmental radiation protection; criteria and standards for radioactive waste; comments by 1–25–77.. 2331; 1–11–77

Interstate motor carrier noise emission standards; special local determinations; extension of comments by 1–27–77..... 2330; 1–11–77
[First published at 41 FR 52317, Nov. 29, 1976]

National pollutant discharge elimination system; comments by 1–23–77. 52308; 11–29–76

Railroad noise emission standards; special local determinations; comments by 1–27–77..... 2330; 1–11–77

ENVIRONMENTAL QUALITY COUNCIL

Freedom of Information Act, procedures; comments by 1–24–77..... 54005; 12–10–76

FEDERAL COMMUNICATIONS COMMISSION

Cable televisions operators; notification of changes in name, mail address, status changes, etc.; reply comments by 1–28–77..... 54778; 12–15–76

Clear channel broadcasting in the standard Broadcast Band; extension of comments filing time; reply comments by 1–24–77.. 40503; 9–20–76

FM broadcast stations; Louisiana; comments by 1–24–77..... 52499; 11–30–76

FM translator stations; unattended operation; comments by 1–28–77. 2087; 1–10–77

Government in the Sunshine; procedures; comments by 1–27–77. 56675; 12–29–76

International and domestic telex and TWX; interface of services; comments by 1–24–77..... 54505; 12–14–76

Maintenance of certain program records; reply comments by 1–27–77. 1278; 1–6–77
[First published at 41 FR 37344, Sept. 3, 1976]

FEDERAL ENERGY ADMINISTRATION

Alternative entitlement program; adjustments for imported residual fuel oil; comments by 1–27–77..... 56821; 12–30–76

FEDERAL POWER COMMISSION

Financial report for municipal electric utilities and federal projects; new FPC form No. 164; comments by 1–25–77..... 55120; 12–16–76

Observation of Commission meetings and ex parte communications; comments by 1–26–77.... 2079; 1–10–77
[First published at 41 FR 52303, Nov. 29, 1976]

FEDERAL TRADE COMMISSION

Government in the Sunshine Act; comments by 1–25–77.. 55885; 12–23–76

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

Certain Fluorocarbons (Chlorocarbons) in foods and drugs, and cosmetics; labeling requirements; comments by 1–25–76..... 52071; 11–26–76

Cosmetic ingredient labeling; establishment of names for fluorocarbons propellant ingredients; comments by 1–25–76..... 52078; 11–26–76

Fluorocarbons and other halocarbons; advanced notice of proposed rulemaking to phase out nonessential uses; comments by 1–25–76. 52070; 11–26–76

Public Health Service—

Professional standards review areas; comments by 1–27–77.... 56339; 12–28–76

INTERIOR DEPARTMENT

Geological Survey—

Surface management coal mining; steep slopes; comments by 1–24–77..... 56830; 12–30–76

Land Management Bureau—

Surface management coal mining; steep slopes; comments by 1–24–77..... 56830; 12–30–76

Office of the Secretary—

Employee responsibilities and conduct, regulations; comments on rule by 1–24–77..... 56100; 12–23–76

INTERNATIONAL TRADE COMMISSION

Domestic industries; investigations of injury; comments by 1–26–77. 56205; 12–27–76

JUSTICE DEPARTMENT

Drug Enforcement Administration—

Exempt chemical preparations; schedules of controlled substances; comments by 1–26–77..... 52867; 12–2–76

Papaver Bracteatum; extension of time for comments; comments by 1–28–77..... 55558; 12–21–76
[First published at 41 FR 51036, Nov. 19, 1976]

Parole Commission—

Parole, release, supervision and recommitment of prisoners, youth offenders and juvenile delinquents; comments by 1–24–77..... 52889; 12–2–76

LABOR DEPARTMENT

Occupational Safety and Health Administration—

Alaska; supplement to approved plan; comments by 1–27–77.... 56336; 12–28–76

Pension and Welfare Benefit Programs—
Hearing and class exemption; comments by 1–27–77..... 1488; 1–7–77
[First published at 41 FR 31838, 31874, July 30, 1976]

NUCLEAR REGULATORY COMMISSION
Appeal Board decisions; review; comments by 1–27–77..... 54206; 12–13–76
Production and utilization facilities; licensing; comments by 1–26–77. 56204; 12–27–76

TRANSPORTATION DEPARTMENT
Coast Guard—
Camden Harbor, Me.; special anchorage area; comments by 1–27–77. 54199; 12–13–76
Drawbridge operations; New Smyrna Beach, Fla.; comments by 1–25–77..... 55367; 12–20–76
Drawbridge operations; Sarasota County, Fla., comments by 1–25–77..... 55367; 12–20–76
Federal Aviation Administration—
Airspace, air traffic and general operating rules; comments by 1–24–77. 46875; 10–26–76
Airworthiness directives; Bell; comments by 1–28–77..... 55365; 12–20–76
Airworthiness directives; Bell Models 206B Helicopters; comments by 1–28–77..... 55889; 12–23–76
Alteration of transition area; Seattle, Wash.; comments by 1–24–77. 55890; 12–23–76
Federal Highway Administration—
Directional sign standards; comments by 1–24–77..... 46877; 10–26–76
National Highway Traffic Safety Administration—
Average fuel economy standards; exemptions; comments by 1–24–77. 53827; 12–9–76
Tire quality; uniform grading standards; comments by 1–27–77. 54205; 12–13–76
Urban Mass Transportation Administration—
Charter bus operations by UMTA assisted operators; comments by 1–28–77..... 56680; 12–29–76

TREASURY DEPARTMENT
Fiscal Service—
Certificates of indebtedness; State and local government series; comments by 1–26–77..... 56208; 12–27–76
Surety companies doing business with the United States; comments by 1–28–77..... 56674; 12–29–76
Internal Revenue Service—
Hearing and class exemption; comments by 1–27–77..... 1488; 1–7–77
[First published at 41 FR 31838, 31874, July 30, 1976]
Income tax; assignment or alienation of benefits; comments by 1–27–77. 56334; 12–28–76

Next Week's Meetings

AGRICULTURE DEPARTMENT
Agricultural Marketing Service—
Shippers Advisory Committee, Lakeland, Fla. (open), 1–25–77. 1496; 1–7–77
Animal and Plant Health Inspection Service—
Poultry Health Advisory Committee, Mycoplasmosis Subcommittee, Hyattsville, Md. (open), 1–25–77. 2105; 1–10–77
Forest Service—
Okanogan National Forest Grazing Advisory Board, Okanogan, Wash. (open), 1–28–77..... 54010; 12–10–76
White Mountain National Forest Advisory Committee, Jackson, N.H. (open), 1–27 and 1–28–77. 1050; 1–5–77

ARTS AND HUMANITIES, NATIONAL FOUNDATION
Visual Arts Advisory Panel, Washington, D.C. (closed), 1–24 and 1–25–77. 1547; 1–7–77

CIVIL RIGHTS COMMISSION
District of Columbia Advisory Committee, Wash., D.C. (open), 1–26–77. 54014; 12–10–76
Kansas Advisory Committee, Topeka, Kans. (open), 1–27–77..... 1051; 1–5–77
Maine Advisory Committee, Augusta, Me. (open), 1–25–77.. 56356; 12–28–76
North Carolina Advisory Committee; Raleigh, N.C. (open), 1–27–77. 1051; 1–5–77
Oklahoma Advisory Committee, Oklahoma City, Okla. (closed), 1–24–77. 55567; 12–21–76
Pennsylvania Advisory Committee, Philadelphia, Pa. (open), 1–26–77. 55567; 12–21–76
South Carolina Advisory Committee, Marion, S.C. (open), 1–28–77. 55567; 12–21–76
Vermont Advisory Committee, Montpelier, Vt. (open), 1–24–77..... 1051; 1–5–77
Virginia Advisory Committee, Rosslyn, Va. (open), 1–28–77..... 2516; 1–12–77

COMMERCE DEPARTMENT
Census Bureau—
Asian and Pacific Americans Population for the 1980 Census, Census Advisory Committee; Suitland, Md. (open), 1–27 and 1–28–77. 1061; 1–5–77
Housing for the 1980 Census Advisory Committee, Suitland, Md. (open), 1–24–77..... 1062; 1–5–77
National Oceanic and Atmospheric Administration—
New England Fishery Management Council, Peabody, Mass. (open), 1–25 and 1–26–77..... 2336; 1–11–77
North Pacific Management Council Scientific and Statistical Committee Advisory Panel, Anchorage, Alaska (open), 1–26 thru 1–28–77..... 1287; 1–6–77
South Atlantic Fishery Management Council, Buena Vista, Fla. (open), 1–25 thru 1–27–77..... 56878; 12–30–76

CONSUMER PRODUCT SAFETY COMMISSION
Product Safety Advisory Council, Washington, D.C. (open), 1–25 and 1–26–77..... 56681; 12–29–76

DEFENSE DEPARTMENT
Air Force Department—
Air Force ROTC Advisory Panel, Montgomery, Ala. (open), 1–26 and 1–27–77..... 2355; 1–11–77
Navy Department—
Chief of Naval Operations Executive Panel Advisory Committee, Washington, D.C. (closed), 1–26 and 1–27–77..... 1051; 1–5–77
Office of the Secretary—
DDR & E High Energy Laser Review Group (HELRG), Albuquerque, New Mex. (closed), 1–26 thru 1–28–77. 55570; 12–21–76
Images and Display Electron Devices Advisory Group, New York, N.Y. (closed), 1–27–77..... 55930; 12–23–76
Laser Electron Devices Adivsory Group, Arlington, Va. (closed), 1–26 and 1–27–77.... 55930; 12–23–76

EDUCATION OF DISADVANTAGED CHILDREN, NATIONAL ADVISORY COUNCIL
Meeting, Washington, D.C. (open), 1–28 and 1–29–77..... 2387; 1–11–77

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
Procurement Policy Advisory Committee, Washington, D.C. (open), 1–27–77. 2524; 1–12–77
Study Group on Global Environmental Effects of Carbon Dioxide, Atlanta, Ga. (open), 1–29–77..... 3015; 1–14–77

ENVIRONMENTAL PROTECTION AGENCY
State-Federal FIFRA Implementation Advisory Committee, Washington, D.C. (open), 1–27 and 1–28–77..... 2340 1–11–77

FEDERAL COMMUNICATIONS COMMISSION
Personal Use Radio Advisory Committee, Arlington, Va. (open), 1–27–77. 12–20–76; 55377 and 12–29–76; 56707
Private Land Mobile Advisory Committee, Washington, D.C. (open), 1–27–77. 56707; 12–29–76
Radio Astronomy Service Working Group for 1979 ITU-World Administrative Radio Conference, Washington, D.C. (open),.. 1–24–77 55740; 12–22–76
Radio Technical Commission for Marine Services, Washington, D.C. (open), 1–25 thru 1–27–77..... 840; 1–4–77

1979 World Administrative Radio Conference Advisory Committee for Amateur Radio, Washington, D.C. (open with restrictions), 1–25–77..... 2113; 1–10–77

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitration Services Advisory Committee, Washington, D.C. (open), 1–27 and 1–28–77..... 2341; 1–11–77

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Washington, D.C. (closed), 1–27–77. 54815; 12–15–76

FEDERAL REGISTER OFFICE

Legal Drafting Workshop, Washington, D.C. (open), 1–26 thru 1–29–77. 1500; 1–7–77

FINE ARTS COMMISSION

Meeting, Washington, D.C. (open), 1–25–77..... 2337; 1–11–77

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Aging Federal Council—

Research and Manpower Committee, Washington, D.C. (open), 1–24–77. 56859; 12–30–76

Alcohol, Drug Abuse and Mental Health Administration—

Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism, Rockville, Md. (open with restrictions), 1–25–77. 1515; 1–7–77

Education Office—

Adult Education National Advisory Council; Washington, D.C. (open), 1–24 thru 1–26–77..... 55387; 12–20–76

Bilingual Education National Advisory Council, Austin, Tex. (open), 1–27 and 1–28–77..... 2359; 1–11–77

Equality of Educational Opportunity National Advisory Council, Orlando, Fla. (open), 1–28 and 1–29–77. 55240; 12–17–76

Financial Aid to Students Advisory Council, Scottsdale, Ariz. (open), 1–27 and 1–28–77..... 10761; 1–5–77

Indian Education National Advisory Council, Tucson, Ariz. (open), 1–27 thru 1–29–77..... 2541; 1–12–77

Food and Drug Administration—

Ear, Nose and Throat Panel, Washington, D.C. (open), 1–24 and 1–25–77..... 1517; 1–7–77

Health Resources Administration—

Nurse Training National Advisory Council, Bethesda, Md. (partially open), 1–24 thru 1–26–77. 52539; 11–30–76

National Institutes of Health—

Advisory Eye Council, National Bethesda, Md. (partially open), 1–24 thru 1–26–77..... 2721; 1–13–77

First published at 41 FR 55592, Dec. 21, 1976

Allergy and Immunology Subcommittee of the National Advisory Allergy and Infectious Diseases Council, Bethesda, Md. (closed), 1–26–77. 2357; 1–11–77

Allergy and Infectious Diseases National Advisory Council, Bethesda, Md. (partially open), 1–27 and 1–28–77..... 857; 1–4–77

[First published at 41 FR 54817, Dec. 15, 1976]

Arthritis, Bone, and Skin Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77..... 55592; 12–21–76

Arthritis, Metabolism, and Digestive Diseases National Advisory Council, Bethesda, Md. (partially closed), 1–26 thru 1–28–77..... 55592; 12–21–76

Blood Diseases and Resources Advisory Committee, Bethesda, Md. (open), 1–24 and 1–25–77. 55590; 12–21–76

Board of Regents of the National Library of Medicine, Bethesda, Md. (partially closed), 1–27 and 1–28–77..... 54816; 12–15–76

Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (open), 1–24–77..... 53709; 12–8–76

Committee Advisory to the National Cancer Institute, review of research contract proposals, 1–24 and 1–25; 1–27 thru 1–29–77. 55592–55593; 12–21–76

Dental Research National Advisory Council, Bethesda, Md. (partially open), 1–27 and 1–28–77. 53709; 12–8–76

Diabetes, Endocrine, and Metabolic Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77..... 55592; 12–21–76

Diagnosis and Treatment and Carcinogenesis and Prevention Committee, Bethesda, Md. (open), 1–23–77. 54817; 12–15–76

Digestive Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77. 55592; 12–21–76

Kidney, Urologic and Blood Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77..... 55592; 12–21–76

National Cancer Advisory Board, Bethesda, Md. (partially closed), 1–24 and 1–25–77..... 54817; 12–15–76

National Pancreatic Cancer Project Working Cadre, Los Angeles, Calif. (partially closed), 1–26–77. 54818; 12–15–76

National Prostatic Cancer Project Working Cadre, Miami, Fla. (partially closed), 1–27–77..... 54818; 12–15–76

Primate Research Centers Advisory Committee, Bethesda, Md. (open), 1–27–77..... 55592; 12–21–76

Subcommittee on Centers and Conservation, National Cancer Advisory Board, Bethesda, Md. (partially closed), 1–23–77..... 54818; 12–15–76

Subcommittee on Planning and Budget of the National Cancer Advisory Board, Bethesda, Md. (open), 1–23–77 ..... 53711; 12–8–76

Virus Cancer Program Advisory Committee, Frederick, Md. (open), 1–26 and 1–27–77 ..... 859; 1–4–77

Virus Cancer Program Advisory Committee, Bethesda, Md. (open), 1–26 and 1–27–77..... 53711; 12–8–76

Workshop on Dyslexia, Bethesda, Md. (open), 1–24 and 1–25–77. 54817; 12–15–76

Office of the Secretary—

National Professional Standards Review Council, Washington, D.C. (open), 1–24 and 1–25–77. 2543; 1–12–77

Review Panel on New Drug Regulations, Washington, D.C. (open), 1–24 and 1–25–77..... 1307; 1–6–77

Rights and Responsibilities of Women Advisory Committee, Washington, D.C., 1–26 thru 1–28–76..... 52544; 11–30–76

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Insurance Administration—

National Insurance Development Advisory Board, Washington, D.C. (open), 1–26–77 ..... 1078; 1–5–77

INTERIOR DEPARTMENT

National Park Service—

Cuyahoga Valley National Recreation Area Advisory Commission, Bath, Ohio (open), 1–27–77..... 1523; 1–7–77

Midwest Regional Advisory Committee, Omaha, Nebr. (open), 1–27–77..... 55946; 12–23–76

Office of the Secretary—

Oil Shale Environmental Advisory Panel, Grand Junction, Colo. (open), 1–25 and 1–26–77. 2365; 1–11–77

JUSTICE DEPARTMENT

Law Enforcement Assistance Administration—

Criminal Justice National Minority Advisory Council, Miami, Fla. (open), 1–28 and 1–29–77..... 84; 1–3–77

National Minority Advisory Council on Criminal Justice, Atlanta, Ga. (open), 1–26 and 1–27–77. 2366; 1–11–77

LABOR DEPARTMENT

Occupational Safety and Health Administration—

Federal Advisory Council on Occupational Safety and Health, Washington, D.C., 1–26–77..... 54038; 12–10–76

National Advisory Committee on Occupational Safety and Health, Standards Subgroup, Washington, D.C. (open), 1–27–77..... 56411; 12–28–76

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Research and Technology Advisory Council, Panel on Research, Moffett Field, Calif. (open), 1–27 and 1–28–77 ..... 56420; 12–28–76

Space Program Advisory Council, Washington, D.C. (open), 1–26–77. 1319; 1–6–77

NATIONAL SCIENCE FOUNDATION

Human Cell Biology Advisory Panel, Washington, D.C. (closed), 1–27 and 1–28–77..... 55949; 12–23–76

Mathematical Sciences-Ad Hoc Group on Mathematical Logic Advisory Panel, St. Louis, Mo. (closed), 1–26–77. 56422; 12–28–76

Research Advisory Committee, Task Groups 15 and 17, Washington, D.C. (open), (2 meetings), 1–27 and 1–28–77..... 56873; 12–30–76

Science Education Projects Advisory Panel; Research Initiation and Support Program, (RIAS) Subpanel, Arlington, Va. (closed), 1–27 and 1–28–77..... 1548; 1–7–77

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

(Closed), 1–27–77..... 2143; 1–10–77

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems, Washington, D.C., 1–29–77..... 2729; 1–13–77

Advisory Committee on Reactor Safeguards, Subcommittee on the Blue Hills Station, Units 1 and 2 (open), 1–28–77..... 2728; 1–13–77

"Inservice inspection of prestressed concrete containment structures with grouted tendons", Bethesda, Md. (open), 1–25–77.. 55394; 12–20–76

OCEANS AND ATMOSPHERE, NATIONAL ADVISORY COMMITTEE

Washington, D.C. (open), 1–24 and 1–25–77..... 1084; 1–5–77

SCIENCE AND TECHNOLOGY POLICY OFFICE

Intergovernmental Science, Engineering and Technology Advisory Panel, Detroit, Mich. (open), 1–28–77. 2544; 1–12–77

SMALL BUSINESS ADMINISTRATION

Boston District Advisory Council, Worcester, Mass. (open), 1–28–77. 55615; 12–21–76

STATE DEPARTMENT

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 1–26–77. 1092; 1–5–77

International Radio Consultative Committee, Study Group CMTT of the U.S. International Committee, Washington, D.C. (open), 1–26–77.... 56898; 12–30–76

International Radio Consultative Committee, Study Group 2 of the U.S. International Committee, Washington, D.C. (open), 1–26–77.... 56898; 12–30–76

Ocean Affairs Advisory Committee, Washington, D.C. (closed), 1–25–77. 56898; 12–30–76

TELECOMMUNICATIONS POLICY OFFICE

INMARSAT Preparatory Committee Working Group, Washington, D.C. (open), 1–24–77..... 1324; 1–6–77

TRANSPORTATION DEPARTMENT

Coast Guard—

Rules of the Road Advisory Committee, Washington, D.C. (open), 1–25–77..... 55961; 12–23–76

Federal Aviation Administration—

Radio Technical Commission for Aeronautics Executive Committee, Washington, D.C. (open), 1–28–77. 56899; 12–30–76

VETERANS ADMINISTRATION

Wage Committee, Washington, D.C. (closed), 1–27–77. 55963; 12–23–76

Next Week's Public Hearings

ENVIRONMENTAL PROTECTION AGENCY

California state standards for motor vehicle pollution control, Los Angeles, Calif., 1–27 and 1–28–77..... 1065; 1–5–77

Kepone levels in certain seafood (2 documents), Baltimore, Md., 1–24–77; Richmond, Va., 1–26–77.. 56380; 12–28–76

Stage II vapor recovery, Denver, Colo., 1–27 and 1–28–77..... 56889; 12–30–76

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Interstate Land Sales Registration Office—

Sea-Air Estates, Washington, D.C., 1–28–77..... 56403; 12–28–76

INTERNATIONAL TRADE COMMISSION

Probable Economic Effect of the Provisions of H.R. 14600 and the Need to Protect A Domestic Industry, Washington, D.C., 1–25–77..... 53549; 12–7–76

INTERSTATE COMMERCE COMMISSION

Preparation of Delmarva Peninsula Study on Rail Transportation (3 documents), Dover, Del. 1–24–77; Melfa, Va. 1–28–77; Salisbury, Md. 1–26–77. 56428; 12–28–76

POSTAL SERVICE COMMISSION

Public service costs of postal service, various cities, 1–24 thru 1–28–77. 55738; 12–22–76

VETERANS ADMINISTRATION

Station Committee on Educational Allowances, Nashville, Tenn. 1–27–77. 56425; 12–28–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

rules and regulations

Title 7—Agriculture

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

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Nomination of Plum Commodity Committee Grower Members

This document reallocates grower member positions and realigns certain grower districts for purposes of representation on the Plum Commodity Committee.

A notice of proposed rulemaking on this matter was published in the FEDERAL REGISTER on December 16, 1976 (41 FR 54948). This notice invited interested persons to submit written data, views, or arguments in connection with the proposal through December 31, 1976. No such material was received.

The Plum Commodity Committee is established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528). This order regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Grower representation on the Plum Commodity Committee is allocated on the basis of production of plums in districts established under the marketing order. The present allocation is set forth in § 917.116 of the Subpart—Rules and Regulations and has been in effect since 1969 and production in some of the districts has changed since that time. This action under § 917.35(g) of the order reallocates grower membership and realigns grower districts to more nearly reflect current production patterns. The number of grower members to represent the Fresno District is increased from six to seven members and the Placer-Colfax District (which currently nominates one grower member) and the North and Central Sacramento Valley Districts (which currently nominate one grower member) would nominate one grower member for all three districts.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee (the administrative agency established under the order) and other available information, amendment of § 917.116 of Subpart—Rules and Regulations (7 CFR 917.100–917.179), as hereinafter set forth, is approved.

Therefore, § 917.116 is amended to read as follows:

§ 917.116 Changes in nomination of Plum Commodity Committee members.

Nominations for membership on the Plum Commodity Committee shall be made by the growers of plums in the respective representative areas as follows:

(a) Kern District, Tehachapi District, South Coast District, and Southern California District one nominee.

(b) Tulare District two nominees.

(c) Fresno District, seven nominees.

(d) Placer-Colfax District, North Sacramento Valley District, and Central Sacramento Valley District one nominee.

(e) All of the production area not included in the Kern District, Tehachapi District, South Coast District, Southern California District, Tulare District, Fresno District, Placer-Colfax District, North Sacramento Valley District, and Central Sacramento Valley District one nominee.

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

Dated January 14, 1977, to become effective February 25, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–1790 Filed 1–18–77;8:45 am]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Qualification Requirements and Nomination Procedure for Public Members of Commodity Committees

This document establishes qualification requirements and nominating procedure for public members of the Pear, Plum, and Peach Commodity Committees.

A notice of proposed rulemaking on this matter was published in the FEDERAL REGISTER on December 20, 1976 (41 FR 55359). The notice invited interested persons to submit written data, views, or arguments in connection with the proposal through December 31, 1976. No such material was received.

The proposal was submitted by the Control Committee which is established under marketing order No. 917 (7 CFR Part 917; 41 FR 17528). The order regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

A recent amendment of the marketing order provided that each of the three commodity committees (i.e. the Pear, Plum, and Peach Commodity Committees) could be increased by one public member. Such public member would be nominated by the respective commodity committee and selected by the Secretary. The decision in that amendatory proceeding concluded that procedures for the selection and appointment of public members (and their alternates) should be established by the Control Committee and approved by the Secretary. The Control Committee met on November 10, 1976, and, under § 917.34(g) of the order, unanimously recommended establishment of the qualification requirements and nomination procedure, hereinafter set forth, applicable to the public members (and their alternates) of the respective Commodity Committees.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Control Committee, and other available information, amendment of Subpart—Rules and Regulations (7 CFR 917.100–917.179) by adding a new § 917.122 is approved. The new § 917.122 reads as follows:

§ 917.122 Qualification requirements and nomination procedure for public members of Commodity Committees.

(a) Public members shall not have a direct financial interest or be closely associated with production, processing, financing, or marketing (except as consumers) or California agricultural commodities.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly, and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of California.

(d) Public members should be nominated by each Commodity Committee and should serve a two-year term which coincides with the term of office of grower members of Commodity Committees.

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

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

Dated January 14, 1977, to become effective February 25, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc.77–1791 Filed 1–18–77;8:45 am]

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

Miscellaneous Amendments

This document amends the rules and regulations of Marketing Order No. 930 to: (1) increase from $10,000 to $15,000 the amount which may be set aside from reserve pool funds to defray certain costs; and (2) clearly indicate that the conditions governing the sale of reserve pool cherries are applicable to those sales of cherries which are released from the reserve pool as a result of a revision of percentages.

On December 14, 1976, a notice of proposed rulemaking on these matters was published in the FEDERAL REGISTER (41 FR 54493). The notice invited interested persons to file written data, views, or arguments through December 31, 1976. No such material was received. The proposal was unanimously recommended by the Cherry Administrative Board which is established under Marketing Order No. 930 (7 CFR Part 930) as the agency to administer the order. This order regulates the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

At present, the Cherry Administrative Board is permitted, under § 930.109(c) to set aside a portion of reserve pool funds, not to exceed $10,000, to defray the costs of storage and maintenance of records and supporting material of such a pool. The Board has concluded that $10,000 is insufficient for such purposes and recommended this maximum amount be increased to $15,000.

Section 930.591 contains the conditions governing the sale of reserve pool cherries. Sale of such cherries to handlers are made by two methods: (1) By releasing a portion, or all, of the reserve pool cherries; and (2) by revising the free (and restricted) percentage applicable to cherries which handlers may acquire and freely handle.

During the 1974–75 season, reserve pool cherries were released by means of revising free and restricted percentages. Since § 930.591 did not clearly indicate that the conditions of sale are applicable to sales of reserve pool cherries resulting from a revision of percentages, some uncertainties arose as to conditions of sale. To remove any uncertainty in the future, this action amends § 930.591 to clearly indicate that the provisions of that section are applicable to such sales.

After consideration of all relevant matter presented, including that in the notice, the information submitted by the Cherry Administrative Board, and other available information, it is found that the amendment hereinafter set forth will tend to effectuate the declared policy of the act. Therefore, 7 CFR Part 930 is amended as follows:

1. Paragraph (c) of § 930.109 is revised to read:

§ 930.109 Distribution of reserve pool proceeds.

* * * * *

(c) In accordance with § 930.60 all reserve pool funds, after deductions, shall be distributed to equity holders in direct proportion to each person's equity in the total reserve pool. In the event of complete disposition of all reserve pool cherries, the Board may, prior to making disposition of the resulting funds, set aside a portion of such funds, not to exceed $15,000, as a reserve to defray costs of storage and maintenance of records and supporting material of the pool.

* * * * *

2. The introductory text of § 930.591 is revised to read:

§ 930.591 Conditions governing the sale of reserve pool cherries.

The procedure set forth in this section shall be applicable to cherries released from the reserve pool as a result of a revision of percentages pursuant to § 930.53(a) or release of reserve pool cherries pursuant to § 930.53(b).

* * * * *

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

Dated January 14, 1977, to become effective February 25, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-1789 Filed 1-18-77;8:45 am]

[Amdt. 1]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

This amendment relieves on January 16, 23 and 30, 1977, the Sunday packaging prohibition. Recent rainy weather has reduced harvest and packing. This amendment is necessary to allow the industry sufficient operating time to satisfy existing and prospective orders for lettuce.

Findings. (a) Pursuant to Marketing Agreement No. 144 and Order No. 971 (7 CFR Part 971) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas it is hereby found that the amendment to the handling regulation, hereinafter set forth, will tend to effectuate the declared policy of the act. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The amendment is based upon recommendations and information submitted by the South Texas Lettuce Committee, established pursuant to said marketing agreement and order and upon other available information.

(b) It is hereby found that it is impractical and contrary to the public interest to give preliminary notice, or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) this amendment must become effective immediately if producers are to derive any benefits therefrom, (2) compliance with this amendment will not require any special preparation on the part of handlers, and (3) this amendment relieves restrictions on the handling of lettuce grown in the production area.

Regulation, as amended. In § 971.317 (41 FR 51388) the introductory paragraph is hereby amended by adding the following thereto:

§ 971.317 Handling regulation.

* * *, except that the prohibition against the packing of lettuce on Sundays shall not apply on January 16, 23 and 30, 1977.

* * * * *

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

Effective date. Dated January 14, 1977, to become effective January 16, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-1788 Filed 1-18-77;8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

IMMIGRATION AND NATIONALITY ACT

Implementation

Reference is made to the notice of proposed rulemaking which was published in the FEDERAL REGISTER on November 26, 1976 (41 FR 52061) pursuant to section 553 of Title 5 of the United States Code (80 Stat. 383) and in which there were set forth proposed amendments to Parts 204, 212, and 214 of Chapter I of Title 8 of the Code of Federal Regulations implementing the amendments to the Immigration and Nationality Act which were made by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484; 90 Stat. 2300–2303).

The Service received representations from nine parties in response to the above notice of proposed rulemaking, and they have been carefully considered.

One writer was in favor of the proposed rules. Another objected because the change from present law on the admission of alien physicians and surgeons could worsen an already critical physician shortage in his State. Two others found the requirement for the foreign physician to have passed Parts I and II of the National Board of Medical Examiners Examination an impossible one for foreigners to satisfy, since as a general rule they are not permitted to take that examination. One writer complained that no "equivalent" examination has been declared as provided for in the amended law. All of these comments pertain essentially to the amended law itself and not to Service regulations, and

are therefore not apropos. The provision for the determination of an examination as equivalent to the National Board of Medical Examiners Examination is one for implementation by the Secretary of Health, Education, and Welfare and not for the Commissioner of Immigration and Naturalization.

Another writer took issue with the change in 8 CFR 212.7(c) which states in effect that it will no longer be possible for the foreign country of the medical graduate's nationality or last residence to allege to the Secretary of State that such country has no objection to the alien being granted a waiver of the foreign residence requirement. The amended rule, however, does no more than paraphrase the changed requirement in section 212(e) of the Immigration and Nationality Act as amended by Pub. L. 94-484. Objection was also raised to the requirement that the alien physician coming as an exchange visitor for graduate medical education be trained in an institution which is affiliated with a school of medicine: the point was made that many institutions, like the Cleveland Clinic and the Mayo Clinic, are accredited teaching institutions in their own right and without having medical school affiliation. Again these comments pertain to the amended law and not to the regulation.

Another writer questions the absence in the proposed regulation of a provision which would exempt the immigrant medical graduate from the provisions of section 212(a)(32) of the amended law if the graduate were coming to teach or conduct research rather than to perform services as a member of the medical profession. It is the Service position from a reading of the whole Act that Congress clearly considered teaching and research within the "services" performed by a member of the medical profession, and therefore intended no exemption from the exclusionary provisions of section 212(a)(32) for the medical school graduate coming to engage in teaching or research as a third or sixth preference or nonpreference immigrant.

Another correspondent wrote with regard to the reference to nurses (in 8 CFR 214.2(h)(2)(iv) and in 8 CFR 214.2(h)(4)(iv)) and their classification as nonimmigrants. The observations were made (1) that nursing education obtained in Canada should no longer be deemed the equivalent of licensure since nurses educated in Canada are now required with few exceptions to take licensure examinations in the States; and (2) that alien nurses in order to be classified as nonimmigrants under section 101(a)(15)(H) of the Act should be required to present evidence of having passed the examination of the Commission on Graduates of Foreign Nursing Schools (COGFNS) when that examination becomes available in 1978. The proposed rule amended the requirements for physicians and merely restated separately the existing requirements for nurses. To eliminate the advantage now provided for the Canadian nurse will require publication of another proposed rule. The suggestion that the alien nurse be required to pass the COGFNS examination will be considered when that examination is finally made available abroad.

Another writer objected to the use of the word "solely" in the proposed rule that would require a petitioner, seeking to classify a physician as a nonimmigrant temporary worker under section 101(a)(15)(H)(i) of the Act, to establish that the physician is coming solely to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of such institution or agency. Section 101(a)(15)(H)(i) of the Act, as amended by Pub. L. 94-484, in substance now restricts that temporary worker classification for the graduate of a medical school to one coming to teach or conduct research. The inclusion of the word "solely" emphasizes the newly restricted character of the work to be performed and is not believed to vary the Congressional intent. This writer's other objection related to 8 CFR 214.2(j) and to the fact that the proposed language in that rule would make the restrictions of the new law applicable to *all* medical graduates applying as exchange visitors and not just to those coming for graduate medical education or training. The objection is well taken and the language in 8 CFR 214.2(j) has been modified and restated below to make it more closely parallel to the language of the statute.

In the light of the foregoing, minor nonsubstantive changes for purposes of clarification have been made in §§ 204.2(e)(2), 212.7(c), and 214.2(j)(2)(a) and (b). In the light of the clarifying change made in § 214.2(j)(2)(a), no change will be made in § 214.2(j)(1).

The proposed rules, as modified and set forth below, are hereby adopted:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

In § 204.2(e)(2) the heading and text are revised to read as follows:

§ 204.2 Documents.

* * * * *

(e) *Evidence of eligibility for third- or sixth-preference classification*

* * * * *

(2) *Physicians or Surgeons.* An alien who is coming to the United States principally to perform services as a member of the medical profession shall not be considered eligible for classification as a third or sixth preference immigrant unless he establishes that he is a graduate of a medical school or has qualified to practice medicine in a foreign state; has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare); and is competent in oral and written English.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

In § 212.7, paragraph (c) is amended by adding two new sentences between the existing second and third sentences, and by adding an additional new sentence to the end thereof. As amended, § 212.7(c) reads in pertinent part, as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(c) *Section 212(e).* * * * An alien is also subject to the foreign residence requirement of section 212(e) of the Act if he was admitted to the United States as an exchange visitor on or after January 10, 1977 to receive graduate medical education or training, or following admission, acquired such status on or after that date for that purpose. However, such exchange visitor already participating in an exchange program of graduate medical education or training as of January 9, 1977, who was not then subject to the foreign residence requirement of section 212(e) and who proceeds or has proceeded abroad temporarily and is returning to the United States to participate in the same program, continues to be exempt from the foreign residence requirement. * * * However, this "no objection" provision shall not be applicable to the exchange visitor admitted to the United States on or after January 10, 1977 to receive graduate medical education or training, or who acquired such status on or after that date for such purpose.

* * * * *

PART 214—NONIMMIGRANT CLASSES

In § 214.2(h)(2), the heading of subparagraph (iii) is amended to read "Physicians", the text of subparagraph (iii) is revised as set forth below, existing subparagraph (iv) is redesignated (v) and a new (iv) is added:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees.*

* * * * *

(2) *Petition for alien of distinguished merit and ability*

* * * * *

(iii) *Physicians.* A petitioner seeking to accord a physician a classification under section 101(a)(15)(H)(i) of the Act shall attach to the petition satisfactory evidence that the physician has graduated from a medical school or has a full and unrestricted license to practice medicine in a foreign state. Additionally, the petitioner shall establish that the beneficiary is coming to the United States solely to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of such institution or agency.

(iv) *Nurses.* A petitioner seeking to accord a nurse a classification under section 101(a)(15)(H)(i) of the Act shall attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where she/he has obtained her/his nursing education, or that such education was obtained in the United States or Canada; also, a statement from the petitioner certifying whether to the best of petitioner's information and belief the beneficiary is fully qualified under the laws governing the place of intended employment to perform the desired services, whether under those laws the petitioner is authorized to employ the beneficiary to perform such services, and whether under those laws the beneficiary is permitted to substantially perform the services. If the laws governing the place where the services will be performed place any limitations on the services to be rendered by the beneficiary the statement should contain details as to the limitations. The district director shall consider any such limitations in determining whether the services which the beneficiary would perform are of an exceptional nature requiring a person of distinguished merit and ability.

(v) *Accompanying aliens.* Managers, trainers, musical accompanists, and other persons determined by the district director to be necessary for successful performance by the beneficiary of a petition approved for classification under section 101(a)(15)(H)(i) of the Act may also be accorded such classification if included in the same or a separate petition.

* * * * *

In § 214.2(h)(4), subparagraph (i) is revised by adding an additional new sentence at the end thereof, following the word "professions" to read as follows:

* * * * *

(4) *Petition for alien trainee.*—(i) *General.* In addition to purely industrial establishments, an individual, organization, firm, or other trainer may petition for nonimmigrant trainees on Form I-129B for the purpose of giving instruction or training in agriculture, commerce, finance, government, transportation, and the professions. However, this does not apply to trainees coming to receive graduate medical education or training.

* * * * *

In § 214.2(h)(4), in subparagraph (iv), the heading is amended, and the text revised, to read as follows:

* * * * *

(iv) *Nurses.* A petitioner may seek a classification under section 101(a)(15)(H)(iii) of the Act for a nurse who is not qualified for classification under section 101(a)(15)(H)(i) of the Act, who is coming to the United States for training in furtherance of her/his career abroad in nursing. The petitioner shall attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the nursing education was obtained, or that such education was obtained in the United States or Canada; also, a statement from the petitioner certifying that to the best of the petitioner's information and belief the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

* * * * *

In § 214.2(j), existing subparagraph (2) is renumbered (3), and republished without change, and a new subparagraph (2) is added to read as follows:

* * * * *

(j) *Exchange aliens.*—(1) * * *

(2) *Eligibility requirements for section 101(a)(15)(J) classification for aliens desiring to participate in programs under which they will receive graduate medical education or training.*—(i) *Requirements.* An alien coming to the United States as an exchange visitor to participate in a program under which he will receive graduate medical education or training, or an alien seeking to change his nonimmigrant status to that of an exchange visitor on Form I-506 for that purpose, must have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare), and must be competent in oral and written English; and shall submit a valid Form DSP-66, completely executed on or after January 10, 1977.

(ii) *Exemptions.* From January 10, 1977 until December 31, 1980, an alien who seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or an alien who seeks to change his nonimmigrant status for such purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) through (D) of section 212(j)(1) of the Act if there would be substantial disruption in the health services provided in such program because the alien was not permitted to enter the United States or change his nonimmigrant status to participate in the program on account of his inability to comply with such requirements: *Provided* That an exemption from the requirements set forth in subparagraphs (A) through (D) of section 212(j)(1) of the Act shall not be granted where the granting of such exemption would increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1977.

(3) *Aliens in cancelled programs.* When an exchange visitor program is cancelled by the Department of State a notification of the cancellation shall be sent by the district director to each participant in the program. The participant shall be informed that he may remain in the United States in his present stauts to continue his activities in the cancelled program until the date of expiration of his currently authorized stay and that he must terminate his participation in that program by that date. A copy of the notification to the alien shall be sent to the sponsor of the cancelled program. Where extension of the alien's stay will not exceed the time limitation on the type of program in which he is engaged, he shall also be informed that he may apply for an extension if he is accepted as a participant in another approved exchange program and submits Form DSP-66 executed by his new program sponsor. In such case, a release by the sponsor of the cancelled program shall not be required.

* * * * *

The basis and purpose of the rules prescribed in this order is to implement the amendments to the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) made in the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484, 90 Stat. 2300-2303).

Effective date: The effective date of the rules prescribed in this order will be January 19, 1977. It is necessary that these rules be made effective on less than 30 days notice because the statute which they implement (Pub. L. 94-484; 90 Stat. 2300-2303) became effective on January 10, 1977.

(Title VI of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484; 90 Stat. 2300-2303), and section 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply sections 101, 204, 212, and 214 (8 U.S.C. 1101, 1154, 1182 and 1184).)

Dated: January 14, 1977.

L. F. CHAPMAN, JR.,
Commissioner of Immigration and Naturalization.

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Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[Ruling 1977-1]

CLARIFICATIONS TO MANDATORY PETROLEUM PRICE REGULATIONS APPLICABLE TO DOMESTIC CRUDE OIL

I. BACKGROUND

On April 13, 1976, the Federal Energy Administration ("FEA") gave notice (41 FR 16179, April 16, 1976) of a proposed rulemaking and public hearing to consider clarifications to certain technical aspects of the Mandatory Petroleum Price Regulations applicable to domestic crude oil (10 CFR Part 212, Subpart D).

The FEA did not propose in that rulemaking proceeding to alter any of the major policy decisions already reached, or under consideration, in the three rulemaking stages to implement the crude oil pricing policies of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94-163). Rather, the purpose of the rulemaking proceeding was to resolve as many as possible of a variety of more technical subsidiary issues that had arisen in connection with the implemen-

tation of the EPCA. These issues included those related to the definition of "property" and "posted price"; whether a well is properly classified as an "oil well" for purposes of the stripper well property rule; the partial rescission and modification of Ruling 1975–15, including the issue whether a property's producing patterns have been "significantly altered" for purposes of the enhanced recovery rule applicable to unitized properties (10 CFR 212.75); and whether the certification of domestic crude oil sales required in 10 CFR 212.131 was adequate to enable crude oil purchasers to report on the Form FEA–P124–M–0, Domestic Crude Oil Purchaser's Monthly Report, notice of which was also issued on April 13, 1976.

In the April 13 Notice, FEA set forth tentative conclusions with respect to these issues and solicited comments to aid FEA in resolving these issues in a way that would best comport with the statutory objectives of the EPCA. FEA indicated that primary consideration would be given to interpretive rulings and clarifying amendments (if needed) that would be both administratively feasible and consistent with obtaining optimum production of crude oil in the United States. After receiving written comments and oral statements, FEA issued on August 20, 1976 a Notice entitled "Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil" (41 FR 36172, August 26, 1976), setting forth FEA's determinations with respect to those issues, and adopting certain regulatory amendments designed to improve the incentives offered under the two tier pricing system. The purpose of this Ruling is simply to set forth in the format of a Ruling the FEA interpretations, which were initially set forth in the August 20 Notice, of certain regulatory definitions as they existed since first adopted by the Cost of Living Council. This action is being taken to eliminate possible questions concerning the legal significance of the August 20 clarifications.

II. The Definition of "Property."[1]

A. *Outline of Common Legal Relationship in Crude Oil Production.*—Before discussing the purpose and intent of the crude oil pricing regulations and the definition of "property," a brief outline of the general nature of the legal relationships pursuant to which crude oil is typically produced should prove helpful in affording a better understanding of the issues involved.

Crude oil which can be commercially produced generally must be found in underground reservoirs[2] which have trapped a sufficient quantity of marketable crude oil to make production economically feasible. The nature of the interests which may exist in crude oil is extremely complex. In the simplest case, the owner of land in fee is generally entitled to produce and dispose of any crude oil which may be recovered by wells on that land. This right is not unqualified, however, but is subject to laws and regulations, which have been adopted in various states for conservation and other purposes, and to various legal doctrines which have evolved with respect to protection of the correlative rights of other parties, such as adjoining landowners, that may be affected by the landowner's production of crude oil.

In the typical case, however, the landowner does not exercise the right to produce crude oil which is inherent in the fee interest; rather, the various rights, powers, privileges, and immunities associated with the ownership of land in fee (and the crude oil which may be recovered therefrom) are transferred or otherwise divided among several parties. Although the nature of the interests which may be created by such transactions is virtually limitless, certain principal rights have been grouped together with sufficient frequency that they may be generally described as follows:

(a) Mineral interests,
(b) Royalty interests, and
(c) Leasehold interests.

Thus, the owner of the land may grant to others (or reserve to himself) the right to go upon the land and remove therefrom the crude oil (or other minerals) which may be found beneath the surface, thus separating this right (the "mineral interest") from the balance of rights otherwise appurtenant to the ownership of land.

The owner of the mineral interest may, in turn, execute what is generally known as an oil and gas lease, which typically conveys the right to go upon the land for the purpose of prospecting for and producing crude oil (the "leasehold interest"). Such leases are typically for a term of years, subject to extension in the event crude oil is produced from the land during the term described in the lease. In consideration for receiving such a "leashold interest," the lessee usually agrees to deliver to the lessor free of cost a share of the crude oil produced from the land (said to be taken by the lessor "in kind"), or a share of the proceeds of such crude oil produced and sold from the land. This right, typically retained by the holder of the mineral interest, to a share of production or proceeds is described as a "royalty interest." (See generally 1 H. Williams and C. Meyers, Oil and Gas Law §§ 101, 201–202 (1975 Supp.), hereinafter cited as "Williams and Meyers.") An oil and gas lease may be described as follows:

> The basic document of the oil and gas industry is the lease which authorizes an operator, the lessee or his assignee, to enter upon described premises for the purpose of exploring for and developing the mineral resources in the premises. * * *
>
> The modern oil and gas lease is the product of conflicts between the landowner and the operator of the oil and gas interest. The operator has been desirous of securing a lease with a small capital investment, keeping the lease as long as it was productive or was valuable for speculative purposes, and at the same time, being able to terminate an unprofitable lease without liability to the lessor. The landowner has been interested primarily in obtaining royalties from the lease and therefore has pressed for immediate exploration and development operations. In lieu of exploration and development operations, the lessor has tried to secure a periodic return for the holding of the leasehold interest. However, he has also wanted to limit the time the lessee can postpone drilling by periodic payments, in order to prevent the lessee from holding the lease merely for speculation, and to assure the exploration and development of the lease within a short time. (3 Williams and Meyers § 601, at 1–2.)

B. *Regulatory Background.*—The two tier pricing system was proposed on July 19, 1973 (38 FR 19464, July 20, 1973), by the Cost of Living Council ("CLC") under authority of the Economic Stabilization Act of 1970, as amended. In proposing the two tier system, CLC stated:

> The Council recognizes a need to stimulate increased production and is proposing a system which allows increased production (new crude petroleum) from each producing property and an equal amount of the current production (old crude petroleum) to be sold without respect to the ceiling price rule. Adoption of this incentive plan creates a two-tier pricing system for crude oil, which requires posting of two sets of prices, one for "old oil" and one for "new oil." Postings for "old oil" can be no higher than the ceiling price and postings for "new oil" is [sic] at the buyer's discretion.
>
> A crude oil producer is required to prorate among all his "old oil" buyers the amount of "old oil" freed from ceiling limitations by the production of a like amount of "new oil." (38 FR 19467.)

The regulations proposed on July 19 did not include a definition of the term "property," but defined "base production control level" (i.e., the level above which a property's current production and sale would qualify as "new oil") as follows:

> "Base production control level" for a particular month means—
>
> (i) For a particular property on which the producer has leased production rights, the total number of barrels of domestic crude petroleum produced in the same month of 1972 from that property.
>
> (ii) For a particular property on which the producer owns production rights, the total number of barrels of domestic crude petroleum produced in the same month of 1972 from that property. (38 FR 19482.)

In adopting the two tier pricing system on August 17, 1973 (effective August 19, 1973 (38 FR 22536, August 22, 1973)), CLC indicated:

[1] This Ruling sets forth verbatim only the interpretive portions of the August 20 Notice, and the section headings have been revised accordingly. Differences between this Ruling and the interpretive portions of the August 20 Notice, other than obvious changes in the references to the rulemaking proceeding initiated by the April 13 Notice, are referenced in subsequent notes.

[2] The reference to "geological formations" has been deleted as possibly confusing because a similar term is subsequently used to refer to more than a single reservoir.

A 2-tier price system has been adopted, providing for a ceiling on domestic crude petroleum prices but allowing new crude and an equivalent amount of old crude to be sold at prices above the ceiling * * * (38 FR 22536.)

CLC also stated:

* * * The substantive policy changes [between the July 19, 1973 proposal and the August 17, 1973 final regulations] were publicly announced on August 10. These regulations implement those policy decisions and, in addition, incorporate numerous changes to better implement the program. (38 FR 22536.)

The August 10 public announcement referred to above was in the form of a press release issued by CLC, stating that with respect to the two tier pricing system.

The Council has been very concerned that the final regulations strike a balance between constraining prices while at the same time encouraging the necessary increase in supplies which the country must have. * * *

The press release explained the two tier pricing system as follows:

Rule.—A two-tier pricing system is provided. Producers will have the opportunity to sell "new oil"—that above 1972 production levels—at free market prices.

Reason.—The two-tier pricing system which allows new oil to be sold at higher prices than "old oil" is expected to stimulate domestic crude oil production while maintaining price controls on oil presently being produced. The two-tier system will encourage increased investment in domestic exploration and will provide an economic incentive to allow the recovery of a larger percentage of oil in existing reservoirs. (2 Historical Working Papers on the Economic Stabilization Program August 15, 1971 to April 30, 1974, at 1259–60.)

There was no discussion of the term property in the preamble to the final regulations, but a definition of property was included in 6 CFR 150.354 of the August 17, 1973 final regulations, as follows:

"Property" is the right which arises from a lease or from a fee interest to produce domestic crude petroleum. (38 FR 22538.)

Thus, from the very inception of the two tier pricing system, producers were required to measure current monthly production and sale of crude oil from a "property" against the amount of crude oil produced and sold from that same "property" in the same month of 1972, in order to determine the amount of current crude oil production which would be subject to the ceiling price rule.

CLC did not elaborate on the rationale for the two tier price system, beyond the statements quoted above concerning the need to constrain prices while at the same time encouraging increased production. Thus, CLC perceived its statutory objective as primarily to control inflation with what was envisioned to be a short-term program under authority of the Economic Stabilization Act of 1970. That Act was scheduled to expire, as it did, eight months later, on April 30, 1974. (Thus, for example, CLC began sector-by-sector decontrol on October 25, 1973.) FEA noted in the April 13 Notice with respect to this consideration that

Because the Economic Stabilization Program was always intended to be a temporary program, the regulations adopted pursuant to that program were designed so as to achieve the price control regulatory objectives with minimal disruption to normal business practices. Thus, a definition of property was adopted to serve two basic purposes. First, the entity was intended to be one for which producers would in their normal course of business maintain production records so that new recordkeeping or data collection by the producers would not generally be necessary and audits for compliance purposes would be facilitated. Second, the entity was designed to serve as the basic building block for the incentive system which rewarded increased or new production from a property by classifying that production as new crude oil. (41 FR 16180.)

It should be noted also that the concept of a "current cumulative deficiency" was also incorporated in the two tier pricing system from the outset. (Once new crude oil had been produced and sold from a property, and current production and sale then fell short of 1972 production and sale levels, new crude oil could not thereafter be sold from the property until enough production in excess of 1972 levels had been sold at the ceiling price even though it would otherwise have qualified as new crude oil but for the requirement to make up the cumulative deficiency.) However, the cumulative deficiency rule was not a significant factor in the early months of the two tier system, since production and sale levels in late 1973 were, in general, not significantly less than 1972 levels.

C. *Legislative Background.*—The term "property" gained further significance under the crude oil pricing regulations with the advent of the statutory exemption from those regulations of the first sale of crude oil produced from stripper well leases, which was initially provided for by the Trans-Alaska Pipeline Authorization Act ("TAPAA," Pub. L. 93–153), signed by the President on November 16, 1973. The exemption was implemented by CLC by an amendment to its regulations, which was issued November 21, 1973 and made effective as of November 16, 1973 (38 FR 32494, November 26, 1973). The amendment defined "stripper well lease" to mean a "property" (as previously defined in the two tier crude oil pricing regulations) whose average daily production did not exceed the qualifying limits set by the statute. In so doing, CLC stated:

* * * For purposes of this exemption, the term "property" is described as being co-extensive with that "property" used to determine 1972 base production control levels, as measured by leases in existence in 1972. This narrow definition was adopted in order to comply with the Congressional intent expressed in the Conference Report which stated that the "Congress specifically intends that the regulations shall, among other things, prevent any 'gerrymandering' of leases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings" (H.R. Rep. No. 93–624). (38 FR 32495.)

On November 27, 1973, the Emergency Petroleum Allocation Act of 1973 ("EPPA," Pub. L. 93–159) was enacted and it modified the test for stripper well lease qualification from one based on production levels during the preceding calendar month to one based on production levels during the preceding calendar year. A corresponding change in the crude oil pricing regulations was made by CLC, effective November 27, 1973 (38 FR 34464, December 14, 1973), but in all other respects the definition of stripper well lease remained as initially adopted.

Section 4(e)(2) of the EPAA provided for the stripper well lease exemption (until its repeal, effective February 1, 1976, by the Energy Policy and Conservation Act and read in part, as follows:

(A) The regulation promulgated under subsection (a) of this section shall not apply to the first sale of crude oil produced in the United States from any lease whose average daily production of crude oil for the preceding calendar year does not exceed ten barrels per well.

(B) To qualify for the exemption under this paragraph, a lease must be operating at the maximum feasible rate of production and in accord with recognized conservation practices.

Neither the EPAA nor the TAPAA included a definition of the term "lease." The most extensive legislative history concerning the original stripper well lease exemption is found in the Conference Report accompanying the TAPAA.

Although the Conferees did not discuss the meaning of the term "lease," they did state:

The Congress intends that the provisions of this section will be strictly enforced and regulated by the administering agency to insure that the limited exemption of this class of wells for the express purposes described above is not in any way broadened * * * Congress also directs that the administering agency shall promulgate regulations to implement the provisions of this section before it becomes operative. The Conferees expect the administering agency to utilize State data regarding production volumes, and to provide by regulation safeguards against the manipulation of gerrymandering of lease units in a manner that evades the price control and allocation programs.

These regulations shall be so designed as to provide safeguards against any abuse, over-reaching or altering of normal patterns of operations to achieve a benefit under this section which would not otherwise be available. Congress specifically intends that the regulations shall, among other things, prevent any "gerrymandering" of leases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings. The sole purpose and objective of this Section 406 is to keep stripper wells—those producing less than ten barrels per day—in production and to insure that the crude oil they produce continues to be available for U.S. refineries and U.S. consumers. It is not intended to confer any benefit on the owners and operators of wells producing in excess of ten barrels per day.

The Congress also intends that the regulations provide appropriate limitations and provisions in the definition of "lease" to insure that an administratively workable system is established which does not permit

abuse. (Emphasis in original, H.R. Rep. No. 624, 93d Cong., 1st Sess. at —— (1973).)

The TAPAA stripper well lease exemption originated with a floor amendment that was introduced by Senator Bartlett of Oklahoma. The original text of the amendment provided that:

Those oil leases whose average daily production per well does not exceed that of a stripper well of not more than ten barrels of oil per day shall be exempt from any allocation or price restraints. * * * (*119 Cong., Rec. S13432* (daily ed. July 14, 1973).)

In explaining this amendment Senator Bartlett stated:

So if the stripper producer had production that did not qualify, he, of course, would not be in any position to have that production exempted from price controls. It is done on a lease basis, because normally all the wells on one lease go into one tank or on a several tank basis. So if it is from a big well, the average goes away [sic] up.

Incidentally, when subsidies were put on [stripper well production] during World War II, that went beyond just a lease basis; that was done on a field basis, because it is easier to do all the accounting that way. But in this case, it is only decided on a lease basis. (Id. at S13435, remarks of Senator Bartlett.)

It should be noted also that the sponsor of the amendment understood stripper wells typically to be operated by independent producers pursuant to a lease:

Large oil companies have few stripper wells. Because of their higher operational costs, major oil companies are forced to sell their leases to independents—who can operate these leases for a longer period. (Id. at S 13432.)

The legislation which became the Emergency Petroleum Allocation Act of 1973 ("EPAA") originated in the Senate where a bill was passed on June 5, 1973, containing no stripper well provision of any kind. When the House passed a similar version of the emergency petroleum allocation measure on October 17, 1973, it contained a "stripper" exemption applicable to wells rather than to leases. In the Conference Report of November 10, 1973, a stripper well lease provision was substituted, without comment, and this provision was subsequently adopted by Congress in the final version of the EPAA without debate or comment on the meaning of "leases."

The general legislative silence on the meaning of stripper well "leases" in connection with the drafting and passage of the EPAA can therefore be explained only by the fact that this matter was decided largely in connection with the TAPAA companion measure. These two statutory stripper well lease provisions, although identical insofar as the concept of "leases" is concerned, contained certain technical differences. Because of the use of the same language in both enactments concerning "leases," however, the legislative history of the TAPAA is relevant and applicable to the meaning of stripper well "leases" under the EPAA and the implementing CLC, FEO, and FEA regulations.

D. *Changes Since Adoption of the Two Tier Crude Oil Pricing System.*—Several important changes in circumstances have occurred since the initial definitions of "property" and "stripper well lease" were adopted. First, with the passage of time, the natural decline in the rate of production has operated to make the cumulative deficiency provision of the two tier pricing system increasingly more significant. Second, the initial emphasis of CLC on restraining prices and controlling inflation has tended to be of lesser significance compared with the need to provide effective incentives for increased domestic production of crude oil. Third, the price differential between "old crude oil" and crude oil not subject to the ceiling price limitation has increased dramatically, from modest initial levels of $.50 per barrel or less, to amounts of $7.00 per barrel or more. The "old crude oil allocation" or "entitlements" program was instituted in response to this increased price disparity, and since November, 1974, refiners have been required to have an "entitlement" to refine a barrel of old crude oil, with those refiners having more than the national average of old crude oil generally required to purchase such entitlements from refiners having less than the national average of old crude oil. Finally, enactment of the EPCA on December 22, 1975, effectively, changed the crude oil pricing program from one which was expected only to be temporary to one which would be mandatory for at least 40 months.

The amendments to the crude oil pricing regulations adopted to implement the crude oil pricing policies of the EPCA are intended to reflect these changed circumstances. Under the two tier pricing system as revised effective February 1, 1976, existing cumulative deficiencies were eliminated for all properties. Also, provisions were subsequently added to take into account the natural rate of production decline in future months, so that the level of production which must be exceeded before crude oil produced from a property may be sold at upper tier prices (the "base production control level") may be adjusted downward at six month intervals. These provisions were added to help keep the incentive of higher, upper tier prices within the reach of producers of most properties, so that measures taken to increase rates of production could realistically be expected to result in upper tier prices without regard to the time that has elapsed since the initial base production control levels were first established. Also, the "released crude oil" provisions which were included in the initial two tier pricing system as a special incentive for increased production in the short term were eliminated on a prospective basis, and base production control levels are now determined with reference to the average monthly volume of "old crude oil" produced and sold from each property in 1975.

E. *General Considerations.*—Because the considerations involved with respect to past applications of the term "property" are significantly different from the considerations involved in prospective applications of the term, FEA has concluded that the clarifications that are appropriate with respect to past applications of the term are likewise different from those which are to be applied on a prospective basis. With respect to past interpretations FEA is, of course, bound to formulate those clarifications which are most consistent with the purpose and intent of the regulations in effect during that time, whereas with respect to future applications of the term, FEA enjoys greater latitude to make such prospective adjustments in the meaning of the term as will best suit the current objectives of the two tier pricing system.

In seeking at this time to clarify the meaning of a term that has been so widely applied for almost three years, FEA has sought, first, to determine the legal significance of the words used to define the term and, second, to identify and evaluate the extent to which other factors (extrinsic to the language of the definition itself) may have made it inequitable or impracticable to apply the literal meaning of that definition in certain circumstances. With this intention, and based upon the comments received in response to the April 13 Notice, therefore, FEA has concluded that the literal meaning of the term "property," as defined by FEA, is generally to be understood as synonomous with the physical "tract" or "premises" as to which a working interest is established by an oil and gas lease, or by a fee interest. It has also concluded that in certain instances it is permissible to segregate the interest so described for purposes of delineating an FEA "property," while in other instances the aggregation of such interests to form a single FEA "property" is appropriate.

The conclusion that the term "property" (i.e., "the right which arises from a lease or from a fee interest to produce domestic crude petroleum") is, in the strictest sense, generally synonymous with the tract or premises as to which a right to produce exists pursuant to an oil and gas lease or a fee interest, is based in large measure on the foregoing review of the history of these concepts.

Although the evidence is not unambiguous, FEA has concluded that CLC by its definition of the term "property" intended to refer to the premises described in the oil and gas lease pursuant to which crude oil was being produced. It also appears that this is the reasonable meaning of the definition that CLC used and that the definition should have been so understood. Thus, when CLC first proposed the two tier concept, it described the productive entity with respect to which production was to be measured as "a particular property on which the producer has leased production rights." Use of the phrase "property on which" suggests that CLC contemplated that crude oil production would be measured according to the surface acreage, or "tract," as to which a producer had obtained production rights through an oil and gas lease. (Such leases typically describe the premises by surface boundaries, although they may also delineate particular underground strata as to which rights are conferred. (See,

e.g., 3 Williams and Meyers section 665.))

When the two tier pricing system was adopted, property was defined, as noted above, as "the right which arises from a lease or from a fee interest to produce domestic crude petroleum." The term "lease" has been generally defined, for purposes of oil and gas law, as "[t]he instrument by which a leasehold or working interest is created in minerals. * * *" Williams and Meyers, Manual of Oil and Gas Terms at 240–241 (3d ed. 1971). "Working interest" has been defined, in turn, as "[t]he operating interest under an oil and gas lease. The owner of the working interest has the exclusive right to exploit the minerals on the land. * * *" (Id. at 511.)

Inasmuch as the lease is the basic document of the oil and gas industry, there should have been no doubt but that CLC intended by its definition of property to signify the premises described by an oil and gas lease (or by a deed, in those comparatively few instances in which the operator was also the owner of the mineral interest).[3] FEA believes that this term, which has generally uniform historic meaning throughout the crude oil production industry, was used initially with the intention and expectation that it would provide a uniform basis for application of price controls throughout the industry and would avoid the need for taking into account the varying state regulatory concepts and internal systems of accounting.

Also relevant to the intent with which CLC used the term is that the concept of released crude oil was specifically designed as an incentive to increased production over a relatively short time. The fastest means of increasing production was through maximum exploitation by producers of tracts subject to their working interests—whether by application of enhanced recovery techniques, re-working of wells, or by re-completion of wells in new producing formations. The treatment, for example, of separate reservoirs subject to the same oil and gas lease as separate properties would have been inconsistent with the objective of the released crude oil concept to provide producers with maximum incentives to exploit to the fullest extent the tracts which were subject to their existing rights to produce crude oil.

The evidence with respect to the legislative treatment of the term "lease" is not inconsistent with this conclusion. FEA's review of the legislative history of the stripper well lease exemption indicates that the sponsor of the stripper well lease exemption used the "lease" as the unit of measurement simply because the production of several wells subject to a single lease is commonly commingled in one or more storage tanks. He proposed that the stripper well exemption be "decided on a lease basis," rather than on some other basis, solely because of the practical necessity inherent in the common collection and storage systems in use. Thus, a well-by-well measurement would not normally be possible on the one hand and, on the other hand, averaging per-well production across an entire field, to the extent a field "went beyond" or was broader in scope than a lease, was presumably not desirable because it would in some cases have unnecessarily expanded the scope of the exemption to leases that were not marginal and in other cases would have unnecessarily prevented marginal leases from benefiting from the exemption. The term "lease" therefore appears to have been regarded as the most appropriate term available to describe an interest that would typically encompass more than a "well" but less than a "field." It also appears that the term was regarded to be commonly understood as no definition was included in the Act.

However, notwithstanding the strong support, both in the legislative history and elsewhere, for a literal interpretation of the definition of property, FEA has determined that the clarification of past applications of the property concept should recognize more flexibility because of a variety of circumstances under which an interpretation of the term property that was limited to the literal meaning of the language of the definition would be inequitable.[4] Several considerations led to this conclusion.

As noted in the foregoing review of the concept of property and its significance under the two tier price system, the term "property" was first defined in regulations which were issued on August 17, 1973, and became effective on August 19, 1973. Thus, producers were required immediately (i.e., by the end of August) to apply the new definition to their particular circumstances to determine whether any "new" or "released" crude oil had been produced from a property in that month. While the definition of the term appears to have been premised on the assumption that it would provide a common and easily-understood basis for delineating appropriate productive entities, comments received in this and other proceedings indicate that there have, in fact, been many differing interpretations of the meaning of the term among producers.

With respect to the extent to which differing and possibly conflicting interpretations of the term should be recognized by FEA as consistent with the regulations, it must be recognized that producers had no detailed guidance initially from CLC, FEO, or FEA with respect to the numerous questions that arose with respect to the property definition. The first ruling on the definition of property was not issued until August 29, 1975 (FEA Ruling 1975–15, 40 FR 40832, September 4, 1975). Further, when the CLC definition of property had to be adapted by producers to their particular circumstances in August 1973, the benefits or detriments of alternative approaches, to the extent they may have been considered, would have been perceived much differently than at a later time.

It should be recognized, for example, that the two tier pricing system initially operated generally to provide an economic incentive for the aggregation of productive entities if one such entity was capable of producing significantly higher volumes of crude oil than it produced in 1972. This is because there had not yet been time for significant current deficiencies to accumulate as to most productive entities, and the increased production from one entity, if sufficient, would serve under the special release rule to release from the ceiling price rule crude oil from other productive entities only if they were treated as part of the same property. Of course, to the extent that any cumulative deficiency had accrued at that date, selective segregation of entities would have served immediately to result in all "new crude oil" from any separate entity with respect to which production was just being initiated. As a general matter, however, it seems unjust, with the benefit of hindsight, to ascribe now improper motivations to applications of the property concept which were made under considerably different circumstances nearly three years ago.

Also favoring a more flexible interpretation of past applications of the term property is the reality of several significant consequences attached to the determinations that have been made with respect to the meaning of the term "property." Volumes of "old," "new," "released," and "stripper well lease" crude oil are a function of the scope of the "property" as determined by the producer. "Old" crude oil volumes, thus determined, have been certified, and entitlements have been purchased by refiners with respect to such volumes. The costs of the crude oil and entitlements to refiners have, in turn, generally been passed through in prices charged for refined products. Revenues paid to producers have, in like manner, generally been used to pay operating costs or to initiate enhanced recovery or new exploration and development, and remitted to royalty owners, or otherwise disposed of. In addition, since February 1, 1976, the "base production control level" of each property has been defined by reference to the volume of "old crude oil" produced and sold from the property concerned during 1975.

FEA recognizes the substantial reliance that has been placed on these determinations by numerous parties, that there is no basis for concluding in general that such determinations were other than good faith attempts to comply with the regulations, and that there is a substantial need for a measure of adminis-

[3] This statement, which appeared in the August 20 Notice, has given rise to questions concerning its consistency with the statement in the text at note 4 infra. The above statement concerning the intended meaning of the CLC definition was made with reference to what FEA regarded as the vast majority of instances. It was not meant to preclude the possibility that, in certain instances, as discussed more fully in the text beginning at note 4 infra, there would have been considerable doubt as to the intended meaning of the term.

[4] See note 3 supra.

trative finality to attach to as many of these determinations as possible, so as to avoid substantially disruptive retroactive adjustments.

The legislative history of congressional intent with respect to the meaning of "lease" in the context of the stripper well lease exemption is not inconsistent with the need to afford some measure of flexibility in the definition of the term "property." The Conference Report accompanying the TAPAA states that "Congress * * * intends that the regulations provide appropriate limitations and provisions in the definition of "lease" to insure that an administratively workable system is established which does not permit abuse." This statement clearly indicates that rigid adherence to a "lease" system was not expected and that the necessity for some degree of flexibility in defining the term was acknowledged. Consistent with this intent, the regulatory definition of a stripper well lease provided for, among other understandable exercises in flexibility, inclusion of "fee interests" within the meaning of the statutory term "lease."

The strictures in the Conference Report on the subject of stripper well "gerrymandering" do not contradict this view. The only express qualification on administrative flexibility in defining "lease" would seem to be one which would be present by implication in any event (i.e., that the administrative treatment of the term "lease"—as in any other phase of administering the stripper well exemption—must not be such as to permit abuse of the exemption).

On the other hand, FEA does not regard its ability retroactively to provide for a more flexible interpretation of the term property to be unqualified. Principles of equity generally favor that those who are similarly situated receive comparable treatment. In this regard, it would be particularly inappropriate for those producers which closely adhered to the regulatory definition of the term "property" to be treated much less favorably than those producers which interpreted the term in a less formal manner. Moreover, FEA is also concerned that unwarranted departures from its regulations not be permitted and that the interests of consumers in full and fair enforcement of the price controls on crude oil be adequately protected.

Accordingly, the detailed discussion setting forth the proper clarification of past applications of the property concept in the following Section II. F. represents FEA's attempt to strike an appropriate balance between the foregoing considerations as to a literal interpretation of the term property vis-a-vis a more flexible interpretation which takes into account factors extrinsic to the language of the definition itself.

FEA believes that the clarifications first announced on August 20, 1976 and set forth in this Ruling are consistent with the practices that have been followed by the substantial majority of producers. However, to the extent that these clarifications would permit any producer to calculate larger volumes of "new," "released," or "stripper well lease" crude oil than were calculated and certified in prior months, no recertifications of additional volumes will be permitted. Such recertifications will be considered, if at all, only on a case-by-case basis on normal grounds of inequity or hardship through the FEA exceptions process. FEA is aware that in so affording significance to differing good faith definitions of property that have been adopted by producers, similarly situated persons will in some instances be treated differently under the regulations. This fact is, however, counterbalanced in FEA's view by the need for the greatest possible measure of administrative finality to be afforded the determinations already made as to volumes of old crude oil. Appropriate compliance actions will, of course, be taken with respect to applications of the term property which are not consistent with the clarifications set forth herein, to the extent that they have resulted in the certification of greater volumes of new or upper tier crude oil than is permitted. FEA reserves the right in such compliance actions to determine whether any misapplication of the "property" concept, which resulted in improper classification of lower tier crude oil as upper tier crude oil to a particular purchaser, also resulted in that purchaser receiving at lower tier prices other volumes of crude oil that could properly have been certified as upper tier crude oil. In such cases, and in the context of formal compliance action (i.e., by remedial order or consent order), FEA may permit the producer to recertify such amounts of crude oil mistakenly invoiced as lower tier crude oil, but only to the extent that additional funds due the producer because of such recertification do not exceed refunds due to the purchaser because of sales of crude oil by the producer at prices in excess of the appropriate ceiling prices.

F. *Past Applications of the Term "Property."* The issues with respect to past applications of the term property may, for purposes of convenience, be generally divided into three categories: (1) Those involving the delineation of the premises which are subject to a single "right to produce" pursuant to a lease or fee interest, (2) Those involving the aggregation of two or more such premises, and (3) Those involving the segregation of such premises subject to a single "right to produce."

(1) *The right to produce.* FEA Ruling 1975–15 made it clear that the property concept is one that begins with "the right to produce crude oil." Consistent with the discussion above of the common meaning of that term as being generally synonymous with the concept of "working interest," the analysis of property will generally begin with identifying the one or more "premises" or "tracts" described in the instrument that confers the right to produce. Generally speaking, except in those cases where the right to produce is conveyed separately with respect to separate horizontal strata, the "premises" as to which the right to produce exists will generally be described in terms of surface acreage—commonly referred to as a "tract." In those instances in which production is undertaken by the owner of the mineral interest in fee, rather than by a lessee, the instrument conveying the fee interest will similarly describe the premises typically in terms of surface acreage, also referred to as a "tract." The terms "premises" and "tract" are both used here to refer to the physical limits as to which a right to produce exists. Since "tract" implies surface acreage, whereas "premises" is not so limited (but also signifies use of three dimensional boundaries), the latter term is preferred.

Difficult issues can arise with respect to construing a lease or deed to delineate the one or more premises as to which a "right to produce" exists under that instrument. This can occur, for example, where a lease conveys a right to produce with respect to described premises, but imposes differing or special rights or obligations with respect to the development of and production from particular portions of the described premises. Generally speaking, where the rights or duties created under a single instrument are significantly different with respect to particular identified portions of a described premises, where a producer has in good faith relied upon such differences in its exploration and development activities, and where the producer has consistently and historically accounted for such portions separately, FEA will permit the lease concerned to be considered as having established more than a single "right to produce" and, consequently, more than a single property. Thus, for example, where the time within which a lessee is obligated to begin production activities varies as to specified portions of a particular tract, those portions of the tract would be subject to differing "rights to produce," and hence, could constitute separate "properties."

(2) *Segregation of Premises Subject to a Single Right to Produce.* More complex issues are posed with respect to the extent to which the premises subject to a single right to produce may appropriately be subdivided to form separate "properties." As noted above, there are instances in which a single lease may create several distinct "rights to produce" with respect to specified portions of the premises described therein. And as discussed below, the aggregation (with premises subject to other rights to produce) of less than all of the premises covered by a single right to produce may result in the subdivision of the premises formerly subject to a single right to produce into at least two properties—the portion which has been aggregated and the portion which remains. There are, however, still further instances in which segregation into one or more properties of a premises subject to a single right to produce appears to have been appropriate under the existing regulations.

a. *Non-contiguous tracts.* One such instance is in the case of non-contiguous tracts. Particularly in the case of fee interests, but also in the case of certain

large leases (typically old leases), a single instrument may convey a single undifferentiated right to produce with respect to multiple, non-contiguous tracts, which may be located at great distances from one another. In all cases in which it can be shown that such non-contiguous tracts were developed and produced separately, and where they have historically and consistently been accounted for as separate properties, FEA will continue to permit them to be so regarded. The basis for this determination is principally that FEA understands this to have been a consistent and historic practice and one which was followed to conform the treatment of the atypical situation of multiple tracts subject to a single instrument to that afforded in the more typical situation of a single tract subject to a single lease.

b. *Very large tracts.* Another such instance is in the case of very large tracts which are subject to a single right to produce. Although this problem appears to exist mainly with respect to large fee interests, it also obtains with respect to certain large leases, particularly those granted many years ago by Federal and state governments. As noted above, the modern oil and gas lease typically conveys a right to produce which must be exercised within a specified period in order for production rights to be retained by the lessee. The objective of the lessor is to obtain production in a specified area within a specified time. Accordingly, most oil and gas leases confer a right to produce as to an area within which exploration and development by the lessee can reasonably be expected within a reasonable time—five years is typical.

Owners of mineral interests in fee which undertake their own exploration and development activities are not, of course, bound by any lease obligations with respect to the time within which such activities must take place. Accordingly, exploration and development of a large fee interest may take place over an extended period of time, in much the same manner as if several leases had been conveyed with respect to particular areas and time periods. Similarly, with respect to large leases, a comparable form of phased development may have taken place. Indeed, as to certain large government-granted leases, a "selection" process has been employed, whereby only with respect to those portions of the lease that are developed does the lessee retain production rights. In such cases, the right conveyed by the initial "lease" is more in the nature of a right to explore, which ripened into a right to produce those areas that the lessee has developed in a timely fashion.

In order to treat holders of large tracts subject to a single right to produce—whether by a lease or by fee interest—in a manner that is comparable to the treatment of those who hold a right to produce under the more limited typical modern oil and gas lease which covers a lesser area, FEA has concluded that separate geological formations subject to the same right to produce which have been developed and produced separately, and which have historically and consistently been accounted for separately may continue to be so regarded.

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

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

d. *Severance tax or royalty owner accountability.* Another instance in which segregation of a premises subject to a single right to produce is appropriate is where the production from identifiable portions of the premises is required to be measured and accounted for separately for purposes of determining severance tax liability or for purposes of accounting to royalty owners. FEA has concluded that where the payment of revenues to State tax authorities or to royalty owners requires separate accounting for production from identified portions of a premises subject to a single right to produce, and where such portions of the premises have consistently and historically been treated as separate properties, such separate treatment may appropriately be continued.

e. *Other segregation not permitted.* The most complex and apparently controversial issue with respect to segregation of a premises subject to a single right to produce has to do with production from separate "reservoirs." FEA has studied this issue at considerable length but has been unable to find a solution which is likely to be satisfactory to all parties concerned. FEA has concluded on the basis of the review of the legislative and regulatory history and the general considerations outlined above that a premises which contains multiple reservoirs but which is subject to a single right to produce may not, simply by virtue of the existence of separate reservoirs, be treated as comprising multiple "properties."

FEA does not believe that the language of the definition of the existing term "property" can be construed to mean that production from separate reservoirs subject to the same working interest would, simply by virtue of the fact that the several reservoirs have been developed and produced separately, be regarded as production from separate properties. (Producers have been on express notice of this at least since the issuance of FEA Ruling 1975–15 on August 29, 1975.) Moreover, any producer which adopted a reservoir-by-reservoir approach to the definition of property (and, hence, to the computation of amounts of "new" and "released" crude oil) would typically have been in a position to achieve greater benefits under the price regulations over the past three years than those producers who took the approach of aggregating production from all reservoirs subject to the same right to produce, as required under the regulations. At least until February 1, 1976, any producer that treated each reservoir as a separate property automatically would have obtained "new" crude oil whenever production was obtained from a new reservoir. Producers using the lease approach, on the other hand, were required first to exceed 1972 levels of production from the lease concerned before any production from a new reservoir would be regarded as "new" crude oil. FEA has unfortunately not been able to obtain any approximation of the extent to which producers have actually adopted a reservoir-by-reservoir definition of property.

Under these circumstances, FEA has concluded that it would be inequitable to permit producers who took an expansive—and, in FEA's view, unwarranted—view of the meaning of the term property to obtain benefits that were not afforded to producers who adhered closely to the regulations. Thus, FEA has concluded that separate reservoirs which are subject to the same right to produce will generally not be treated as separate properties prior to September 1, 1976.[5]

There are, however, instances in which, for a variety of reasons, it would have been impracticable or inequitable for producers not to have treated separately production from a separate reservoir or reservoirs. Those instances of which FEA is aware have been noted above. There may well be other instances of which FEA is not aware, but which may be appropriately addressed in subsequent rulings, as they become known. The mere existence of separate reservoirs and the requirement to report separately the production from such reservoirs in itself will, however, only suffice to permit separate property treatment if the producer has applied for exceptions relief and has been permitted to use such a definition in order to avoid serious hardship or gross inequity.

(3) *Aggregation of "Rights to Produce."* The aggregation of separate "rights to produce" pursuant to a unitization agreement was discussed in FEA Ruling 1975–15. There are, however, other circumstances under which sepa-

[5] Italicized language appeared in August 20 Notice as "under existing regulations."

rate rights to produce may appropriately be aggregated, pursuant to either voluntary or involuntary arrangements.

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

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

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

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

III. The Definition of "Posted Price"

FEA price regulations employ historical crude oil posted prices as references for determining lower and upper tier ceiling prices, with lower tier ceiling prices determined by reference to the highest posted price for the same grade of crude oil in the same or nearest field on May 15, 1973, plus a per-barrel increment, and with upper tier ceiling prices determined by reference to the highest posted price for the same grade of crude oil in the same or nearest field on September 30, 1975, less a per-barrel increment.

The definition of "posted price" was adopted by the Cost of Living Council on November 30, 1973, and has remained substantially unchanged since that time:

"Posted price" means a written statement of crude petroleum prices circulated publicly among sellers and buyers of crude petroleum in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field. (38 FR 33577 at 33578, December 6, 1973.)

Although FEA has until this time issued no interpretive ruling with respect to this definition, the posted price concept has served as the basis for determining lower tier ceiling prices for nearly three years.

On February 1, 1976, in connection with the first stage of rulemaking proceedings to implement the crude oil pricing policy of the EPCA, the FEA rejected its proposal (41 FR 1564, January 8, 1976) to determine upper tier ceiling prices by reference to actual transaction prices, and decided instead to determine upper tier ceiling prices with reference to highest posted prices on September 30, 1975. Most of the comments submitted in the first stage proceeding indicated that postings were prevalent in September 1975, and suggested that the use of field-wide September postings would avoid other difficulties inherent in FEA's proposal to base upper tier ceiling prices upon actual transactions (e.g., the need to establish a price where there had been no production and sale of crude oil from the property concerned in September 1975).

After publication of the February 1 amendments, however, a substantial number of inquiries were received by FEA relative to the correct application of the posted price concept to the determination of upper tier ceiling prices. (To a much lesser extent, inquiries were also received relative to the posted price for purposes of determining lower tier ceiling prices. However, the problem was said to be not as prevalent with respect to lower tier ceiling prices due to the relative uniformity of crude oil prices in May 1973.) Accordingly, FEA solicited comments in the April 13 Notice in order to determine whether any clarifications were necessary with respect to the definition of posted price. Notwithstanding the clearly expressed purpose of soliciting comments in this regard, however, a large number of written as well as oral comments suggested that FEA either (1) Depart from the posted price concept in favor of the actual transaction approach that was specifically rejected on February 1, or (2) Interpret the definition of "highest posted price" as the "highest prevailing price," so as to include within the definition actual transaction prices that prevailed on September 30, 1975. On August 20, 1976 after consideration of all the written and oral comments, FEA determined that amendments to the current definition of "posted price" were unnecessary. The following clarifications should resolve any confusion that persists with respect to the posted price concept.

Prior to the implementation of price controls by CLC, the traditional and historical operation of the crude oil market included the use of posted field prices, a mechanism well known among buyers and sellers of crude oil throughout the world as:

The announced price at which a crude oil purchaser will buy the oil (of specified quality) from a field. At one time, the price was actually announced by a statement posted in the field. [More recently], the announcement is usually made in the newspapers. (*Williams and Meyers, Manual of Oil and Gas Terms* at 339.)

The general practice among principal purchasers has been periodically to issue price bulletins, which are widely circulated to the public, announcing the price that that particular purchaser would pay for a particular grade crude oil in a particular location.

It was in this context that CLC adopted the two tier pricing system in August 1973. In the Notice of Proposed Rulemaking issued on July 19, 1973, CLC indicated that the ceiling price for crude oil was to be "the price posted on May 15, 1973 for each grade of petroleum from each particular field." (38 FR 19464 at 19467, July 20, 1973.) The posted price concept was selected because the ready availability of price bulletins (which were understood to be in normal circulation in May 1973) provided a mechanism whereby producers and purchasers alike could be able to determine the ceiling price for any grade crude oil in any particular field. Moreover, the use of price bulletins avoided the enormous administrative complexity of having to establish ceiling prices that would maintain traditional gravity and quality price differentials.

Although the August 17 1973 Subpart L Petroleum Price Regulations did not contain a definition of posted price, a definition was adopted by CLC on November 30, 1973 to make it clear "that a posted price must be a publicly circulated written offer to purchase." (Emphasis added, 38 FR 33577 at 33578, December 6, 1973.)

While the CLC definition did not require the formality of a printed price bulletin such as is published by major purchasers, the CLC did require the formality of a "publicly circulated written offer." The requirement that the offer be in writing eliminates verbal offers, and the requirement that the written offer be publicly circulated eliminates offers (even though written) to specified producers. Accordingly, other than the published price bulletins of the type traditionally issued by major oil companies, FEA will only recognize as a "posted price" written offers to purchase only so long as they were bona fide public offers of general applicability to crude oil producers in the field. For example, a letter from a purchaser to all crude oil producers in a field or in an area would constitute a posted price if the letter was understood by producers and the purchaser to be a bona fide offer to purchase from all producers in that field or area. A written contract, of course, would not qualify as a posted price because it represents an agreement between a buyer and specific producer, not a bona fide offer to purchase from all producers.

Accordingly, in determining the "highest posted price," a producer should first determine which offers qualify as posted prices under the definition as interpreted above. The next inquiry is into which of those posted prices were on September 30, 1975 (or May 15, 1973 for lower tier ceiling prices) applicable to the particular field in question. Once that de-

termination has been made the producer simply identifies the highest price offered among qualified postings.

With respect to determining the applicability of specific postings to particular fields, it has become clear that the principal issue relates to the use of the term "field" in the definition of posted price. Buyers and sellers alike indicated that inasmuch as "field" is not a defined term, conflicting September 30, 1975 "highest posted prices" occur in many areas of the country. Specifically, the term field has different accepted meanings and usages in various producing areas, and consequently might have been interpreted to mean an area as small as a lease, or as large as one or more entire state. However, for purposes of posting crude oil prices, crude oil producers and purchasers have generally understood the term "field" to signify a general area underlain by one or more reservoirs. For example, while some price bulletins refer specifically to named fields in which the particular price prevails, other types of bulletins specify a price for a particular grade of crude oil, which is produced over a large geographical area—perhaps even over an area of one or more states.

The problem arises where a single price bulletin was issued for an area and grade of crude oil (without specifying particular fields), while a price bulletin was issued by a competing buyer offering a higher price, but specifically limited to certain named fields which do not include all the fields within the larger area referred to in the price bulletin offering a lower price. Resolution of such disputes should be as follows: Price bulletins which specify only a geographical area and crude oil grade (e.g., "West Texas Sour") are presumed to be applicable to every field within the named area, unless a particular field is specifically excluded. However, the existence of a price bulletin stating a higher price for specifically named fields within the same area will, of course, supersede the area-wide price bulletin, for the named field only.

Finally, there should remain no question that posted prices used to establish lower tier ceiling prices, as well as posted prices for upper tier crude oil, do "not include premiums above posted prices which may have been paid for crude purchased on May 15, 1973 [or September 30, 1975] (38 FR 33577 at 33578, December 6, 1973)." This was made clear by CLC in November 1973 and should have been understood since that time.

IV. Applicability of the Stripper Well Property Rule to Condensate Produced From Gas Wells

Prior to February 1, 1976, 10 CFR 210.32 provided an exemption from price and allocation regulations for the first sale of "crude oil, including condensates, produced from any stripper well lease. * * *" A stripper well lease was defined in § 210.32 as a

"property" whose average daily production of crude oil, including condensates, per well did not exceed 10 barrels per day during any preceding calendar year beginning after December 31, 1972.

In FEA Ruling 1974–28 (39 FR 44414, December 24, 1974), FEA held that the stripper well lease exemption was inapplicable to condensate produced from gas wells. This issue was subsequently reconsidered in the context of a formal rulemaking proceeding, and on August 29, 1975, FEA determined that, in all respects except the applicability of the stripper well lease exemption to gas wells, Ruling 1974–28 remains interpretive of the price regulations since they were first promulgated (40 FR 40818, September 4, 1975). With respect to the treatment of gas-well condensate for purposes of the stripper well lease exemption, FEA concluded that because of the good faith treatment by producers of gas-well condensate as being eligible for treatment under the stripper well lease exemption prior to the issuance of Ruling 1974–28, FEA would not require gas-well condensate to be excluded from the scope of the stripper well lease exemption until January 1, 1975, so that the impact of Ruling 1974–28 in this respect was made prospective only.

On February 1, 1976, the stripper well lease exemption was deleted from FEA price and allocation regulations pursuant to the removal of the former exemption of the EPAA by section 401(b)(1) of the EPCA. However, FEA determined that in keeping with the congressional objectives embodied in the EPCA, crude oil produced from stripper well leases should qualify for treatment as upper tier crude oil. At that time the definition of a stripper well lease was modified to make it clear that only "crude oil (excluding condensate recovered in non-associated production)" is counted in determining whether the property qualifies as a stripper well lease.

Since the issuance of FEA Ruling 1974–28, certain producers have indicated that some uncertainty exists as to the meaning of the term "gas-well condensate," inasmuch as different state classifications might result in wells having basically the same productive characteristics being classified as a gas well in one state and an oil well in another.

In the August 29, 1975 Notice, FEA recognized this issue and stated:

In order further to eliminate any uncertainty that might have arisen from the [original] regulatory language, conforming amendments are made today, effective January 1, 1975, to the stripper well lease exemption in 10 CFR 210.32 to reflect that *the exemption extends only to crude oil and condensate recovered in associated production.* (Emphasis added, 40 FR 40820.)

Thus, the qualification of a property as a stripper well property is only prohibited to the extent that the property consists of wells having only non-associated production of natural gas and condensates. That is, unless a well produces some crude oil, the well fails to qualify for inclusion as a producing well in the stripper well property computations.

Therefore, if a well produces from an associated reservoir (i.e., a reservoir in which gas occurs in association with crude oil), that well may be included to determine if the property is a stripper well property only if crude oil is produced from that well. If only condensate is produced, in association with the gas, the well may not be included to determine if the property is a stripper well property. On the other hand, if a well is producing non-associated gas (i.e., free gas not in contact with crude oil in the reservoir), or only natural gas (even if from an associated gas reservoir), that well may not be included as a producing well because it does not produce crude oil.

To the extent that a single property includes wells of both types, only the wells that produce crude oil may be counted in calculating average daily production. The volumes of condensate produced from the non-associated gas wells are not properly included in the calculation of the property's average daily production.

In the April 13 Notice FEA solicited comments on the extent to which the distinctions outlined above may be made with uniformity in various states. Notwithstanding this specific request, the thrust of most comments was to urge FEA to eliminate the distinction between condensate produced in associated and non-associated production, and to extend the stripper well property provisions to all condensate production. In the August 20 Notice FEA rejected these suggestions and noted that such a proposal was then being considered in the context of the third stage rulemaking to implement the EPCA to adopt a stripper well property rule applicable to condensate recovered in non-associated production. (See 41 FR 18873 at 18876, May 7, 1976.)

With respect to the current stripper well property rule, however, the FEA has determined that the distinctions set forth in the April 13 Notice and reproduced here are valid and will continue to serve to determine which producing wells are to be counted for purposes of determining if the property is a stripper well lease.

David G. Wilson,
Acting General Counsel,
Federal Energy Administration.

January 13, 1977.

[FR Doc.77-1608 Filed 1-14-77;7:54 am]

Title 16—Commercial Practices

CHAPTER 1—FEDERAL TRADE COMMISSION

[Docket 9029]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Commercial Programming Unlimited, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of merchandise and/or facilities; § 13.50 Dealer or seller assistance; § 13.55 De-

mand, business or other opportunities; § 13.60 Earnings and profits; § 13.73 Formal regulatory and statutory requirements; 13.73–92 Truth in Lending Act; § 13.105 Individual's special selection or situation; § 13.115 Jobs and employment service; § 13.143 Opportunities; § 13.155 Prices; 13.155–95 Terms and conditions; 13.155–95(a) Truth in Lending Act; § 13.175 Quality of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.225 Services. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records. Subpart—Failing to provide foreign language translations: § 13.1052 Failing to provide foreign language translations. Subpart—Misrepresenting oneself and goods—Goods: § 13.1608 Dealer or seller assistance; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1623 Formal regulatory and statutory requirements; § 13.1623–95 Truth in Lending Act; § 13.1663 Individual's special selection or situation; § 13.1670 Jobs and employment; § 13.1715 Quality; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts. Prices: § 13.1823 Terms and conditions; § 13.1823–20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1852–75 Truth in Lending Act; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; § 13.1905–60 Truth in Lending Act. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1935 Earnings and profits; § 13.1985 Individual's special selection or situation; § 13.1995 Job guarantee and employment; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, et seq.)

In the matter of Commercial Programming Unlimited, Inc., a corporation, and Walter Small, individually and as an officer of said corporation

Consent order requiring a New York City training school for data processing and computer programming, among other things to cease misrepresenting employment opportunities and demands for graduates of their training courses; misrepresenting the effectiveness of their job placement service; and the advantages of taking additional courses. Respondents must advise prospective students of their right to cancellation and refund and provide certain written disclosures relating to job placement and drop-out rates of former students. Additionally, respondent is required to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such disclosures as are required by Regulation Z of the said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:[1]

ORDER

I

It is ordered, That respondents Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers, and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course in any field, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, in writing or in any other manner, directly or by implication, that:

(a) College education is not necessary in all cases or advantageous for the placement of persons as computer programmers or computer programmer trainees; job experience is not necessary in all cases or advantageous for the placement of persons in the field of electronic data processing; or otherwise representing that persons with a high school education or its equivalent will achieve employment in the electronic data processing field, unless in every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or job experience is advantageous for placement; or misrepresenting in any manner the qualifications necessary to achieve employment in any field.

(b) There is a substantial demand, or demand of any size or proportion, for persons completing any of the courses offered by the respondents in the area of electronic data processing or any other field, or otherwise representing that opportunities for employment, or opportunities of any type or number are available to such persons or that persons completing said courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 7 of the Order.

(c) Graduates of respondents' courses of instruction are virtually assured of placement in positions for which they have been trained; or misrepresenting in any manner the employment prospects of any persons completing respondents' courses of instruction.

(d) The IBM aptitude test or any such test or entrance examination by itself can reliably determine a person's suitability for employment in the field of electronic data processing; or misrepresenting in any manner the meaning, purpose, benefit, significance or use of any examination or test or its results.

(e) Acceptance in or admission to any courses of instruction offered by respondents or others is determined solely by the applicant's suitability for such work as determined by the IBM aptitude test given to prospective students prior to enrollment.

2. Representing, orally, in writing or in any other manner, directly or by implication, that respondents own a computer or computers which enable students to gain sufficient practical experience in the operation of a computer, thereby aiding them in securing employment; or misrepresenting in any manner the facilities or equipment available to enrollees in courses of instruction offered by respondents or others.

3. Using any false inducements or representations to obtain enrollees for any of said courses of instruction or to obtain the signature of any such enrollee on documents which obligate any such enrollee to expend or pay any money.

4. Misrepresenting, orally, in writing, or in any other manner, directly or by implication, that:

(a) The training offered to students enrolled in any courses of instruction offered by the respondents or others is by itself, sufficient to qualify graduates thereof for positions as computer programmers, console operators, or as trainees in these areas, or for any other positions in the electronic data processing field; or the significance or importance of any course of instruction in qualifying any person for employment in a particular field of endeavor.

(b) The assistance provided by respondents in obtaining employment for graduates, or the effectiveness of respondents' placement service in obtaining employment for graduates of any course of instruction.

(c) The benefits to be derived by completing more than one course of instruction offered by respondents.

5. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch to any student without obtaining a separate signed and dated document stating the following information and none other, printed in capital and lower case letters of not less than 12 point bold-faced type, in English and in Spanish, a copy of which is to be given to the customer prior to his enrolling in the course.

IMPORTANT NOTICE

Taking more than one course of instruction does not significantly improve, but may help, a student's employment chances because:

(1) To be a computer programmer a student does not need to know console operation or key punch;

(2) To be a console operator, a student does not need to know computer programming or key punch;

(3) To be a key punch operator, a student does not need to know computer programming or console operation.

[1] Copies of the Complaint, Appendices, and Decision and Order filed with the original document.

6. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch without advising prospective enrollees to read the notice set forth in paragraph five (5) above in the language in which the initial sales presentation took place.

7. Failing to provide to each enrollee of any course of instruction, prior to the signing of any contract, the following information which shall be disclosed in writing, clearly and conspicuously, and in the form and manner prescribed in Appendices A, B or C, as applicable, and for a base period designated as described in Appendix D:

(1) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based; such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' students as to the same students used to compute the placement percentage in (2) above;

(4) A list of firms or employers which have hired graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement precentage in (2) above.

Provided, however, That the above information shall be disclosed only for enrollees who are U.S. citizens and others who, by law, are eligible to work in the United States.

Provided, however, That the following two notes may be included in Appendices A, B, or C as applicable:

NOTE.—In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE.—This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Provided, however, That the above information need not be provided for courses of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; (c) Business English and Report Preparation; however, this provision shall not in any way affect respondents' obligation to disclose the information for courses of instruction in computer programming, computer operation and key punch.

Provided, however, Respondents shall disclose in the form and manner prescribed in Appendices A, B or C to each enrollee of a course of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; and (c) Business English and Report Preparation, a notice stating: Concepts of S/360 Computer Programming, Concepts of S/360 Computer Operations and Business English and Report Preparation (or other title as the case may be) may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

Provided, however, This paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents until such time as the new school or course has been in operation for the base period established pursuant to Appendix D as prescribed in the Paragraph. However, during such period the following statement, and no other, shall be made in lieu of the disclosure form required by this Paragraph:

DISCLOSURE NOTICE

This school (or course, as the case may be) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

8. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in boldface type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point bold face type the following information and statements:

NOTICE OF CANCELLATION

_____
(Date)
(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within ten (10) business days from the above date.

If you cancel, any payments made by you under the contract or sale, and any evidence of indebtedness signed by you will be returned within fifteen (15) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel this transaction you must return, in substantially as good condition as when received, any books or other materials provided to you under this contract or sale. These materials must be mailed or delivered by you to _____
(Address of Seller's place of business)
within ten (10) days of the date you cancel this transaction. If you fail to return these materials, then seller may deduct the cost of books and materials as listed in the enrollment agreement.

To cancel this transaction, deliver (and obtain a signed statement from seller indicating the date of delivery) or mail a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to _____,
(Name of Seller)
at _____
(Address of Seller's place of business)
not later than midnight of _____
_____
(Enter date of 10th business day following date of transaction)

I hereby cancel this transaction.

_____ _____
(Date) (Buyer's signature)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Failing to provide a signed statement indicating the date of delivery to a prospective enrollee who delivers a notice of cancellation to respondents.

(e) Misrepresenting in any manner the prospective enrollee's right to cancel.

(f) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within fifteen (15) business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; *Provided, however,* That respondents may deduct from said refund the cost of any books or materials as listed in the enrollment agreement that are not returned by the student within ten (10) days of the date after the transaction has been canceled as stated above; (ii) return any goods or property traded in, in substantially as good condition as when received by respondents; (iii) cancel and return any evidence of indebtedness signed by the prospective enrollee in connection with the contract or sale.

(g) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph, except for the sole purpose of reminding students of the day classes will commence and the amount of tuition due.

9. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this Order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

II

It is further ordered, That respondents, Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise

or other device, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 CFR 226) and the Truth in Lending Act (P.L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to disclose the sum of all fees and other charges included in the downpayment, and to describe that sum as the "total downpayment", as required by § 226.8(c) of Regulation Z.

2. Failing to disclose the amount of money of which the customer has the actual use, and to describe that amount as the "amount financed", as required by § 226.8(c)(7) of Regulation Z.

3. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments", as required by § 226.8(b)(3) of Regulation Z.

4. Failing to disclose the annual percentage rates accurately to the nearest quarter of one percent, in accordance with § 226.8(b)(2) of Regulation Z.

5. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by §§ 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents maintain adequate records, to be furnished upon request of the Federal Trade Commission, which evidence compliance with the provisions of this Order, including, but not limited to, the names, addresses and scores of all enrollees who take an aptitude test of any kind, copies of all contracts entered into between respondents and customers, copies of all correspondence between respondents and their customers, records showing the name and address of each student, the dates of his attendance, the date of his graduation or other termination of his studies, the names and addresses of any employers he was referred to, if any, and his current position.

It is further ordered, That the individual respondent named herein promptly

It is further ordered, That the indi- notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment which relates in any way to the sale or offering for sale of any courses of study, training or instruction. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That a copy of this Order to Cease and Desist be delivered to all present and future personnel of respondents.

It is further ordered, That Respondents: (a) Deliver, or cause to be delivered, a copy of this Order to all persons who now or in the future become franchisees of respondents for the operation of a vocational school program.

(b) Inform all franchisees that Respondents are obligated to terminate those franchisees who continue the acts or practices prohibited by this Order.

(c) Institute a program of continuing surveillance to reveal whether the business operations of each of said franchisees conform to the requirements of this Order.

(d) Upon receiving actual knowledge from any source (including but not limited to Respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this Order by any of respondents' present or future franchisees, Respondents shall within 24 hours notify such franchisee by certified mail, return receipt requested, that such violation of this Order has occurred ("Notice"), and that Respondents will discontinue dealing with said franchisee upon receipt by Respondents of actual knowledge of any further violations of this Order by such franchisee. Respondents shall obtain from such franchisee written acknowledgement of receipt of such Notice with acknowledgement and shall indicate the date of receipt of such Notice.

Upon receiving actual knowledge from any source (including but not limited to Respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this Order, following a franchisee's receipt of the aforesaid "Notice", and said violations are not corrected within 30 days, Respondents shall permanently terminate such franchisee.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution of subsidiaries, or any other changes in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the Order to Cease and Desist contained herein.

It is further ordered, That in the event the Federal Trade Commission should promulgate a trade regulation rule concerning proprietary vocational and home study schools, any pertinent provisions of such rule shall supersede any comparable provisions of this Order.

APPENDIX A (FOR KEYPUNCH OPERATOR COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students	(Number).
2. Students who failed to complete the course	(Number)—(percent).
3. Students (whether graduating or not) who obtained employment as keypunch operators or keypunch operator trainees.	Do.
4. Graduates who obtained employment as keypunch operators or keypunch operator trainees.	Do.
5. Starting salaries of students who obtained employment as keypunch operator trainees:	Do.
Less than $75/wk	Do.
$75 to $100/wk	Do.
$101 to $125/wk	Do.
$126 to $150/wk	Do.
Over $150/wk	Do.
6. Employers who hired graduates from the (name of course):	
Name of employers	Number of graduates hired

NOTE.—In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE.—This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX B (FOR COMPUTER OPERATOR COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students	(Number).
2. Students who failed to complete the course	(Number)—(percent).
3. Students (whether graduating or not) who obtained employment as computer operators or computer operator trainees.	Do.
4. Graduates who obtained employment as computer operators or computer operator trainees.	Do.
5. Starting salaries of students who obtained employment as computer operators or computer operator trainees:	
Less than $90/wk	Do.
$90 to $120/wk	Do.
$121 to $160/wk	Do.
$161 to $200/wk	Do.
Over $200/wk	Do.

6. Employers hired graduates from the (name of course):

Name of employers	*Number of graduates hired*

NOTE.—In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE.—This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX C (FOR COMPUTER PROGRAMMER COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students	(Number).
2. Students who failed to complete the course	(Number)—(percent).
3. Students (whether graduating or not) who obtained employment as computer programmers or computer programmer trainees.	Do.
4. Graduates who obtained employment as computer programmers or computer programmer trainees.	Do.
5. Starting salaries of students who obtained employment as computer programmers or computer programmer trainees:	
Less than $120/wk	Do.
$120 to $160/wk	Do.
$161 to $200/wk	Do.
$201 to $250/wk	Do.
$251 to $300/wk	Do.
Over $300/wk	Do.

6. Employers hired graduates from the (name of course):

Name of employers	*Number of graduates hired*

NOTE: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE: This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX D

1. "Base period" shall mean the calendar period of time.

a. From October 1 to March 31, inclusive; or

b. From April 1 to September 30, inclusive.

c. The first base period shall be the period from the first day of the second month following the effective date of the Order to March 31, 1977 inclusive.

2. The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment experience of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.

3. On July 1 of each year respondents shall begin to disseminate statistics for the base period which ended on March 31 of that year. Respondents shall continue to distribute said statistics until December 31.

4. On January 1 of each year respondents shall begin to disseminate statistics for the base period which ended on September 30 of the previous year, and shall distribute said statistics until June 30.

The Decision and Order was issued by the Commission December 9, 1976.

JOHN F. DUGAN,
Secretary.

[FR Doc.77-1668 Filed 1-18-77;8:45 am]

[Docket No. 8959]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

RSR Corporation; Correction

In response to RSR Corporation's petition of January 4, 1977, pointing out a variation in the wording of the Commission's Final Order in this matter, the Federal Trade Commission issued January 7, 1977, an Order Correcting Final Order which amended the language in FR Doc. 76-38398 in FEDERAL REGISTER issue for Monday, January 3, 1977, at page 5, column 1, line 17, following the word "year" to read "from the effective date of this Order" instead of "from the service of this Order."

By direction of the Commission dated January 7, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1743 Filed 1-18-77;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. Nos. 1, 22, further amended]

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

PART 422—ORGANIZATION AND PROCEDURES

Release of Information by Title XVIII Program to Title XIX and CHAMPUS Programs

On July 27, 1976, there was published in the FEDERAL REGISTER (41 FR 31228-31229) a notice of proposed rulemaking with proposed amendments to Regulation No. 1 (20 CFR Part 401) and Subpart E of Regulations No. 22 (20 CFR Part 422) regarding release of certain investigatory information pertaining to title XVIII of the Social Security Act to agencies administering title XIX of that Act and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), specifically:

(1) The name and address of any provider of medical services, organization, physician, or other individual being actively investigated for possible fraud in connection with title XVIII of the Social Security Act, and the nature of the suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation;

(2) The name and address of any provider of medical services, organization, physician, or other individual found, after consultation with an appropriate

professional association or program review team, to have provided unnecessary services, or of any physician or other individual found to have violated assignment agreements on at least three occasions.

This information in (1) and (2) above will be released by the Social Security Administration to those Federal and State officials responsible for the investigations of fraud or abuse in programs funded by title XIX of the Social Security Act, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); these agencies will also be notified when an investigation is concluded with a finding that there is no fraud or other prosecutable offense.

Under current regulations, the Social Security Administration does not alert the title XIX agencies and CHAMPUS about title XVIII fraud and abuse cases until it refers such cases to the Department of Justice or to a State professional society or licensing board (see 20 CFR 401.3(u)(2) and 20 CFR 422.434, as amended on July 1, 1975, at 40 FR 27648 et seq.). During the period elapsing between the initiation of an investigation connected with the title XVIII program and referral of information to an agency administering the title XIX program or CHAMPUS, a suspect could have successfully defrauded the title XIX program or CHAMPUS.

It would be in the mutual interest of all concerned to effectuate an earlier exchange of information. This data exchange would serve to alert other agencies involved that a provider, physician, or supplier of services is under investigation for various categories of fraud or abuse. The other agencies could then either begin an investigation themselves or provide additional review on bills received from the suspected individuals or providers. The title XVIII and title XIX programs and CHAMPUS can be alerted to the possibility of potential violations and can take action to ensure against program fraud and abuse by the same violator. Agreements would specify that the data could be released only to the agency's enforcement branch and that the agency would preserve the confidentiality of the data received and would not be permitted to disclose such data for other than program purposes.

This procedure will meet a clear need for greater coordination between the title XVIII and title XIX programs with respect to investigations of fraud and abuse, a need also noted in reports of the General Accounting Office. Interested parties were given until August 26, 1976, to submit written comments or suggestions on the notice of proposed rulemaking. Comments and suggestions received with regard to this notice of proposed rulemaking, responses thereto, and changes in the proposed regulations are summarized below.

1. Several comments were received from State Welfare Departments and private insurance companies suggesting that the title XIX and CHAMPUS programs reciprocate by releasing similar information to title XVIII. The Social and Rehabilitation Service, which administers the title XIX program, published final regulations on June 25, 1976 (41 FR 26221–26222), for the purpose of facilitating the exchange of information with the Social Security Administration on providers under investigation for fraud and abuse.

2. A comment was made by a State Hospital Association that title XVIII should also advise title XIX and CHAMPUS when an active investigation has been terminated without a finding that there has been fraud or other prosecutable offense. We have adopted this suggestion and have revised the proposed amendments to include this provision (see §§ 401.3(t)(3) and 422.434(c)(3)).

3. Several comments were received from various State Health and Welfare Departments and from private insurance companies that completely endorsed the amendments, while several others from State and county medical societies completely opposed the amendments in general and for various specific reasons relating to potential abuse of confidentiality. The need for the amendments is obvious in view of the prior criticism of the lack of coordination between Medicare and Medicaid in investigating fraud and abuse. The regulations contain adequate safeguards (see §§ 401.3(t) and 422.434(c)) to protect the confidentiality of information about the individuals or organizations being investigated and to ensure that the information will not be released for other than program purposes.

4. Several comments were received from State and county medical societies suggesting that a person or organization being investigated should be notified of the investigation before the information is released to title XIX or CHAMPUS. This suggestion has not been followed because such a procedure would jeopardize the ongoing title XVIII investigations and would defeat the purpose of the amendments which is to allow an earlier disclosure of investigatory information to the title XIX and CHAMPUS programs than is permitted by current regulations (see 20 CFR 401.3(u)(2) and 20 CFR 422.434, as amended on July 1, 1975, at 40 FR 27648 et seq.). The notification of the title XIX agency and CHAMPUS that an investigation has been concluded with a finding that there is no fraud will adequately protect the rights of a person or organization investigated.

5. One comment was received from a county medical society that since a decision as to what constitutes "necessary" as opposed to "unnecessary" medical care is a judgmental one which may vary from area to area, such a decision should hardly result in a verdict that fraud or abuse were involved. The Medicare program currently consults appropriate professional associations before making decisions as to whether services are "unnecessary services" for the payment of claims. In addition "unnecessary services" will ordinarily be found only after examination of a number of claims indicates a pattern of providing unnecessary services. The sole purpose of the amendments is not to adjudge whether fraud or abuse are involved but to permit Medicare to alert the investigatory branch of the title XIX and CHAMPUS agencies when a significant pattern of providing unnecessary services has been noted by the professional association.

6. A comment was received from a State medical society objecting to the use of program review teams to determine when a provider or physician or other person has been furnishing unnecessary services, since program review teams have not operated on any widescale basis or with any significant experience. The Medicare program intends to continue consulting with the peer review committees of professional associations currently in operation. The program review teams were included in the amendments so that the program would have the option of using their services if appropriate.

7. Several comments were received from county medical societies that these amendments would increase the cost of running the Medicare program. On the contrary, we expect that considerable savings will be realized by these amendments in the earlier identification of possible fraud and abuse, through the exchange of information between title XVIII, title XIX, and CHAMPUS programs, while the change in operational procedures will be minimal.

8. One comment from a State Department of Health and Social Services suggested dropping the requirement that an organization or person must have violated the Medicare assignment agreement on at least three occasions before title XIX or CHAMPUS would be notified. This suggestion has not been adopted because a definite pattern of assignment violation should be established before another agency is notified.

9. Comments from a State Health Department, a former Medicaid director, and a Professional Standards Review Organization (PSRO) propose that the information to be released to title XIX and CHAMPUS by the amendments also be released to local agencies and to county medical societies and PSROs. While PSROs and other professional associations may provide information to Medicare resulting from their review of the appropriateness of health care provided to program beneficiaries which will help in identifying patterns of program abuse and unnecessary services that may become the subject of investigation by the title XVIII and XIX agencies, the specific purpose of these amendments is restricted to permit the earliest possible release of information only to title XIX agencies and CHAMPUS so that they may take appropriate action to ensure the integrity of their programs. The amendments currently provide that the information received by these agencies will be kept confidential and will be re-

leased only to the agency's enforcement branch.

10. One comment from a private insurance company advocated that title V of the Social Security Act be included with title XIX and CHAMPUS as recipient of the investigatory information. This suggestion has also not been adopted for the reason stated in item number 9 above. In addition, the title V program generally provides medical services through State-owned and operated facilities with very little fee-for-service payment. The type of information to be released under these amendments would be of very limited use to title V.

11. One comment from a private insurance company suggested that penalties be provided for misuse of the information released. Penalties are already provided under the Privacy Act of 1974 (5 U.S.C. 552a) and section 1106 of the Social Security Act for disclosure violations.

12. Various comments suggested procedures to be followed in coordinating titles XVIII, XIX, and CHAMPUS investigations. These suggestions will be considered in preparing implementing instructions after the amendments have been adopted.

Accordingly, with these changes, the amendments are adopted as proposed and are set forth below.

(Secs. 205, 1102, 1106, Social Security Act, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended (42 U.S.C. 405, 1302, 1306).)

Effective date. The amendments shall be effective on January 19, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.800–13.803, Social Security Programs.)

The Social Security Administration 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.

Dated: December 16, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Parts 401 and 422 of Chapter III of Title 20 of the Code of Federal Regulations are amended as set forth below:

1. In § 401.3 between paragraphs (s) and (u) a new paragraph (t) is added to read as follows:

§ 401.3 Disclosure of information relating to individuals.

* * * * *

(t) To any officer or employee of an agency of the Federal or a State government lawfully charged with the duty of conducting an investigation or prosecution with respect to possible fraud or abuse against a program receiving grants-in-aid under title XIX of the Social Security Act, but only for the purpose of conducting such an investigation or prosecution, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), the following information, provided that such agency has filed an agreement with the Social Security Administration that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than program purposes:

(1) The name and address of any physician or other individual being actively investigated for possible fraud in connection with title XVIII of the Social Security Act, and the nature of such suspected fraud. An active investigations exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) The name and address of any physician or other individual found, after consultation with an appropriate professional association or a program review team, to have provided unnecessary services, or of any physician or other individual found to have violated the assignment agreement on at least three occasions.

(3) The name and address of any physician or other individual released under paragraph (t) (1) or (2) of this section concerning whom an active investigation is concluded with a finding that there is no fraud or other prosecutable offense.

* * * * *

2. Section 422.434 is revised by adding a new paragraph (c) to read as follows:

§ 422.434 Release of title XVIII information to State and Federal agencies.

* * * * *

(c) The following information may be released to any officer or employee of an agency of the Federal or a State government lawfully charged with the duty of conducting an investigation or prosecution with respect to possible fraud or abuse against a program receiving grants-in-aid under title XIX of the Social Security Act, but only for the purpose of conducting such an investigation or prosecution, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), provided that such agency has filed an agreement with the Social Security Administration that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than program purposes:

(1) The name and address of any provider of medical services, organization, or other person being actively investigated for possible fraud in connection with title XVIII of the Social Security Act, and the nature of such suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) The name and address of any provider of medical services, organization, or other person found, after consultation with an appropriate professional association or a program review team, to have provided unnecessary services, or of any physician or other individual found to have violated the assignment agreement on at least three occasions.

(3) The name and address of any provider of medical services, organization or other person released under paragraph (c) (1) or (2) of this section concerning which an active investigation is concluded with a finding that there is no fraud or other prosecutable offense.

[FR Doc.77–1693 Filed 1–18–77; 8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 76–17]

PART 625—DESIGN STANDARDS FOR HIGHWAYS

Design Criteria; Interim Regulation; Technical Amendments

The technical amendments set forth below concerning 23 CFR Part 625 are made to FR Doc. 76–38400 published at page 6 in the FEDERAL REGISTER of January 3, 1977:

(1) The footnote at the end of 23 CFR 625.3(a)(11) should read "2."

(2) Add a footnote "4" at the end of 23 CFR 625.3(c)(3).

(3) Add a footnote "2" at the end of 23 CFR 625.3(e).

(4) In Appendix A, the address for the American Association of State Highway and Transportation Officials in No. 2 should read as follows:

American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.

(5) Also in Appendix A, the address for the Association of American Railroads in No. 3 should read as follows:

Association of American Railroads, American Railroad Building, 1920 L Street, NW., Washington, D.C. 20036.

Issued on: January 12, 1977.

DOWELL H. ANDERS,
Acting Chief Counsel.

[FR Doc.77–1676 Filed 1–18–77;8:45 am]

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

On December 9, 1976, at 41 FR 53811 the Department of the Interior published as proposed rulemaking a Cooperative

Agreement between the Department of the Interior and the State of Wyoming. Interested persons were given until January 10, 1977, to comment on the proposed Cooperative Agreement. Full consideration was given to all comments that were received by that date. This rulemaking notice adopts the Cooperative Agreement as a final rule. The Cooperative Agreement will become effective on February 1, 1977.

Background. On May 17, 1976, the Department of the Interior adopted new regulations to govern the management of federally-owned coal resources. These regulations established standards for the conduct of employees of the Department of the Interior and did not attempt to exclude the application of state laws on reclamation from federal coal leaseholds. The regulations contained two other important features. First, the regulations established a procedure under which the Department would adopt as Federal law the requirements of a state's reclamation regulations which provided protection of the environment at least as stringent as would occur under the exclusive application of federal law and which would not prevent the mining of federal coal which is required by the overriding national interest. Second, since both the state and the Department would be performing similar reclamation related functions, the regulations established a procedure where the Department and a State could enter into a Cooperative Agreement to prevent duality in the administration and enforcement of reclamation requirements.

On December 9, 1976, at 41 FR 53793 the Department adopted the requirements of Wyoming's reclamation laws and regulations as federal regulations in place of portions of the regulations in 30 CFR Part 211 as the standards to govern the reclamation of lands disturbed by surface coal mining. On that same day, the Department proposed that it adopt a Cooperative Agreement which gave the State of Wyoming principal responsibility for enforcing reclamation requirements on federal coal leases in that State.

Discussion of Final Rulemaking. Other than three technical changes to eliminate inconsistencies in the proposed Cooperative Agreement, the Cooperative Agreement adopted in this final rulemaking is identical to the Agreement that was proposed in the December 9, 1976, notice. The three changes are: (1) Article IV has been modified to eliminate the inference that the Agreement applies to exploration activities that do not involve surface mining of coal; and (2) Subparagraph D-5 of Article IX has been changed to make both of the time periods in that paragraph 30 days; and (3) Article V has been modified by adding the word "coal" between "federal" and "leases" to clarify that Wyoming's inspection obligation is limited to federal coal leases. No other changes in the Agreement have been made. Both the Secretary of the Interior and the Governor of the State of Wyoming have approved these minor changes.

Although the Agreement has not been changed, the Department would like to make several comments on the effect of the regulations. Article V of the Cooperative Agreement gives the State of Wyoming pricipal responsibility to inspect the operations area of Federal coal leases for the purpose of determining whether an applicant is complying with the appropriate reclamation regulations. This section obligates the State of Wyoming to do the inspections that the Geological Survey would have otherwise performed under 30 CFR 211.3(b)(1) (insofar as that inspection pertains to reclamation) and the inspections under 30 CFR 211.41. Article V does not obligate the State to perform inspections if the lessee is not conducing coal mining operations on a lease or where operations are imminent or to perform inspections on portions of leaseholds that are totally unaffected by ongoing operations. The inspection requirement covers leases where operations are taking place.

Obligations Under Federal Regulations. With the exception of the areas mentioned in the Cooperative Agreement, a lessee's obligation to comply with the requirements of Federal laws and regulations has not been changed. The leesee or operator must still comply with the other requirements of 30 CFR Part 211 including 30 CFR Section 211.12 Mine Maps, 30 CFR Section 211.20 Information required to be submitted, 30 CFR Section 211.21 Core and Test holes, and 30 CFR Section 211.62 Reports. The Department and the State of Wyoming will work to develop joint reports to further eliminate duplication of work and reports for Federal coal lessees. If agreement is reached in this area, the Department will amend the procedures and requirements of 30 CFR Part 211 through either an amendment to the regulations or a Coal Mining Operating Order.

Obligations Under State Laws and Regulations. The Cooperative Agreement does not define in any way, a federal coal lessee's obligation to comply with laws or regulations that are not explicitly covered by the Agreement. The lessee's obligation to comply with other laws requirements, including the State of Wyoming's exploration regulations is unchanged by this Agreement, and the lessee must comply with all valid state laws.

Process of Approval of Mining Plans. The Cooperative Agreement requires an operator to submit a mining plan to both the State of Wyoming and the Department of the Interior. The Agreement also incorporates a sequential process with first the State of Wyoming and then the Department of the Interior approving a mining plan under their respective statutory and regulatory obligations. The agreement does not require the Department of the Interior to refrain from taking any steps needed prior to approving a mining plan until after the State of Wyoming has completed its determinations. The Department may proceed with all of the steps that are required in its decisionmaking process, including preparation of environmental impact statements, while the State of Wyoming is considering what action it will take on the mining plan.

New Section. Finally, the proposed notice of rulemaking did not include the Cooperative Agreement as a section in 30 CFR Part 211. The final rulemaking includes a new section, § 211.77(a), which notes the adoption of the Cooperative Agreement, and refers to the page in the FEDERAL REGISTER where the text of the Cooperative Agreement can be found.

The Department of the Interior has determined that this final rulemaking does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 13, 1977.

THOMAS S. KLEPPE,
Secretary,
U.S. Department of the Interior.

Under the authority delegated to the Secretary of the Interior, Part 211 of Title 30 CFR is amended to read as follows, effective February 1, 1977.

1. Title 30 CFR §211.10 is amended by the addition of paragraph (e) to read as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) *States with 211.75(b) agreements.* (1) Wyoming. A federal coal lessee in the State of Wyoming who must submit a mining plan under both State and Federal law shall submit, in lieu of the mining plan required by this section, a mining plan containing the information required by:

(i) Wyo. Stat. section 35-502.24(a), (b)(i)-(ix);

(ii) Wyo. Land Quality Reg., Chapter VI;

(iii) 30 CFR Section 211.10(c)(3)(ii), (6)-(i), (iv)-(vi), (xii), (xiv)-(xv); and

(iv) 30 CFR Section 211.10(c)(7)(iii), (v)-(vi); and a statement certifying that a copy of the plan or permit application has been given to both the appropriate official in the State of Wyoming and the Secretary of the Interior.

2. Title 30 CFR § 211.74 is amended by the addition of paragraph (g) to read as follows:

§ 211.74 Variances.

* * * * *

(g) States with 211.75(b) agreements.

(1) Wyoming. A federal coal lessee in the State of Wyoming shall request and receive variances from the State of Wyoming and the Secretary under the provisions of Wyo. Stat. section 35-502.-45.

3. Title 30 CFR Part 211 is amended by the addition of a new section, to read as follows:

§ 211.77 States with Cooperative Agreements.

(a) Wyoming. The Administration and enforcement of reclamation requirements on federal coal leases subject to this part shall be done according to the Cooperative Agreement between the State of Wyoming and the Department of the Interior. The Cooperative Agreement is published at 42 FR 3644, January 19, 1977, and is available at appropriate offices of the Department of the Interior.

4. The State of Wyoming and the Department of the Interior enter into a Cooperative Agreement, effective February 1, 1977, to read as follows:

Cooperative agreement between the United States Department of the Interior and the State of Wyoming under Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. Section 189, and Section 307 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Section 1737.

This agreement (referred to as the Cooperative Agreement) is made under Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. Section 189, 30 CFR 211.75, and Section 307 of the Federal Land Policy and Management Act of 1976, between the State of Wyoming, acting by and through Ed Herschler, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

ARTICLE I. PURPOSE

This agreement provides for a cooperative program between the United States Department of the Interior and the State of Wyoming with respect to the administration and enforcement of surface coal reclamation operations conducted under coal leases issued by the Department of the Interior under the Mineral Leasing Act of 1920. The basic purpose of the agreement is to prevent duality of administration and enforcement of surface reclamation requirements by designating the State of Wyoming as the principal entity to enforce reclamation laws and regulations in Wyoming.

ARTICLE II. EFFECTIVE DATE

The Cooperative Agreement is effective on the 1st day of February, 1977, and remains in effect until terminated as provided in Article IX.

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor affirms that the State will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article upon which the approval of the Secretary is based.

A. *Responsible Administrative Agency.* The Department of Environmental Quality and the Environmental Quality Council (hereinafter referred to as "State Agency") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor throughout the State.

B. *Authority of State Agency.* The State Agency designated in Paragraph A of this Article has, and shall continue to have, authority to carry out this Cooperative Agreement.

C. *State Reclamation Law.* The reclamation requirements of Wyoming listed in Appendix A afford general protection of the environment at least as stringent as would occur under the exclusive application of 30 CFR Part 211, and do not unreasonably impair the mining of federally leased coal, the mining of which is in the overriding national interest.

D. *Effectiveness of State Procedures.* The existing procedures of the State are, and shall continue to be, in the judgment of the Secretary substantially as effective for the purpose of enforcing the reclamation requirements listed in Appendix A as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The Governor affirms that the State will inspect all mines located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the Agreement in a manner that ensures effective environmental protection.

G. *Qualified Personnel.* The State Agency has and shall continue to have an adequate number of fully qualified personnel necessary for the enforcement of this Cooperative Agreement.

H. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of reclamation requirements in the State.

I. *Reports and Records.* The State Agency shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The Governor shall also make available to the Secretary, upon request, information developed under the Cooperative Agreement.

The Secretary affirms that the Department of the Interior will comply with all of the provisions of this Cooperative Agreement.

ARTICLE IV. MINE PLANS

Federal regulations, 30 CFR 211.10(c), and State laws and regulations require the operator of lands leased, permitted or licensed for coal mining to receive approval of a mining plan or permit prior to conducting operations.

A. *Contents of Mining Plans and Permits.* The Governor and the Secretary agree to require a federal coal lessee who must submit a mining plan or permit application under both State and federal law to submit an application, plan or permit with the following minimum information:

1. The information required by:

a. Wyo. Stat. Section 35-502.24 (a), (b) (i)-(ix);

b. Wyo. Land Quality Reg., Chapter VI;

c. 30 CFR 211.10(c) (3) (ii), (6) (i), (iv)-(vi), (xii), (xiv), (xv);

d. 30 CFR 211.10(c) (7) (iii), (v), (vi).

2. A statement certifying that a copy of the plan or permit application has been given to both the Governor and the Secretary.

If either the Governor or the Secretary requires the operator to submit additional information, the operator shall submit the information to both the Governor and the Secretary. The operator will request variances from the mining plan in accordance with the provisions of Wyo. Stat. Section 35-502.45, and will file the request with the Governor and the Secretary.

B. *Review of Plan.* The Governor and the the Secretary shall each review and analyze the adequacy of the plan, or request for a variance from the plan.

C. *Approval of Mining Plans.* The Governor shall review the mining plan, or request for a variance, as provided in Articles 4 and 6 of the Wyoming Environmental Quality Act (W.S. 35-502.20 to 35-502.41, and 35-502.45), and shall notify the Secretary of his action pursuant to such Act. The Secretary shall then independently review and take action on the mining plan, or request for a variance, acted on by the Governor. The Secretary shall notify the Governor of his action.

ARTICLE V. INSPECTIONS

A. The Governor shall inspect as authorized by Wyo. Stat. 35-502.9 as frequently as necessary but at least quarterly the operations area of all federal coal leases, permits and licenses where operations affecting the reclamation of mined lands are conducted or to be conducted, for the purpose of determining whether the operator is complying with all applicable laws, regulations and orders and all requirements of approved exploration or mining plans that affect the reclamation of mined lands.

B. The Governor will, subsequent to conducting any inspection, file with the Secretary a report on (1) the general conditions of the lands under lease, permit, and license (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable reclamation requirements. A copy of this report shall be furnished to the operator on request, and shall be made available for public inspection during normal business hours at the offices of the Mining Supervisor.

C. For the purpose of evaluating the manner in which the Cooperative Agreement is being carried out and to insure that reclamation is being effectively performed, the Secretary may inspect from time to time mines within the State. Inspections by the Secretary may be made in association with regular inspection by the State.

D. The Secretary may conduct inspections to determine whether the operator is complying with requirements that are unrelated to reclamation.

ARTICLE VI. ENFORCEMENT

A. If the Governor determines that the operator is not complying with a requirement that relates to the reclamation of lands disturbed by surface mining, he shall take such steps as required by Wyo. Stat. 35-502.46, 49.

B. If, in the judgment of the Governor, an operator is conducting activities on lands subject to this agreement which fail to comply with a requirement that relates to reclamation and those activities threaten immediate and serious damage to the environment, the State shall order the immediate cessation of such activities, as authorized by Wyo. Stat. 35-502.15.

C. The State shall notify the Secretary of all violations of applicable laws regarding reclamation including violations of federal laws and regulations or lease terms and of all actions taken under Wyo. Stat. 35-502.46, 49.

D. This section does not limit the Secretary's authority to seek cancellation of a federal coal lease under federal laws and regulations, or prevent the Secretary from taking appropriate steps to correct actions that violate federal, but not State law.

E. Failure to adequately enforce the reclamation laws and regulations shall be grounds for termination of this Agreement.

ARTICLE VII. BONDS

A. *Amount and Responsibility.* The Governor shall require all federal coal lessees subject to the provisions of 30 CFR Part 211 to submit a bond as required by Wyo. Stat. 35-502.34. The Secretary shall reduce the federal bond required for reclamation purposes under 43 CFR 3041.3, and 30 CFR 211.3, by the amount of the bond required by the Governor.

B. *Notification.* Prior to releasing the bond required by Wyo. Stat. 35-502.34 for lands the surface of which is owned by the federal government, the Governor shall consult with

and seek the advice and consent of the Secretary.

C. *Release of Bond.* The Governor shall hold the operator responsible and liable for successful reclamation as required by Wyo. Stat. 35-502.40.

ARTICLE VIII. OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Agency that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. Upon failure of the State Agency to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

ARTICLE IX. TERMINATION OF COOPERATIVE AGREEMENT

The Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the State plan shall be terminated, but which date of termination shall not be less than 30 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary whenever the Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing:

1. That the State has failed to comply substantially with any provision of the Cooperative Agreement; or

2. That the State has failed to comply with any assurance given by the State upon which the Cooperative Agreement is based, or any condition or requirement which is specified in Article III; or

3. That State action unrelated to surface coal mine reclamation will unreasonably and substantially prevent the mining of federal coal.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law when no longer authorized by federal laws and regulations.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Agency specified in Article III.

2. Specify and set out in the written notice the grounds upon which he proposes to terminate the Cooperative Agreement.

3. Specify the date upon which and the place where the State will be afforded an opportunity for hearing and to show cause why the Cooperative Agreement should not be terminated by the Secretary. The date upon which such hearing shall be held shall be not less than 30 days from the date of such notice, and the plaae of hearing shall be in the State.

4. The Secretary shall also publish a notice in the Federal Register containing the items in 1-3 of this paragraph.

5. Within 30 days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within 30 days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

E. *Conduct of Hearing.* The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.* After a hearing has been held, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of the Cooperative Agreement, he shall notify the State Agency of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of the Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without and further opportunity afforded to the State for a hearing.

ARTICLE X. REINSTATEMENT OF COOPERATIVE AGREEMENT

The Cooperative Agreement which has been terminated may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement plan and has remedied all defects in administration for which the Cooperative Agreement was terminated.

ARTICLE XI. AMENDMENTS OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

ARTICLE XII. CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior and/or the State of Wyoming may from time to time revise and promulgate new or revised reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, each party has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If such changes are not made, then the termination provision of Article IX may be invoked.

ARTICLE XIII. QUALIFICATIONS AND EXPERIENCE OF PERSONNEL

The State Agency shall be adequately staffed with, or have readily available to it an adequate number of qualified personnel to carry out fully the requirements of the Cooperative Agreement. The personnel of the State Agency shall be so qualified that the end result of their efforts is comparable to that which would have resulted from administration by Department of Interior personnel.

ARTICLE XIV. CONFLICT OF INTEREST

No member of the State Agency or agencies responsible for the administration of the State law and rules and regulations relating to this Cooperative Agreement shall participate in the review, analysis, administration, decision-making, or enforcement actions relating to any operation subject to this Cooperative Agreement if such person has, directly or indirectly, any financial interest in a company, partnership, organization, or corporation (parent or subsidiary) which owns, operates or has a financial interest in such operation subject to this Cooperative Agreement.

ARTICLE XV. EQUIPMENT AND LABORATORIES

The State Agency shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, analyses, can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement or have access to such facilities and personnel.

ARTICLE XVI. EXCHANGE OF INFORMATION

A. *Organizational and Functional Statement.* The State Agency and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall advise promptly the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Agency and the Secretary shall advise each other in writing the location of its various offices, addresses, telephone numbers, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and shall advise promptly of any changes in such.

B. *Laws, Rules and Regulations.* The State Agency and the Secretary shall provide to each other copies of their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations, and standards when the revision becomes effective.

ARTICLE XVII. RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act or the Constitution of the United States. Furthermore, this Cooperative

Agreement neither alters, expands, nor diminishes the rights, duties, and obligations of the parties hereto as set forth in the stipulation and Consent Decree entered in *Herschler, et al. v. Kleppe*, Docket No. C76-108B (Suit filed June 9, 1976, D. Wyoming).

ED HERSCHLER,
Governor,
State of Wyoming.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

APPENDIX A

1. Wyo. Stat. 35-502.3(e)(i).
2. Wyo. Stat. 35-502.21(a)(i)-(vi).
3. Wyo. Stat. 35-502.24:I
4. Wyo. Stat. 35-502.32(b)(ii)-(ix).
5. Wyo. Land Quality Reg. II-1b.
6. Wyo. Land Quality Reg. II-2a (1), (2).
7. Wyo. Land Quality Reg. II-3 through 5.
8. Wyo. Land Quality Reg. III-1 through 4. 6 through 7.
9. Wyo. Land Quality Reg. IV-1.
10. Wyo. Land Quality Reg. VIII-1.

[FR Doc.77-1682 Filed 1-18-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 204—DANGER ZONE REGULATIONS PACIFIC OCEAN, CALIFORNIA

San Miguel Island, Calif.

On 5 November 1976 there was published in the FEDERAL REGISTER (Vol. 41, No. 215, page 48747) a notice of proposed rulemaking concerning 33 CFR 204.203 which establishes a danger zone in the Pacific Ocean at San Miguel Island, California. We proposed to amend only paragraph (c)(9) to extend the period of use to 1 July 1978. Interested parties were given the opportunity to submit comments or objections on or before 5 December 1976.

No comments have been received and accordingly, the period of use for the danger zone is hereby extended to 1 July 1978 and is set forth below without change, effective upon publication in the FEDERAL REGISTER.

Dated: December 20, 1976.

Approved:

VICTOR V. VEYSEY,
Assistant Secretary of the Army (Civil Works).

Section 204.203(c)(9) of 33 CFR Part 204 is amended as follows:

§ 204.203 Pacific Ocean at San Miguel Island, Calif., naval danger zone.

* * * * *

(c) *The Regulations.* * * *

(9) The regulation in this section shall be in effect until 1 July 1978 and shall be reviewed in May 1978 to determine the continuing need.

[FR Doc.77-1667 Filed 1-18-77;8:45 am]

Title 39—Postal Service

CHAPTER III—POSTAL RATE COMMISSION

[Order No. 149; Doc. No. RM77-4]

PART 3002—ORGANIZATION

Reorganization; Combining Office of Secretary With Administrative Office

JANUARY 14, 1977.

The Postal Rate Commission has determined that an internal reorganization which merges the functions of the Office of the Secretary (39 CFR 3002.3) into an Administrative Office (39 CFR 3002.8) under the direction of a single officer, employing, as appropriate, the titles of Secretary and Chief Administrative Officer, is necessary and desirable for the efficient conduct of the business of the Commission.

All present functions of the Office of the Secretary and the Administrative Office will continue to be exercised but will be assumed by a reorganized and expanded Administrative Office. Amendments to the Commission's organization (39 CFR Part 3002), as provided herein, fully describe the reorganization changes.

Since the amendment herein made involves matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act do not apply. (5 U.S.C. 553.) Accordingly, pursuant to section 3603 of title 39 (39 U.S.C. 3603), it is ordered that effective January 15, 1977, Part 3002 of the Commission's Regulations (39 CFR Part 3002) is hereby amended as follows:

(A) 39 CFR 3002.3 is revised to read as follows:

§ 3002.3 Administrative Office.

(a) The incumbent head of the office is responsible for exercising two executive functions of the Commission and utilizes the title of either "Secretary" or "Chief Administrative Officer," as appropriate.

(b) As Secretary of the Commission, the incumbent head shall have custody of the Commission's seal, the minutes of all action taken by the Commission, its rules and regulations, its administrative and other orders, and records. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(c) As Chief Administrative Officer the incumbent head is also responsible, subject to the policy guidelines of the Commission, for: Development, implementation, and administration of the Commission's financial management system and accounting activities including those relating to the budget and the payroll; development and administration of a personnel program designed to meet the needs of the Commission and its employees; provision of facilities and operating and support services essential to the efficient and effective conduct of operations; acquisition, planning and assignment of office space; procurement and supply; serving as the contracting officer for the Commission and controlling the obligation of Commission funds, as authorized by the Commission.

§ 3002.8 [Revoked]

(B) 39 CFR 3002.8 is revoked.

§ 3002.9 [Redesignated]

§ 3002.10 [Redesignated]

(C) 39 CFR §§ 3002.9 and 3002.10 are redesignated as §§ 3002.8 and 3002.9, respectively.

By the Commission.

DAVID F. HARRIS,
Acting Secretary.

[FR Doc.77-1710 Filed 1-18-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20403; FCC 76-1174]

PART 73—RADIO BROADCAST SERVICES

Automatic Transmission Systems at AM, FM and Television Broadcast Stations

Correction

In FR Doc. 77-531 appearing at page 1233 in the FEDERAL REGISTER of Thursday, January 6, 1977 the following correction should be made: On page 1239, first column, in § 73.146(a), 12th line, fourth sentence should read "If the licensee wishes to establish an ATS monitoring and alarm point other than at the station transmitter, main studio, or an authorized remote control point, an informal request is to be submitted to the Commission in Washington, D.C. with a description of the location of the point and stating the basis for its selection".

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

PART 40—STANDARDS OF CONDUCT

Promulgation

A notice of propose rulemaking was published in the FEDERAL REGISTER on December 8, 1976 (41 FR 53673), for revision of part 32 (CFR part 40 entitled, "Standards of Conduct." This revision provides for a more strict and concise standards of conduct and more comprehensive disclosure of affiliations and financial interests for all Department of Defense personnel, regardless of assign-

ment. Interested persons were given until January 7, 1977, to submit written comments. Two comments were received from the public and several comments from Department of Defense Components.

In consideration of comments received, 32 CFR part 40 is reissued as follows:

Sec.
40.1 Purpose and objective.
40.2 Applicability and scope.
40.3 Definitions.
40.4 Proper conduct of official activities.
40.5 Equal opportunity.
40.6 Conduct prejudicial to the Government.
40.7 Conflicts of interests.
40.8 Gratuities.
40.9 Prohibition of contributions or presents to superiors.
40.10 Use of Government facilities, property, and manpower.
40.11 Use of civilian and military titles or positions in connection with commerical enterprises.
40.12 Outside employment of DOD personnel.
40.13 Gambling, betting, and lotteries.
40.14 Indebtedness.
40.15 Information to personnel.
40.16 Standards of conduct counselors.
40.17 Reporting suspected violations.
40.18 Resolving violations.
40.19 Statements of affiliations and financial interests (DD Form 1555).
40.20 Nondisqualifying financial interest.
40.21 DOD-related employment reporting.
40.22 Required statement of employment (DD Form 1357).
40.23 Delegation of authority.
40.24 Requirements for submission of DD Form 1555 statements.
40.25 Effective date.

AUTHORITY: The provisions of §§ 40.1–40.25 are issued under E.O. 11222 and Pub. L. 87–651.

§ 40.1 Purpose and Objectives.

(a) Government employment, as a public trust, requires that Department of Defense (DOD) personnel place loyalty to country, ethical principles, and law above private gain and other interests. This Part prescribes standards of conduct required of all DOD personnel, regardless of assignment.

(b) This part implements Executive Order 11222 of May 8, 1965 and the Civil Service Commission Regulation, "Employee Responsibilities and Conduct," Title 5, Code of Federal Regulations, Part 735. It includes standards of conduct based on the conflict of interest laws, and it reflects the Code of Ethics for Government Service contained in House Concurrent Resolution 175, 85th Congress.

(c) Penalties for violations of these standards include the full range of statutory and regulatory sanctions for civilian and military personnel.

§ 40.2 Applicability and scope.

The provisions of this part apply to all DOD personnel and to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereinafter referred to as "DOD Components"), including nonappropriated fund activities.

§ 40.3 Definitions.

(a) *DOD Personnel.* All civilian officers and employees, including special Government employees, of all Components, and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps.

(b) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefits (for example, discounts, passes, and promotional vendor training), given or extended to or on behalf of DOD personnel, their immediate families, or households for which fair market value is not paid by the recipient or the U.S. Government.

(c) *Special Government Employee.* A person who is retained, designated, appointed, or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Standards of Conduct Counselors.* See § 40.16.

§ 40.4 Proper conduct of official activities.

(a) DOD personnel shall become familiar with the scope of authority for, and the limitations concerning, the activities for which they have responsibilities.

(b) The attention of DOD personnel is directed to the statutory prohibitions which apply to DOD personnel conduct.

(c) DOD personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S. laws, Executive Orders, or applicable Directives, Instructions, or regulations.

(d) In cases of doubt as to the propriety of a proposed action or decision in terms of regulation or law, DOD personnel shall consult legal counsel or, if appropriate, the Standards of Conduct Counselor or Deputy Counselor to ensure the proper and lawful conduct of DOD programs and activities.

§ 40.5 Equal opportunity.

DOD personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, or national origin, in accordance with DOD Directive 7700.15, "Reporting Procedures on Defense Related Employment," October 30, 1970.[1]

§ 40.6 Conduct prejudicial to the Government.

DOD personnel shall avoid any action, whether or not specifically prohibited by this part, which might result in or reasonably be expected to create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person or entity;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 40.7 Conflicts of interests.

(a) *Affiliations and Financial Interests.* DOD personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their DOD positions. For the purpose of this prohibition, the private interests of a spouse, minor child, and any household members are treated as private interests of the DOD personnel.

(b) *Using Inside Information.* DOD personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.

(c) *Using DOD Position.* DOD personnel are prohibited from using their DOD positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any benefit, financial or otherwise, to themselves or others.

(d) *Disqualification or Divestiture Requirements.* Unless otherwise expressly authorized by action taken under 18 U.S.C. 207 or 208, all DOD personnel who have affiliations or financial interests which create conflicts or appearances of conflicts of interests with their official duties must disqualify themselves from any official activities that are related to those affiliations or interests or the entities involved. A formal disqualification must be sent to an individual's superior and immediate subordinates whenever it appears possible that his official functions will affect those affiliations, interests, or entities. If the individual cannot adequately perform his official duties after such disqualification, he must divest himself of such involvement or be removed from that position.

(e) *Membership in Associations.* DOD personnel who are members or officers of non-Governmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions (DOD Directive 5500.2, "Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations," August 4, 1972 (37 FR 16674) and DOD Instruction 5410.20, "Public Affairs Relations with Business and Non-Governmental Organizations Representing Business," January 16, 1974).[2]

(f) *Commercial Soliciting by DOD Personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DOD personnel, except special Government employees, are prohibited from making personal commercial solicitations or sales to DOD personnel who are junior in rank or grade, at any time, on or off duty.

(1) This limitation includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(2) This prohibition is not applicable to the one-time sale by an individual of his own personal property or privately owned dwelling or to the off-duty employment of DOD personnel as employees in retail stores or other situations not including solicited sales.

(3) For civilian personnel, the limitation applies only to personnel under their supervision at any level.

(g) *Assignment of Reserves for Training.* DOD personnel who are responsible for assigning Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(h) *Prohibited Selling by Retired Officers.* There are legal limitations on sales by retired Regular military officers to any component of the Department of Defense, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(i) *Dealing with Present and Former Military and Civilian Personnel.* DOD personnel shall not knowingly deal on behalf of the Government with present or former, military or civilian, Government personnel whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this Part.

§ 40.8 Gratuities.

(a) *Policy Basis.* The acceptance of gratuities by DOD personnel or their families, no matter how innocently tendered and received, from those who have or seek business with the Department of Defense and from those whose business interests are affected by Department functions (1) May be a source of embarrassment to the Department, (2) May affect the objective judgment of the DOD personnel involved and (3) May impair public confidence in the integrity of the Government.

(b) *General Prohibition.* Except as provided in paragraph (c) of this section, DOD personnel and their immediate families shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from, or on behalf of, any source that:

(1) Is engaged in or seeks business or financial relations of any sort with any DOD Component;

(2) Conducts operations or activities that are either regulated by a DOD Component or significantly affected by DOD decisions; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.

(c) *Limited Exceptions.* The general prohibition in paragraph (b), above, does not apply to the following:

(1) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate Standards of Conduct Counselor.

(2) The acceptance of unsolicited advertising or promotional items that are less than $5 in retail value.

(3) Trophies, entertainment, prizes, or awards for public service or achievement or given in games or contests which are clearly open to the public generally or which are officially approved for DOD personnel participation.

(4) Things available to the public (such as university scholarships) covered by DOD Directive 1322.6, "Fellowships, Scholarships, and Grants for Members of the Armed Forces," April 27, 1963 (32 CFR Part 139) and free exhibitions by Defense contractors at public trade fairs.

(5) Discounts or concessions extended Component-wide and realistically available to all personnel in the Component.

(6) Participation by DOD personnel in civic and community activities when any relationship with Defense contractors is remote; for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by a Defense contractor.

(7) Social activities engaged in by officials of a DOD Component and officers in command, or their representatives, with local civic leaders as part of community relations programs of the DOD Component in accordance with DOD Directive 5410.18, "Community Relations," July 3, 1974.[1]

(8) The participation of DOD personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors) provided that they have been approved in accordance with DOD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 14, 1974.[1]

(9) Situations in which (i) Participation by DOD personnel at public ceremonial activities of mutual interest to industry, local communities, and the DOD Component concerned serves the interests of the Government and (ii) Acceptance of the invitation is approved by the Head of the employing DOD Component, or his designee.

(10) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. In any such case, the individual shall report in writing the circumstances to his supervisor as soon as possible.

(11) Attendance at promotional vendor training sessions when the vendor's products or systems are provided under contract to DOD and the training is to facilitate the utilization of those products or systems by DOD personnel.

(12) Attendance or participation of DOD personnel in gatherings, including social events such as receptions, which are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the Head of the employing DOD Component, or his designee.

(13) Situations in which, in the sound judgment of the individual concerned or his supervisor, the Government's interest will be served by DOD personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 40 hours by the individual or his supervisor to the appropriate Standards of Conduct Counselor (or designated Deputy Counselors).

(d) *Reimbursements.* (1) The acceptance of accommodations, subsistence, or services, furnished in kind, in connection with official travel from sources other than those indicated in paragraph (b) of this section is authorized only when the individual is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended and when such attendance and acceptance is authorized by the order-issuing authority as being in the overall Government interest.

(2) Except as indicated in paragraph (d)(1) of this section, DOD personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the appropriate Standards of Conduct Counselor (pursuant to 5 U.S.C. 4111 or other statutory authority). Rather, reimbursement must be made to the Government by check payable to the Treasurer of the United States. Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement.

(3) In no case shall DOD personnel accept, either in kind or for cash reimbursement, benefits which are extravagant or excessive in nature.

(4) When accommodations, subsistence or services in kind are furnished to DOD personnel by non-U.S. Government sources, consistent with this subsection, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable.

(e) Procedures with respect to gifts from foreign governments are set forth in DOD Directive 1005.3, "Decorations and Gifts from Foreign Governments," September 16, 1967.[1]

(f) Procedures with respect to ROTC Staff Members are set forth in DOD Directive 1215.8, "Policies Relating to Senior Reserve Officers Training Corps (ROTC) Programs," May 1, 1974.[1]

(g) After the effective date of this part, DOD personnel who receive gratuities, or have gratuities received for them, in circumstances not in conformance with the standards of this section shall promptly report the circumstances

See footnotes at end of document.

to the appropriate Standards of Conduct Counselor (or Deputy) for disposition determination.

§ 40.9 Prohibition of contributions or presents to superiors.

DOD personnel shall not solicit a contribution from other DOD personnel for a gift to an official superior, make a donation or gift to an official superior, or accept a gift from other DOD personnel subordinate to themselves. However, this section does not prohibit voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, or retirement, provided any gifts acquired with such contributions shall not exceed a reasonable value.

§ 40.10 Use of Government facilities, property, and manpower.

DOD personnel shall not directly or indirectly use, take, dispose, or allow the use, taking, or disposing of, Government property or facilities of any kind, including property leased to the Government, for other than officially approved purposes. Government facilities, property, and manpower (such as stationery, stenographic and typing assistance, mimeograph and chauffeur services) shall be used only for official Government business. DOD personnel have a positive duty to protect and conserve Government property. These provisions do not preclude the use of Government facilities for approved activities in furtherance of DOD community relations, provided they do not interfere with military missions or Government business.

§ 40.11 Use of civilian and military titles or positions in connection with commercial enterprises.

(a) All DOD personnel, excluding special Government employees, are prohibited from using their titles or positions in connection with any commercial enterprise or in endorsing any commercial product. This does not preclude author identification for materials published in accordance with DOD procedures.

(b) All retired military personnel and all members of reserve components, not on active duty, are premitted to use their military titles in connection with commercial enterprises provided that they indicate their inactive reserve or retired status. However, if such use of military titles in any way casts discredit on the Military Departments or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Military Departments or the Department of Defense, it is prohibited. In addition, the Military Departments may further restrict the use of titles including use by retired military personnel and members of reserve components, not on active duty, in overseas areas.

§ 40.12 Outside employment of DOD personnel.

(a) DOD personnel shall not engage in outside employment or other outside activity, with or without compensation, that: (1) Interferes with, or is not compatible with, the performance of their Government duties;

(2) May reasonably be expected to bring discredit on the Government or the DOD Component concerned; or

(3) Is otherwise inconsistent with the requirements of this Part, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(b) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(c) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this part. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(d) DOD personnel are encouraged to engage in teaching, lecturing and writing. However, DOD personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when (1) the information has been published or is generally available to the public, or (2) It will be made generally available to the public and the agency head gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) Civilian Presidential appointees shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to DOD responsibilities, programs, or operations or which draws substantially from official material which has not become part of the body of public information.

§ 40.13 Gambling, betting, and lotteries.

While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, DOD personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property and the sale or purchase of a number slip or ticket. The only exceptions are for activities which have been specifically approved by the Head of the DOD Component.

§ 40.14 Indebtedness.

DOD personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, State, and local taxes), so that their indebtedness does not adversely affect the Government as their employer. DOD Components are not required to determine the validity or amount of disputed debts.

§ 40.15 Information to personnel.

All DOD personnel, except enlisted personnel not required to file Statements of Affiliation and Financial Interests (DD Form 1555) [1] shall be given a copy of this part or implementing DOD Component regulation and an oral standards of conduct briefing proceding employment or assumption of duties. Each individual receiving such briefing shall attest in writing to his attendance at the briefing, the fact that he has read the standards of conduct, and his comprehension of the requirements imposed. Enlisted personnel not required to file the Statement shall be given standards of conduct briefings and attest in writing to their attendance at such briefings. All DOD personnel shall be reminded at least semi-annually of their duty to comply with required standards of conduct.

§ 40.16 Standards of conduct counselors.

(a) The Head of each DOD Component shall designate a Standards of Conduct Counselor and one or more Deputy Counselors. Those designated shall be responsible for providing advice and assistance to their Components and to the personnel of those Components on all questions arising from the operation and implementation of this Part. They shall also be responsible for the proper review, including audits, coordination, and advice regarding all standards of conduct problems.

(b) The General Counsel of the Department of Defense, or his designee, shall provide legal guidance and assistance to the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), or his designee, who shall be the Standards of Conduct Counselor for the Office of the Secretary of Defense, and to the Standards of Conduct Counsellors of all DOD Components.

(c) The General Counsel, DOD, shall represent the Department of Defense to the Civil Service Commission on matters relating to standards of conduct.

§ 40.17 Reporting suspected violations.

DOD personnel who have information which causes them to believe other DOD personnel have violated a statute or standard of conduct imposed by this Part should first bring the matter to the attention of those persons. If those persons are one's supervisors or the communication is not expected to remedy or does not appear to have remedied the problem, a report shall be made to the appropriate authority and to the Standards of Conduct Counselor.

§ 40.18 Resolving violations.

The resolution of standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture or conflicting interest, disqualification for particular assignments, changes in assigned duties, termination, or other appropriate action, as provided

See footnotes at end of document.

by statute or administrative procedures. Disciplinary actions shall be in accordance with established personnel procedures.

§ 40.19 Statements of affiliations and financial interests (DD Form 1555) [1].

The following DOD personnel are required to submit initial and annual Statements of Affiliations and Financial Interests, DD Form 1555 [1], unless they are expressly exempted. (See § 40.24 for details on applicability and requirements.)

(a) All civilian DOD personnel paid at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–16 including the Executive Schedule.

(b) Officers of flag or general rank.

(c) Commanders and Deputy Commanders of major installations, activities, and operations, as determined by the Heads of the DOD Components.

(d) Board members of the Armed Service Board of Contract Appeals.

(e) DOD personnel classified at GS–13 or above, or at a comparable pay level under other authority, and members of the military in the rank of Lieutenant Colonel, Commander, or above, when the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity.

(f) Special Government employees (except those exempted in § 40.24).

(g) Other DOD personnel who are required, with Civil Service Commission approval, to file such Statements.

§ 40.20 Nondisqualifying financial interest.

DOD personnel need not disqualify themselves under § 40.7(d) for holding shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208b(2), such holdings are hereby exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

§ 40.21 DOD-related employment reporting.

Pre-employment and post-employment reporting requirements concerning defense-related employment are covered in DOD Directive 7700.15.[2]

§ 40.22 Required statement of employment (DD Form 1357).[1]

(a) Each retired Regular officer of the Armed Forces shall file with the Military Department in which he holds retired status a Statement of Employment (DD Form 1357).[1] Each Regular officer retiring hereafter shall file this Statement within 30 days after retirement. Whenever the information in the Statement is changed, each such officer shall file a new DD Form 1357 [1] within 30 days of that change.

(b) The Military Departments shall review the Statements of Employment as required to assure compliance with applicable statutes and regulations.

§ 40.23 Delegation of authority.

The General Counsel, DOD is authorized to modify or supplement any of the enclosures to this Part in a manner consistent with the policies set forth in this Part.

§ 40.24 Requirements for submission of DD Form 1555 statements.

(a) *DOD Personnel Required to Submit Statements.* DOD personnel required to file Statements of Affiliations and Financial Interests (DD Form 1555)[1] are those indicated in § 40.19 of this Part.

(b) *Review of Positions.* Each DOD Component shall include in the description of each position indicated in § 40.19 of this Part a statement that the incumbent of the position must file a Statement of Affiliations and Financial Interests as required by this Part. All positions shall be reviewed at least annually to determine those which require Statements. Any individual may request a review of the decision requiring him to file a Statement through the established complaint procedures of the DOD Component.

(c) *Exclusion of Positions.* Heads of DOD Components, or their designees may determine that the submission of Statements is not necessary for certain positions because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbents' work.

(d) *Manner of Submission of Statements.* (1) The Secretary of Defense is required to submit his Statement to the Chairman of the Civil Service Commission in accordance with the provisions of section 401 of Executive Order 11222.

(2) All DOD civilian Presidential appointees and Directors of Defense Agencies shall submit their Statements to the DOD General Counsel.

(3) Personnel of the Office of the Secretary of Defense (OSD) and the Organization of the Joint Chiefs of Staff shall submit their Statements through their superiors for review and forwarding to the OSD Standards of Conduct Counselor.

(4) Military Department and Defense Agency personnel shall submit their Statements through their immediate supervisors for review and forwarding to officials of the Military Departments or Defense Agencies designated in the regulations of those Departments and Agencies.

(5) Commanders of Unified Commands shall submit their Statements directly to the OSD Standards of Conduct Counselor. Other personnel of the Unified Commands shall submit their Statements through their supervisors to the Deputy Command Counselor in the Office of the Legal Advisor to the Unified Command. Commanders who have a dual responsibility as commanders of both joint commands and components shall submit their Statements through service channels.

(6) All Statements shall be reviewed and approved by the appropriate Standards of Conduct Counselor or Deputy Counselor and the appropriate supervisor prior to the commencement of service or assumption of duties and annually thereafter as prescribed in paragraph (g) of this section. Designees to positions requiring the approval of the Secretary of Defense or the Secretary of a Military Department shall execute the Statement in advance of nomination so that it may be thoroughly reviewed prior to appointment.

(7) Agreements with other DOD Components and Government agencies involving detailing of DOD personnel shall contain a requirement that the other DOD Component or Government agency shall, within 60 days, forward to the parent DOD Component's Standards of Conduct Counselor a copy of the detailed individual's Statement, if required, and notice concerning the disposition of any conflict or apparent conflict of interests indicated.

(e) *Excusable Delay.* When required by reason of duty assignment or infirmity a superior may grant an extension of time with the concurrence of the Standards of Conduct Counselor or Deputy Counselor. Any extension in excess of 30 days requires the concurrence of the Head of the DOD Component concerned or his designee. Any late Statement shall include appropriate notation of any extension of time granted hereunder.

(f) *Special Government Employees (as defined in § 40.3 of this part).* (1) Each special Government employee shall, prior to appointment, file a Statement of Affiliations and Financial Interests.

(2) The following are exempted categories of special Government employees who are not required to file Statements unless specifically requested to do so:

(i) Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

(ii) Veterinarians providing only veterinary services.

(iii) Lecturers participating in education activities.

(iv) Chaplains performing only religious services.

(v) Individuals in the motion picture and television fields who are utilized only as narrators or actors in DOD productions.

(vi) Members of selection panels for NROTC candidates.

(vii) A special Government employee who is not a "consultant" or "expert" as those terms are defined in the Federal Personnel Manual, Chapter 304.

(3) The Secretary or a Deputy Secretary of Defense or the Secretary of a Military Department may grant an exemption to an appointee from the requirement of filing a Statement upon a determination that such information is not relevant in light of the duties the appointee is to perform.

(g) *Annual Statements.* DD Form 1555 [1] Statements shall be filed by Octo-

[1] Form DOD Directive 1555, 1005.3, 7700.15, 5410.18 and 5410.20. Filed as part of original. Copies available from Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attn: Code 300.

ber 31st of each year for all affiliations and financial interests as of September 30th of that year. Even though no changes occur, a complete Statement is required. All DOD Components shall notify the Office of the Secretary of Defense Standards of Conduct Counsellor no later than December 31st of each year that all required Statements have been filed, reviewed and any problems appropriately resolved or explain the details of the outstanding cases.

(h) *Interests of Relatives of DOD Personnel.* The interest of a spouse or minor child, or any member of one's household is to be reported in the same manner as an interest of the individual.

(i) *Information Not Known by DOD Personnel.* DOD Personnel shall request submission on their behalf of required information known only to other persons. The submission may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DOD personnel concerned.

(j) *Information Not Required to be Submitted.* DOD personnel are not required to submit on a Statement any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business for profit. For the purpose of this part, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are to be included in a person's Statement.

(k) *Confidentiality of Statements of DOD Personnel.* DOD Components shall hold each Statement in confidence. A Component may not disclose information from a Statement except as the Component head or the Civil Service Commission may determine for good cause. "Good cause" includes a determination that the record or any part of the record must be released under the Freedom of Information Act. Persons designated to review the Statements are responsible for maintaining the Statements except to carry out the purpose of this part.

(l) *Disqualification.* See paragraph (d) of § 40.7 of this part for requirements concerning disqualification.

(m) *Effect of Statements on Other Requirements.* The Statements required of DOD personnel are in addition to, and not in substitution for, any similar requirement imposed by law, order, or regulation. Submission of Statements does not permit DOD personnel to participate in matters in which their participation is prohibited by law, order, or regulation.

§ 40.25 Effective date.

This part shall become effective on January 19, 1977.

Dated: January 17, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

[FR Doc.77-1918 Filed 1-18-77;8:45 am]

proposed rules

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 215]

COLLECTION OF FOREIGN SUPPLY INFORMATION

Reporting Requirements; Foreign Oil Supply Agreements

On November 15, 1976, the Federal Energy Administration (FEA) requested comments on a proposal to establish new reporting requirements for foreign oil supply agreements (41 FR 50331). Although FEA is already collecting substantial amounts of information with respect to foreign crude oil supplies, FEA believes that such reporting needs to be expanded in order to provide the government a more comprehensive and useable data base. Such information would improve the government's ability to assess more adequately the state and direction of the international oil market and would assure that government decisions with respect to that market are based upon full and complete information.

In response to this notice, 34 comments were received. After evaluation of the comments and other available information, FEA has decided to issue a proposed rulemaking expanding reporting requirements with respect to foreign oil supply agreements. In general, the proposed rule would augment existing reports to provide certain price, cost, volume and related information on a country basis for major agreements. Less information would be required concerning other significant supply arrangements. FEA, on a case-by-case basis, could also require production of individual contracts. FEA does not at this time propose to expand existing arrangements with respect to agreements under negotiation. Notice of major negotiations, however, will be required.

I. Comments

Of the comments favoring the proposal, one was from a purchaser of petroleum products. The party indicated general support for greater information concerning crude oil supply arrangements because of the direct relationship between the cost of crude oil and petroleum products. Presumably this interest could be fulfilled by more effective cost and price reporting. A second party was concerned about promoting the use of privately-owned U.S. flag vessels, and to this end was interested in having the government develop more detailed information on downstream restrictions imposed by producing governments, particularly requirements to use vessels of such governments. Other comments from the Governor of Massachusetts, and the Chairman of the Subcommittee on Energy of the Joint Economic Committee, expressed general support.

Objections to expanded reporting requirements fell into four categories. First, parties argued that FEA already had adequate information to monitor the oil market on the basis of the Form F701-M-O (Transfer Pricing Report) and Form P-328 (Foreign Crude Oil Cost Report), briefings provided to the FEA and the State Department, and the considerable information now available in trade publications. Moreover, the parties pointed out that contract information was not particularly reliable as to future developments since contracts were frequently subject to unilateral change by selling governments especially with respect to prices. Secondly, companies felt that reporting requirements would reduce competitive pressures and opportunities in the market. The fear of publicity would substantially restrict the scope of negotiations and would tend to lead to greater rigidity and standardization of contract terms. Sales could tend to shift to foreign firms or foreign brokers not subject to reporting requirements. Thirdly, parties argued that reporting requirements with respect to negotiations in progress would tend to make the government a third party, politicizing such negotiations, and shifting bargaining to a government-to-government level. Finally, the firms argued that new reporting requirements could create significant new burdens on the industry unless their coverage was limited to the largest contracts.

II. Proposed Rule

A. General

FEA continues to believe that it is essential for the U.S. Government to have accurate and complete information concerning those aspects of the oil market which affect the energy and foreign policy interests of the United States. In addition, the U.S. Government must be aware of potential new developments in the crude oil market where these developments will affect substantial quantities of crude.

At the same time FEA recognizes that expanded reporting requirements are not costless. They could have a detrimental impact on the competitive opportunities of U.S. companies as well as the competitive nature of the market generally. Untoward disclosure of negotiations in progress could result in competitive supply opportunities being directed to foreign companies and could reduce competitive pricing pressures. Producing countries may indeed be reluctant to make price reductions below "official" prices if those reductions could become public.

At the moment companies are able to obtain concessions from official selling levels. These differences can be quite important in terms of the competitive positions of individual companies and such concessions can cause some general price pressure on OPEC, especially through differentials. At the margin such differentials may also produce shifts in supply sources which provide a further check on pricing by individual countries. Further, these discounts to the extent they exist, provide benefits for U.S. companies which may be passed forward through competition to U.S. and other consumers. Thus there is a substantial public benefit from competition among oil companies with respect to supply contracts, and reporting requirements must be structured so as to minimize any adverse competitive effects.

To balance these conflicting requirements, FEA proposes to establish the following reporting procedures:

1. Modification and expansion of existing reporting forms to provide certain additional information on major agreements concerning lifting obligations and options and, in the case of equity interests, expected production volumes and government imposed production limits. This material would be integrated with information already being collected concerning prices, government take and costs, as well as expiration and renegotiation dates of existing contracts. More limited information would be required concerning smaller but still significant contracts.

2. An expansion of the requirements for reporting certain price and cost developments, in particular government decreed changes in prices, price differentials, permitted lifting levels, and downstream obligations.

3. Establishment of explicit regulations concerning FEA's power to obtain or inspect any existing or proposed supply agreement.

B. Expanded Reporting Requirements

FEA currently collects much price and cost data; this information has, however, not always been fully utilized.[1] In

[1] The Form F701-M-O provides for all third-party transactions by U.S. companies, f.o.b. prices, rebates and discounts, including credit over 45 days, contract beginning, ending and renegotiation dates, shipment volumes, dates of loading and destination points. Similar information plus transportation costs is provided for all crude oil imported into the United States. Schedule P of the form also requires detailed cost data including government take and production cost. The price data is buttressed by certain

part this is due to the difficulty of taking information reported on a cargo basis and projecting it in terms of future supply patterns. To alleviate this problem, FEA proposes to require expanded reports for all major supply arrangements.[2] These reports would include:

1. *In the case of purchases:*

(a) Parties.
(b) Grades available; loading terminals.
(c) Minimum lifting obligation and maximum lifting rights.
(d) Details of lifting options within the above limits.
(e) Effective delivery period.
(f) Expiration and renegotiation dates.
(g) Price terms including credit, rebates and discounts.
(h) Related service fees and cost of providing services.
(i) Restrictions on shipping or disposition; other obligations.

2. *In the case of lifting from an equity interest:*

(a) Parties including partners and percentage interest.
(b) Grades available; loading terminals.
(c) Forecast production volumes for next five years.
(d) Government imposed production limits, if any.
(e) Existing government take (i.e., tax, royalty and any other payment) net of related service fees.
(f) Cost of production.
(g) Related service fees and cost of providing services.
(h) Restrictions on shipping or disposition; other obligations.

Such reports would be required 30 days after agreement for any arrangements permitting a company to lift or produce an average of 200,000 barrels per day or more from a country for a period of at least one year. Parties would be required to report significant changes in those arrangements within 30 days after such changes occur. Certain of this information is already collected on the F701–M–O and P–328, but FEA has not been able to fully utilize that information since it is not reported on a contract-by-contract basis. To the extent of redundancy between these forms, FEA would expect to delegate or simplify those elements from the F701–M–O which have not in practice been necessary for the computation of transfer prices, the purpose for which such form was developed.

Special note should be made of the last item in each category. The purpose of this requirement is to determine the scope of leverage exercised by oil producing countries on downstream activities. It will also permit monitoring of other commitments which oil companies make to producing governments in order to obtain crude oil.

Arrangements not defined as major agreements as set out above but which are still significant would have to be noticed to FEA and more limited information provided. This notice would indicate the parties to the agreement, the volumes covered, the expiration date, and where relevant, a notation of any restrictions on shipping or disposition or any other obligations. Arrangements providing for the lifting of 100,000 barrels per day or more of crude oil from any country for a period of at least one year would have to be reported under this provision.

The purpose of this requirement is to make the government aware of agreements which when cumulated may take on greater significance.

Additionally, cost and prices for all volumes lifted by U.S. companies would still be collected on the Transfer Pricing Report and the Foreign Crude Oil Cost Report.

All reports under this system will be considered confidential and protected from public disclosure to the extent permitted by law.

C. Reporting of New Developments

In addition, in conjunction with the transfer pricing program, companies would be required to report within 30 days, prior or volumetric changes imposed by the host government in connection with their lifting. Matters to be noticed would include changes in official selling prices, government take, differentials in either official selling prices or government take, and service fees. With respect to lifting and production rights, companies would have to report any lifting or production restrictions. Reporting would be required with respect to those crude streams which a company lifts.

D. Production of Contracts

The revised reporting requirements do not require the production of individual contracts. Pursuant to section 13 of the FEA Act, FEA, however, has the power to require the production of such contracts in appropriate cases. FEA proposes to adopt specific regulations in this regard.

III. Reports on Negotiations

FEA will continue to rely on its present discretionary system of direct contact with companies in appropriate cases, and where necessary its power to require production of documents. To assure that the government is aware of negotiations in progress so that inquiries may be initiated in appropriate cases, FEA is proposing to add a new requirement that companies notify FEA of ongoing negotiations where negotiations may significantly affect the terms and conditions of major supply arrangements.

This approach has the advantage of giving the government greater flexibility in dealing with particular problems, especially the need to preserve confidentiality, while avoiding direct U.S. Government participation as a third-party in such negotiations.

FEA in conjunction with the Department of State will continue to monitor those negotiations which it deems most vital through the discretionary process now available to it, buttressed by its power to require for review purposes access to drafts or reports in particular cases. FEA's experience to date suggests that in those cases existing powers are adequate to provide the government full information concerning such negotiations.

Interested persons are invited to submit written data, views, or arguments with respect to these amendments to Executive Communications, Room 3309, Federal Energy Administration, Box KG, The Federal Building, Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to the Federal Energy Administration with the designation: "Reporting Requirements: Foreign Oil Supply Agreements." Fifteen (15) copies should be submitted. All comments received by 4:30 p.m., February 21, 1977, will be considered by the Federal Energy Administration in evaluating the revision and amendments.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Public hearings with respect to these amendments will be held beginning at 9:30 a.m., e.s.t., on February 17 and 18, in Room 2105, 2000 M Street, N.W., Washington, D.C. Any person who has an interest in these changes, or who is representative of a group or class of persons which has such an interest, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m. e.s.t., February 2, 1977. Such a request may be hand delivered to Room 3309, The Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he may be contacted through February 16, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., e.s.t., February 4, 1977, and must submit 100 copies of his statements to Executive Communications, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 4:30 p.m. e.s.t.

The FEA reserves the right to select the persons to be heard at these hear-

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world-wide volumetric data. The Porm F701–M–O is supplemented by the Form P–328 which collects quarterly information on crude oil costs for companies' own production, purchases of "preferential" oil, and purchases from host governments. The P–328 is in a standardized format so it may be aggregated and used in conjunction with data provided by other member countries of the International Energy Agency.

[2] FEA is not today issuing proposed forms for the collection of this data; FEA expects, however, to issue such forms within the next two weeks.

ings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings; and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested persons may submit questions to be asked of any person making a statement at the hearings to Executive Communications, FEA, before 4:30 p.m., e.s.t., February 15, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitttd at the hearings, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection in the Freedom of Information Office, Room 2107, The Federal Building, 12th and Pennsylvania Avenue, N.W., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Finally, this proposal has been reviewed in accordance with Executive Order 11821 and OMB Circular No. A-107 and has been determined not to require evaluation of its inflationary impact as provided therein.

[Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185].

In consideration of the foregoing, it is proposed that Chapter II of Title 10 of the Code of Federal Regulations be amended as set forth below.

Issued in Washington, D.C., January 14, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

10 CFR, Chapter II, is proposed to be amended by adding a new Part 215 to read as follows:

PART 215—COLLECTION OF FOREIGN SUPPLY INFORMATION

Sec.
215.1 Purpose.
215.2 Definitions.
215.3 Supply reports.
215.4 Production of contracts and documents.
215.5 Pricing and volume reports.
215.6 Notice of negotiations.

AUTHORITY: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.

§ 215.1 Purpose.

The purpose of this part is to set forth certain requirements pursuant to section 13 of the Federal Energy Administration Act to supply information concerning foreign supply arrangements. The authority set out in this section is not exclusive.

§ 215.2 Definitions.

As used in this subpart:

"Administrator" means the Federal Energy Administrator or his delegate.

"FEA" means to Federal Energy Administration.

"Host government" means the government of the country in which crude oil is produced and includes any entity which it controls, directly or indirectly.

"Person" means any natural person, corporation, partnership, association, consortium, or any other entity doing business or domiciled in the U.S. and includes (a) any entity controlled directly or indirectly by such a person and (b) the interest of such a person in any joint venture, consortium or other entity to the extent of entitlement to crude oil by reason of such interest.

§ 215.3 Supply reports.

(a) Any person having the right to lift or produce an average of 200,000 barrels per day or more of crude oil from a country for a period of at least one year pursuant to supply arrangements with the host government shall report the following information.

(1) *In the case of purchases:*

(i) Parties.

(ii) Grade or grades available; loading terminal or terminals.

(iii) Minimum lifting obligation and maximum lifting rights.

(iv) Details of lifting options within the above limits.

(v) Effective delivery period.

(vi) Expiration and renegotiation dates.

(vii) Price terms including rebates, discounts, and weighted average number of days of credit calculated from the date of loading.

(viii) Related service fees and cost of providing services.

(ix) Restrictions on shipping or disposition; other obligations.

(2) *In the case of lifting from an equity interest:*

(i) Parties including partners and percentage interest.

(ii) Grade or grades available; loading terminal or terminals.

(iii) Forecast production volumes for next five years.

(iv) Government imposed production limits, if any.

(v) Existing government take (i.e., taxes, royalties, and any other payment to the host government) and the timing of collection calculated in terms of the average number of days from the date of loading.

(vi) Cost of production.

(vii) Related service or other fees and cost of providing services.

(viii) Restrictions on shipping or disposition; other obligations.

(b) Except to the extent that such information must be reported pursuant to paragraph (a) of this section, any person having the right to lift or produce an average of 100,000 barrels per day or more of crude oil from a country for a period of at least one year pursuant to supply arrangements with the host government shall report the following information:

(1) *In the case of purchases:*

(i) Parties.

(ii) Minimum lifting obligation and maximum lifting rights.

(iii) Price terms including rebates, discounts, and weighted average number of days of credit calculated from the date of loading.

(iv) Related service fees and cost of providing services.

(v) Restrictions on shipping or disposition; other obligations.

(2) *In the case of lifting from an equity interest:*

(i) Parties including partners and percentage interest.

(ii) Forecast production volumes for next five years.

(iii) Existing government take (i.e., taxes, royalties, and any other payment to the host government) and the timing of collection calculated in terms of the weighted average number of days from the date of loading.

(iv) Cost of production.

(v) Related service or other fees and cost of providing services.

(vi) Restrictions on shipping or disposition; other obligations.

(c) Reports under this section shall be reported no later than 30 days after the later of (1) the effective date of this regulation or (2) the date when such supply arrangements are entered into. Reporting shall be based on actual practice between the parties. Material changes in any item which must be reported pursuant to this section shall be reported no later than 30 days after a person receives actual notice of such changes.

§ 215.4 Production of contracts and documents.

Whenever the Administrator determines that certain foreign supply information is necessary to assist in the formulation of energy policy or to carry out any other function of the Administrator, he may require, by order or otherwise, the production by any person of any agreement or documents relating to foreign energy supply arrangements or reports related thereto. Such documents or reports shall be provided pursuant to the conditions prescribed by the Administrator at the time of such order or subsequently.

§ 215.5 Pricing and volume reports.

To the extent not reported pursuant to § 207.12, any person lifting or producing crude in a country shall report to the FEA within 30 days of the month in which he receives actual notice:

(a) Any change (including changes in the timing of collection) by the host government in official selling prices, royalties, host government taxes, service fees, quality or port differentials, or any other payments made directly or indirectly for crude oil; and for crude oil; and

(b) Any changes in restrictions on lifting, production, or disposition.

§ 215.6 Notice of negotiations.

Any person entering into or conducting negotiations with a host government which may significantly affect the terms and conditions or may reasonably lead to the establishment of any supply arrangement subject to reporting pursuant to paragraph (a) of § 215.3 shall notify FEA of such negotiations. Such notice shall be made no later than the later of 30 days after the effective date of this regulation or the date such negotiations are initiated.

[FR Doc.77-1714 Filed 1-14-77;1:39 pm]

FEDERAL TRADE COMMISSION

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking

On December 20, 1976 (41 FR 55488), the Federal Trade Commission published its proposed rulemaking with respect to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 at pp. 55488-55501.

The Federal Trade Commission has received several requests for extensions of time in order to submit written comments with respect to the Proposed Rulemaking. Accordingly, the Federal Trade Commission has determined to grant an extension of the period for filing comments on proposed regulations implementing the premerger notification requirements of the Act for a thirty-day period until February 18, 1977. This extension does not apply to the proposed Transitional Rule which is to govern mergers and acquisitions occurring on or after February 27, 1977, the official effective date of the new law, and before the effective date of the final Notification Report Form and related rules. The deadline for filing comments with respect to the Transitional Rule remains January 19, 1977.

The Commission also stated that it does not expect to grant further extension of the comment period beyond February 18, 1977 in view of its obligation to implement the premerger notification requirements of the new law at the earliest possible date.

Dated: January 12, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1742 Filed 1-18-77;8:45 am]

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking; Correction

In FR Doc. No. 76-37343 appearing in FEDERAL REGISTER issue for Monday, December 20, 1976, at page 55488 certain pages of the submitted document were out of sequence.

The material appearing at page 55496 beginning with the heading "Instructions" and including the following ten (10) paragraphs ending with the words "* * * several parties to the transactions" should correctly appear on page 55495 before the heading "Special Instruction for Certain Partial Acquisitions."

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1677 Filed 1-18-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing, Federal Housing Commissioner

[24 CFR Part 242]

[Docket No. R-76-374]

MORTGAGE INSURANCE FOR HOSPITALS

Withdrawal of Notice of Proposed Rulemaking

• *Purpose.* The purpose of this notice is to withdraw a proposed rule, R-76-374, (41 FR 10625) in which HUD proposed to amend § 242.57(b) of Part 242 to prohibit a mortgagee from accepting a letter of credit from nonprofit mortgagors in lieu of the cash deposit required by § 242.57(a)(1). •

Twenty-six comments were received before the deadline and numerous others were received afterwards. All of the comments were negative.

The main argument set forth in the comments was that allowing a letter of credit in lieu of a eash deposit is the most practical and least expensive manner for nonprofit hospital sponsors to raise funds for the 10 percent equity contribution based upon fund raising drives and the value of existing facilities rather than having to wait until cash is available for the 10 percent equity contribution and the costs of construction have escalated. Another primary comment stressed the overall success of the nonprofit hospital mortgage insurance program and the fact that the risks involved in a letter of credit rest with the mortgagee.

In view of the foregoing comments, HUD has determined that rulemaking action on the proposed amendment is not appropriate at this time and that the notice of proposed rulemaking should be withdrawn. The withdrawal of the proposal, however, does not preclude HUD from issuing similar notices in the future or commit HUD to any course of action.

In consideration of the foregoing, the proposed notice published in the FEDERAL REGISTER (41 FR 10625) on March 12, 1976, is hereby withdrawn.

Issued at Washington, D.C., January 11, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc.77-1718 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

DEVILS TOWER NATIONAL MONUMENT, WYO.

Climbing

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), a Proclamation (No. 658) of September 24, 1906, 34 Stat. 3236, DMI, NPS Order No. 77 (38 FR 7478); Regional Director, Rocky Mountain Region Order No. 1 (39 FR 12369), it is proposed to add § 7.30 to Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this addition is to establish restrictions on persons climbing Devils Tower. This has become necessary in order to adequately protect climbers on the tower and other nonclimbing monument visitors walking near the tower's base.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Superintendent, Devils Tower National Monument, Devils Tower, Wyoming, 82714, on or before February 18, 1977.

It is proposed to add § 7.30 to Title 36 as set forth below:

§ 7.30 Devils Tower National Monument.

(a) *Climbing.* Registration with a park ranger is required prior to any climbing above the talus slopes on Devils Tower. The registrant is also required to sign in immediately upon completion of a climb in a manner specified by the registering ranger.

HOMER A. ROBINSON,
Superintendent,
Devils Tower National Monument.

JANUARY 7, 1977.

[FR Doc.77-1647 Filed 1-18-77;8:45 am]

[36 CFR Part 7]

OLYMPIC NATIONAL PARK, WASH.

Snowmobile Use

Notice is hereby given that pursuant to the authority contained in Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 3), and the Act of June 29, 1938 (52 Stat. 1241, as amended, 16 U.S.C. 251; 52 Stat. 1242, as amended, 16 U.S.C. 254); 245 DM 1 (34 F.R. 13879) as amended; National Park Service Order No. 77 (38 FR 7478) as amended; and Pacific Northwest Region Order No. 3 (37 FR 6325) as amended; it is proposed to amend Section 7.28 of Title 36 of the Code of Federal Regulations by adding a new paragraph (f) as set forth below.

The purpose of the proposed regulation is to designate routes for the use of snowmobiles as provided for by 36 CFR, Chapter 1, § 2.34(c). The criteria contained in Sections 3 and 4 of E.O. 11644 (37 FR 2877) have been used for guidance and other factors, such as visitor uses, safety, wildlife management, noise, erosion, geography, weather, vegetation, and resource protection were considered.

A written environmental assessment has been prepared with respect to the use of snowmobiles on the routes designated for their use. The assessment determines that the proposed Federal regulation is not a major federal action which will have a significant effect on the quality of human or natural environment. A copy of this assessment as approved on March 15, 1976, is on file and may be examined at the office of the Superintendent for the Olympic National Park and at the Pacific Northwest Regional Office of the National Park Service, Fourth and Pike Building, Seattle, Washington 98101.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Olympic National Park, Port Angeles, Washington 98362, on or before February 18, 1977.

It is therefore proposed to amend 36 CFR § 7.28 by adding paragraph (f) in the manner set forth below:

§ 7.28 Olympic National Park.

* * * * *

(f) *Snowmobile use.* (1) Except as provided herein, all lands within Olympic National Park are closed to the use of snowmobiles. Snowmobiles may be used only on the following routes, as designated by the posting of appropriate signs, or by marking on a map available at the office of the Superintendent, or both:

(i) Staircase Road from the park boundary to the Staircase Ranger Station.

(ii) Dosewallips Road from the park boundary to the Dosewallips Ranger Station.

(iii) Whiskey Bend Road from the junction of Elwha Road to the Whiskey Bend trailhead.

(iv) Boulder Creek Road from Glines Canyon Dam to Boulder Creek Campground.

(v) Soleduck Road from the junction of U.S. 101 to the Soleduck trailhead.

(vi) North Fork Quinault Road from the end of the plowed portion to the North Fork Ranger Station.

(vii) South Shore Road from the end of the plowed portion to the Graves Creek Ranger Station.

(2) On roads designated for snowmobile use, only that portion of the roadway intended for wheeled vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated roadway is closed to all other public motor vehicle use.

Dated: December 14, 1976.

ROGER W. ALLIN,
Superintendent,
Olympic National Park.

[FR Doc.77-1646 Filed 1-18-77;8:45 am]

[36 CFR Part 7]

GRAND CANYON NATIONAL PARK, ARIZONA

Immobilized, Inoperable Vehicles

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916, (39 Stat. 535, as amended; 16 U.S.C. 3), section 2 of the Act of February 26, 1919, (40 Stat. 1177; 16 U.S.C. 222), section 2 of the Act of February 25, 1927, (44 Stat. 1240; 16 U.S.C. 221b), 245 DMI (34 FR 13879), National Park Service Order No. 77 (38 FR 7478) as amended, and Regional Director, Western Region Order No. 7 (37 FR 6326), it is proposed to amend § 7.4 of Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this amendment is to establish regulations for storing immobilized and inoperable vehicles on government lands within the park. These regulations are necessary to discourage the development of hazardous conditions and physical and visual pollution of the area.

It is the policy of the Department of the Interior whenever applicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Superintendent of Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023, on or before February 18, 1977.

It is proposed to amend § 7.4 of 36 CFR by the addition of a paragraph (i) as follows:

§ 7.4 Grand Canyon National Park.

* * * * *

(i) *Immobilized and legally inoperative vehicles.* (1) An immobilized vehicle is a motor vehicle which is not capable of moving under its own power due to equipment malfunction or deficiency. This term shall also include trailers whose wheels have been removed or which, for other reasons, cannot be immediately towed from their location, excluding trailers being used as residences which are occupying sites designated for this purpose by the Superintendent. A legally inoperative vehicle is a motor vehicle capable of movement under its own power, but not licensed to legally operate on roads.

(2) Leaving, storing, or placing upon federally owned lands within the park any immobilized or legally inoperative vehicle for a period exceeding 30 days is prohibited, except under the terms of a permit issued by the Superintendent.

(3) A revocable permit for an immobilized or legally inoperative vehicle may be issued without fee by the Superintendent for a specific period of time, upon a finding that the issuance of such a permit will not interfere with park management or impair park resources.

(i) Any permit issued will be valid for the period stated on the permit, unless otherwise revoked or terminated by the Superintendent, and will state the name and address of the owner, the description of the vehicle, and the exact location where it may be left, stored or placed.

(ii) The permittee will affix the permit securely and conspicuously to the vehicle.

(iii) The permit shall be nontransferable.

(iv) Any person issued a permit shall comply with all terms and conditions of the permit. Failure to do so will constitute cause for the Superintendent to terminate the permit at any time.

(v) A permit may be revoked at any time for the convenience of the National Park Service or upon a finding that continued authorization under the permit would interfere with park management or impair park resources.

(4) An immobilized or legally inoperative vehicle left in excess of 30 days without a permit will be removed at the owner's expense.

(5) An immobilized or legally inoperative vehicle constituting a safety hazard, causing an obstruction to roads or trails, or interfering with maintenance operations will be removed immediately at the owner's expense. Such interference or impairment may include, but shall not be limited to, the creation of a safety hazard, traffic congestion, visual pollution, or fuel and lubricant drip pollution.

(6) The Superintendent shall have the right of inspection at all reasonable times to ensure compliance with the requirements of this paragraph.

Dated: December 30, 1976.

MERLE E. STITT,
Superintendent, Grand
Canyon National Park.

[FR Doc.77-1634 Filed 1-18-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 672-7]

ILLINOIS

Approval and Promulgation of State Implementation Plans; Emergency Episodes

On January 31, 1972, the State of Illinois submitted to the Administrator of the United States Environmental Protection Agency an implementation plan to achieve and maintain the National Ambient Air Quality Standards. The plan was approved by the Administrator on May 31, 1972 (37 FR 10862) with several exceptions, including disapproval of regulations pertaining to Prevention of Air Pollution Emergency Episodes. These deficiencies were corrected and the episode plan was fully approved on October 23, 1973 (38 FR 29297).

On April 9, 1976, the Illinois Pollution Control Board revised its emergency episode regulations after due notice and public hearings. The regulations (Illinois Pollution Control Board Regulations, Chapter 2, Part IV) took effect on April 19, 1976 and were submitted to U.S. Environmental Protection Agency (EPA) on July 22, 1976 as revisions to the Illinois State Implementation Plan (SIP).

The new regulations primarily address ozone episode situations, and would revise the plan as follows: (1) The regulations specifically state that Illinois Environmental Protection Agency has sole authority for declaring episode stages; (2) The requirement for a forecast of 24 hours of poor dispersion before an ozone episode can be declared has been revised to allow the declaration of an episode whenever specified ozone levels occur one day and are expected to recur the next day, or if an air stagnation advisory is received for any area within the State; (3) The term Ozone Advisory replaces the former designation of Ozone Watch, and is issued when a 2 hour average of 0.07 ppm of ozone is measured; (4) Episode stages have been set for concentration levels occurring for a one hour period at any monitoring station as follows: ozone yellow alert level has been raised from 0.10 to 0.17 ppm; ozone red alert level has been decreased from 0.40 to 0.30 ppm; ozone emergency level has been decreased from 0.60 to 0.50 ppm; (5) The regulations establish a procedure for filing emission reduction contingency plans and requirements for reduction of pollution levels during periods of high concentrations. Indirect sources of pollution such as large government agencies, parking garages, and fleet vehicle operations are included among sources required to file emission reduction contingency plans.

Approval of the revisions depends on their consistency with the requirements set forth in section 110(a)(2)(A)-(H) of the Clean Air Act, as amended, and the implementing regulations found in 40 CFR Part 51. The Administrator has received the submission and found it to be a necessary revision to the existing plan, and, therefore, proposes to approve the revised episode regulations.

The Administrator is announcing these proposed changes to the Illinois plan for the purpose of securing public comments. Any interested party may make a comment on the proposed rulemaking in writing by addressing correspondence to Region V's Air Programs Branch, Air and Hazardous Materials Division, 230 South Dearborn Street, Chicago, Illinois 60604. All comments received no later than thirty days from the date of this notice will be considered. Receipt of comments will be acknowledged.

Copies of the proposed regulations and public hearing transcript of hearings conducted by the State of Illinois are available for public inspection during normal working hours at the Illinois Pollution Control Board, 309 West Washington Street, Suite 300, Chicago, Illinois 60606. Copies of the proposed regulations are also available at the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706; and at Air Programs Branch, Air and Hazardous Materials Division, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

Authority: 42 U.S.C. 1857c-5(a)

Dated: January 11, 1977.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

[FR Doc.77-1624 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 2400]

ALASKA

Proposed Amendment of Principles and Procedures for Land Classifications

This proposed amendment of and addition to the regulations contained in Part 2400 of Title 43 of the Code of Federal Regulations is being made to add the authority for classification and reclassification of lands in Alaska contained in section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)), and to place all classification criteria and procedures relating to lands in Alaska under the proposed Subpart (2480).

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-1071.

In accordance with section 310 of the Federal Land Policy and Management Act of 1976, public participation is invited in rulemaking. Interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210, Bureau of Land Management, Department of the Interior, Washington, D.C., on or before February 22; 1977.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection at the foregoing address during regular working hours (7:45 a.m. to 4:15 p.m.).

It is therefore proposed to revise Chapter II, Subchapter B, Group 2400 of 43 CFR as set forth below.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 14, 1977.

PART 2400—LAND CLASSIFICATION

1. Section 2400.0-2 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 2400.0-2 Objectives.

* * * * *

(b) Procedures for land classification in Alaka are contained in Subpart 2480 of this part.

§ 2400.0-3 [Amended]

2. Section 2400.0-3 is amended by deleting the words "in the case of Alaska" from the first sentence in paragraph (f).

3. Section 2400.0-3 is amended by deleting paragraph (h) and renumbering paragraphs (i) and (j) accordingly.

4. Part 2400 is amended by adding new Subparts 2480 to 2485 to read as follows:

Subpart 2480—Land Classification; Alaska

Sec.
2480.0-2 Objectives.
2480.0-3 Authority.
2480.0-4 Responsibility.
2480.0-5 Definitions.
2480.0-7 Applicability.

Subpart 2480—Land Classification; Alaska

§ 2480.0-2 Objectives.

Various statutes, many of which are cited in § 2480.0-3, authorize the Secretary of the Interior of classify Federal lands. The objectives of this subpart are (a) to specify those values and principles that will be considered in the exercise of the Secretary's authority and (b) to establish procedures for the prompt and efficient exercise of this authority with the knowledge and participation of interested parties, including the general public.

§ 2480.0-3 Authority.

The Secretary of the Interior, or his delegate, is authorized by 43 U.S.C. 2 to perform all executive duties in anywise respecting the public lands of the United States. He is also authorized by 43 U.S.C. 1624 to enforce and carry into execution by appropriate regulations every part of the provisions of the Alaska Native Claims Settlement Act (ANCSA). The following statutes, among others, authorize land classification by the Secretary:

(a) Section 17(d)(1) of the ANCSA (43 U.S.C. 1616(d)(1)) authorizes the

Secretary to classify or reclassify lands in Alaska withdrawn for classification and to open such lands to appropriation in accord with such classification. By various Public Land Orders, lands have been withdrawn from all forms of appropriation under the public land laws, including State selections (some exceptions); from location and entry under the mining laws, with some exceptions for locations for metalliferous minerals (30 U.S.C. Ch. 2); and from leasing under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. sections 187–287 (1970)). By these Orders, all such lands not otherwise withdrawn or appropriated are subject to classification and reclassification.

(b) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869–869–4), authorizes the Secretary to classify lands for lease or sale for recreation or public purposes.

(c) The Act of August 30, 1949, as amended (43 U.S.C. 687b), authorizes the Secretary to sell at public auction lands that he classifies as suitable for industrial or commercial purposes, including construction of housing.

(d) Section 6(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(d)) authorizes the Secretary to exchange federally owned property which he classiqes as suitable for exchange or other disposal for nonfederal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system.

§ 2480.0–4 Responsibility.

Except where specified to the contrary in this subpart, the authority of the Secretary to classify lands and make other determinations in accordance with the regulations of this part has been delegated to officials of the Bureau of Land Management.

§ 2480.0–5 Definitions.

As used in the regulations of this subpart—

(a) "Agricultural" refers to the growing of cultivated crops; it does not include grazing or the production of native grasses or native forage plants.

(b) "Authorized Officer" refers to the head of a Bureau of Land Management field office who has been delegated authority to make classification decisions.

(c) "Bureau" means the Bureau of Land Management.

(d) "Classification" means a positive determination as to whether certain Federal lands will be subject to appropriation under specified law(s) or will remain in Federal ownership and control.

(e) "Appropriation" means, but is not limited to, grant, sale, exchange, selection, entry, or location for purposes of transfer of title from Federal ownership; or a lease under the Recreation and Public Purpose Act (43 U.S.C. 869, et seq.) or under the Act of May 24, 1928, as amended (49 U.S.C. 211–214).

(f) "Land Use Plan" means a plan, as of a given point in time, that sets out the future use(s) of the land based upon a systematic analysis of physical, environmental, and socioeconomic factors affecting the land.

(g) "Secretary" means the Secretary of the Interior.

(h) "State Director" means the Director of the Alaska State Office, Bureau of Land Management.

§ 2480.0–7 Applicability.

The regulations of this Subpart govern all classification of lands administered by the Bureau that are made pursuant to the authorities described in § 2480.0–3. They also apply to lands not administered by the Bureau where the head of the administering agency agrees and the specific classification authority applies; e.g., the Recreation and Public Purposes Act (43 U.S.C. 869, et seq.). Classification is a prerequisite to the approval of all appropriations and entries under the following parts, among others, of this chapter: Exchanges—Group 2200; Original, Additional, Second, Adjoining Farm, and Enlarged Homesteads in Alaska—Subparts 2511, 2512, 2513, 2514, and 2567; Indian Allotments—Part 2530; Trade and Manufacturing Sites—Subpart 2563; State Grants—Subpart 2627; Recreation and Public Purposes—Part 2740 and Subpart 2912; Airports—Subpart 2911.

Subpart 2481—Classification Principles

Sec.
2481.1 General.
2481.2 Requirements.

Subpart 2481—Classification Principles

§ 2481.1 General.

The authorities in § 2480.0–3 of Subpart 2480 of this part grant the Secretary full discretion, subject to statutory guidelines and limitations, to determine whether to classify any particular tract of Federal Lands for appropriation. The regulations in this subpart contain the principles and procedures which personnel of the Department of the Interior shall consider and follow in the exercise of land classification authority delegated to them by the Secretary.

§ 2481.2 Requirements.

(a) In arriving at the classification decision the authorized officer must find that the lands involved have the geographical, physical, and economic attributes to support the use or values upon which the classification decision is based.

(b) In arriving at a classification decision under the regulations of this part, the authorized officer shall consider:

(1) Federal uses, policies, programs and plans, including Bureau Land use plans and applicable policies and objectives set forth in Group 1700 of this chapter;

(2) State and local governmental uses, policies, programs, plans and laws, including zoning and other land use regulations, to the extent such are consistent with Federal uses, policies, programs and plans;

(3) Reasonably ascertainable present and potential uses and users of the lands;

(4) Environmental effects, including economic and social impacts;

(5) Relative scarcity of values that could be lost or impaired and availability of alternate means and sites for accommodation of those values;

(6) Effects on the administration of other public lands;

(7) The impact on resources utilized for subsistence purposes.

Subpart 2482—Classification for Appropriation

Sec.
2482.1 General.
2482.2 Relative values for types of appropriation.
2482.3 Lands classified for appropriation under particular laws.

Subpart 2482—Classification for Appropriation

§ 2482.1 General.

When lands are classified for appropriation, the classification decision shall specify the particular public land law(s) under which they may be appropriated and, where applicable, the particular type(s) of use and appropriation for which the lands will be open under such law(s).

§ 2482.2 Relative values for types of appropriation.

Where lands are found to have value for more than one type of nonfederal use or appropriation under more than one public land law, the law or laws specified in the classification decision shall be chosen so as to give the most benefit to the public, as determined by the authorized officer, with particular regard to the considerations in § 2481.2 (b) of Subpart 2481 of this part.

§ 2482.3 Classification for appropriation under particular laws.

(a) A Classification allowing appropriation for a homestead (Part 2510 and Subpart 2567 of this chapter) may be made if the lands are (1) chiefly valuable for agriculture, (2) suitable for development as a home and farm, (3) sufficient to provide an adequate return anticipated for the farm family, and (4) in an area where rainfall or groundwater and/or irrigation water is adequate and available under Alaskan law in sufficient quantity to permit agricultural development of the particular lands.

(b) A classification allowing appropriation for an Indian allotment (Part 2530 of this chapter) may be made if (1) the lands are chiefly valuable for agriculture, (2) the lands are, on the whole, suitable for a home, and (3) the anticipated agricultural use would support the allottee and the allottee's family.

(c) Needs in relation to subsistence living will be considered in investigations of the classification of lands for possible appropriation for headquarter sites, homesites, or trade and manufacturing sites (Subparts 2563 and 2562 of this chapter).

(d) The authorized officer will not finalize a proposed classification allowing appropriation solely for exchange unless the estimated fair market values of the offered and selected lands are approximately equal. Where the exceptions con-

tained in section 17 of the Act of January 2, 1976 (89 Stat. 1156) are desired to be used by the authorized officer, the classification will not become final without the specific approval of the Secretary.

Subpart 2483.1—Applications

Subpart 2483.2—Proposed Classification

Subpart 2483.3—Classification

Subpart 2483.1—Applications

§ 2483.1–1 Application or Bureau Motion.

Lands may be classified for appropriation in response to either an application for appropriation or on Bureau Motion.

§ 2483.1–2 Filing.

(a) An application must be on an approved form. Application forms and lists indicating the proper office for the filing of applications may be obtained from any office of the Bureau. All applications must be submitted in accordance with the applicable provisions of Subpart 1821 of this chapter and all other regulations concerning filing.

(b) The filing of an application gives no right to enter, occupy, or settle upon the lands.

(c) All filing fees which accompany applications submitted in accordance with the regulations of this Subpart shall be earned upon the filing of such applications with any office of the Bureau.

§ 2483.1–3 Rejection or suspension.

The classification authorities cited in § 2480.0-3, authorize classification action and applications requesting classification may be rejected without classification action at the discretion of the authorized officer or as provided by other regulations of this chapter.

(b) If the requested lands have already been classified and the application is for a type of appropriation not allowable by the existing classification, the application shall be rejected.

(c) An application for a type of appropriation not allowable under a proposed classification decision shall be suspended until the proposed decision is vacated or a final decision is issued.

(d) Applications shall also be rejected where the provisions of Subpart 2091 and other regulations of this chapter concerning segregation apply. However, applications shall not be rejected solely on the basis that the land is withdrawn pending classification under this Part.

(e) Upon finality of a classification decision, any inconsistent applications, which are then pending, will be rejected.

(f) Decisions rejecting applications will contain a statement giving the reasons for rejection and advising the applicant of corrective steps, if any, that may be taken.

(g) Upon finality of a decision rejecting an application, any advance payments on other such monies, except filing fees and reimbursement payments, submitted with the application will be returned or refunded.

§ 2483.1–4 Administrative review.

A rejection or suspension of an application pursuant to § 2483.3(a) through (e), supra, shall not be appealable to the Board of Land Appeals.

Subpart 2483.2—Proposed Classification

§ 2483.2–1 Commencement of classification action.

If an application is not rejected or suspended, or if the classification action is initiated by Bureau motion, the authorized officer shall proceed to examine the lands and prepare a proposed classification decision.

§ 2483.2–2 Proposed classification decision.

(a) Before issuing a proposed classification decision, the authorized officer shall determine whether the proposed action requires preparation of an environmental impact statement (an EIS) under section 102(2)(c) of the National Environmental Policy Act (43 U.S.C. 4332 (2)(c)). In those instances where he determines that an EIS is required, the authorized officer shall proceed to prepare an EIS based on the proposed classification decision.

(b) The authorized officer shall make and issue a proposed classification decision which shall (1) state whether the lands will be retained or offered for appropriation; (2) if appropriation, state the extent or under which authority (ies) appropriation will be allowed as provided in § 2482.1 of Subpart 2482 of this part; (3) state whether an EIS has been or is being prepared; (4) identify any and all applications filed for the land; (5) if no application has been filed and disposition is contemplated, state that the land will be open to application by all qualified persons on an equal-opportunity basis after public notice; (6) contain a statement of reasons in support of the decision proposed; and (7) specify a period of not less than 30 days during which protests shall be received. Should the authorized officer find good cause, the protest period may be shortened, and, if so shortened, the proposed decision shall contain the reason(s) in support of such lesser period of time.

(c) Such decisions shall be served upon (1) each applicant for use or appropriation of the land; (2) each permittee, licensee, or lessee using the land; (3) the local governing board, planning commission or other official body having land-use control authority in the area where the land is located; (4) any governmental officials or agencies from whom written comments concerning future use of the lands have recently been received; and (5) such other persons as the authorized officer deems appropriate.

(d) A proposed classification decision that would classify more than 2,560 acres shall be published in the FEDERAL REGISTER and in a newspaper having general circulation in the vicinity of the lands. A proposed classification decision for 2,560 acres or less may be also so published if it is deemed appropriate by the authorized officer.

(e) The authorized officer shall hold a public meeting on the proposal if the proposed classification is for more than 100,000 acres, or he determines that sufficient public interest exists to warrant the time and expense of a meeting.

§ 2483.2–3 Protests.

After a proposed classification decision has been issued, any interested party may file a written protest with the State Director during the period specified in the proposed decision. No particular form of protest is required. The protest must be sufficient to identify the specific proposed decision being protested.

Subpart 2483.3—Classification

§ 2483.3–1 Involving an environmental impact statement.

If, under § 2483.2–2(a) of Subpart 2483.2 of this part, it was determined that an EIS is necessary, no classification will become final until the final EIS has been filed. In such cases, the authorized officer shall issue a final classification notice or decision as appropriate.

§ 2483.3–2 In absence of protests.

If no protest is filed within the time allowed, the proposed classification shall become final, and the authorized officer shall serve a notice of final classification upon those served with the proposed decision. A notice shall also be published in the FEDERAL REGISTER and a local newspaper if the proposed decision was so published.

§ 2483.3–3 With protests.

If a protest to the proposed classification decision is timely filed, the following procedures shall apply:

(a) The protest shall be reviewed by the State Director. At the conclusion of the review, the State Director shall either vacate, affirm, or modify the proposed classification decision. Notice of his decision shall be served upon those served with the proposed classification decision and upon all protestants. It shall also be published in the FEDERAL REGISTER and a local newspaper if the proposed classification decision was so published.

(b) For a period of 30 days after service of the notice of the State Director's decision, any interested person may petition the Secretary for review. Notice of the filing of a petition with the Secretary

must be served on the State Director within the 30-day period.

(c) If within the 30-day period, the State Director does not receive notice of petition to the Secretary, the decision shall become the final classification decision.

(d) If a petition is timely received, including service on the State Director, the State Director's decision shall be suspended. Notice of suspension shall be given to the same persons and in the same manner as notice of the State Director's decision. Therefore, the Secretary shall make the final classification decision. Notice of the Secretary's action shall be given to the same persons and in the same manner as the notice of suspension.

§ 2483.3–4 Classification by Secretary without certain procedures.

Where the Secretary determines that the public interest would be served thereby, he may issue a final classification decision without following any or all of the procedures in §§ 2483.2–2(b) through 2483.2–3 of Subpart 2483.2 of this part and §§ 2483.3–2 and 2483.3–3 by publishing his decision in the FEDERAL REGISTER and a newspaper having general circulation in the vicinity of the lands being classified.

§ 2483.3–5 Administrative Review.

No person shall be entitled to any administrative review of a classification decision other than that provided by § 2483.3–3.

Subpart 2484—Opening of Lands

Sec.
2484.1 Preference rights.
2484.2 Appropriation in absence of preference rights.
2484.3 Right to enter, occupy, or settle.

Subpart 2484—Opening of Lands

§ 2484.1 Preference rights.

(a) No applicant shall have a preference right unless it is expressly provided by law.

(b) If it should be necessary for any reason to reject the application of the first applicant entitled to a preference right, other qualified applicants who filed prior to classification shall succeed to the preference right in order of filing.

§ 2484.2 Appropriation in absence of preference rights.

Where there is no preference right, the authorized officer shall, in accordance with the specifics of the classification:

(a) Seek application for the land from an applicant where there is only one possible qualified applicant, e.g., the State of Alaska.

(b) Publish a notice setting a time and place at which the land will be sold to the highest bidder.

(c) Publish a notice providing for a period during which applications may be filed, with the successful applicant to be determined by a drawing among all qualified applicants.

(d) In the event there is no response to the specific notices given in paragraphs (b) and (c) of this section, the authorized officer, in his discretion may cancel the classification or allow the classification to stand until the first qualified applicant submits a proper application, or the classification terminates for other reasons.

§ 2484.3 Right to enter, occupy, or settle.

(a) A classification for appropriation does not give a right to enter, locate, occupy, or settle upon the lands unless the classification decision expressly opens the lands. If a classification decision does not so provide, no person shall be entitled to possession or use of the land until otherwise expressly authorized by the authorized officer. Entry, location, occupancy, or settlement on the land prior to that time constitutes a trespass.

(b) After lands have been classified, all the laws and regulations governing the particular type of appropriation must be complied with in order for title to vest or other interest to pass. No final determination on whether an applicant has satisfied all requirements of law for appropriation need be made until the lands have been classified. No conveyancing instrument or lease shall be executed until the lands are opened.

Subpart 2485—Termination of Classification

§ 2485.1 Continuance.

A final classification shall continue in full force and effect until it is revoked, until it terminates by its own terms or by operation of law, or until the lands are reclassified. Lands may be reclassified at any time.

§ 2485.2 Recreation and public purpose classifications.

If no application is received for lands classified for appropriation under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869—869–4), within 18 months of the date of classification, the classification shall automatically terminate.

[FR Doc.77–1731 Filed 1–18–77;8:45 a.m.]

Office of the Secretary

[43 CFR Part 29]

TRANS-ALASKA PIPELINE LIABILITY FUND

Establishment of Non-Profit Corporation

The United States Department of the Interior, in order to implement section 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c) (the Trans-Alaska Pipeline Liability Fund), proposes to adopt regulations pursuant to the Act for the purpose of establishing a non-profit corporate entity to be strictly liable without regard to fault for all damages sustained by any person or entity as a result of discharges of oil from vessels engaged in the coastwise transportation of oil from the terminal facilities of the Trans-Alaska Pipeline to a port under the jurisdiction of the United States. Specifically, the contents of these proposed regulations include directives for establishing, supervising, and administering the Trans-Alaska Pipeline Liability Fund within the requirements of section 204 (c) of the Act.

The Department of the Interior invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to fully reflect the needs of the public and parties affected by the provisions. Written comments should be submitted to the Office of the Secretary, U.S. Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240, on or before March 7, 1977. Following the close of the comment period, and after review of the comments, the Secretary may amend these proposed regulations to reflect necessary and permissible changes. The Secretary shall then publish final regulations in the FEDERAL REGISTER.

THOMAS S. KLEPPE,
Secretary of the Interior.

It is proposed to add a new 43 CFR Part 29 as follows:

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.
29.1 Definitions.
29.2 Creation of the fund.
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing of the fund.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing
29.13 Termination.
29.14 Audit.

AUTHORITY: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c).

§ 29.1 Definitions.

As used in this part:

(a) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) "Secretary" means the Secretary of the Interior or his authorized representatives.

(c) "Act" means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93–153.

(d) "Trans-Alaska Pipeline System" means any pipeline or terminal facilities constructed by the Permittees.

(e) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by Sec. 204 (c) (4) of the Trans-Alaska Pipeline Authorization Act.

(f) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(g) "Oil" means petroleum in any form including crude oil, refined products, and other liquid hydrocarbons which have

been transported through the Trans-Alaska Pipeline System and loaded on a vessel at the terminal facilities of the pipeline.

(h) "Vessel" means any sea-going vessel of any type whatsoever, including floating craft, whether self-propelled or propelled by another vessel, constructed or adapted to carry crude oil or petroleum products in bulk in its cargo spaces, and includes combination carriers such as ore-bulk-oil and ore-oil carriers engaged in transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and ports under the jurisdiction of the United States.

(i) "Pipeline" means any pipeline in the Trans-Alaska Pipeline System.

(j) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels for transportation to ports under the jurisdiction of the United States.

(k) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System and includes the Amerada Hess Corporation, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipeline Company, Union Alaska Pipeline Company, and successors in interest to any one or more of the aforenamed companies.

(l) "Owner" means, in the case of oil, the owner of the oil at the time that such oil is loaded on a vessel at terminal facilities in the State of Alaska for transportation to a port under the jurisdiction of the United States.

(m) "Operator of the Pipeline" means the person or persons to whom payments are made for the costs of transportation of oil through the Trans-Alaska Pipeline System.

(n) "Owner or operator" means, in the case of a vessel, any person owning, operating, or chartering by demise such vessel.

(o) "Incident" means any occurrence, or series of occurrences, which causes a discharge from a vessel of oil which is being or has been loaded at the pipeline terminal facilities with oil destined for a port under the jurisdiction of the United States.

(p) "Damage" means loss, injury or deterioration suffered by any person as a result of an incident.

(q) "Damage" means all legally compensable injuries or losses including but not limited to:

(1) The cost of preventive measures taken to avoid additional injury or loss arising from an incident.

(2) Oil removal and clean-up costs.

(3) Injury or loss to real or personal property.

(4) Injury or loss to natural resources.

(r) "Preventive measures" means any reasonable measures taken by any person after an incident has occurred, to prevent, minimize or mitigate damage stemming from the incident.

(s) "Claim" means a demand in writing for damages recoverable under this Part.

(t) "Affiliate" means:

(1) Any corporation that effectively controls or has the power to control another corporation by stock interest; or

(2) Any corporation which is under common ownership or control with another corporation.

§ 29.2 Creation of the fund.

(a) The Trans-Alaska Pipeline Liability Fund was created as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary.

(b) The Fund shall take all steps necessary to carry out its responsibilities under the Act, including registering or otherwise qualifying to do business in all states and territories of the United States that it may reasonably be expected to do business in.

(c) The Fund shall be subject to the provisions of the Act, these implementing regulations, and, to the extent consistent with this Act and regulations, to the laws and regulations of the states in which it is registered to do business.

(d) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in (b) herein.

(b) The Board of Trustees shall be comprised of one member designated by each Permittee and one member designated by the Secretary. Each member of the Board of Trustees shall have the right to one vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a Trustee. The Board shall elect a Chairman and a Secretary annually.

(c) The day-to-day operations of the Fund are subject to the direction of an Administrator elected by a majority vote of the Board of Trustees.

§ 29.4 General powers.

(a) The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(1) By resolution of the Board of Trustees, the Fund shall adopt a corporate seal.

(2) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(3) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(4) The Fund shall designate an agent to receive claims, in each state where a likelihood of damages resulting from the discharge of oil from a vessel transporting oil between the terminal facilities of the Pipeline and a port under the jurisdiction of the United States exists.

(5) The Board of Trustees of the Fund, subject to the approval of the Secretary, shall adopt and may amend and repeal bylaws governing the performance of its statutory duties.

(6) The Fund shall do all things reasonably necessary or advisable in conducting its activities as Trustee including (1) receipt of collections pursuant to Section 204(c)(6) of the Act; (2) payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund; (3) investment of all sums not needed for the administration and the satisfaction of claims in income producing securities as hereinafter provided; and (4) seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in Section 204(c)(8) of the Act.

(7) The Fund shall acquire, by purchase, lease, or donation such real and personal property and any interest therein, and shall sell, lease, hypothecate, or otherwise dispose of such real and personal property as may be necessary or desirable for the performance of its statutory duties.

(8) The Fund may conduct researches, surveys, and investigations relating to damage valuations from oil pollution and shall assemble data for the purpose of establishing reasonable damage evaluation criteria.

(9) The Fund shall determine the character of and the necessity for its obligations and expenditures, the manner in which they shall be incurred, allowed, and paid, and shall, through the Board of Trustees, establish an annual budget.

(10) All costs and expenses reasonably necessary to the administration of said Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

§ 29.5 Officers and employees.

(a) Administrator. The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administration functions as authorized by the Board of Trustees, in accordance with the Act, including the receipt of funds collected from Owners of oil pursuant to Section 2(a) hereof, the investment of such funds in securities according to guidelines approved by the Board of Trustees and the Secretary, and the disbursement of such funds in payment of expenses and approved claims.

(b) The Fund shall employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing of the fund.

(a) The operator of the pipeline shall collect a fee of five cents per barrel from the owner of the oil at the time it is loaded on a vessel transporting such oil to a port under the jurisdiction of the United States. Such collection shall be transferred forthwith to the Fund. The collections shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

(b) Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with Section 1.10. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month, or other agreed upon accounting period, the operator of the pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the operator of the pipeline and delivered to vessels, the amount of fees charged, and the Owners from whom such fees were collected.

(d) At the end of each accounting period, the same proportion of the total expense of administering the Fund, including the payment of claims during such acounting period, shall be deducted from the balance of each Owner in the Fund as each Owner's balance in the Fund bears to the total of the balances of all Owners in the Fund on said date. At the end of each accounting period there shall be allocated to the balance of each Owner in the Fund the same proportion of Fund earnings during such accounting period as that Owner's balance in the Fund bears to the total of the balances of all Owners in the Fund on said date.

(e) The Fund shall provide an annual accounting showing the amounts paid into the Fund by each Owner, the proportionate share of income and expenses of the Fund attributable to each Owner, and the balance accumulated in the Fund attributable to each such Owner.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, if oil that has been transported through the Trans-Alaska Pipeline System is loaded on a vessel at the terminal facilities of the pipeline for transportation to a port under the jurisdiction of the United States, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by Section 204(c) of the Act, shall be strictly liable without regard to fault in accordance with that section for all damages including clean-up costs sustained by any person or entity, public or private, including residents of Canada, as the result of discharge(s) of oil from such vessel. Strict liability under the Act ceases when the oil is first brought ashore at a port under the jurisdiction of the United States including transportation to and beyond deepwater ports.

(b) Strict liability shall not be imposed under this Part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the Act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(d) The owner or operator of a vessel carrying oil in bulk as cargo between terminal facilities of the pipeline and ports under the jurisdiction of the United States shall establish financial responsibility in the amount of $14,000,000 to cover any liability for damages which may arise under the Act. Financial responsibility for $14,000,000 shall be established in accordance with the provisions of Section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) to the extent such provisions are consistent with the purposes of the Act. Financial responsibility shall be demonstrated before a vessel is loaded with oil. Specific requirements for demonstration of financial responsibility shall be set forth in Port Rules established pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline between the United States of America and the Permittees.

§ 29.8 Notification and advertisement.

(a) Notification of spills and claims against operators will be made to the Fund in accordance with the Port Rules.

(b) When the Fund receives information from any person of an incident involving the discharge of oil, and it is reasonably anticipated that damages, including clean-up costs, may exceed $14,000,000, the Fund shall, where possible, designate the source or sources of the discharge, immediately notify the owner or operator of any vessel designated as the source of a discharge, and advertise the designation and the procedures by which claims for damages may be presented to the Fund. This advertisement is in addition to any notification required of the owner or operator of the vessel under Section 311(b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard (33 CFR § 153.203).

(c) Advertisement under subsection (b) shall commence no later than fifteen days from the date of the designation by the corporation and shall continue for a period of not less than thirty days.

§ 29.9 Claims, settlement and adjudication.

(a) Any claim submitted to the Fund must contain the following information:

(1) A detailed statement of the circumstances, if known, in which the claimed loss occurred.

(2) Proof of ownership of the property interest which is the subject of the claim; and

(3) A detailed statement of the amount claimed as damages with respect to each item of property.

(b) The Port Rules will provide for notification to the Fund of the intent of operators to settle claims against the operators under the Act.

(c) The Fund may settle or compromise at any time any claim asserted against it if such settlement or compromise is approved at a meeting of the Board of Trustees by a majority vote of the Board present and voting. The Board of Trustees may at a meeting by a majority vote of those present and voting delegate to the Administrator the authority to compromise or settle all claims or certain classes of claims asserted against the Fund.

(d) The Administrator shall agree to submit a claim to binding arbitration by, and in accordance with the rules of, the American Arbitration Association, if the owner and operator of the vessel and the claimant shall so agree with respect to the first $14,000,000 claimed. The Fund shall be a party to any such arbitration and shall be bound by its results.

(e) (1) In any action arising under section 204(c) of the Act and brought in the United States District Court, if the Fund has not been named as a defendant and served with process in such action as provided in Rule 4 of the Federal Rules of Civil Procedure, the Fund may move to intervene in said action as provided in Rule 24 of the Federal Rules of Civil Procedure. If the Administrator determines that all claims arising from the incident which provides the basis for the plaintiff's claim in such action could in the aggregate exceed $14,000,000, the Fund shall move to intervene in such action.

(2) If an action arising under section 204(c) of the Act is commenced in a state court and the Fund is not named as a defendant and served with process in accordance with applicable state law, the Fund may move to intervene in such action. If the Administrator determines that all claims arising from the incident which provides the basis for plaintiff's claim in such action could in the aggregate exceed $14,000,000, the Fund shall move to intervene in such action.

(3) If the Fund is a defendant in an action described in paragraph (e)(2), whether after intervention or otherwise, it shall file those pleadings required by 28 U.S.C. 1446 in a United States Dis-

trict Court for the district and division in which the state court is located and seek to remove such action to such United States District Court.

(f) In any action in which the Fund is a defendant it shall timely file and serve a summons and third party complaint upon and otherwise seek to implead any person who may be liable to the Fund for all or any part of the damages claimed.

(g) No provision contained in these Regulations shall operate as a limitation upon the Fund's right to seek to recover by counterclaim, cross-claim, or a claim made in a civil action which it brings, or otherwise, those amounts which the Administrator determines are owed to the Fund.

(h)(1) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(2) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this Part and may contract to pay compensation for those facilities and services.

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights, claims, and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in types of income-producing securities having a high degree of reliability and security as approved by the Secretary, such as:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities which have a rating by Standard and Poors of at least "AAA" or an equivalent rating.

Provided, however, that no securities of the Permittees or their affiliates may be purchased or held by the Fund.

(b) No more than two percent of the total market value of all securities issued by a corporation may be held by the Fund at any one time.

(c) The Fund may retain one or more investment advisors to assist it in maintaining a satisfactory investment portfolio.

(d) The Secretary will review the Fund's portfolio at least once each year and may direct any changes in investment necessary to maintain the integrity of the Fund, such changes to be consistent with these Regulations and with any guidelines approved by the Board of Trustees and the Secretary.

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, the Fund may borrow money needed to satisfy the claim from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is less than $500,000, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds $500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the pipelines, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all monies remaining in the Fund shall be distributed to those persons from whom fees were collected on the basis of their respective balances in the Fund. If, at the time of termination, there are claims pending against the Fund, a reasonable reserve fund shall be set aside to cover probable costs of disposing of such claims and the balance shall be distributed as provided in this section.

§ 29.14 Audit.

The Fund shall be audited annually by the Comptroller General and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall, during normal business hours, have complete access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit, and they shall be afforded full facilities for verifying, among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

[FR Doc.77-1577 Filed 1-18-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Child Support Enforcement

[45 CFR Part 304]

GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Repayment of Federal Funds by Installments

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Director, OCSE, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations would enable a State to make repayment of Federal funds by installments when it has claimed and been paid a significant amount of Federal funds, under the public assistance programs, for expenditures which are later determined to be unallowable for Federal financial participation.

Purpose: To incorporate in the regulations specific criteria for determining (1) when a State may be authorized to repay by quarterly installments Federal funds due the Federal Government and (2) the amount of the quarterly installments. Until such time as final regulations are issued, OCSE will consider negotiation of installment repayment agreements with States, and will use the criteria in this proposed regulation as guidelines.

Basis: Social and Rehabilitation Service today (at 42 FR 3664) is proposing an amendment to 45 CFR Part 201, to provide for repayment of such funds by installment. To maintain a consistent and uniform policy, OCSE is proposing to amend 45 CFR Part 304, to provide an identical installment repayment scheme. The Background and Basis statement contained in the SRS proposal is equally applicable to this proposed amendment.

Prior to the adoption of the proposed regulation, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Director, OCSE, Department of Health, Education, and Welfare, Post Office Box 2366, Washington, D.C. 20013, on or before March 7, 1977. Comments received will be available for public inspection in Room 5225 of the Department's offices at 330 C Street SW., Washington, D.C. on Monday through Friday of each week 8:30 a.m. to 5 p.m. (area code 202-245-0950).

Answers to specific questions may be obtained by calling Kent Dickson (area code 202) 245-1738.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: December 27, 1976.

ROBERT FULTON,
Director, Office of Child Support Enforcement.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 304, Chapter III, Title 45 of the Code of Federal Regulation is amended by adding a new § 304.40 to read as follows:

§ 304.40 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided: (1) The amount of the repayment exceeds 2½ percent of the estimated annual State share of expenditures for the IV-D program as set forth in paragraph (b) of this section; and

(2) The State has notified the OCSE Regional Representative in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

Total repayment amount as percentage of State share of annual expenditures for the IV–D program	*Number of quarters to make repayment*
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters:	*Repayment installment may not be less than these percentages than these percentages*
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest OCSE–OA–25 submitted by the State shall be used to estimate the State's share of annual expenditures for the IV–D program. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest OCSE–OA–25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½ percent of the annual State share for the IV–D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRS–OA–41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as apropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

(8) Interest on repayments will not be charged unless mandated by court order.

[FR Doc.77-1597 Filed 1-18-77;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 201]

GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Repayment of Federal Funds by Installments

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations would enable a State to make repayment of Federal funds by installments when it has claimed and been paid a significant amount of Federal funds, under the public assistance programs, for expenditures which are later determined to be unallowable for Federal financial participation.

Purpose: To incorporate in the regulations specific criteria for determining (1) When a State may be authorized to repay by quarterly installments Federal funds due the Federal Government and (2) The amount of the quarterly installments. Until such time as final regulations are issued, SRS will consider negotiation of installment repayment agreements with States, and will use the criteria in this proposed regulation as guidelines.

Background and Basis: State agencies owing the Federal Government significant amounts of Federal funds for unallowable claims for which they have been paid are requesting that they be authorized to make repayment in installments over a period of time. The Social and Rehabilitation Service shares the concern of State agencies with respect to repayment of Federal funds funds and realizes that immediate repayment of the entire amount in certain instances could result in extreme hardship for the public assistance programs being administered by the State and have an adverse effect on the recipients of these programs.

The proposed 12-quarter time period for repayment is similar to the time period in regulations implementing the Federal Claims Act (4 CFR, Chapter II, Parts 101–105), which generally limits the repayment of a debt due the Federal Government to 3 years. However, an exception to the 12-quarter time period would be provided when amounts due exceed the State's share of annual expenditures for the program to which the disallowance applies.

The proportions of the annual State share used to determine the proposed amounts of quarterly installments (2½% for each of the first 4 quarters; 5% for each of the second 4 quarters; and 17½% for each the last 4 quarters) take into account the fact that most State legislatures would need time to enact appropriations to repay significant amounts. Under the proposed schedule, 70% of the repayment would not be due until the third year. The 2½% for each of the first 4 quarters is intended to keep the repayment low but more than a mere token amount.

The State share of estimated annual expenditures (rather than the Federal share) was used for calculating the installment repayment percentages for the 12 quarters because repayments must be made from State funds and such repayments in excess of 2½ percent of a State's annual share of a program is considered to be a hardship situation in light of the amount of expenditures for SRS programs.

The Service considered establishing a repayment schedule based on dividing the total disallowance by the number of quarters over which the improper claims were made. A repayment schedule established on this basis would not enable a State to make smaller quarterly installments during the first quarters of the repayment period. It might not provide time for a State to reprogram its funds or to enact appropriations before large amounts must be repaid. Furthermore, there is little, if any, correlation between the total repayment and the number of quarters over which the improper claims were made. As a result of using that number of quarters the installments might be too large. It is believed that the procedure set forth in the proposed regulation will enable repayment with the least adverse effect on the State and the recipients of the public assistance programs.

The proposed regulation also provides that the amount of any retroactive claim

to be paid a State under a particular title of the Act will be offset against any balance due SRS from such State on any installment repayment plan resulting from a disallowance under the same title.

The basis for this provision is the Department's belief that it is the equitable way of handling such situations and is completely consistent with usual commercial practices. States would be given the choice of suspending payments equal to the offset amount, or continuing to pay installments until the reduced amount of their debt (remaining after the offset), has been paid in full.

Prior to the adoption of the proposed regulation, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, Post Office Box 2366, Washington, D.C. 20013, on or before March 7, 1977. Comments received will be available for public inspection in Room 5225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week 8:30 a.m. to 5 p.m. (area code 202–245–0950).

Answers to specific questions may be obtained by calling Kent Dickson, (area code 202) 245–1738.

(Section 1102, 45 Stat. 647 (45 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance 13.714—Medical Assistance Program; 13.724—Public Assistance—State and Local Training; 13.748—Work Incentive Program—Child Care—Employment Related Supportive Services; 13.754—Public Assistance—Social Services; 13.761—Public Assistance—Maintenance Assistance (State Aid); and 13.711—Social Services for Low Income and Public Assistance Recipients.)

Dated: October 8, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 201, Chapter II, Title 45 of the Code of Federal Regulation is amended by adding a new § 201.66 to read as follows:

§ 201.66 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under titles I, IV–A, VI, X, XIV, XVI (AABD), XIX or XX which are later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share for the program in which the unallowable expenditure occurred as set forth in paragraph (b) of this section; and

(2) The State has notified the SRS Regional Commissioner in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the specific program against which the recovery is made, as follows:

Total repayment amount as percentage of State share of annual expenditures for the specific program	*Number of quarters to make repayment*
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of the estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters:	*Repayment installment may not be less than these percentages*
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest SRS–OA–25 submitted by the State shall be used to estimate the State's share of annual expenditures for the specific program in which the unallowable expenditures occurred. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest SRS–OA–25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In the case of a program terminated by law or by the State, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½% of the annual State share for the program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRS–OA–41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full.

This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

(8) Interest on repayments will not be charged unless mandated by court order.

[FR Doc.77–1596 Filed 1–18–77;8:45 am]

[45 CFR Part 249]

MEDICAL ASSISTANCE PROGRAM

Long-Term Care Facilities; Termination of Federal Financial Participation

Notice is hereby given that the regulation set forth in tentative form below is proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The purpose of the proposed amendment is to clarify the circumstances in which Federal financial participation (FFP) will no longer be available in State payments to skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) under the Medicaid program (title XIX, Social Security

Act). The facilities involved are those whose provider agreements for participation in the Medicaid program expire or are otherwise cancelled or denied under the provisions of 45 CFR 249.33(a) (4), (5) or (6). The proposed amendment with respect to SNFs participating in both Medicare (title XVIII) and Medicaid also clarifies the effect on continued Medicaid participation, under the provisions of 45 CFR 249.33(a)(9), when the facility's Medicare provider agreement expires or is otherwise cancelled.

With respect to SNF providers participating under Medicaid only and ICF providers, the proposed regulation requires that the State Medicaid plan provide for a hearing and appeal procedure for providers who are denied certification or whose existing certification is cancelled by the State survey agency. The regulations further provide for hearing and appeal procedures for providers who are denied an initial or new provider agreement or whose existing provider agreement is cancelled by the Medicaid agency during a contractual period for reasons other than certification action taken by the State survey agency.

The provisions contained in the proposed addition of paragraph (a)(11) to § 249.33 include appeals in those instances where certification is denied or cancelled on the basis of a survey (certification) agency determination that a facility does not quality as a provider of services under the standards established in § 249.33(a)(1)(i) or (2). State Medicaid interagency agreements under the provisions of § 250.100(c), therefore, should be modified, as necessary, to clearly assure a State survey agency hearing and appeal mechanism in accordance with proposed provisions of (a)(11)(i) in those instances where certification is denied or cancelled by that agency under the program.

The provisions contained in the proposed addition of paragraph (a)(11) to § 249.33 also includes appeals in those instances where a provider agreement is denied or cancelled by the Medicaid agency for reasons other than certification as provided for under the "good cause" provisions of paragraph (a)(6) of § 249.33.

In cases of certification and provider agreement denial or cancellation, an informal reconsideration must be made available before the cognizant agency takes such action and, upon request, an administrative hearing must be provided within four months prior or subsequent to the date of denial or cancellation. Since the facts used to determine such denials or cancellations have already been documented during the survey agency certification process or during the Medicaid agency's determination of "good cause" for not executing an agreement, the four-month hearing time frame appears to meet the interests both of provider equity and the proper and efficient administration of the State's Medicaid program.

Federal financial participation will not be available as of the effective date of a survey agency certification expiration or cancellation or in the absence, for any other reason, of a valid provider agreement. If the decision in either hearing and appeal proceedings is in the provider's favor, FFP would be available retroactively to the effective date of a valid provider agreement executed in accordance with the provisions of 45 CFR 249.33(a)(6). For example, in the case of a facility desiring to enter the program which is denied survey agency certification and subsequent Medicaid Agency issuance of a provider agreement and the certification denial is then overturned by appeal, a provider agreement could be considered valid retroactively for purposes of FFP effective from, but not prior to, the date of the denial of certification. In the case of a provider agreement which is terminated by an automatic cancellation clause, (45 CFR 249.33(a)(4)(iii)(B)) and the survey agency appeal process results in the facility's favor, a provider agreement could be recognized as valid retroactively for the entire term of the original contractual period. Where an appeal of an automatic cancellation clause overlaps a recertification, FFP would also be available on a continuous basis provided that the State and the facility promptly execute a provider agreement retroactive to the date of the expiration (without giving effect to the cancellation clause) of the previous provider agreement and based upon valid survey data and retroactive recertification.

With respect to SNFs whose Medicaid participation is predicated upon Medicare certification, existing regulations are clarified to specify that the effective date of the Medicare agreement's expiration or cancellation must also be the effective date for expiration or cancellation of the Medicaid agreement. As of such date, Federal financial participation will no longer be available in the State Medicaid payments to the facility.

Furthermore, the proposed regulation requires that Medicaid appeal of any denial or cancellation of a certification or provider agreement with respect to such joint Medicare-Medicaid facilities is available only through the Medicare procedures described at 20 CFR Part 405 Subpart 0 for purposes of participation in both programs. These procedures are available after the date of denial or cancellation, and Federal financial participation is not available during any period in which a valid provider agreement is not in effect (§ 249.10(b)(4)), regardless of the status of any appeal then pending. If the decision in the hearing and appeal procedure is in the provider's favor, Federal financial participation would be available retroactively.

The basis for the proposed changes, with respect to joint Medicaid-Medicare facilities, is section 1910 of the Act, which provides that facilities certified under title XVIII are deemed to be certified under title XIX. Consequently a facility's certification status under Medicare determines its status for purposes of a Medicaid provider agreement. With respect to Medicaid-only facilities, the basis for these amendments is the Secretary's determination that policies similar to those for joint facilities should apply, that Federal payments should not be made in the absence of a valid and in-force provider agreement, and that facilities are entitled to a reasonable opportunity for review of adverse actions.

Prior to the adoption of the proposed regulation, consideration will be given to written comments, suggestions or objections thereto addressed to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box Washington, D.C. 20013, and received on or before March 7, 1977. In order to assure prompt handling of comments, please refer to MSA-159—P. Agencies and organizations are requested to submit their comments in duplicate.

Such comments will be available for public inspection in Room 5223 of the Department's offices at 330 C Street, SW., Washington, D.C., beginning approximately two weeks after publication of this Notice in the FEDERAL REGISTER, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-245-0950). Answers to specific questions may be obtained by calling Robert Silva, 202-245-0425.

(Section 1102, 49 Stat. 647 (42 U.S.C. 1302). (Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program))

NOTE.—It is hereby certified that the economic and inflationary effects of this proposal have been carefully evaluated in accordance with Executive Order No. 11821.

Dated: January 10, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 249, Chapter, II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. Section 249.10 is amended by revising paragraphs (b)(4)(i)(C) and (b)(15)(v) as set forth below:

§ 249.10 Amount, duration and scope of medical assistance.

* * * * *

(b) *Federal financial participation.*

* * *

(4)(i) * * *.

(C) Provided by a facility or distinct part of a facility which is certified to meet all of the requirements for participation pursuant to § 249.33 as evidenced by an agreement, executed in accordance with the certification provisions of § 249.33, between the single State agency and the facility for the provision of skilled nursing facility services and the making of payments under the plan; except that with respect to skilled nursing facility services furnished by a skilled nursing facility whose provider agreement has expired or has otherwise terminated, the State agency may continue to claim Federal financial participation in payments on behalf of eligible individuals for such services furnished by such

institution during a period not to exceed 30 days starting with the date of expiration or other termination of its provider agreement, but only if such individuals were admitted to the facility before the date of expiration or other termination of its provider agreement, and if the State agency makes a showing satisfactory to the Secretary that it has made reasonable efforts to facilitate the orderly transfer of such individuals from such institution to another facility.

Except as authorized in the preceding sentence, Federal financial participation shall continue only through the final effective date of a valid provider agreement. Should final administrative or judicial review provided for under § 249.33 (a) (9) or (11) be in favor of the facility, FFP shall be available retroactively to the effective date of a valid provider agreement.

* * * * *

(15) * * *

(v) The term "intermediate care facility" also includes any facility located on an Indian reservation, which provides, on a regular basis, health-related care and services and is certified by the Secretary as meeting the provisions of paragraph (b) (15) (i) (C) of this section and the standards of §§ 249.12 and 249.13.

With respect to intermediate care facility services furnished by an intermediate care facility whose provider agreement has expired or has otherwise terminated, the State agency may continue to claim Federal financial participation in payments on behalf of eligible individuals for such services furnished by such facility during a period not to exceed 30 days starting with the date of expiration or other termination of its provider agreement, but only if such individuals were admitted to the facility before the date of expiration or other termination of its provider agreement, and if the State agency makes a showing satisfactory to the Secretary that it has made reasonable efforts to facilitate the orderly transfer of such individuals from such facility to another facility.

Except as authorized in the preceding sentence, Federal financial participation shall continue only through the final effective date of a valid provider agreement. Should final administrative or judicial review provided for under § 249.33 (a) (11) be in favor of the facility, FFP shall be available retroactively to the effective date of a valid provider agreement.

* * * * *

2. Section 249.33 is amended by revising paragraph (a) (9) and adding a new paragraph (a) (11) as set forth below:

§ 249.33 Standards for payment for skilled nursing facility and intermediate care facility services.

(a) *State plan requirements.* * * *

(9) Provide that, in the case of skilled nursing facilities participating in title XIX of the Act on the basis of title XVIII certification under paragraph (a) (1) (ii) of this section, a title XIX provider agreement shall be subject to the same terms and conditions and be coterminous with the period of approval of eligibility specified by the Secretary pursuant to title XVIII. Upon notification by the Social Security Administration that an agreement with the facility under title XVIII is going to be denied, or cancelled, the single State agency will take the same action under title XIX as of the effective date of the title XVIII action. When taking such action, the single State agency shall also notify the facility that an appeal from or review of the title XIX denial, or cancellation, will be provided through the title XVIII review procedures pursuant to 20 CFR Part 405 Subpart 0, and that any decision with respect to title XVIII participation will be binding with respect to title XIX participation. A facility participating in titles XVIII and XIX whose agreement has thus been denied or cancelled may not be issued another agreement for title XIX participation until the reasons which caused the denial or cancellation have been removed and reasonable assurance provided to the survey agency that they will not recur.

* * * * *

(11) (i) Provide that any skilled nursing home or intermediate care facility participating in title XIX whose certification is denied or cancelled, by the State agency designated under § 250.100(c) of this chapter, as specified in paragraph (a) (11) (ii) of this section (other than skilled nursing facilities participating under the State's title XIX program by virtue of certification under title XVIII) shall, notwithstanding any other remedies under State law, have available:

(A) An informal reconsideration before the agency takes such action; and if dissatisfied with the outcome of this reconsideration:

(B) An administrative hearing before that agency as provided for by State law and procedures, which hearing provides at least:

(*1*) An impartial hearing officer,

(2) A right to call and examine witnesses, and

(3) A full reexamination of the basis for the determination.

This administrative hearing must be made available within 4 months prior or subsequent to the date of denial or cancellation.

(ii) An action for purposes of paragraph (a) (11) (i) of this section shall only include denial or cancellation of a skilled nursing facility or intermediate care facility certification by the State agency designated under the provisions of § 250.100(c) of this chapter on the basis of the conditions specified in paragraph (a) (4) (ii), (iii), (iv) and (5) (iii) of this section.

(iii) Provide that any skilled nursing facility or intermediate care facility participating in the title XIX program whose provider agreement is denied or cancelled by the single State agency under the good cause provisions specified in paragraph (a) (6) of this section shall, under State law, have available:

(A) An informal reconsideration before the agency takes such action; and if dissatisfied with the outcome of this reconsideration:

(B) An administrative hearing as provided for by State law and procedures, which hearing provides at least:

(*1*) An impartial hearing officer,

(2) A right to call and examine witnesses, and

(3) A full reexamination of the basis for the determination.

This administrative hearing must be made available within 4 months prior or subsequent to the date of denial or cancellation and must also be available to a skilled nursing facility provider participating in title XVIII whose provider agreement for title XIX is denied or cancelled by the State for reasons other than such action being taken with respect to title XVIII participation.

* * * * *

[FR Doc.77-1692 Filed 1-18-77;8:45 am]

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

[45 CFR Part 1703]

GOVERNMENT IN THE SUNSHINE ACT

Notice of Proposed Rulemaking

The Government in the Sunshine Act was signed by the President on September 13, 1976. Agencies are charged with the issuance of rules implementing the Act by March 12, 1977, 180 days after the date of enactment. The Commission's proposed rules are set out below. We have also initiated consultations with the Office of the Chairman of the Administrative Conference of the United States, as required by the Act.

Pursuant to procedures set out in § 1703.601 of this notice of proposed rulemaking, 45 CFR Part 1703, interested persons may file comments on the proposed rules on or before February 12, 1977. Reply comments are not requested. Comments will be available for inspection in the Commission's headquarters, 1717 K Street, NW., Suite 601, Washington, D.C. 20036, during regular business hours. All relevant and timely comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it in addition to the comments invited by this Notice. In accordance with the provisions of § 1703.601 of this notice of proposed rulemaking, an original and 19 copies of all comments and other materials shall be furnished the Commission. All suggestions for changes in the text as set out above should be accompanied by drafts of the language thought necessary to accomplish the desired change and by statements and arguments in support thereof.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE,
ALPHONSE F. TREZZA,
Executive Director.

Part 1703 is proposed to be added to Title 45 as follows:

PART 1703—GOVERNMENT IN THE SUNSHINE ACT

Subpart A—General Provisions

Subpart B—Procedures Governing Decisions About Meetings

Subpart C—Conduct of Meetings

Subpart D—Maintenance of Meeting Records

Subpart E—Administrative Review

Subpart F—Judicial Review

Subpart A—General Provisions

§ 1703.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decisionmaking processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission actions, and inform the public of which meetings they are entitled to observe.

§ 1703.102 Definitions.

In this part:

(a) "Meeting" means the deliberations of at least eight Commission members where such deliberations determine or result in the joint conduct of official Commission business.

(b) "Member" means one of the Commissioners of the National Commission on Libraries and Information Science (NCLIS) who is appointed to that position by the President with the advice and consent of the Senate.

§ 1703.103 Applicability and scope.

This part applies to deliberations of at least eight Commission members. Excluded from coverage of this part are deliberations of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members; individual member's consideration of official agency business circulated to the members in writing for disposition or notation; and deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in § 1703.202.

§ 1703.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decisionmaking processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in § 1703.202.

Subpart B—Procedures Governing Decisions About Meetings

§ 1703.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§ 1703.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

"(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

"(2) Relate solely to the internal personnel rules and practices of an agency;

"(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

"(5) Involve accusing any person of a crime, or formally censuring any person;

"(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

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

"(9) Disclose information the premature disclosure of which would—

"(i) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

"(ii) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (9) (ii) of this paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

"(10) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing."

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of §1703.202(a), if it would be in the public interest to do so.

§ 1703.203 Decision to close meeting.

(a) Commission members may decide to close to public observation a meeting or a portion or portions thereof, or to withhold information pertaining to such meeting, only if at least eight members vote on the record to take such action. No proxy votes shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the

public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the Chairman of NCLIS shall certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the Chairman shall state each relevant exemptive provision as set forth in § 1703.202(a). A copy of the Chairman's certification, together with a statement from the Chairman setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 1703.202(a) (5), (6) or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§ 1703.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1703.205 Public announcement of meeting.

(a) Except as provided in §§ 1703.207 and 1703.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting itself was closed to protect, the subject matter shall not be announced.

§ 1703.206 Providing information to the public.

Individuals or organizations interested in obtaining copies of information available § 1703.204 may request same under provisions set forth in §§ 1703.402 and 1703.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Director to the Commissioners to place them on a mailing list for receipt of information available under § 1703.205.

§ 1703.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

(b) Items that have been announced for Commission consideration may be deleted without notice.

§ 1703.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§ 1703.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§ 1703.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, alternative facilities will be made available.

§ 1703.302 Role of observers.

The public may attend open meetings for the sole purpose of observation and may not record any of the discussions by means of electronic or other devices or cameras unless approved in advance by the Executive Committee of the Commission. Observers may not particiapte in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the Commission. When meetings are partially closed, observers will leave the meeting room upon request so that discussion of matters exempt under provisions of Subpart B, § 1703.202 of this part, may take place.

Subpart D—Maintenance of Meeting Records

§ 1703.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a comprehensive set of minutes.

(b) When minutes are produced, such minutes shall fully and clearly describe all matters discussed, and will provide a full and accurate summary of any actions taken and the reasons expressed therefor. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of paragraph (b) of this section shall be retained by the agency as part of the minutes of the meeting:

(1) Certification by the Chairman that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time and place of the meeting and listing the persons present.

§ 1703.402 Availability of records to the public.

(a) The Commission shall make promptly available to the public the minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 1703.202(a). Copies of such minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt parts of the minutes shall be in the official custody of the Executive Director of the Commission. Appropriate facilities will be made available to any person who makes a request to review these records.

(c) Requests for copies of nonexempt parts of minutes, shall be directed to the Executive Director of the Commission. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 1703.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than the minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 1703.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the National Commission on Libraries and Information Science.

(b) The Executive Director of the Commission has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 1703.501 Administrative Review.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Director to the Commissioners.

Wherever possible, the Executive Director will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 1703.601 Judicial Review.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within sixty days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within sixty days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

[FR Doc.77-1706 Filed 1-18-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[Docket No. 21006]

FREQUENCY CHANNELLING REQUIREMENTS AND SIGNAL LEAKAGE

Order Extending Time for Filing Comments and Reply Comments

Adopted: January 12, 1977.
Released: January 14, 1977.

In the matter of amendment of Part 76 of the Commission's rules to add frequency channelling requirements and restrictions and to require monitoring for signal leakage from cable television systems (see 41 FR 54512, December 14, 1976); Docket No. 21006.

1. Comments in this proceeding are now due January 17, 1977, and reply comments are due February 15, 1977. The National Cable Television Association, with the support of the Consumer Electronics Group of the Electronic Industries Association, has requested a 45-day extension of these filing dates. The additional time is said to be needed to complete the necessary research and, on the part of the EIA/CEG, to also provide time for the preparation of comments in two other Commission proceedings.

2. Good cause therefore having been shown, the requested time extension will be granted.

Accordingly, it is ordered, That the dates for filing comments and reply comments in the captioned proceeding are extended to March 3, 1977 and April 1, 1977, respectively.

This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by § 0.288(a) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES R. HOBSON,
Chief,
Cable Television Bureau.

[FR Doc.77-1723 Filed 1-18-77;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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

DISTRIBUTORS' ADVISORY COMMITTEE

Renewal

Notice is hereby given that the Distributors' Advisory Committee has been renewed for an additional period of 2 years under provisions of the Federal Advisory Committee Act (86 Stat. 770).

The purpose of the committee is to provide to the Industry Committee under Federal Marketing Order No. 918 its recommendation for regulation of peaches each time the Industry Committee meets.

The Distributors' Advisory Committee represents the Georgia peach industry as prescribed in the Order. The three shippers who shipped the largest proportion of the peaches shipped during the preceding season are entitled to one member each. The remaining four members are selected from the remaining handlers. Each district shall be represented by at least one member.

Information about this committee may be obtained from Mr. William C. Knope, Lakeland Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 302 South Massachusetts Avenue, Rooms 204–206, Florida Citrus Mutual Building; mailing address: P.O. Box 9, Lakeland, Florida 33802. Telephone: 813–683–5983.

Authority for this committee will expire January 5, 1979 unless determination is made that continuance is in the public interest.

This notice is given in compliance with P.L. 92–463.

Dated: January 14, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77–1697 Filed 1–18–77;8:45 am]

HOP MARKETING ADVISORY BOARD

Renewal

Notice is hereby given that the Hop Marketing Advisory Board has been renewed for an additional period of 2 years under provisions of the Federal Advisory Committee Act (86 Stat. 770).

The purpose of the Board is to advise the Hop Administrative Committee under Federal Marketing Order No. 991 concerning marketing policy and other operational matters as the Committee requests.

This Board represents handlers of hops. Representation for most is based on the quantities of hops handled; and one representative is for extractors.

Information about this Board may be obtained from Mr. Allan E. Henry, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Federal Building, Room 1566, 1220 S.W. Third Avenue, Portland, Oregon 97204. Telephone: 503–221–2724.

Authority for this Board will expire January 5, 1979, unless it is determined that continuance is in the public interest.

This notice is given in compliance with Pub. L. 92–463.

Dated: January 14, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77–1698 Filed 1–18–77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 29882]

PACIFIC WESTERN AIRLINES, LTD.

Foreign Air Carrier Permit; Postponement of Prehearing Conference and Hearing

The prehearing conference and hearing in this proceeding heretofore assigned for January 26, 1977 (41 FR 56684, dated December 29, 1976) is hereby postponed to 9:30 a.m., February 1, 1977 in Room 1003 D, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Ralph L. Wiser.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., January 13, 1977.

RALPH L. WISER,
Administrative Law Judge.

[FR Doc.77–1739 Filed 1–18–77;8:45 am]

[Docket 23080–2; Order 77–1–19]

PRIORITY AND NONPRIORITY DOMESTIC MAIL SERVICE RATES—PHASE 2

Order Reclassifying Stations

Issued under delegated authority January 5, 1977.

Order 76–9–5, dated September 1, 1976, and effective September 11, 1976, as amended by Order 76–10–131, dated October 28, 1976, and effective November 6, 1976, classified the stations for the purposes of the multielement service mail rate formulas applicable to the transportation of sack mail and for standard and daylight container mail. Upon review of the revenue tons enplaned by stations for the year ended June 30, 1976, the Board finds that certain stations require reclassification.

The multielement service mail rate formulas,[1] which were designed to provide a uniform rate of pay for like mail service, are comprised of a linehaul rate and a terminal charge which varies by class of station.[2] These are applicable to both sack and container mail.

The orders fixing the multielement service mail rates provide for the reclassification of stations, without disturbing the overall rate structure, when the revenue tons enplaned at the stations in question bring such stations within a different class.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.16(e); it is found that:

1. The present classification of stations should be amended, based on the volume of on-line revenue tons enplaned during the year ended June 30, 1976,[3] to bring certain stations within the new classifications shown in the Appendix hereto.

2. Such reclassifications should be made effective January 29, 1977, which date will be the first day of the next 28-day U.S. Postal Service Accounting Period.

3. In view of the foregoing, the lists of stations included in the Appendix attached to Order 76–9–5, as amended, for the station classes should be amended to reflect the new classifications designated herein.

Accordingly, pursuant to the delegated authority referred to above,

It is ordered that: 1. Effective January 29, 1977, the stations included in each of the station classes should be as specified in the Appendix attached hereto; *Provided*, That any station not listed in the Appendix shall be classified as a Class Z station;

2. Effective January 29, 1977, the Appendix attached to Order 76–9–5, as amended, shall be superseded by the Appendix attached hereto; and

3. This order be served upon all parties in Docket 23080–2.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may

[1] Order 74–1–89, January 16, 1974, as amended, fixed temporary service mail rates for sack mail and for standard and daylight container mail, effective on and after March 28, 1973.

[2] As set forth in Order 74–5–82, May 16, 1974, and incorporated by reference in Order 76–9–5, the standards for station classification are as follows:

Class of stations:	*Total revenue tons enplaned per year*
X	27,000 and over
Y	5,400 to 26,999
Z	5,399 or less

[3] Traffic data for the year ended June 30, 1976 cover the most recent 12-month period for which an official compilation is available.

file such petitions within seven days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order shall be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX—CLASSIFICATION OF STATIONS

FOR DETERMINATION OF AIR MAIL TERMINAL CHARGES

CLASS X STATIONS

AKRON/CANTON, OHIO
ALBANY, NEW YORK
ALBUQUERQUE, NEW MEXICO
ANCHORAGE, ALASKA
ATLANTA, GEORGIA
AUSTIN, TEXAS
BALTIMORE, MARYLAND
BILLINGS, MONTANA
BIRMINGHAM, ALABAMA
BOISE, IDAHO
BOSTON, MASSACHUSETTS
BUFFALO & NIAGARA FALLS, NEW YORK
CHARLESTON, SOUTH CAROLINA
CHARLOTTE, NORTH CAROLINA
CHICAGO, ILLINOIS
CINCINNATI, OHIO
CLEVELAND, OHIO
COLORADO SPRINGS, COLORADO
COLUMBIA, SOUTH CAROLINA
COLUMBUS, OHIO
DALLAS-FORT WORTH, TEXAS
DAYTON, OHIO
DENVER, COLORADO
DES MOINES, IOWA
DETROIT & ANN ARBOR, MICHIGAN
EL PASO, TEXAS
FAIRBANKS, ALASKA
FORT LAUDERDALE, FLORIDA
FRESNO, CALIFORNIA
GRAND RAPIDS, MICHIGAN
GREEN BAY/CLINTONVILLE, WIS.
GREENSBORO/HIGH POINT, N.C.
HAMILTON, BERMUDA
HARRISBURG/YORK, PA.
HARTFD, CON/SPGFLD & WESTFLD, MASS.
HILO, HAWAII, HAWAII
HONOLULU, OAHU, HAWAII
HOUSTON, TEXAS
INDIANAPOLIS, INDIANA
JACKSON-VICKSBURG, MISS.
JACKSONVILLE, FLORIDA
KANSAS CITY, MISSOURI
KNOXVILLE, TENNESSEE
LAS VEGAS, NEVADA
LITTLE ROCK, ARKANSAS
LOS ANGELES/LONG BEACH, CALIF.
LOUISVILLE, KENTUCKY
MADISON, WISCONSIN
MEMPHIS, TENNESSEE
MEXICO CITY, MEXICO
MIAMI, FLORIDA
MILWAUKEE, WISCONSIN
MINNEAPOLIS/ST. PAUL, MINNESOTA
MOBILE, AL/PASCAGOULA, MISS.
MOLINE, ILLINOIS/DAVENPORT, IOWA
MONTREAL, QUEBEC, CANADA
NASHVILLE, TENNESSEE
NASSAU, BAHAMAS
NEWARK, NEW JERSEY
NEW ORLEANS, LOUISIANA
NEW YORK, NEW YORK
NORFOLK/VA BCH/PTSMH/CHESPKE, VA.
*OAKLAND, CALIFORNIA
*OKLAHOMA CITY, OKLAHOMA
OMAHA, NEBRASKA
ONTARIO/SAN BERNARD/RIVERSE, CA.
ORLANDO, FLORIDA
PHILADELPHIA, PA/CAMDEN, N.J.
PHOENIX, ARIZONA
PITTSBURGH, PA./WHEELING, W. VA.
PORTLAND, OREGON
PROVIDENCE, RHODE ISLAND
RALEIGH/DURHAM, NORTH CAROLINA
RENO, NEVADA
RICHMOND, VIRGINIA
ROANOKE, VIRGINIA
ROCHESTER, NEW YORK
SACRAMENTO, CALIFORNIA
ST. LOUIS, MISSOURI
SALT LAKE CITY, UTAH
SAN ANTONIO, TEXAS
SAN DIEGO, CALIFORNIA
SAN FRANCISCO, CALIFORNIA
SAN JOSE, CALIFORNIA
SAN JUAN, PUERTO RICO
SARASOTA/BRADENTON, FLORIDA
SEATTLE/TACOMA, WASHINGTON
SHREVEPORT, LOUISIANA
SPOKANE, WASHINGTON
SYRACUSE, NEW YORK
TAMPA & ST. PTSBG/CLWTRE & LKLND, FLA.
TOLEDO, OHIO
TORONTO, ONTARIO, CANADA
TUCSON, ARIZONA
TULSA, OKLAHOMA
**VANCOUVER, BR. COLUMBIA, CANADA
**WASHINGTON, DIST. OF COL.
WEST PALM BEACH/PALM BEACH, FLA.
WICHITA, KANSAS

CLASS Y STATIONS

Acapulco, Mexico
Agana Nas, Guam Island
Alexandria, Louisiana
Allentown/Bethlehem/Easton, Pa
Amarillo/Borger, Texas
Asheville, North Carolina
Ashland, Ky./Huntington, W. Va.
Aspen, Colorado
Augusta, Georgia
Bakersfield, California
Bangor, Maine
Baton Rouge, Louisiana
Binghamton/Endct/Jhnsn Cty, NY
Bismarck/Mandan, North Dakota
Bristol/Kngsprt/Jhnsn Cty, Tenn
Brownsville, Texas
Burbank, California
Burlington, Vermont
Calgary, Alberta, Canada
Casper, Wyoming
Cedar Rapids/Iowa City, Iowa
Champaign/Urbana, Illinois
Charleston/Dunbar, W. Virginia
Charlotte Amalie, Virgin Is. US
Charlottesville, Virginia
Chattanooga, Tennessee
Christiansted, St. Croix, V.I., US
Columbus, Georgia
Corpus Christi, Texas
Daytona Beach, Florida
Dothan, Alabama
Duluth, Minn./Superior, Wis.
Eglin Air Force Base, Florida
Elmira/Corning, New York
Erie, Pennsylvania
Eugene, Oregon
Eureka/Arcata, California
Evansville, Indiana
Fargo, N.D./Moorhead, Minnesota
Fayetteville, North Carolina
Flint, Michigan
Fort Myers, Florida
Fort Smith, Arkansas
Fort Wayne, Indiana
Freeport, Bahamas
Gainesville, Florida
Grand Forks, North Dakota
Grand Junction, Colorado
Great Falls, Montana
Greenville&Spartanburg, S.C.
Gulfport/Biloxi, Mississippi
Huntsville&Decatur, Alabama
Idaho Falls, Idaho
Indio/Palm Springs, California
Islip, Long Island, New York
Ithaca/Cortland, New York
Juneau, Alaska
Kalamazoo-Battle Creek, Mich.
Ketchikan, Alaska
Kinston, North Carolina
Lafayette, Louisiana
Lansing, Michigan
Lexington/Frankfort, Kentucky
Lincoln, Nebraska
Lubbock, Texas
Lynchburg, Virginia
Macon, Georgia
Medford, Oregon
Melbourne, Florida
Midland/Odessa, Texas
Minot, North Dakota
Mission/McAllen/Edinburg, Texas
Missoula, Montana
Monroe, Louisiana
Montego Bay, Jamaica
Montgomery, Alabama
Muskegon, Michigan
Myrtle Beach, South Carolina
Newpt New/Hamptn/Wlibg/Yktn, Va
Oshkosh/Appleton, Wisconsin
Panama City, Florida
Pasco/Kennewick/Richland, Wash.
Pensacola, Florida
Peoria, Illinois
Pocatello, Idaho
Portland, Maine
Rapid City, South Dakota
Rochester, Minnesota
Saginaw/Bay City/Midland, Mich.
Salinas/Monterey, California
Santa Ana-Anaheim, California
Santa Barbara, California
Santo Domingo, Dominican Rep.
Savannah, Georgia
Scranton/Wilkes-Barre, Penna.
Sioux City, Iowa
Sioux Falls, South Dakota
South Bend, Indiana
SPRINGFIELD, ILLINOIS
SPRINGFIELD, MISSOURI
TALLAHASSEE, FLORIDA
TRAVERSE CITY, MICHIGAN
WATERLOO, IOWA
WAUSAU/STEVENS POINT, WISCONSIN
WILMINGTON, NORTH CAROLINA
WINNIPEG, MANITOBA, CANADA
WINSTON-SALEM, NORTH CAROLINA
YOUNGSTOWN, OHIO

CLASS Z STATIONS

Aberdeen, South Dakota
Abilene, Texas
Almagordo/Holloman AFB, N. Mex.
Alamosa, Colorado
Albany, Georgia
Alliance, Nebraska
Alpena, Michigan
Anniston, Alabama
Aruba, Netherlands Antilles
Athens, Georgia
Augusta/Waterville, Maine
Bridgetown, Barbados
Beaumont/Port Arthur, Texas
Beckley, West Virginia
Beloit/Janesville, Wisconisn
Bemidiji, Minnsota
Bend/Redmond, Oregon
Benton Harbor/St. Joseph, Mich.
Bloomington, Illinois
Blythe, California.
Bozeman, Montana
Bradford, Pennsylvania
Brainerd, Minnesota
Brookings, South Dakota
Brownwood, Texas
Burlington, Iowa
Butte, Montana

Cape Girardeau/Sikeston, Mo.
Carlsbad, New Mexico
Cedar City, Utah
Chadron, Nebraska
Cheyenne, Wyoming
Chico, California
Chishold/Hibbing, Minnesota
Clarksburg/Fairmont, W. Virginia
Clarksvle/Pt. Cam/Hopksvle, Tenn.
Clinton, Iowa
Clovis, New Mexico
Columbia/Jefferson City, Mo.
Columbus, Mississippi
Columbus, Nebraska
Cordova, Alaska
Cortez, Colorado
Curacao, Netherlands Antilles
Danville, Virginia
Decatur, Illinois
Devils Lake, North Dakota
Dubuque, Iowa
Durango, Colorado
Eau Claire, Wisconsin
El Centro, California
El Dorado/Camden, Arkansas
Elko, Nevada
Ely, Nevada
Enid, Oklahoma
Escanaba, Michigan
Fairmont, Minnesota
Farmington, New Mexico
Fayetteville, Arkansas
Flagstaff, Arizona
Florence, South Carolina
Fort De France, Martinique
Fort Dodge, Iowa
Fort Leonard Wood, Missouri
Gadsden, Alabama
Galesburg, Illinois
Gallup, New Mexico
Garden City, Kansas
Glasgow, Montana
Glendive, Montana
Glen Falls, New York
Goodland, Kansas
Grand Canyon, Arizona
Grand Island, Nebraska
Grnbr/Wht S Spg/Lbrg, W. Va.
Greenville, Mississippi
Greenwood, Mississippi
Guadalajara, Mexico
Guaymas, Mexico
Gunnison, Colorado
Hancock/Houghton, Michigan
Harlingen/San Benito, Texas
Harrison, Arkansas
Hastings, Nebraska
Hattiesburg/Laurel, Miss.
Havre, Montana
Hays, Kansas
Helena, Montana
Hickory, North Carolina
Hobbs, New Mexico
Hot Springs, Arkansas
Hot Springs, Virginia
Huron, South Dakota
Hyannis, Massachusetts
Independence/Vafyvle/Parsons, Kan.
International Falls, Minnesota
Iron Mountain/Kingsfd, Michigan
Ironwood, Mich./Ashland, Wis.
Jackson, Michigan
Jackson, Tennessee
Jackson, Wyoming
Jacksonville/Camp LeJeune, N.C.
Jamestown, North Dakota
Jonesboro, Arkansas
Joplin, Missouri
Kalispell, Montana
Kearney, Nebraska
Keene, New Hampshire
Kingston, Jamaica
Kirksville, Missouri
Klamath Falls, Oregon
La Crosse, Wisconsin
Lake Charles, Louisiana
Lake of the Ozarks, Missouri
Lamar, Colorado
La Paz, Mexico
Laramie, Wyoming
Laredo, Texas
Lawton/Fort Sill, Oklahoma
Lebanon, NH/White Riv Junc, Vt.
Lewiston, Idaho/Clarkston, Wash.
Lewiston/Auburn, Maine
Lewistown, Montana
Liberal, Kan.-Guymon, Okla.
London/Corbin, Kentucky
Longview/Kilgor/Gladwater, Texas
Luvell/Powell/Cody, Wyoming
Manchester/Concord, N. Hampshire
Manhattan/Jct. Cty/Ft. Rily, Kan.
Manistee/Ludington, Michigan
Manitowoc/Sheboygan, Wisconsin
Mankato, Minnesota
Marinette, Wis/Menominee, Mich.
Marion/Herrin, Illinois
Marquette, Michigan
Martha's Vineyard, Massachusetts
Mason City, Iowa
Mattoon/Charleston, Illinois
Mazatlan, Mexico
McAlester, Oklahoma
McCook, Nebraska
Merced, California
Merida, Mexico
Meridian, Mississippi
Miles City, Montana
Mitchell, South Dakota
Modesto, California
Monterrey, Mexico
Montpelier/Barre, Vermont
Montrose/Delta, Colorado
Morgantown, West Virginia
Moultrie/Thomasville, Georgia
Mount Vernon, Illinois
Muscle Sh/Flor/Shef/Tusc, Ala.
Nantucket, Massachusetts
New Bedford/Fall River, Mass.
New Bern & Morehd Cty/Beaufrt, NC
New Haven/Bridgeport, Conn.
Norkfolk, Nebraska
North Bend/Coos Bay, Oregon
North Platte, Nebraska
Ottawa, Ontario, Canada
Ottumwa, Iowa
Owensboro, Kentucky
Paducah, Kentucky
Page, Arizona
Pago Pago, American Samoa
Paris, Texas
Parkersburg, W. Va/Marietta, Ohio
Pellston, Michigan
Pendleton, Oregon
Petersburg, Alaska
Pierre, South Dakota
Pointe A Pitre, Guadeloupe
Ponape, Caroline Islands
Ponca City, Oklahoma
Ponce, Puerto Rico
Port Au Prince, Haiti
Port of Spain, Trinidad & Tobago
Presque Isle/Houlton, Maine
Princeton/Bluefield, W. Virginia
Pueblo, Colorado
Puerto Vallarta, Mexico
Quincy, Ill./Hannibal, Mo.
Red Bluff/Redding, California
Rhinelander/Land O Lakes, Wisc.
Riverton/Lander, Wyoming
Rockford, Illinois
Rock Springs, Wyoming
Rocky Mount, North Carolina
Roswell, New Mexico
St. Johns, Antigua
St. Lucia British West Indies
St. Martin, Netherland Antilles
Salem, Oregon
Salina, Kansas
San Angelo, Texas
Santa Maria, California
Sault Ste. Marie, Michigan
Scottsbluff, Nebraska
Sheridan, Wyoming
Sidney, Montana
Sidney, Nebraska
Silver City/Hurley/Deming, NM
Sitka, Alaska
Staunton, Virginia
Steamboat Springs/Hayden/Craig, Colo.
Sterling/Rock Falls, Illinois
Stillwater, Oklahoma
Stockton, California
Tampico, Mexico
Temple, Texas
Texarkana, Arkansas
Thief River Falls, Minnesota
Thunder Bay, Ontario, Canada
Tinian, Mariana Islands
Topeka, Kansas
Tupela, Mississippi
Tuscaloosa, Alabama
Twin Falls, Idaho
Tyler, Texas
University/Oxford, Mississippi
Utica/Rome, New York
Valdosta, Georgia
Veracruz, Mexico
Vernal, Utah
Visalia, California
Waco, Texas
Watertown, South Dakota
West Yellowstone, Montana
White Plains, New York
Wichita, Kansas
Williamsport, Pennsylvania
Williston, North Dakota
Wolf Point, Montana
Worcester, Massachusetts
Worland, Wyoming
Worthington, Minnesota
Wrangell, Alaska
Yakima, Washington
Yakutat, Alaska
Yankton, South Dakota
Yuma, Arizona

[FR Doc.77-1740 Filed 1-18-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

[Order No. 49-1]

OFFICE OF ENERGY PROGRAMS

Statement of Organization and Function and Delegation of Authority

This order effective November 16, 1976 supplements the material appearing at 41 FR 50314 of November 15, 1976.

SECTION 1. *Purpose.*—This order prescribes the organization and assignment of functions within the Office of Energy Programs (OEP).

SEC. 2. *Organization and line of authority.*—The organization structure and line of authority shall be as depicted in the attached organization chart. The Director of the Office of Energy Programs shall report directly to the Assistant Secretary for Domestic and International Business. A copy of the chart is on file with the original of this document in the Office of the Federal Register.

SEC. 3. *Office of the Director.*—.01 The Office shall be headed by a "Director" who shall formulate policies and programs and provide oversight and direction for all activities of the Office.

.02 The "Deputy Director" shall be the principal assistant to the Director on formulation of policies and programs, have technical responsibility for OEP's energy-related scientific and economic analyses, and shall perform the functions of the Director in the latter's absence. He shall oversee the activities of the Office's energy analysis programs and be assisted by a "Technology Liaison Staff" which shall:

a. Advise on the technological ramifications of specified policy and/or program developments;

b. Provide liaison with other elements of the Department on technological aspects of energy programs;

c. Serve as the OEP point of contact on energy research and development matters; and

d. Conduct or arrange for the conduct of a program to identify the comparative advantages of alternatives energy program proposals.

SEC. 4. *Energy Resources Division.*—The Division shall perform all activities relating to the Office of Energy Programs' role in energy resources, including all matters relating to the oil, coal, gas, electric power, and other energy industries. Specifically, the Division shall:

a. Maintain a current overview of the main elements of energy supply and demand balance;

b. Assist in the identification of energy policy studies to be conducted;

c. Evaluate selected energy studies and analyses performed by other organizations;

d. Provide staff support for Commerce membership on committees contributing to the formulation or execution of energy policy as requested by the Office of Energy and Strategic Resources Policy;

e. Monitor certain energy-related commodities found to be in short supply and report to the Office of Export Administration on short supply export controls;

f. Prepare position papers and comments on energy-related programs and activities such as selected business and industrial programs;

g. Develop comments and presentations on energy-related testimony, legislation, and other related subjects; and

h. Provide staff support and/or Departmental representation, within guidance provided by the Office of Energy and Strategic Resources Policy, on energy-related task forces and committees established to examine specific energy policy issues and problems pertinent to the U.S. business community.

SEC. 5. *Planning, Evaluation, and Promotion Division.*—The Division shall work with business and industry to increase their awareness of, and to promote, energy conservation and efficiency. In addition, the Division shall be responsible for OEP's planning, evaluation, and management systems. Specifically, the Division shall:

a. Develop and evaluate approaches, methods, and programs to foster energy efficiency;

b. Coordinate, design, develop, and produce such energy conservation/efficiency informational material as films, brochures, and pamphlets for the business community;

c. Arrange and/or conduct seminars, meetings, and public appearances on energy conservation/efficiency;

d. Coordinate multi-agency participation in energy conservation/efficiency trade shows and exhibits and direct the Department's participation in such shows and exhibits as a sole exhibitor;

e. Provide an Executive Director and staff support for the National Industrial Energy Council (NIEC), and its Subcouncils on Industry Programs, Program Development, and Business Awareness;

f. Provide staff support and an Executive Director for the Department's Energy Policy Committee, which is the primary mechanism for the coordination of DOC energy policy and programs;

g. Advise and counsel other Commerce organizations in the development and implementation of energy conservation programs;

h. Coordinate energy conservation activities with DIBA's Office of Field Operations and other Commerce organizations;

i. Coordinate energy conservation awareness programs with other interested Government agencies to insure that the business community has consistent goals in, and receives objective information on, energy conservation; and

j. Develop and carry out planning, evaluation, and management systems and techniques for OEP. Such activities include management by objectives, program evaluation, and periodic audits.

SEC. 6. *Industry Programs Division.*—The Division shall establish and maintain liaison with key energy consuming industries and trade associations to:

a. Implement energy management programs that will insure the efficient use by the business community of energy resources;

b. Insure, through the key identified industry associations, that the overall objectives of the Department's energy conservation programs for energy intensive industrial and business firms are met;

c. Provide a cohesive structure for managing and reporting on more efficient energy use within the business community;

d. Support interagency energy conservation programs and manage those programs which may be established and operated by the Department in a lead agency role; and

e. Provide technical assistance relevant to energy management to participating associations and member firms.

SEC. 7. *Energy Analysis Division.*—The Division shall conduct special studies and analyses utilizing operations research, econometric and statistical techniques and methodologies on topics and issues affecting energy resources/energy utilization policies and programs. The Division will serve as the central point for data accumulations and analysis for the Office. Specifically, the Division shall:

a. Maintain energy supply and demand data with emphasis on industrial supply and demand, including an Energy Data Book;

b. Maintain and compile data on energy materials imported and exported;

c. Maintain data on potential energy conservation efforts with emphasis on industrial conservation;

d. Maintain industrial energy indicators which reflect trends;

e. Maintain industrial energy forecasts for supply and consumption;

f. Conduct energy analyses as required by the Director of OEP with emphasis on studies in industrial conservation;

g. Perform integrated analytical work within OEP which encompasses energy resources and conservation activities;

h. Maintain reports, analyses, and documentation on industrial conservation conducted by other Government organizations and private firms;

i. Maintain coordinative relationship with other U.S. Government data bases;

j. Maintain an OEP energy reference library; and

k. Conduct quick-response energy actions as required (e.g. OEP's Natural Gas Action Group).

SEC. 8. *Administrative, Public Affairs, and Field Support.*—.01 The "Office of Public Affairs," DIBA, shall furnish public affairs services to the Office.

.02 The "Directorate of Administrative Management," DIBA, shall furnish management, ADP, budget, personnel, travel, and administrative services. The Directorate will also serve as liaison with departmental elements providing other administrative support to the Office.

.03 Field support will be provided by the "Office of Field Operations."

Effective date: November 16, 1976.

DONALD E. JOHNSON,
Acting Assistant Secretary for Domestic and International Business.

[FR Doc.77-1666 Filed 1-18-77;8:45 am]

Maritime Administration

[Docket No. S-536]

STATES STEAMSHIP CO.

Application

Notice is hereby given that States Steamship Company has applied for amendment of the service descriptions of its subsidized Services B and C so as to add calls at ports on the Persian Gulf and Gulf of Oman. This is an amendment to the Operator's existing Operating-Differential Subsidy Agreement, Contract No. FMB-62, which expires on December 31, 1977.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1175), should, by the close of business on January 31, 1977 notify the Secretary, Maritime Subsidy Board in writing in triplicate, and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated in an essential service, served by citizens of the United States which would be in addition

to the existing service, or services, and if so, whether the service already provided by vessels of United States registry in such essential service is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: January 14, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-1722 Filed 1-18-77;8:45 am]

National Technical Information Service

TECHNICAL INFORMATION PRODUCTS AND SERVICES

Netherlands

The National Technical Information Service of the U.S. Department of Commerce requests that parties interested in managing the sales of its technical information products and services in the Netherlands make their interest known to the NTIS Assistant Director, Market Development, NTIS, 5285 Port Royal Springfield, Virginia 22161.

DEAN SMITH,
Asistant Director,
Market Development.

Approved: 1/10/77

WILLIAM T. KNOX,
Director.

[FR Doc.77-1705 Filed 1-18-77;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for U.S. and possibly foreign licensing, in accordance with the policies of the agency sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications, either paper copy (PC) or microfiche (MF), can be purchased at the prices cited from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licenses by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE ARMY, Office of Judge Advocate General, Patent Division, Room 2C-455, Pentagon, Washington, D.C. 20310.

Patent application 571,175: Discrete Control Correction for Synchronizing Digital Networks; filed 24 April 1975; PC $4.00/MF $3.00.

Patent application 650,658: Glass Compositions Having Fluorescence Properties; filed 20 January 1976; PC $3.50/MF $3.00.

Patent Re 28,621: Fluid Angular Rate Sensor; filed 17 July 1969, reissued 25 November 1975; not available NTIS.

Patent Re 28,622: Fluid Angular Rate Sensor; filed 17 July 1969; reissued 25 November 1975; not available NTIS.

Patent 3,931,730: Ramp Current Apparatus and Method of Sensitivity Testing; filed 23 December 1974; patented 13 January 1976; not available NTIS.

Patent 3,932,745: Far Field Construction for Optical Fourier Transforms; filed 30 September 1974; patented 13 January 1976; not available NTIS.

Patent 3,933,096: Gyroscopic Rate Switch; filed 11 March 1974; patented 20 January 1976; not available NTIS.

Patent 3,936,902: Automatic Cleaning Apparatus for Fluid Filters; filed 11 July 1974; patented 10 February 1976; not available NTIS.

Patent 3,936,902: filed 11 July 1974; patented 10 February 1976; not available NTIS.

Patent 3,937,071: Fatigue Test Apparatus; filed 11 July 1975; patented 10 February 1976; not available NTIS.

Patent 3,938,378: Engine Compression Testing; filed 26 August 1974; patented 17 February 1976; not available NTIS.

Patent 3,938,815: Chuck Having Jaw Counterbalance Mechanism; filed 31 March 1975; patented 17 February 1976; not available NTIS.

Patent 3,942,486: Hydraulic Fan Drive System Speed Control; filed 21 August 1974; patented 9 March 1976; not available NTIS.

Patent 3,938,815: Embossing Method; filed 25 March 1975; patented 16 March 1976; not available NTIS.

Patent 3,943,776: Fluidic Acceleration Sensor; filed 23 December 1974; patented 16 March 1976; not available NTIS.

U.S. DEPARTMENT OF THE AIR FORCE,
AF/JACP,
Washington, D.C. 20314.

Patent application 696,341: Dual Pressure Sensing Safing and Arming Mechanism; filed 15 June 1976; PC $3.50/MF $3.00.

Patent application 696,343: N-Channel Deep Depletion Mode Semiconductor Device; filed 15 June 1976; PC $3.50/MF $3.00.

Patent application 696,344: Intershaft Balance Weight; filed 15 June 1976; PC $3.50/MF $3.00.

Patent application 696,345: Turbine Band Cooling System; filed 15 June 1976, PC $3.50/MF $3.00.

Patent application 696,963: Duct Pressure Actuated Nozzle; filed 17 June 1976; PC $3.50/MF $3.00.

Patent application 698,984: Low Power Frequency Modulated Hybrid Fiber Optic Data Acquisition System; filed 23 June 1976; PC $3.50/MF $3.00.

Patent application 699,929: Vortex Generators in Axial Flow Compressor; filed 25 June 1976; PC $3.50/MF $3.00.

Patent 3,969,907: Cold Cylinder Assembly for Cryogenic Refrigerator; filed 25 March 1975; patented 20 July 1976; not available NTIS.

Patent 3,969,978: Direct Injection Liquid Propellant Gun System; filed 20 December 1974; patented 20 July 1976; not available NTIS.

Patent 3,970,005: Mass Focus Explosive Layered Bomblet; filed 25 January 1969; patented 20 July 1976; not available NTIS.

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Assistant General Counsel for Patents,
Washington, DC 20545

Patent 3,904,273: Apodised Aperture Using Rotation of Plane of Polarization; filed 18 March 1974; patented 9 September 1975; not available NTIS.

Patent 3,904,985: Explosive Laser; filed 5 February 1974; patented 9 September 1975; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Assistant General Counsel for Patent Matters,
NASA Code GP-2,
Washington, DC 20546.

Patent application 712,419: Flow Separation Detector; filed 6 August 1976; PC $3.50/MF $3.00.

Patent 3,545,262: Method and Apparatus for Nondestructive Testing of Pressure Vessels; patented 8 December 1970; not available NTIS.

Patent 3,955,941: Hydrogen Rich Gas Generator; patented 11 May 1976; not available NTIS.

Patent 3,971,256: Meteoroid Capture Cell Construction; patented 27 July 1976; not available NTIS.

Patent 3,971,535: Oblique-Wing Supersonic Aircraft; patented 27 July 1976; not available NTIS.

Patent 3,972,008: Method and Apparatus for Generating Coherent Radiation in the Ultraviolet Region and Above by Use of Distributed Feedback; patented 27 July 1976; not available NTIS.

[FR Doc.77-1694 Filed 1-18-77;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for U.S. and possibly foreign licensing, in accordance with the policies of the agency sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231 for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications, either paper copy (PC) or microfiche (MF), can be purchased at the prices cited from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed

to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, WASHINGTON, DC 20314

Patent application 681,018: Two-Dimensional Drawing Board Manikin filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681,084: Digitally Tuned Parametric Amplifier; filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681,871: Lubricant Composition filed 30 April 1976; PC $3.50 MF $3.00.

Patent application 685,841: Method for the Fabrication of Gallium Arsenide Semiconductor Devices, filed 13 May 1976; PC $3.50/MF $3.00.

Patent application 687,285: Digital Lock-Loop Frequency Offset Correction and Display Apparatus; filed 17 May 1976; PC $3.50/MF $3.00.

Patent application 687,581: Self Synchronizing Concoler System; filed 18 May 1976; PC $3.50/MF $3.00.

Patent 3,940,892: Self-Erecting Aircraft Structure; filed 23 May 1974; patented 2 March 1976; not available NTIS.

Patent 3,955,160: High Power Resistor: filed 8 November 1974; patented 4 May 1976; not available NTIS.

Patent 3,957,083: Pressure Sensitive Regulating Valve; filed 27 January 1975; patented 18 May 1976; not available NTIS.

Patent 3,960,814: Poly (Perfluoroalkylene Oxide) Oxadiazoles and Their Synthesis; filed 27 February 1975; patented 1 June 1976; not available NTIS.

Patent 3,963,490: Dye Sensitized Dichromated Gelatin Holographic Material; filed 25 September 1974; patented 15 June 1976; not available NTIS.

Patent 3,960,422: System Channel Distortion Weighting for Predetection Combiners; filed 26 July 1974; patented 22 June 1976; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, VA 22217.

Patent application 587,475: Target Detection Method and Apparatus for Reducting Range-Smearing Error Caused by Relative Target Motion; filed 16 June 1975; PC $3.50/MF $3.00.

Patent application 680,944: Constant Current Base-Drive Circuit; filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681,087: Electrical Conducting Phthalonitrile Polymers; filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681, 317: Mid-Pulse Detector; filed 29 April 1976; PC $3.50 MF $3.00.

Cutting Tool: filed 3 May 1976; PC $3.50/

Patent application 682,693: Bending and MF $3.00.

Patent application 684,506: Redundant Oscillator for Clocking Signal Source; filed 7 May 1976; PC $3.50/MF $3.00.

Patent application 685,877: Material for Magnetic Bubble Devices; filed 12 May 1976; PC $3.50/MF $3.00.

Patent application 689,417: Low Loss Tuneable Filter; filed 24 May 1976; PC $3.50/MF $3.00.

Patent 3,916,229: Induction Motor for Superconducting Synchronous/Asynchronous Motor; filed 3 June 1975; patented 28 October 1975; not available NTIS.

Patent 3,924,262: Aural Warning Apparatus; filed 2 December 1974; patented 2 December 1975; not available NTIS.

Patent 3,934,204: AM/AGC Weighted Diversity Combiner/Selector; filed 4 October 1974; patented 20 January 1976; not available NTIS.

Patent 3,937,407: Multiple Strap Shock Absorber; filed 24 May 1974; patented 10 February 1976; not available NTIS.

Patent 3,939,334: Closest Point of Approach Calculator; filed 2 January 1975; patented 17 February 1976; not available NTIS.

Patent 3,940,289: Flash Melting Method for Producing New Impurity Distributions in Solids; filed 3 February 1975; patented 24 February 1976; not available NTIS.

Patent 3,942,511: Sandwiched Structure for Production of Heat and Hydrogen Gas; filed 19 September 1974; patented 9 March 1976; not available NTIS.

Patent 3,943,001: Silver Sulfide Cathode for Liquid Ammonia Batteries and Fuel Cells Containing Sulfur and H2S in the Electrolyte; filed 5 July 1973; patented 9 March 1976; not available NTIS.

Patent 3,949,378: Computer Memory Addressing Employing Base and Index Registers; filed 9 December 1974; patented 6 April 1976; not available NTIS.

Patent 3,952,186: Apparatus for the Generation of a Two Dimensional Discrete Fourier Transform; filed 10 February 1975; patented 20 April 1976; not available NTIS.

Patent 3,952,290: Read-Only Optical Memory System; filed 11 November 1974; patented 20 April 1976; not available NTIS.

Patent 3,953,260: Gossypol, an Abundant, Low-Cost Iron Deactivator, Pot-Life, Extender, and Processing Aid for HTPB Propellants; filed 23 May 1975; patented 27 April 1976; not available NTIS.

Patent 3,957,340: Electrooptical Amplitude Modulator; filed 25 February 1975; patented 18 May 1976; not available NTIS.

Patent 3,957,840: Preparation of a Ferrocenyl Compound; filed 15 July 1974; patented 18 May 1976; not available NTIS.

Patent 3,958,564: EKG Contact; filed 9 May 1975; patented 25 May 1976; not available NTIS.

Patent 3,963,198: Negative Air Cushion for Airship Ground Handling; filed 2 April 1975; patented 15 June 1976; not available NTIS.

[FR Doc.77-1695 Filed 1-18-77;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

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Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications, either paper copy (PC) or microfiche (MF), can be purchased at the prices cited from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE ARMY, Office of Judge Advocate General, Patent Division, Room 2C-455, Pentagon, Washington, DC 20310.

Patent application 647,238: Inflatably Sealed Sterilizer Door; filed 7 January 1976; PC $3.50/MF $3.00.

Patent 3,940,474: Generation of Hydrogen; filed 6 August 1974; patented 24 February 1976; not available NTIS.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, DC 20314.

Patent application 692,720: Method for the Complete Dissolution of Mineral Samples; filed 4 June 1976; PC $3.50/MF $3.00.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Management Branch, General Services Division, Federal Bldg., Agricultural Research Service, Hyattsville, MD 20782.

Patent application 705,230: Wood Impingement Dryer; filed 14 July 1976; PC $3.50/MF $3.00.

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, Assistant General Counsel for Patents, Washington, DC 20545.

Patent 3,904,274: Apodised Aperture Using Rotation of Plane of Polarization; filed 18 March 1974; patented 9 September 1975; not available NTIS.

Patent 3,904,985: Explosive Laser; filed 5 February 1974; patented 9 September 1975; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, NW., Washington, DC 20240.

Patent application 709,990: Production of Supported Raney-Type Catalysts by Reactive Diffusion; filed 30 July 1976; PC $3.50/MF $3.00.

Patent application 709,999: Massive Catalytic Inserts; filed 30 July 1976; PC $3.50/MF $3.00.

Patent 3,969,452: Method for Casting and Handling Ultra Thin Reverse Osmosis Membranes; filed 8 August 1974; patented 13 July 1976; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, DC 20546.

Patent application 706,424: Heat Resistant Polymers of Oxidized Styrylphosphine; filed 19 July 1976; PC $4.00/MF $3.00.

Patent application 706,425: Power factor Control System for AC Induction Motors; filed 19 July 1976; PC $3.50/MF $3.00.

Patent application 707,125: TV-fatigue Crack Monitoring System; filed 20 July 1976; PC $3.50/MF $3.00.

Patent application 708,659: Liquid Metal Slip Ring; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 708,771: Method of Producing Complex Aluminum Alloy Parts of High Temper, and Products Thereof; filed 26 July 1976; PC $3.50/MF $3.00.

aPtent application 708,795: Pressure Modulating Valve; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 708,800: Wrist Joint Assembly; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 708,951: Polymeric Foams from Cross-Linkable Poly-N-Arylenebenzimidaboles; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 712,419: Flow Separation Detector; filed 6 August 1976; PC $3.50/MF $3.00.

Patent 3,961,997: Fabrication of Polycrystalline Solar Cells on Low-Cost Substrates; patented 8 June 1976; not available NTIS.

Patent 3, 971, 362: Miniature Ingestible Telemeter Devices to Measure Deep-Body Temperature; patented 27 July 1976; not available NTIS.

Patent 3,971, 363: Myocardium Wall Thickness Transducer and Measuring Method; patented 27 July 1976; not available NTIS.

Patent 3, 971, 364: Catheter Tip Force Transducer for Cardiovascular Research; patented 27 July 1976; not available NTIS.

Patent 3, 971, 602: Thrust Bearing; patented 27 July 1976; not available NTIS.

Patent 3, 971, 697: Production of I-123; patented 27 July 1976; not available NTIS.

Patent 3, 971, 703: Method of Detecting and Counting Bacteria; patented 27 July 1976; not available NTIS.

Patent 3, 971, 847: Hydrogen Rich Gas Generator; patented 27 July 1976; not available NTIS.

Patent 3, 971, 930: Polarization Compensator for Optical Communications; patented 27 July 1976; not available NTIS.

Patent 3, 972, 008: Method and Apparatus for Generating Coherent Radiation in the Ultraviolet Region and Above by Use of Distributed Feedback; patented 27 July 1976; not available NTIS.

Patent 3,972,038: Accelerometer Telemetry System; patented 27 July 1976; not available NTIS.

Patent 3,972,651: Solar-Powered Pump; Patented 3 August 1976; not available NTIS.

Patent 3,972,727: Rechargeable Battery which Combats Shape Change of the Zinc Anode; patented 3 August 1976; not available NTIS.

[FR Doc.77-1696 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT-DES 77-2]

CORONADO PROJECT

Availability of Draft Environmental Statement

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 7332), the Department of the Interior has prepared a draft environmental statement for the Coronado Project.

The environmental statement describes the environmental impacts associated with the Salt River Project's proposed electrical generating plant at St. John's, Arizona, and associated facilities. The purpose of the project is to provide for the future electrical energy needs of the Phoenix Metropolitan area in Maricopa County, and for the increased electrical demands of the "Eastern Mining Area." Major facilities consist of a 1050 MW coal-fired electric generating station, associated 500 kV and 230 kV transmission lines, a railroad spur for carrying coal, wellfields and pipelines to transport cooling water, service and process to the generating station, and a limestone source to provide limestone to the Air Quality Control System. The transmission lines consist of one 500 kV line from the plant southwest 240 miles to the Kyrene Substation, south of Phoenix. It will share a common corridor with the Cholla-Saguaro 500 kV line through the Sitgreaves and Tonto National National Forests. A 76-mile 500 kV backup transmission line is proposed to run from the Coronado Station to the APS Cholla plant near Holbrook, Arizona.

A Silver King Substation, 60 miles east of Phoenix, is proposed to distribute power along two 230 kV lines—one going to Goldfield Substation just east of Phoenix, and the other going to the Hayden Substation in Hayden, Arizona. Written comments may be submitted to the Regional Director (address below) on or before March 7, 1977.

Copies of the draft environmental impact statement are available for inspection at the following locations:

Office of the Assistant to the Commissioner—Ecology, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240. Telephone (202 343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225. Telephone (303) 234-3006.

Office of the Regional Director, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Telephone (702) 598-7464.

Single copies of the draft statement may be obtained upon request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the Document Service, Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036. Please refer to the statement number above.

Dated: January 14, 1977.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-1725 Filed 1-18-77;8:45 am]

Bureau of Land Management

[Serial No. P-23267]

LOUISIANA LAND AND EXPLORATION CO.

Application for Airport Lease

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214) The Louisiana Land and Exploration Company has applied for an airport lease for the following land:

A parcel contained in Sections 21 and 22, T. 23 N., R. 28 E., Fairbanks Meridian, Alaska, further described to wit:

Commencing at a brass cap monument at the northwest corner of Section 22; thence S14°05'39" W, a distance of 664.64 feet to the true point of beginning of this parcel and lying at Alaska State Plane Zone 2 coordinates of y=4,682,526.30, x=549,825.38 at latitude 66°48'37.913" N, longitude 141°39'-16.211" W; thence N85°50'27" E, a distance of 600 feet; thence S4°09'33" E, a distance of 400 feet; thence N85°50'27" E, a distance of 4,500 feet to a point from which protracted section corner common to Sections 14, 15, 22, and 23 bears N24°48'27" E, a distance of 776.22 feet; thence continuing on the parcel boundary S4°09'33" E, a distance of 110 feet; thence along the arc of a 100 foot radius tangent curve to the right for 314.16 feet; thence along a radial line away from said curve S85°50'27" W, a distance of 5,000 feet to the beginning of a 100 foot radius nontangent curve to the right whose center bears S85°50'27" W, thence along said curve 314.16 feet; thence on tangent to said curve N4°09'-33" W, a distance of 110 feet; thence N85°50'-27" E, a distance of 300 feet; thence N4°09'-33" W, a distance of 400 feet to the true point of beginning of this parcel; and containing 19.87 acres more or less. All bearings and distances are Alaska State Plane Zone 2.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Box 1150, Fairbanks, Alaska 99707.

CARL D. JOHNSON,
Acting District Manager.

[FR Doc.77-1669 Filed 1-18-77;8:45 a.m.]

[Wyoming 57883]

WYOMING

Application

JANUARY 10, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Northwest Pipeline Corporation of Salt Lake City, Utah, filed an application for a right-of-way to construct a 4½-inch pipeline for the purpose of transporting natural gas across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 24 N., R. 114 W.,
Sec. 2, lot 9;
Sec. 3, lot 11.

The pipeline will transport natural gas from a point in sec. 2, T. 24 N., R. 114 W., to a point in sec. 3, T. 24 N., R. 114 W., Lincoln County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Rock Springs, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1670; Filed 1-18-77;8:45 am]

Fish and Wildlife Service

TEXAS

Application

Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Mitchell Energy Offshore Corporation has applied for a twelve inch natural gas and oil pipeline right-of-way that will cross that part of the Aransas National Wildlife Refuge located on the Black Jack Peninsula, Aransas County, Texas.

The pipeline will convey natural gas across ten miles of the Aransas National Wildlife Refuge.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views, should do so within thirty

(30) days and send their name and address to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

ROBERT F. STEPHENS,
Acting Regional Director, United States Fish and Wildlife Service.

JANUARY 10, 1977.

[FR Doc.77-1728 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Vagn Flyger, Inland Environmental Laboratory, CEES, University of Maryland, College Park, Maryland 20742.

OMB NO. 42-R1435

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
A permit is needed to trap, handle, mark (ear tatoo) Delmarva Fox Squirrels (SNC) and to temporarily attach radio collars on selected individuals. Blood smears will also be taken by a tiny incision of a footpad.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Vagn Flyger,
Inland Environmental Laboratory, CEES
University of Maryland
College Park, Maryland 20742
301--454-5641

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 5'10"	WEIGHT 195
DATE OF BIRTH 14 January 1922	COLOR HAIR Blond	COLOR EYES Blue
PHONE NUMBER WHERE EMPLOYED 301--454-5641	SOCIAL SECURITY NUMBER 072-16-9585	

OCCUPATION
Professor - Wildlife, Biology

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
Maryland Wildlife Administration
Annapolis, Maryland

5. IF "APPLICANT" IS A BUSINESS CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Radio telemetry work will be carried on P. B. Stifel's farm near Tunis Mills in Talbot Bounty. Ear tatoo, weighing and examination research will be conducted over entire range of the mammal.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Maryland Scientific Collection Permit

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE: Feb 1, 1977

11. DURATION NEEDED: Dec. 31, 1978

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Vagn Flyger
DATE 14 Dec 1976

3-200
16-74

ATTACHMENT TO FORM 3-200

JUSTIFICATION FOR PERMIT TO HANDLE DELMARVA FOX SQUIRRELS BY VAGN FLYGER

50 CFR 17, 17.22.a.

1. Delmarva Fox Squirrel, *Sciurus Niger Cinereus* (Linneaus).

I plan to trap, mark and release wild Delmarva fox squirrels on the farm of P. B. Stifel near Tunis Mills in Talbot County, Maryland. The squirrels will be lightly anesthetized and marked for permanent identification by tattooing a number or letter on each ear. While the animals are under anesthesia they will be examined, weighed and measured and a small incision will be made on a footpad to get a drop of blood for making a thin smear on a microscope slide. Delmarva fox squirrels will also be captured throughout their range in nest boxes for a study being carried out in cooperation with the Maryland Wildlife Administration and the U.S. Fish and Wildlife Service.

In addition to the above studies, there will be an intensive study of Delmarva fox squirrel habitat usage. I intend to temporarily attach radio collars to approximately 20 adult individuals of both sexes and follow their daily movements. Collars will be removed after two to four weeks. Mr. Frank H. Rice, one of my graduate students, will do most of the radio telemetry work.

2. All of the Delmarva fox squirrels will be wild animals and will be returned to the wild immediately after handling.

3. I have made no previous attempt to obtain a permit to handle Delmarva fox squirrels. I have handled about forty individuals in the past before they were declared an endangered species. I have also handled about fifty other subspecies of fox squirrels and approximately 10,000 gray squirrels (including recaptures) by the method that I intend using. During this time only one squirrel (a gray squirrel) has died during the handling.

4. No captive or foreign animals are involved in this work.

5. No animals will be kept in captivity or displayed. All work will be in the field on state, federal or private property.

6. (i) Not applicable.

(ii) I have been studying, handling and marking gray squirrels for 25 years. During this time I have been perfecting my handling techniques, and adapting those of colleagues to where I believe we have one of the best techniques available for safety handling a wild mammal (see attached unpublished manuscript). Some of my wild gray squirrels have been handled more than seventy times by this method.

(iii) Not applicable.

(vi) The traps to be employed have been constructed expressly for capture of squirrels (see attached manuscript by Flyger, Barkalow and Lustig). This is the trap I have used exclusively for the last ten years to capture squirrels.

(v) The only squirrel (a gray squirrel, *Sciurus carolinensis*) which died in trapping and marking operations over the last five years was one which had a huge abcess on its right shoulder. This abcess contained about 100 ml of pus and the animal was extremely emaciated. Its fur was rough looking and the animal probably would have died soon even if it had not been handled.

Animals spend a maximum of three hours in traps which are covered with black opaque plastic on four sides. There is no chance of squirrels spending the night in traps. Animals are only lightly anesthetized.

My students have learned to handle squirrels by working with captive gray squirrels. Two or three squirrels have been killed in this learning process but no students ever handle wild animals until they have learned how to do this properly. Mr. Frank Rice has handled many gray squirrels and is a capable field worker well able to handle fox squirrels with absolute minimum mortality.

Anesthetized squirrels will be released only after they have fully recovered from anesthesia.

7. Copies of contracts and agreements include: a. Draft of Delmarva Fox Squirrel Recovery Plan, b. Contract with U.S. Forest Service.

8. (i) I would like authorization to:

a. Capture Delmarva fox squirrels by means of live traps and in nest boxes throughout their range.

b. To take a drop of blood by a slight incision in a footpad to make a thin smear. The blood parasite *Hepatozoon grisisciurus* is prevalent in gray squirrels and may be important in the health of fox squirrels.

c. To apply radio collars to approximately twenty adult fox squirrels of both sexes on the farm of P. B. Stifel, Tunis Mills, Maryland.

(ii) Activities will be carried out as follows:

Fox squirrels at the Stifel farm will be captured in wire traps baited with peanuts or captured in nest boxes. They will be lightly anesthetized by inserting the heads of the

squirrels into a widemouthed quart jar containing several gouse sponges soaked with Metrofane (methoxyflourane). In about one to two minutes a squirrel becomes limp and its head can be removed from the jar. It can then be marked, weighed and examined. (For further details see enclosed manuscript by Flyger, Barkalow and Lustig.)

Fifteen gram radio-transmitters will be placed on about twenty individuals and removed after two to four weeks. Only individuals which are regular trap visitors will be fitted with transmitters and no more than two individuals will be fitted with radios at any one time. In the past another student and I conducted studies on gray squirrels using 24 gram collars. There were no mortalities and a paper on this subject has been submitted to the Journal of Wildlife Management. Since then the weight of the transmitters have reduced by 9 grams.

A study on distribution, habitat utilization, abundance and management is to be conducted by myself together with the Maryland Wildlife Administration and the U.S. Fish and Wildlife Service. About 2,500 nesting boxes are being placed in units of 50 in selected woodlands within the range of the Delmarva fox squirrel. These boxes will be visited twice a year to learn where fox squirrels occur and how abundant they are in various habitat types. I plan to mark these animals with ear tatoos to gather data on longevity, movements and population densities. None of these animals will be outfitted with radio collars but it is my intention to take thin blood smears on microscope slides.

(iii) The purpose of these activities is to learn the habitat requirements of Delmarva fox squirrels so that this species can be more effectively managed according to the procedures outlined in the Delmarva Fox Squirrel Recovery Plan.

(iv) At the termination of this activity all squirrels will continue to live in the wild.

The study of Delmarva fox squirrel habitat utilization by means of radio telemetry will continue from February 20, 1977, to February 19, 1979. The ear tattoo marking will continue from February 20, 1977, to beyond December 31, 1981. However, to comply with restrictions on duration of permits I can reapply for extension at the necessary time.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-532-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977, will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1650 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: David L. Majors, Route 1, Box 57, Stevensville, Montana 59870.

BURNT FORK GAME FARM,
Stevensville, Mont. December 21, 1976.

DIRECTOR,
U.S. Fish and Wildlife Service,
Washington, D.C.

DEAR SIR: In reference to your letter ADM 7-02m dated December 10, 1976 the following information is submitted. The shipping containers are reinforced wooden crates measuring 16" x 21" and 12" in height. These are padded with foam rubber on the top of the crate to prevent damage to the birds heads while in transit. The crates are also fitted with food and water containers for use during transit. These crates will hold either one pair or one bird depending upon the size of the pheasant shipped. All the pheasants that have been shipped to me in this type of container have arrived in excellent condition.

I am scheduled to be in western Washington in the first week in February 1977. I would like to pick up some of the pheasants at this time if the permit is issued prior to this date.

Cordially yours,

DAVID L. MAJORS.

OMB NO. 42-R1570

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Make any entry)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
The interstate shipment, to me, of these endangered species (pheasants), as listed in inclosure 1, for propagation of these species.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
David L. Majors
Rt.1, Box 57
Stevensville, Montana 59870
(406) 777-3642

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 5 - 8	WEIGHT 165
DATE OF BIRTH May 25, 1943	COLOR HAIR Brn	COLOR EYES Brn
PHONE NUMBER WHERE EMPLOYED (406) 543-3107 ext220	SOCIAL SECURITY NUMBER 534 44 2634	
OCCUPATION sawmill foreman, game bird breeder		

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Rt. 1, box 57
Stevensville, Montana 59870

Interatate shipment, to me, at the above address

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number)
PRT2-143 DN, PRT 2-2, 6-PR-298

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Montana Game Farm Permit # 737

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE: Dec 1, 1976

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Five (5) inclosures 50 CFR 17.22a

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not print) David L. Majors
DAVID L. MAJORS

DATE Nov 11, 1976

3-200
M-741

GPO 895-042

INCLOSURE 1

The following is a list of the endangered species (pheasants) which I desire to have shipped to me for the purpose of propagation:

1 pair of Brown eared pheasants (*Crossoptilon mantchuricum*), 1 pair of Mikados Pheasants (*Syrmaticus mikado*), 2 pair of Elliot's Pheasants (*Syrmaticus ellioti*) from Mr. Jim Chamberlain, 4850 Alcorn Rd., Fallon, Nevada 89406 all pheasants 1 year old.

1 pair of Elliot's Pheasant (*Syrmaticus ellioti*), 1 pair of Bar-tailed pheasants (*Syrmaticus humiae*), and 1 pair of Mikados Pheasant (*Syrmaticus mikado*) from Mr. Ed Benhardt P.O. Box 189 Reardan, Washington 99029.

1 pair of Elliot's Pheasant (*Syrmaticus ellioti*), and 2 pair of Edward's Pheasants (*Lophura edwardsi*) from Mr. Chick Driscoll, 219 Cowlitz Drive, Kelso, Washington 98626.

1 pair of Brown-eared Pheasants (*Crossoptilon mantchuricum*), 1 pair of Elliot's Pheasants (*Syrmaticus elliotti*), 1 pair of Bar-tailed Pheasants (*Syrmaticus humiae*), and 1 pair of Mikados Pheasants (*Syrmaticus mikado*) from Mr. Warren J. Mack, 600 East River Road, Rochester, N.Y. 14623.

1 pair of Elliot's Pheasants (*Syrmaticus elliotti*) from Mr. Dave Rollins, Altamont, Utah 84001.

1 pair of Edward's Pheasants (*Lophura edwardsi*), 1 pair of Brown-eared Pheasants (*Crossoptilon mantchuricum*) from Mr. Charles Kamm, Rt. 1, Box 87, Courtland, Minn. 56021

1 pair of Elliot's Pheasants (*Syrmaticus elliotti*), 1 pair of Mikados Pheasants (*Syrmaticus mikado*), and 2 pair of Edward's Pheasants (*Lophura edwardsi*) from Mr. Bert Rosenbaum, 3411 So. 90th Street, Tacoma, Washington 98409.

1 pair of Elliots Pheasants (*Syrmaticus elliotti*) and 2 pair of Edward's Pheasants (*Lophura edwardsi*), and 1 pair of Bar-tailed Pheasants (*Syrmaticus humiae*) from Mr. Jerry McRoberts, Gurley, Nebraska 69141.

2 pair of White Eared Pheasants (*Crossoptilon crossoptilon*) from Mr. Charles Sivelle, 41 Westcliff Drive, Dix Hills, Long Island, N.Y. 11746.

The following information is submitted as inclosures as required by 50 CFR 17

17.22a(1) provided above.

17.22a(2) the above will all be captive born birds.

17.22a(3) All of the above pheasants will be purchased as captive born stock, thus there will be no death or removal from the wild of any of the above.

17.22a(4) All of the above pheasants will be birds born in the United States of America.

17.22a(5) All of the above pheasants will be kept at Stevensville, Montana 59870.

17.22a(6)(i)—Inclosure 2.

17.22a(6)(ii)—Inclosure 3.

17.22a(6)(iii)—Inclosure 4.

17.22a(6)(iv)—All of the above will be shipped via air in containers approved by the carrier, that provide for the protection and safe delivery of the birds.

17.22a(6)(v)—Inclosure 5.

17.22a(7)—None. I can not legally acquire the above pheasants without the issuance of the permit I am applying for.

17.22a(8)(i)—The interstate shipment, to me, of the above listed, captive born pheasants.

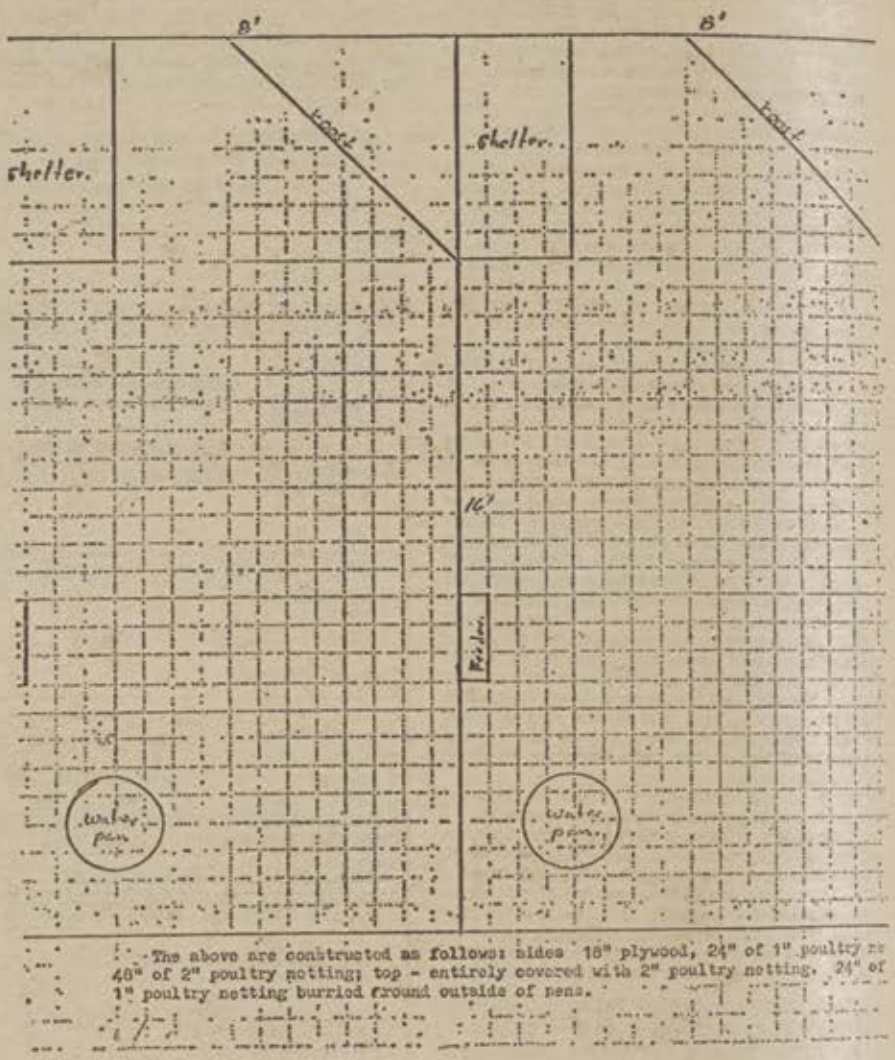
17.22(8)(ii)—The above will be purchased and shipped to me, via air, for the propagation of that species.

17.22a(8)(iii)—The above pheasants will be used for the enhancement of that species thru captive propagation.

17.22a(8)(iv)—I do not plan to terminate my activities in raising birds. If such occurence should ever happen it would be in accordance with any applicable federal or state regulations.

BITCO KAMAN

Two 8' by 16' pens.



The above are constructed as follows: sides 18" plywood, 24" of 1" poultry ne 48" of 2" poultry netting; top - entirely covered with 2" poultry netting. 24" of 1" poultry netting burried around outside of pens.

INCLOSURE 2

I also have 16' by 16' pens and 16' by 32' pens with the same construction. As of this date I have the following pens: Twenty 8' by 16'; thirteen 16' by 16'; four 16' by 32'.

Of the 16' by 16' pens, eight have an attached 8' by 16' totally enclosed building attached. One 40' by 60' pen with top over a 20' by 25' pond for my ornamental waterfowl. Eight 16' by 80' pens and one 64' by 80' and one 80' by 80' pen for Ringneck pheasants.

INCLOSURE 3

I have the following related experience: BS in Wildlife Technology (University of Montana, June 1965), I have always had a keen interest in raising and propagating ducks, geese, and pheasants. This past year (1974) I was finally able to purchase 20 acres where I now reside, which enabled me to start actually raising the birds. I have the advice and help of my father-in-law, Mr. Virgil Fite, who has been engaged in raising pheasants and other birds for the past 30+ years. I am a member of the American Game Bird Breeders Cooperative Federation whose purpose is to "establish and preserve the game birds of the world in captivity in their pure forms."

INCLOSURE 4

I am willing to participate in a cooperative breeding program and to maintain such records as are necessary to insure the preservation of the species listed in Inclosure 1.

INCLOSURE 5

Summary of Mortalities

1 Reeves pheasant—died of unknown causes. This cock was purchased during the moulting period and turned out to be a very poor specimen, which died later in the fall. I had an excellent hatch of Reeves this past Spring and I am in the process of selling my surplus stock.

2 Yellow Golden Pheasants—killed by a skunk. These birds were killed prior to the time I buried the 1" poultry netting around my pens. Since that time I have not lost any birds to skunks.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in

triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-492-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1657 Filed 1-18-77;8:45 a.m.]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: New York Zoological Society, 185th Street and Southern Blvd., Bronx, New York 10460.

OMB NO. 42-R1570

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
The New York Zoological Society seeks permission to purchase and transport interstate an endangered species, barasingha (Cervus d. duvauceli) -- 2 males, and 6 females from the YO Ranch, Mountain Home, Texas 78058 to the New York Zoological Park, Bronx, New York 10460.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
New York Zoological Society
185th Street & Southern Blvd.
Bronx, New York 10460
212-220-5100

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Zoological Park.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
William G. Conway, General Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
New York

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
New York Zoological Park
185th St. & Southern Blvd.
Bronx, New York 10460

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number)
PRT 2-577 NY 2-461-06 2-355-07

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)
N.Y. State Harris Act -- application for state permit being made concurrently; issuance dependent upon USDI permit

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE: 1 February 1977
11. DURATION NEEDED: Six months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE: T. Wayne Gray — Director of Zoology — DATE: 13 December 1976

3-200
(6/74)

NEW YORK ZOOLOGICAL SOCIETY, *New York Zoological Park, New York Aquarium, Center for Field Biology and Conservation, Osborn Laboratories of Marine Sciences. Bronx Zoo, Bronx, New York.*

Attachments as required to New York Zoological Society permit application 50 CFR 17.22.

(1) The common and scientific names of the species sought to be covered by the permit as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce, etc.):

The New York Zoological Society hereby requests permission to purchase and transport interstate 2.6 (=2 males and 6 females) captive-born barasingha (*Cervus duvauceli duvauceli*). The ages of the specimens are as follows:

Males—1 born 1973; 1 born 1974.
Females—1 born 1971; 1 born 1972; 2 born 1974; 2 born 1975.

(2) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (i) is still in the wild, (ii) has already been removed from the wild, or (iii) was born in captivity;

The 2.6 barasingha were born in captivity.

(3) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife:

The 2.6 barasingha are captive-born, and represent no removal of wild stock of the species.

(4) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was raised in captivity, the country and place where such wildlife was born:

The 2.6 barasingha were born at the YO Ranch, Mountain Home, Texas 78058. The specimens are presently located at the YO Ranch.

(5) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed or maintained:

The 2.6 barasingha will be maintained at the New York Zoological Park, 185th Street & Southern Blvd., Bronx, New York 10460.

(6i) A complete description, including photographs or diagrams, of the area and facilities where such wildlife will be housed and cared for:

The New York Zoological Society seeks to establish a major propagating population of barasingha as a contribution towards the long-term survival of the species and as an educational exhibit in its forthcoming forty-acre "WILD ASIA" exhibit within the Bronx Zoo. The Society seeks to employ barasingha displays and propagating facilities as a force to arouse interest in the plight of vanishing species and as a means to raise the environmental awareness of the 2.5 million zoo-goers who visit each year.

Permanent off-exhibit quarters consist of a series of eight large corrals—approximate measurements follow: 3 corrals, some 75'x 100' each; 1 corral some 75'x75'; 1 corral some 50'x100'; 1 corral some 50'x50'; and 1 corral some 75'x150'. All corrals are equipped with open-fronted barns that will be used nightly. In addition, there are six isolation pens with barns. The exhibit consists of both grassy and forested areas much like the natural habitat of barasingha, it measures some 250 x 1000 feet. Attached, please find a drawing of the management facilities and exhibit for this species.

The barasingha will be exhibited daily for eight or nine months each year, as weather permits. They will return each evening to non-exhibit herd corrals where they will be fed and their health and behavior closely observed. Isolation pens are available should they become necessary for male separation, animals undergoing therapy, weaning, crating, or any other reason.

The diet will consist of Purina D. & H. grain ration, timothy and alfalfa hay, hydroponically grown oat and rye grass, with salt block and water always available and pasture.

(6ii) A brief resume of the technical expertise of the persons who will care for such wildlife including any experience the applicant or his personnel have had in raising, caring for, and propagating similar wildlife, or any closely related wildlife:

In the past, barasingha have been maintained most successfully at the New York Zoological Park. Starting with a trio in 1904, a total of 122 young were born at the Bronx Zoo during the period 1904–1964. Only one additional animal from outside the park, a male in 1946, was added to this herd. The last of the specimens died in August of 1965. Crandall (1964) noted that barasingha are thoroughly hardy in the New York City climate and use the provided shelters only occasionally.

Barasingha at the Bronx Zoo will receive direct care from keepers exceptionally experienced with a variety of hoofed animals, under the supervision of Curator of Mammalogy, James G. Doherty. The staff of the Department of Mammalogy has had a long-standing commitment to conservation and the captive-breeding of endangered species as evidenced by long-term breeding programs for many species, including the endangered Siberian tigers, snow leopards, Mongolian wild horse, Pere David deer and wisent. These programs are in the process of expansion as herds increase and other programs are being developed. The number of less endangered species exhibited is being reduced to accommodate the expansion of the successful breeding programs for rare or vanishing species. The Society's total collection has been reduced from 1,000 species to 675 species in the past eight years while the number of specimens has remained at 3200. *Curricula vitae* of Curator of Mammalogy James G. Doherty; Assistant Curator of Mammalogy Mark C. MacNamara; Veterinarians Emil P. Dolensek, Raymond L. Deiter, and Alan Belson are attached. A list of consultants in animal management and medicine is also attached.

The animals will be monitored as needed by the staff of the Society's Animal Health Department, under Dr. Dolensek, resident veterinarian; Dr. Deiter, assistant veterinarian; and their consultants in various specialties (see attached list). Each animal will be tuberculin-tested and given a complete health check upon arrival at the Bronx Zoo. The Society's animal hospital has excellent facilities for pathology investigations and necropsies. Parasite counts will be continuously monitored and treated as circumstances indicate.

(6iii) A statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook:

The history of the New York Zoological Society, back to the days when bison born and raised in the Bronx Zoo were shipped west to stock the national bison ranges in Oklahoma, Montana and South Dakota, is rich in examples of participation and cooperation with other institutions where breeding programs are working to save species from extinction. Below is a list showing the mammalian species now on loan from the Bronx Zoo to other institutions for captive-propagation purposes:

0.1 Matschie's tree kangaroo.
1.0 Black lemur.
2.1 Ring-tailed lemur.
1.0 Common marmoset.
1.1 Mandrill.
2.1 Bornean orang-utan.
0.1 Sumatran orang-utan.
1.0 Lowland gorilla.
0.1 Mountain gorilla.
0.1 Madagascar ring-tailed mongoose.
0.1 Flat-headed cat.
0.2 Siberian tiger.
0.1 African elephant.
1.0 Black rhinoceros.
1.1 Square-lipped rhinoceros.
2.7 Pere David deer.
3.5 Brow-antlered deer.
1.0 Roosevelt elk.
1.0 Okapi.
2.1 Eland.
1.1 Takin.

The New York Zoological Society has always encouraged studbooks and has contributed where possible. The New York Zoological Society is an active contributor to the following studbooks:

Pigmy hippopotamus, Pere David deer, Rhinoceros, Wisent, Mongolian wild horse, Wild canids, Siberian tiger, Snow leopard, Gorillas, Orang-utan, Okapi, Gaur.

Although representatives are no longer in the collection, we have participated in the following studbooks in the past:

Anoa and oryx, Wanderoo, Cheetah, Woolly tapir, Golden lion marmoset, Vicugna.

We have completed surveys in preparation for studbooks on the following:

Clouded leopard, Siberian ibex, Rare leopard subspecies.

The New York Zoological Society is a voluntary paid member of the USDI and AAZPA supported International Species Inventory System (ISIS). The Society was one of the first zoological organizations to stress the need for an ISIS-type of international computerized census and studbook of living zoo collections. NYZS would cooperate if a studbook were developed for barasingha.

(6iv) A detailed description of the type, size and construction of all containers into which such wildlife will be placed during transportation or temporary storage, if any, and of the arrangements for feeding, watering, and otherwise caring for such wildlife during that period:

Shipment will be made directly from Mountain Home, Texas to New York by truck, and effected by professional animal transporters. Crates will allow for size and postural adjustment of the animals and for proper cleaning, feeding and watering in transit.

(6v) For the 5 years preceding the date of this application provide a detailed description of all mortalities involving the species covered in the application and held by the applicant, if any (or any other wildlife of the same genus or family held by the applicant), including the causes of such mortalities and the steps taken to avoid or decrease such mortalities.

Barasingha have not been maintained at the New York Zoological Park since 1965. Attached is a summary of births and deaths in the genus *Cervus* (at the New York Zoological Park this includes Formosan sika deer and Roosevelt elk) in the years 1971–1975.

Half of the mortalities were newborn or very young fawns. The necropsy findings reflect normal mortality in newborn due to failure to nurse or due to rejection by the mother. Other mortalities included superannuated animals, and trauma among males during the rut.

Upon completion of the new exhibit area in WILD ASIA, the Formosan sika deer herd will be moved to a new, larger area which will reduce social stress. Through our records we are attempting to identify the females not rearing their young.

Attached necropsy reports covering the past five years.

(7) Copies of the contracts and agreements pursuant to which the activities sought to be authorized by the permit will be carried out; such copies must identify all persons who will engage in the activities sought to be authorized, and must also give the dates for such activities:

Attached.

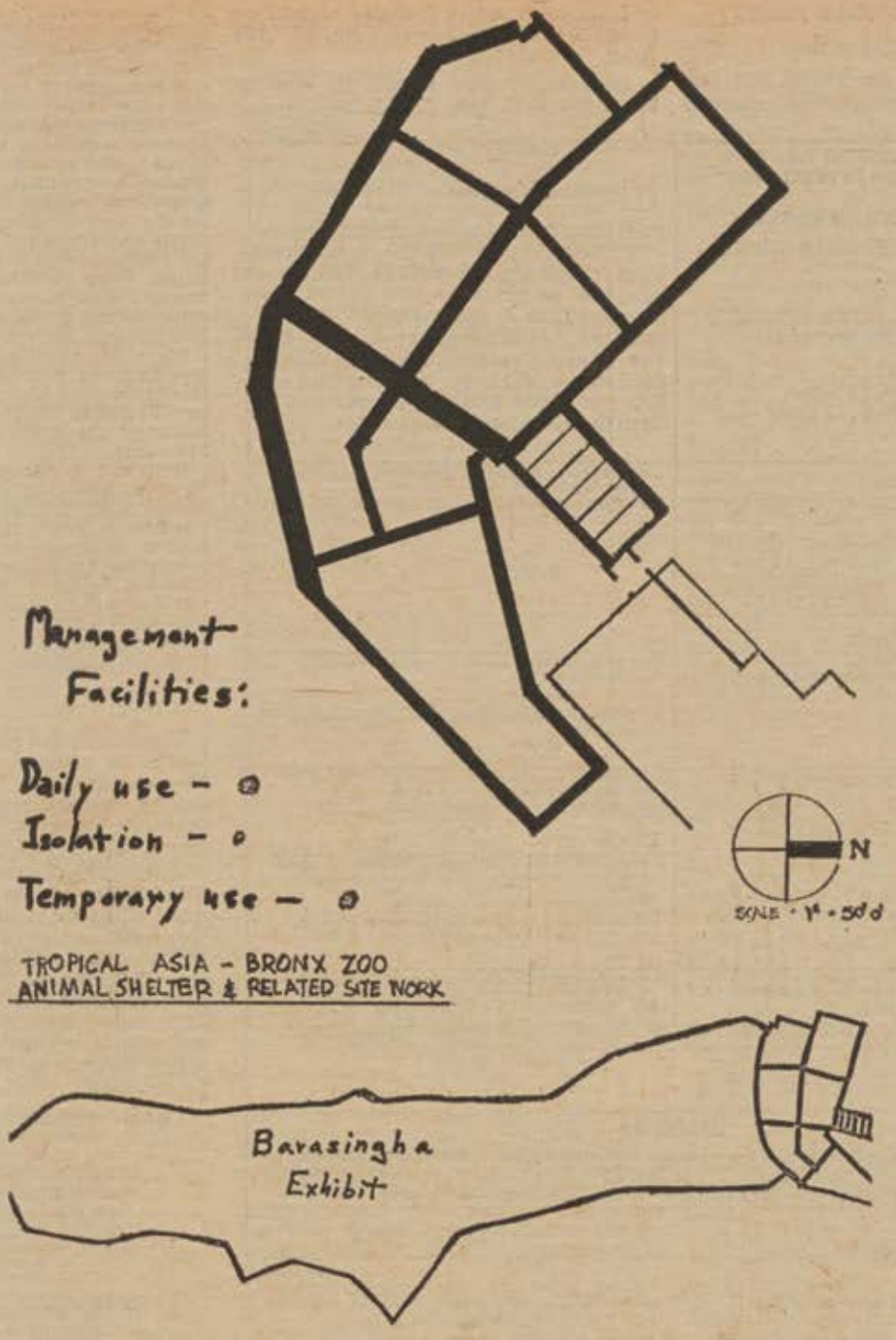
(8) A full statement of the reasons why the applicant is justified in obtaining the permit:

The New York Zoological Society has a long-term commitment to wildlife conservation. The financial support of the New York Zoological Society is sufficient to assure the continuity of its conservation and propagation activities (see attached annual report).

The New York Zoological Society guarantees that the propagation of the barasingha is a long-term commitment of its staff. Our husbandry and facilities will be updated as our knowledge of barasingha improves. Even so, if for some reason it became necessary to terminate our efforts, we would immediately make our barasingha available to a zoological institution which would continue this program.

Attachments

1. Births and deaths in genus *Cervus* in New York Zoological Park 1971–1975.
2. Drawing of animal management facilities, WILD ASIA, New York Zoological Park.
3. *Curricula vitae* for curatorial and animal medical staff.
4. List of New York Zoological Society animal medical consultants.
5. New York Zoological Society annual report.



Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-552-07; please refer to this number when submitting comments. All relevant comments received within 30 days of the date of publication will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc.77-1659 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Charles Sivelle, 49 Westcliff Drive, Dix Hills, New York 11746.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
[X] IMPORT OR EXPORT LICENSE [ ] PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. To export 4 Edwards hens (Lophura edwardsi) '76 hatch, purpose to provide new blood for propagation & enhancement of the species in Europe, as a gift to the World Pheasant Association. Recipient will be T. Winstanley, 10, Reedings Road, Barrowby, Grantham, Lincs, England

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Charles Sivelle
41 Westcliff Drive
Dix Hills, N.Y. 11746
516-423-6146

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
[X] MR. [ ] MRS. [ ] MISS [ ] MS.
HEIGHT: 5'11" WEIGHT: 190 lbs.
DATE OF BIRTH: 9-24-18
COLOR HAIR: Brown
COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: 516-423-6146
SOCIAL SECURITY NUMBER: 125-97-0277
OCCUPATION: Manufacturer
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: n.a.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: n.a.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED: n.a.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: Export from New York City to England

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [X] YES [ ] NO
(If yes, list license or permit numbers): PRT 8 306-C, 5-PR-1084 ES-68

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [X] YES [ ] NO
(If yes, list jurisdictions and type of documents): Necessary Import Number to be supplied by Importer

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: No fee required

10. DESIRED EFFECTIVE DATE: At once

11. DURATION NEEDED: 3 months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Attachment

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Charles Sivelle
DATE: 11-30-76

3-200
8/74

CHARLES SIVELLE,
41 WESTCLIFF DR.,
DIX HILLS, N.Y., *December 2, 1976.*

DIRECTOR (FWS),
U.S. Fish and Wildlife Service,
P.O. Box 19183,
Washington, D.C. 20036.

DEAR SIR: The undersigned hereby applies for an Endangered Species Permit under Section 10(a) of the Endangered Species Act of 1973. The following information is submitted pursuant to paragraph 17.22 of Volume 40, No. 188 of the FEDERAL REGISTER.

Request is made for a permit to export 4 female Edwards pheasants (*Lophura edwardsi*) 1976 hatch, as a gift for the purpose of providing new blood for propagation and enhancement of the species in Europe. The specimens referred to were propagated in the aviaries of the undersigned at 41 Westcliff Drive, Dix Hills, N.Y., 11746 during 1976.

Mr. Winstanley is one of the foremost propagators of rare pheasants in England. He has successfully raised quantities of Edwards pheasants (*Lophura edwardsi*) and other rare pheasants during the last 12 years. His pheasant aviaries contain inside protective enclosures of 1,200 cubic feet and outside runs of approximately 3,000 cubic feet. The enclosures are landscaped and his management techniques have proven successful in the past. The British Ministry of Fish and Wildlife has authorized him to maintain a Quarantine Station so that he can arrange for the direct importation.

The undersigned is a prime propagator of the *Lophura edwardsi* pheasant in the United States today and is participating in the World Pheasant Association project for the enhancement of the survival and propagation program for this endangered pheasant.

The recipient will participate in a cooperative breeding program established by the World Pheasant Association and all data will be collected by Dr. Tim Lovell, official record holder of the World Studbook on Edwards Pheasants.

Birds will be shipped in crates similar and equal to International Air Transport Association taken from Live Animal Regulations 5th Edition, Feb. 7, 1975, containing litter on bottom, containers for feed and water and a padded top for the protection of the birds.

Proper import permits including any permit that applies to the Convention on International Trade and Endangered Species will be provided by Mr. Winstanley and the World Pheasant Association.

Sincerely yours,

CHARLES SIVELLE.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-526-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1660 Filed 1-8-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: University of California, Museum of Vertebrate Zoology, 2593 Life Sciences Building, Berkeley, California 94720.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
A request is made to collect twenty (20) larval or adult individuals of the endangered species Ambystoma macrodactylum croceum for use in a study of the genetic relationships and variation among populations of this species from throughout its range.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Dr. Richard D. Sage
Museum of Vertebrate Zoology
2593 Life Sciences Building
University of California
Berkeley, California, 94720
805-642-3567

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

	HEIGHT	WEIGHT
☐ MR. ☐ MRS. ☐ MISS ☐ MS.	5'11"	180
DATE OF BIRTH: 8 June 1943	COLOR HAIR: Br.	COLOR EYES: Br.
PHONE NUMBER WHERE EMPLOYED: 805-642-3567	SOCIAL SECURITY NUMBER: 558-58-0571	

OCCUPATION: Curatorial Associate, Herpetology

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
Museum of Vertebrate Zoology

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION:
The Museum of Vertebrate Zoology is a non-profit organization devoted to research on the natural history and systematic relationships of animal species.

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.:
Dr. David B. Wake, Director, 642-3567

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED:

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED:
1. Santa Cruz co., California
2. Berkeley, Alameda co., Calif.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit number)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
See attached letter from E.H. Vestal

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $

10. DESIRED EFFECTIVE DATE: February, 1977

11. DURATION NEEDED: Feb.-Dec., 1977

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
1. Outline of proposed research project; 2. Letter from E.H. Vestal

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Richard D. Sage
DATE: 3 December 1976

DEPARTMENT OF FISH AND GAME,
YOUNTVILLE, *Calif., November 29, 1976.*

DR. RICHARD D. SAGE,
Associate Curator of Herpetology,
Museum of Vertebrate Zoology,
University of California,
Berkeley, California 94720.

DEAR DR. SAGE: Thank you for attending the meeting of the Committee for Management and Recovery of the Santa Cruz Long-toed Salamander at the Museum of Vertebrate Zoology, University of California, Berkeley, October 28, 1976. Coincidentally, the full Recovery Team for the animal was present and appreciated the presentation of your proposal to collect for genetic study by electrophoretic and histochemical staining techniques twenty (20) specimens of the animal. You have described proposed collection of ten (10) animals each from two known breeding locations in Santa Cruz County, Ellicott Pond and Bennett-McClusky Slough, the collections to be made during the breeding season of spring, 1977.

Provision is made under Federal and State laws and regulations for the kind of genetic research you have proposed. Moreover, in the opinion of the Recovery Team, a determination of the genetic distinctiveness of the subspecies would have a significant bearing on management of the animal. We, therefore, recommend approval of your proposal and would urge you to apply for the necessary Federal permit to take the required number of animals. John Brode will send you the necessary application form and a copy of the Federal Regulations. It is our understanding that *A. m. croceum* larvae would serve the purpose of your research, and we would suggest you apply for them instead of adults.

If the Recovery Team can be of further assistance to you please let me know.

Sincerely yours,

ELDEN H. VESTAL,
Leader, SCLTS Recovery Team.

ELV:mb
CC: PHILIP LEHENBAUR,
U.S. Fish and Wildlife Service, Portland, Oregon.
JOHN BRODE,
Associate Fishery Biologist.

GENETIC RELATIONSHIPS AMONG AMBYSTOMA MACRODACTYLUM POPULATIONS

Proposal: Permission is requested to collect twenty specimens of the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*). These animals would be used in an analysis of the genetic relationships of this geographicaly isolated population and the larger, contiguous population of the nominate subspecies.

Introduction to the proposal: Through the combination of electrophoresis and histochemical staining reactions it has become possible to identify protein molecules in tissue samples. As discrete products of specific gene loci coding for protein synthesis, the enzyme bands revealed by electrophoretic techniques allow us to measure directly the genetic similarities and differences among organisms. It is now possible to quantify the genetic relatedness among individuals within and between populations. We no longer have to infer relatedness from the complexly controlled, external phenotypes of the animals. The techniques of electrophoresis are being used extensively in determining genetic relationships among many kinds of organisms, and it has become an extremely powerful tool to the systemtist.

The long-toed salamander (*Ambystoma macrodactylum*) is a widespread species in the northwestern parts of the United States and adjacent Canada. The species has a largely continuous distribution throughout most of its range. The one exception to this pattern is the population isolated along the coastal plain of Santa Cruz county in central California. Separated by 150 miles from the nearest population in the Sierra Nevada mountains to the east, and by more than 400 miles from coastal populations in Oregon, this population has persisted in isolation from the principal gene pool of the species for an unkonwn period of time. Based on a distinctive body coloration this isolated population was described as a different subspecies (*A. m. croceum*). Although the use of a subspecies designation implies the genetic distinctivenes of this population, no quantitative measure has been made of this divergence.

An electrophoretic comparison of this population with samples from the main body of the distribution of the species will allow us, for the first time, to obtain such a measure of the genetic relationship of *A. m. croceum* and the nominate subspecies. It is for such an electrophoretic analysis of this population that I would like to collect 20 individuals of the Santa Cruz subspecies. At present there are available for analysis samples of 20–50 individuals from populations in the Sierra Nevada mountains of California, central Oregon, Washington and Montana.

Results expected: Electrophoretic surveys of 20–30 enzyme loci of these four samples will allow us to describe the main gene pool of the species. The sample of 20 animals from the Santa Cruz population will provide information for a measure of the genetic distinctiveness of this isolate. In addition, data from this analysis will provide us with a measure of the amount of genetic diversity present in the gene pool of the Santa Cruz area. In order to maximize the amount of genetic information that can be obtained from these animals, I would like to subdivide the sample into ten individuals from two of the known breeding sites (Ellecott Pond and Bennett–McClusky Slough). This strategy will allow us to detect any major geographic diversity in the population structure between these colonies.

The immediate result of this analysis will be to describe in precise genetic terms the distinctness of this endangered, isolated population. It will reveal the presence of any major substructuring of the populations at the different breeding sites: information that will be valuable in a management program. In a more general sense the study will be of value by providing information on population structuring in animals with fixed breeding sites, but widespread geographic distributions. The degree of genetic divergence detected between the parental populations and the Santa Cruz isolate may indicate the length of geologic time since the separation of *A. m. croceum* from the main gene pool.

Addenda: I will point out that the excess tissues not used in the electrophoretic analy-

sis will be deposited in the newly established Museum of Vertebrate Zoology frozen collection. In this way they will be available for use by workers in the future who require molecules which have not been denatured by the conventional chemical preservation techniques.

17.22 (3) N.A.
17.22 (4) N.A.
17.22 (6) N.A.

Richard David Sage, Associate Curator of Herpetology, Museum of Vertebrate Zoology, University of California, Berkeley, California 94720, 28 October 1976.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-543-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1661 Filed 1-18-77;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have ben received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: McRoberts Game Farm, Gurley, Nebraska 69141. Jerry G. McRoberts.

OMB NO. 42-R1370

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. IF APPLICATION FOR (Indicate only): [ ] IMPORT OR EXPORT LICENSE [X] PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED: Authorization to engage in interstate commerce of endangered pheasants which have been determined to exist in "Captive Self-sustaining Populations" within the U.S.; for a period of 2 years. (1) Brown-eared (Crossoptilon mantchuricus) (2) Edwards (Lophura edwardsi) (3) Hikado (Syrmaticus mikado) (4) White-eared (Cross crossoptilon)

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
McRoberts Game Farm
Gurley, NE 69141
308 884-2371

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
[X] MR. [ ] MRS. [ ] MISS [ ] MS.
HEIGHT: 6'3 WEIGHT: 190
DATE OF BIRTH: 8-30-42 COLOR HAIR: Brn COLOR EYES: Brn
PHONE NUMBER WHERE EMPLOYED: 308 884-2371 SOCIAL SECURITY NUMBER: 508-54-6542
OCCUPATION: Farmer-Game Farmer
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: McRoberts Game Farm

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: Family farm partnership engaged in raising farm crops and game animals and birds.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: Jerry McRoberts (partner) 308 884-2371
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED: N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: On Farm ½ mile north and ½ mile west of Gurley, Nebraska

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [X] YES [ ] NO
(If yes, list license or permit number(s)): √PRT 8-346-C-X

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [X] YES [ ] NO
(If yes, list jurisdictions and type of document): Nebraska state game farm permit #4026

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ N.A.

10. DESIRED EFFECTIVE DATE: Date of issuance

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
For information required under 17.33 see application for endangered species permit PRT 8-346-C-X issued 3-18-76.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Jerry G. McRoberts DATE: 10-26-76

3-200 10/76 GPO 835-042

Additional information required for Captive Self-Sustaining permit—see file FWS/WPO 2-468-25—applied for by McRoberts Game Farm.

17.33(a) (1) See 2. of Form 3-200.

(2) See endangered species permit application PRT 8-346-C-X. Same as in 1975.

(3) See PRT 8-346-C-X.

(4) We will willingly participate in cooperative breeding programs and studbooks.

(5) All birds are shipped in cardboard apple boxes—approximate dimensions 24"x 18"x18". The top of the boxes slip clear down over the bottom and adequate ventilation holes are cut if not present. Alfalfa hay is put on the bottom, and enough apples and soaked millet grain are placed in the container to probably sustain the bird for over a week. Shipment via Air Freight usually takes less than 24 hours. In four years of shipping in these containers, we have never lost a bird.

(6) See PRT 8-346-C-X. No fatalities in the last year.

(7) (i) The purpose of this permit is primarily for disposition of progeny of the four species listed. We are fairly successful breeders, and, as we are one of the few, if not the only breeder of these species in Nebraska, surplus birds produced must go outstate or be eaten (releasing is illegal in Nebraska). New blood occasionally needs to be acquired from other breeders to insure a vigorous breeding program and prevent inbreeding.

(7) (ii) In the event of the unforeseen termination of McRoberts Game Farm all wildlife would go to reputable breeders and zoos.

Hope this information is sufficient.

Sincerely,

JERRY MCROBERTS.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-468-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1658 Filed 1-18-77; 8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: James Everett Fouts, 2444 Somerset, Wichita, Kansas 67204.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Check only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS REQUIRED
Authorization to engage in interstate commerce of seven endangered pheasants which have been determined to exist in "Captive Self-Sustaining Populations within the U.S.;for a period of 2 years. (1) Brown-eared (Crossoptilon mantichuricum),(2) Edwards (Lophura edwardsi),(3) Bar-tailed (Syrmaticus humiae),(4) Mikado (Syrmaticus mikado), Palawan peacock (Polypectron emphanum), Swinhoe (Lophura swinhoii),(7) White-eared (Crossoptilon crossoptilon).

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
James Everett Fouts
2444 Somerset
Wichita, Kansas 67204
316-838-8339
(5)
(6)

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

	HEIGHT	WEIGHT
☒ MR. ☐ MRS. ☐ MS. ☐ MISS	5'9"	145
DATE OF BIRTH: 6/21/53	COLOR HAIR: brown	COLOR EYES: brown
PHONE NUMBER WHERE EMPLOYED: 316-942-2212	SOCIAL SECURITY NUMBER: 510-60-2562	

OCCUPATION: Zoo Keeper

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: none

5. IF "APPLICANT" IS A BUSINESS, AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: n.a.

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: n.a.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED: n.a.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
2444 Somerset
Wichita, Kansas 67204

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list licenses or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of documents)
none required

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ n.a.

10. DESIRED EFFECTIVE DATE: date of issuance

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.33

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not stamp): James E. Fouts
DATE: 7/20/76

3-200
10-76
GPO 885-042

ATTACHMENT 17.33 TO PERMIT REQUEST

(1) A "Captive Self-Sustaining Population" permit is requested for the following species of pheasants: (1) Brown-eared pheasant (*Crossoptilon mantichuricum*); (2) White-eared pheasant (*Crossoptilon crossoptilon*); (3) Bar-tailed pheasant (*Syrmaticus humiae*); (4) Mikado pheasant (*Syrmaticus mikado*); (5) Palawan peacock pheasant (*Polypectron emphanum*); (6) Edwards pheasant (*Lophura edwardsi*); (7) Swinhoe pheasant (*Lophura swinhoii*).

The applicant seeks a permit to authorize an unlimited number of transactions through interstate commerce over a 2 year period of time for the 7 species of pheasant listed above in this paragraph, with the permit being subject to renewal according to section 13.24.

(2) A diagram has been attached as requested. The avaries or pens to house the birds listed above vary in size from 280 sq. ft. to 360 sq. ft. All of these avaries are modular and are comprised of wood and wire. In all there are 16 avaries 8 of which have a 100 sq. ft. indoor flight that has heat available in the winter. All avaries are designed to be predator proof as all walls on the perimeter of the compound are of a heavy guage wire and plywood. The entire compound is surrounded by a 4 ft. fence with wire buried at its base and a 110-volt electric wire along the top. This has proven to be satisfactory as no losses have resulted due to predators. The area of the compound is sufficiently isolated to allow maximum isolation and privacy by the thick vegetation that surrounds it on all four sides.

(3) (a) Two years experience raising pheasants privately. The applicant now keeps 11 species of pheasants and this past breeding season successfully bred and raised all seven of those species capable of reproduction, including the rare Palawan peacock pheasant and the Gray peacock pheasant. A total of 87 chicks were raised this year from the 7 species bred.

(b) Over 4 years experience in an approved zoo where experience has been gained in the husbandary of many birds and animals. (Sedgwick County Zoo, Wichita, Ks. 67212) Currently employed there.

(c) Member of the world Pheasant Association

(d) Member of the American Pheasant and Waterfowl Society

(e) Member of the Game Bird Breeders Cooperative Federation

(f) Member of the American Association of Zoological Parks and Aquariums.

(4) The applicant is quite willing to cooperate with all breeding programs and has already done this with several pheasants which are not endangered. The applicant is also eager to cooperate in the establishment of studbooks for endangered pheasants and is currently acting in an advisory capacity to the World Pheasant Association in regard to the establishment of a studbook for the Edwards pheasant. The applicant currently is formulating and maintaining a studbook for the Clouded Leopard for IUCN and as a result fully realizes the importance of studbooks in the proper captive management of an endangered species.

(5) The pheasants will be individually crated in light wooden crates measuring approximately 24x12x18 inches. Feed and water will be provided. All birds will be shipped by air non-stop from New York to Wichita and will be crated no more than 18 hours.

(6) To date no mortalities have resulted in either of the endangered pheasants kept in the applicants collection, or in any of the other 8 species kept.

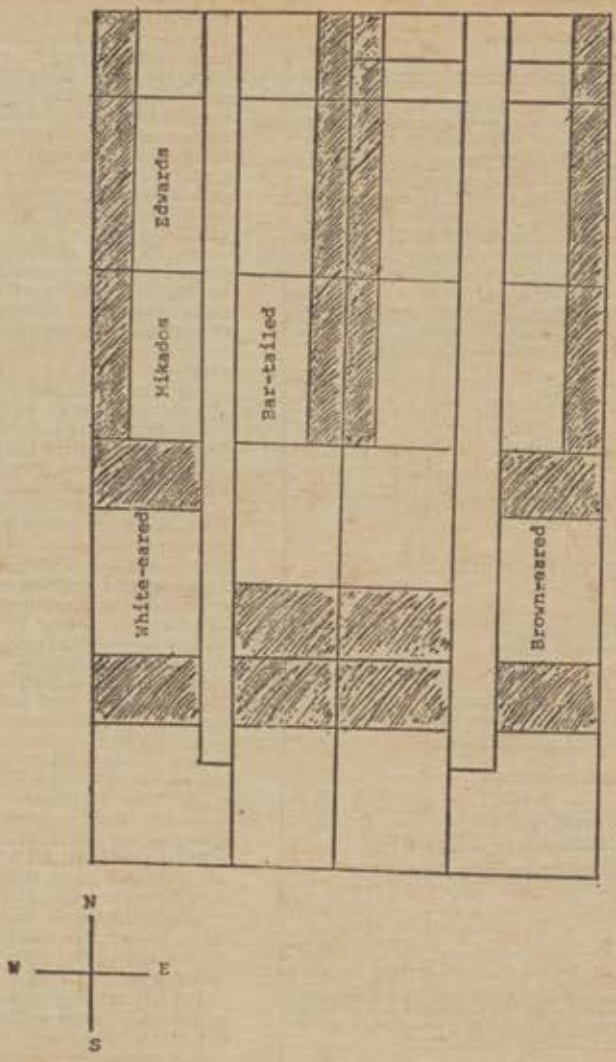
(7) (i) The applicant is making this application to gain authorization to engage in interstate commerce with the 7 pheasants listed under No. 1. This will enable the applicant to dispose of progeny raised each year to qualified breeders and thereby recover all costs invested in the above species. This will also increase the "captive self-sustaining population" of each of the species involved and thereby enhance their overall chances for survival. The applicant also contends that this will better the probability of reintroduction into their natural habitats when environmental and political situations will allow such action.

(ii) Upon termination of my breeding program, those birds covered by the permit as well as those which are not will be distributed among qualified breeders of those species concerned and/or be placed in the trust of the World Pheasant Association.

Sincerely,

JAMES E. FOUTS.

Accompanying Diagram to #2



(1) Overall dimensions: are 58 x 102 ft.
a. 8 pens 12 x 22 ft.
b. 8 pens 12 x 24 ft.
c. 4 pens 12 x 6 ft.

(2) Shaded areas denote shelters:
a. the 8 on the S ½ of the compound are heated
b. the 8 to the N will have heat lamps available this winter.

(3) entire perimeter has a 2 ft. visual barrier to inhibit potential predators. From that point on is either plywood or a 1x2 welded mesh.

(4) All doors open onto a covered hallway to prevent an escape or intrusion by unwanted visitors Both hallway doors are locked at all times.

(5) Currently landscape work is being done in preparation for the birds requested by this permit. The old substrate is also being changed to prevent contamination of the new birds.

(6) I currently keep Bar-tailed and Palawans in my collection and plan to obtain Mikados, White-eared, Brown-eared, Edwards. I do not have plans at this time for Swinhoe. These birds will be housed according to the diagram.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-334-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1651 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Paul B. Hamel, Department of Zoology, Clemson University, Clemson, South Carolina 29631.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Permission is sought to search for, locate, and study Bachman's Warblers (Vermivora bachmanii), an endangered species, and to make photographs documenting the discovery of this species.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or association for which permit is requested)
Paul B. Hamel
Dept. Zoology
Clemson Univ.
Clemson, SC 29631
803/656-3247

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ M ☐ F ☐ W ☐ NB
HEIGHT: 5'11" WEIGHT: 180 lb.
DATE OF BIRTH: 7 Oct. 1948
COLOR HAIR: Brn. COLOR EYES: Blu.
PHONE NUMBER WHERE EMPLOYED: 803/656-3247
SOCIAL SECURITY NUMBER: 367-48-2901
OCCUPATION: Research scientist - graduate student
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
Ph. D. candidate, Dept. Zoology, Clemson Univ.

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
South Carolina, Alabama, Missouri, Arkansas, Kentucky, or any other location where birds may be found.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number)
Banding permit, 09613

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
State permits will be acquired pending approval of this permit.

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:

10. DESIRED EFFECTIVE DATE: 10 March 1977

11. DURATION NEEDED: Three years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Please see attached sheets describing activities and larger study of which they are a part.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not type): Paul B Hamel
DATE: 15 November 1976

RESEARCH TO DETERMINE THE STATUS OF BACHMAN'S WARBLER, AND THE EVOLUTIONARY, ECOLOGICAL, AND HISTORICAL FACTORS RESPONSIBLE FOR ITS DECLINE

A COOPERATIVE AGREEMENT (SUPP. 11 TO CONTRACT 18-400) BETWEEN THE U.S. FOREST SERVICE SOUTHEASTERN FOREST EXPERIMENT STATION AND THE COLLEGE OF SCIENCES, CLEMSON UNIVERSITY

Principal Investigator: S. A. Gauthreaux, Jr.

Research Associate: Paul B. Hamel.

Bachman's Warbler (*Vermivora bachmanii: Parulidae*) is an extremely rare and critically endangered species. This tenuous status necessitates research as soon as possible to determine current numbers, distribution, and management strategies to prevent the species' extinction. Furthermore, the Endangered Species Act of 1973 (Pub. L. 93-205) mandates such research.

An unknown number of Bachman's Warblers exist; among extant North American species, probably only the Ivory-billed Woodpecker (*Campephilus principalis*) is rarer. Activities covered by this permit, and part of the research problem outlined below, will be to search for, identify, photograph, and study all individuals encountered. The birds will at all times remain in the wild. Searches will be conducted in 1977, 1978, and 1979. In each year the searches will begin on 15 March and continue until 15 May. If unsuccessful, searching will terminate at that time; if birds are found, behavioral observations will be made upon them until they migrate from the area, possibly as late as 1 September.

Activities sought to be covered by this permit are as follows:

(1) Searches for Bachman's Warblers will be conducted in likely swamp habitats using a transect method whereby every 400 ft. along a transect a 2-man field party will stop and play a recording of Bachman's Warbler territorial song, alternating 1 min. of recording and 1 min. of silence, totalling 5 min. Once a bird has been located song will not be played back to it again. Individuals who will participate in field searches covered by this permit are P. B. Hamel, J. E. Cely, S. A. Gauthreaux, Jr., R. E. Gutkin, L. P. Faulk, R. G. Hooper, F. R. Moore, M. R. Lennartz, P. Gowaty, C. W. Helms, H. E. LeGrand.

(2) Detailed observations of foraging and other behaviors of breeding birds will be made to determine habitat utilization by this species during the breeding season. Initial non-destructive habitat measurements will be made at the time of discovery. Detailed non-destructive habitat measurements will be made after the breeding season. Behavioral observations will also be used to construct ethograms and time-activity budgets for the species.

(3) Photographs documenting the identification of adult birds, nests, eggs, or young found will be made. These will not necessitate construction of permanent blinds nor will they necessitate any damage to habitat. Absolute proof of identifications of this species is imperative, because it is so rare. Confidentiality of territory locations and nest sites is also imperative, for the same reason. Two individuals only, S. A. Gauthreaux, Jr., and R. G. Hooper, will be taken to locations of birds to confirm the sightings; other interested persons will be able to see published photographs at a later time.

(4) After the nesting season nests will be collected for study of nest-building behaviors. No attempt will be made to collect any live individuals; should any dead individuals or unhatched eggs be found, they will be made into scientific specimens and deposited in the U.S. National Museum of Natural History.

Although systematic searches have recently failed to locate any individuals of the species (Hamel, Hooper, Wright, "Where is the Reverend Bachman's Warblem?" *South Carolina Wildlife*, March-April, 1976; Hamel and Hooper, "Bachman's Warbler—the most critically endangered," *S. C. Symp. on Endangered Species*, in press), the study of Bachman's Warbler can nevertheless make significant contributions to the investigation of endangered species. The question "Why is this species rare?" must be answered. A satisfactory biological answer should provide excellent insight into the causes of rarity and extinction. Such an answer would yield valuable results even if the primary goal of species preservation is not realized.

The case of Bachman's Warbler presents several testable hypotheses concerning the nature of endangeredness.

(a) Does the bird still exist, where, and how abundantly?

(b) What is the evolutionary history of the genus *Vermivora;* is Bachman's Warbler a primitive member of the genus or a recently evolved, highly specialized form?

(c) Have other species begun to compete with Bachman's Warbler in such a way as to exclude that species from its habitat?

(d) Has human modification made its breeding or winter environments uninhabitable?

The goal of the proposed research is to investigate each of these questions, their interactions, and potential effects on preserving this endangered species. The activities sought to be covered by this permit will be invaluable to the answering of questions a) through c). They will be indispensable to any attempt at determining critical habitat for this species, or at designing a management plan to avert the species' extinction.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-391-07; please refer to this number when

submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1652 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: I. & J Game Bird Farm, 4850 Alcorn Road, Fallon, Nevada 89406. Jim Chamberlain.

OMB NO. 42-R1435

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT ☐ EXPORT ☒ PERMIT
One time only

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
The requested Permit is required so that I may legally transport one pair of Brown Eared Manchurians (Crossoptilon-mantchuricum) pheasants to Mr. Jack Schuiteman in Canada to add new blood to his existing flock for the enhancement and survival of the species.

3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
C. J. (Jim) Chamberlain
4850 Alcorn Rd.
Fallon, Nevada 89406
Ph. (702)867-2237

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5-7½" WEIGHT: 140
DATE OF BIRTH: 18 February 1911
COLOR HAIR: Brown COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: As above
SOCIAL SECURITY NUMBER: 530-30-0581
OCCUPATION: Retired -Civil Service - Navy Dept.
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: None
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: N.A.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED: N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Relocation of birds from above address to Jack Schuiteman, R.R. #2, Devlin, Ontario, Canada

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)
Permits 2-352-07, 2-353-25 and 2-453-07 pending.

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Nevada Game Bird Farm License #1 (Commercial)

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ N.A.

10. DESIRED EFFECTIVE DATE: as soon as possible

11. [illegible] date of issuance of Permit

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CR 17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (IN INK): [signature] DATE: 30 November 1976

Attachment to Export Permit 50 CFR 17.22

(1) Common & Scientific name: 1 (one) pair of Brown Eared Manchurian pheasants (*Crossoptilon-mantchuricum*). Birds to be transported from Fallon, Nevada, U.S.A. to Devlin, Ontario, Canada for propagation and enhancement of survival.

(2) The above birds were hatched in captivity by the above applicant in Fallon, ND.

(3) No attempt has ever been made, nor is one contemplated by the applicant to obtain birds from the wild or in any other manner that would cause injury or death to this species.

(4) As in (2) above the birds were raised in captivity in Fallon, Nevada.

(5) The birds covered by this application will be housed at Devlin, Ontario, Canada.

(6) (i) to (v): This information is unknown by the applicant as I have never seen his game bird farm. However, Mr. Schuiteman is very highly regarded as a propagator of rare and endangered pheasants. The past

three years, '74, '75 and '76 he has been awarded the trophy for the outstanding pheasant breeder in all of Canada by the Canadian Pheasant & Game Bird Association.

(7) There are no contracts or agreements in this transaction.

(8) The issuance of this Permit will enable Mr. Schuiteman to add new blood to his existing flock of Manchurians which will greatly enhance the propagation and survival of this species.

(8) (i) Activity of the Permit covers only the transportation.

(ii) Transportation will be via Air, United Airlines and Air Canada.

(iii) Surplus birds will be either sold, loaned, or given to other dedicated aviculturist.

Additional attachment to Applications for "Exportation" Permit assigned Permit No. ?-514-? 50 CFR 17.22.

(5) The birds covered by this application will be housed on a 640 acre cattle and alfalfa Ranch located approximately 1½ miles from Devlin, Ontario, Canada. Owned by Mr. Schnitegan of Devlin, Ontario, Canada.

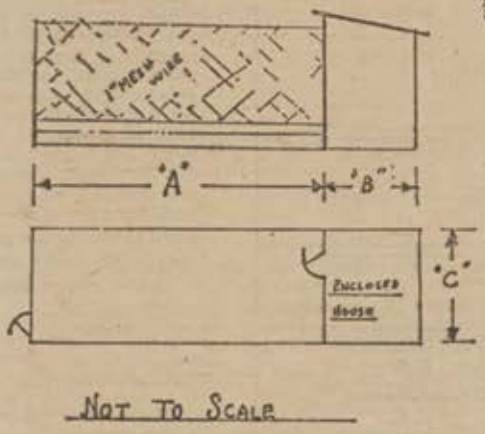
(6) (i) A diagram of both Brown Eared and Mikado pens and housing is attached. The housing contains infra-red heating which is used in extreme weather conditions.

(1) Species covered in this application are as follows:

1—Brown Eared Manchurian (female) of 1976 hatch (Crossoptilon-mantchuricum).

1—Brown Eared Manchurian (Male) of 1976 hatch (Crossoptilon-mantchuricum).

1—Mikado (Male) (Syrmaticus-mikado) of 1976 hatch.



NOT TO SCALE

JACK J. SCHUITEMAN
R.R. #2
DEVLIN-ONTARIO- CANADA

PRT 2-514-

BROWN MANCHURIAN PEN
"A" = 45'
"B" = 8'
"C" = 10'

MIKADO PEN
"A" = 20'
"B" = 8'
"C" = 10'

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-514-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1653 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: L & J Game Bird Farm, 4850 Alcorn Road, Felton, Nevada 89406. Jim Chamberlain.

Division of Law Enforcement
P. O. Box 19183
Washington, D. C. 20036

OMB NO. 42-R139

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
EXPORT [XX] PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Transfer of One (1) pair of Brown Eared Manchurian pheasants (Crossoptilon mantchuricum) from applicant to Mr. Len Glover, Stouffville, Ont. Canada.
Birds are for the introduction of new blood into the present flock of Brown Eared owned by Mr. Glover. This will greatly enhance the propagation and survival of this species.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Mr. C. J. (Jim) Chamberlain
4850 Alcorn Rd.
Fallon, Nevada 89406
Ph. (702)867-2237

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

	HEIGHT	WEIGHT
[XX] MR. [ ] MRS. [ ] MISS [ ] MS.	5'-7-1/2	140
DATE OF BIRTH: 18 February 1911	COLOR HAIR: Brown	COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: As above	SOCIAL SECURITY NUMBER: 530-30-0581	

OCCUPATION: Retired - Civil Service - Navy Dept.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION:
None

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
N.A.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Transfer of birds as noted in block #2 above.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [ ] YES [XX] NO
(If yes, list license or permit number(s))
PRO 2-352-07 & 2-353-25 Pending.

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [XX] YES [ ] NO
(If yes, list jurisdictions and type of document)
Nevada State Game Bird License #1.
Commercial.

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:
$ N.A.

10. DESIRED EFFECTIVE DATE: ASAP

11. DURATION NEEDED: 3 months after issuance of Permit as Canadian [illegible]

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED [illegible] ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Please refer to attachments on Import Application assigned File # 2-352-07 by your Office. Published in Federal Register 24 Sept. '76.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (DO NOT PRINT): [signature]
DATE: 12 October 1976

L AND J GAME BIRD RANCH,
Ornamental Pheasants,
Fallon, Nev.,
December 22, 1976.

U.S. DEPARTMENT OF THE INTERIOR,
Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C.
Attention: Mr. Fred Bolwahnn.
Reference: PRO 2-453-07.

DEAR MR. BOLWAHNN: In compliance with our phone conversation of a few days ago I am enclosing the information you requested on the location and pen size, etc. for the Brown Eared pheasants Mr. Len Glover, of Stouffville, Ontario, Canada hopes to obtain from me.

I sincerely hope that you will do every thing possible to expedite the paper work as I certainly would like to deliver these birds to him prior to the upcoming breeding season.

I am enclosing a copy of the Canadian Government Import Permit for these birds which I'd like to have inserted in his File No. PRO 2-453-07. In view of all the requirements and time element involved to obtain a Permit from our Government, it's quite interesting to note that Mr. Glover submitted his application to the Ottawa Office on the 29th of November and his Government issued the Import Permit on December the 8th. It's really a shame too Fred, as many of the breeders who have been so dedicated in keeping some of our endangered species going have given up the propagation of these birds due to so many restrictions.

Thank you so much for your interest and attention.

Sincerely,

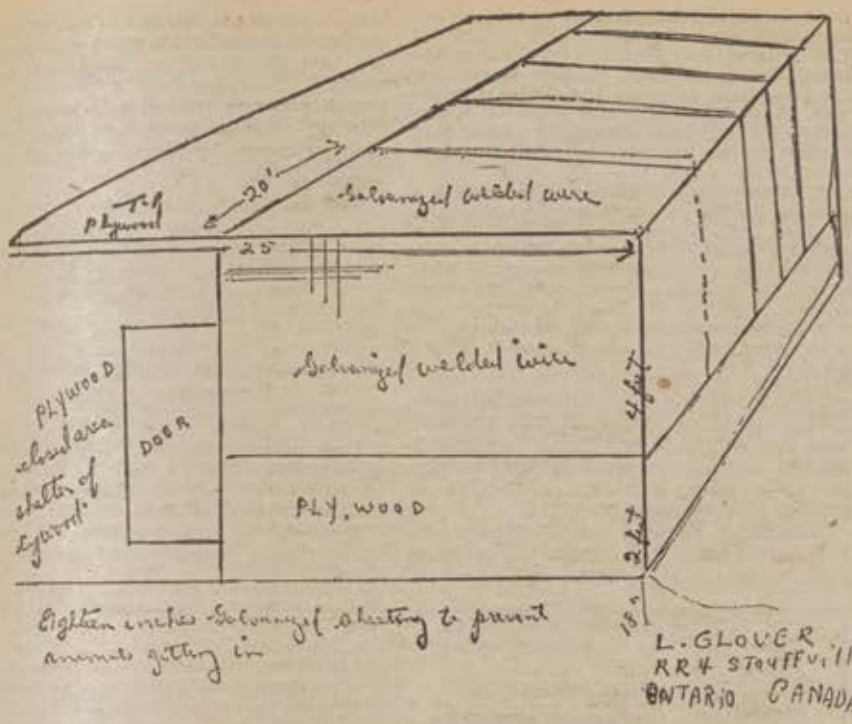
C. J. (JIM) CHAMBERLAIN.

ONE

These birds will be located 30 miles north east of Toronto on a seven and one half acre lot that is mostly wooded, it takes up the east half of lot five, concession six, in Whitchurch Township, address: R R No. 4, Stouffville, Ontario.

TWO

Pens are approximately 20' x 25' situated among trees on 7½ acre wooded lot. These pens are constructed of 2 x 4 lumber and plywood, with galvanized wire to keep out prowling animals, such as coons, rats, etc. They will be housed alongside other endangered pheasants such as Elliots, Swinehoe, plus Coppers Tragapans and other species kept over the last twenty years.



Export Permit—Title 50, 17:22, Attachment to Form 3-200

(1) Common and Scientific name: One (1) pair of Brown Eared Manchurian pheasants (*Crossoptilon-mantchuricum*). Both birds are of 1976 hatch (1) male and (1) female. Birds are to be exported to Canada to Mr. Len Glover of Stouffville, Ontario, Canada for new blood for his existing flock and for the enhancement of propagation and survival of this species.

(2) The above birds were bred and hatched in captivity by Jim Chamberlain of Fallon, Nevada, U.S.A. during 1976.

(3) No attempt has ever been made, nor is one contemplated by the applicant to obtain birds from the wild or in any other manner that would cause injury or death to this specie.

(4) As in (2) above the birds were raised in captivity by Jim Chamberlain in Fallon, Nevada during 1976.

(5) Birds covered by this application will be housed at R.R. No. 4, Stouffville, Ontario, Canada.

(6) (6i): Not known.

(6) (6ii): I have never met Mr. Glover personally nor have I been to his averies, however, I do know he has been raising rare pheasants for a good number of years and has a very good reputation as a breeder.

(6) (6iii): I feel positive Mr. Glover will participate in a cooperative breeding program.

(6) (6iv): All birds will be shipped in unused wire bound crates, suitably padded with foam rubber to prevent any scalping or injury. Food and water containers will be securely wired to the corners of the crates which will be of sufficient size for the young birds to stand and turn around in, approximately 18" x 24" x 13" high. Crates will be newly painted and marked "Live Birds" on all four sides. One (1) birds only will be shipped in each crate.

(6) (6v): Unknown.

(7) There are no contracts or agreements with Mr. Glover except for the purchase price of $150.00. There are no other participants in this transaction.

(8) to (8iv): I do not have the intimate knowledge of Mr. Glover's breeding operating facilities, objectives or future plans, but I can and do vouch for his sincerety and his ability as a breeder of rare pheasants.

(9): As Toronto, Ontario, Canada is the "pick-up" point of these birds it would seem that Chicago would be the better "designated Port" for the birds to pass thru.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-453-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-1654 Filed 1-18-77;8:45 am]

MARINE MAMMAL PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit has been received under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407).

Applicant: Jack W. Lentfer, National Fish & Wildlife Laboratory, U.S. Fish & Wildlife Service, 4454 Business Park Blvd., Anchorage, Alaska 99503.

UNIVERSITY OF ALASKA,
Naval Arctic Research Laboratory, Barrow, Alaska, Ser-R 0176.

To: DIRECTOR U.S. FISH AND WILDLIFE SERVICE, *Washington, D.C.*
From: *Research Veterinarian, Naval Arctic Research Laboratory, Barrow, AK.*
Subject: *Proposed Care and Maintenance of Polar Bear Club.*
Date: *December 23, 1976.*

Reference permit application No. FWS/WPO PRT2-454 submitted by Mr. Jack Lentfer, U.S. Fish and Wildlife Service, Anchorage, AK.

I have personally received the arrangements for transporting and maintaining the polar bear cub and find them more than adequate to provide a healthy and humane environment for the animal.

The animal will be maintained by a staff, including myself, experienced in care and management of polar bears held in captivity for research purposes.

L. MICHAEL PHILCO, MVD,
Research Veterinarian, NARL.

(Director, NARL; Assistant Director for Science, NARL; Animal Research Facility Supervisor, NARL, Jack Lentfer.)

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Anchorage, Alaska, December 27, 1967.

Mr. DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.

DEAR MR. DONAHOO: You requested additional information for an application for a permit for polar bear research (FWS/WPO PRT 2-454).

The bear would be housed in a 15' x 30' cage of steel bar construction. Bars are 2 inches in diameter and 4 inches apart. The floor is concrete with drains. Straw would be provided for bedding. Fecal material is removed from the cage daily and straw is replaced as necessary to maintain a sanitary condition. The cage has two compartments. The bear can be held in either compartment while the other compartment is hosed or steam cleaned. The cage is housed in a frame building within which temperature can be controlled. The cub will be fed canned milk.

A certification from a licensed veterinarian familiar with methods of transporting and maintenance is enclosed.

Sincerely yours,

JACK W. LENTFER,
Polar Bear Project Leader.

Application for Polar Bear Research Permit as Require dby
as Required by Marine Mammal Protection Act of 1972

Information required by 50 CFR 13.12.

1. Applicant's name, address, and phone number: Jack W. Lentfer, National Fish and Wildlife Laboratory, U.S. Fish and Wildlife Service, 4454 Business Park Blvd., Anchorage, Alaska 99503, Phone 907-274-7611.

2. Date of birth: 13 May 1931.
Height: 6'1".
Weight: 170 lbs.
Color of Hair: Light.
Color of Eyes: Blue.
Sex: Male.
Affiliation: Leader, Polar Bear Project, U.S. Fish and Wildlife Service.

3. Agency Director: Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service, Washington, D.C.

4. Location of Activity: Barrow, Alaska.

5. Information required by 50 CFR 18.31 for marine mammal research permit:

(1) Purpose: To determine cold tolerance of a polar bear cub at the time of emerging from the winter maternity den and protective mechanisms for combating cold at this age.

Dates of taking: March–April 1977.
Location: Point Barrow, Alaska.
Manner of taking: A cub will be taken from a female polar bear immobilized as part of a mark-recapture study authorized by Department of Interior Marine Mammal Permit No. PRT–9–13–C.

(2) Stocks, numbers and products to be taken, weights, ages, sizes, sex, and condition: The bear will be taken from a subpopulation of approximately 2,500 animals extending from northwestern Canada to Point Lay, Alaska. The animal will be approximately 3 months old, 8–9 kilograms in weight, nursing, and of either sex.

(3) Manner of transporting and maintaining and applicant's qualifications and experience: The animal will be transported from 10 to 50 miles from the point of capture on sea ice to the animal holding facility at the Naval Arctic Research Laboratory at Barrow, Alaska in the passenger compartment of a helicopter. It will be handled without drugging. It will be fed condensed milk and housed in a building in which the temperature can be controlled. Straw will be provided for bedding. Procedures for feeding and maintaining will be similar to those used by the applicant and Naval Arctic Research Laboratory animal colony personnel for successfully raising polar bear cubs of this age in the past. The applicant has conducted polar bear research since 1966 and has had extensive experience in handling animals. A biographical sketch is attached. A veterinarian employed full-time by the Naval Arctic Research Laboratory will be available for consultation.

(4) Description of research project: The Marine Mammal Protection Act of 1972 directs the Department of Interior to protect polar bears and their ecosystem. Of major concern are possible effects of disturbances to denning females and newborn cubs caused by increasing human activity in the Arctic. The period of greatest concern is immediately after females with new cubs have broken out of winter snow dens and cubs are becoming acclimated to outside conditions. Bears are the most subject to effects of disturbance immediately after emerging from dens because they are visible and do not have the protection of the den. Defense mechanisms available to adult bears are to leave the area of disturbance or go into the water. These actions could result in mortality to cubs, particularly during extremely adverse weather when animals normally would return to the maternal den or form a temporary den.

The objective of this research is to determine cold tolerance of cubs under various conditions (still air, various wind speeds, and ice water) they might be subjected to in the wild, and to describe physiological and mechanical mechanism, which protect cubs from cold. Findings could then be correlated with meteorological data to develop more definitive stipulations for protection than can be recommended now.

Dr. A. S. Blix, physiologist at the Institute of Arctic Biology, University of Alaska, will conduct studies to determine cold tolerance and mechanisms for protection from cold. Physiological studies will require the sacrifice of the cub at the end of the study period. A research proposal is attached.

6. Documentation for importation from foreign country; Not applicable.

7. Certification: I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

8. Desired effective date of permit: Work is planned for the period between 1 March and 30 April 1977. A permit is requested for the period 1 March 1977 through 30 April 1978, however, in case funding is delayed or work is not accomplished the first year for other reasons.

9. Date of application: 13 October 1976.

10. Signature of applicant: JACK W. LENTFER.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2–454–10; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77–1656 Filed 1–18–77;8:45 am]

THREATENED SPECIES PERMIT
Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 USC 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93–205).

Applicant: L. & L. Pheasantry, East Mt. Road, Hegins, Pennsylvania 17938. Lee A. Kiefer.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Check only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT
Captive Self-Sustaining Pop.

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Capative propagation of ornamental pheasants listed on the endangered species list.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
L. & L. Pheasantry
East Mt. Road
Hegins, Pa. 17938

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
commercial propagation of ornamental pheasants listed on the Endangered species list.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Lee A. Kiefer

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Hegins R.D.#2, Hegins Twp.
Schuylkill County, Pa.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit number)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE | 11. DURATION NEEDED

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink)
DATE
Aug. 10, 1976

3-200
(8/74)
GPO 895-042

L. & L. PHEASANTRY,
Hegins, Pa., September 3, 1976.

DIRECTOR (FWS/LE),
U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036.

Re: FWS/LE PRT 2-342-25.

GENTLEMEN: Here is the information as requested in your letter of August 25, 1976. 50 CFR 17.33(a):

1. Brown Eared Pheasant (Crossoptilon Mantchuricum), Edward's Pheasant (Lophura Edwardsi), Bar-Tailed pheasant (Syrmaticus humiae), Mikado pheasant (Syrmaticus mikado), Palawan peacock pheasant (Polyplectron emphanum), Swinhoe pheasant (Lophura Swinhoii), White-eared pheasant (Crossoptilon crossoptilon).

2. Metal and wood shelter with attached wire pens. (Photo enclosed.)

3. Propagator has 25 years experience in propagation of various species of game birds. Production of over 100,000 game species a year. Six terms as president of the Pa. Game Breeders Assn. President and director of North American Game Breeders and Shooting Preservation Assn. Member American Game Breeders Coop. Fed., The American Pheasant and Waterfowl Society, Pa. Poultry Fed. ten awards for propagation of ornamental pheasants and awarded the rank of Master Breeder. Received Game Bird Industry Man of the Year in 1975 from the Pa. Game Bird Assn. Graduate of Whitmoyer Poultry Health and Nutrition School. Also experience in formulation and manufacture of game bird feeds and use of medications for treatment and prevention of diseases in game birds and domestic poultry.

4. We will provide information under this section.

5. During transportation the corrugated carton which we manufacture and sell to other game breeders will be used. Brochure enclosed.

6. Average mortality has been about 17% as per our annual reports to the Pa. Game Commission. Most mortalities were due to weather conditions such as 24 inches of wet snow in Nov. 75 and 18 inches of rain in 24 hrs. in June of 75 and other extreme and unusual weather conditions. Several new construction methods and buildings have been a great advantage. In 75 the worst storm of the year brought about 8 inches of rain and mortality was only about 12 birds out of about 40,000 on the farm at that time. We are blood tested and under the Dept. of agriculture N.P/I.P. program and also have our own vet check the entire farm every 30 days. We are also inspected by the Pa. Game Commission twice a year. The department of Ag. in Harrisburg will be happy to give you a recommendation on our farm and the health of our stock.

7. Since both the FWS and I agree these species are endangered in the wild it is most important that people like myself continue to propagate these species in captivity or there will be none in the wild or in captivity. Since I am only producing more from captive stock and not taking any from the wild this can only increase the total number of these species. Most of these species will be sold to others who also wish to propagate these species and are in need of new blood lines or replacement of lost stock. Some are also sold to zoos where they will be propagated or displayed so the public will be able to see and learn more about endangered species.

Date requested for effective date is as soon as available and duration needed is for as long as permit is applicable or required.

LEE A. KIEFER.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-342-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1655 Filed 1-18-77;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Woodland Park Zoological Gardens, 5500 Phinney Avenue North, Seattle, Washington 98103. David Hancocks, General Director.

OMB NO. 42-R1570

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Authorizing delivery, receipt, carriage, transportation or shipment in interstate commerce, in the course of a commercial activity, or sale, or offer for sale, in interstate commerce of specimens of a captive, self-sustaining population.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Woodland Park Zoological Gardens
5500 Phinney Avenue North
Seattle, Washington 98103
Telephone: (206) 782-1265

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
A municipally owned, non-profit Zoological Park, Seattle, Washington. Involved in conservation, education, recreation, research and general public use.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
782-1265
David Hancocks, General Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Woodland Park Zoological Gardens
5500 Phinney Avenue North
Seattle, Washington 98103
Telephone: (206) 782-2919

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☐ NO
(If yes, list license or permit numbers)
PRT-2-0666-PT
PRT-2-0725-PT

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Not required

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE

11. DURATION NEEDED

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.33 50CRF

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) David Hancocks. DATE 12/76

3-200
10/76

YOUR SEATTLE PARKS AND RECREATION,
WOODLAND PARK ZOOLOGICAL GARDENS,
Seattle, Wash., October 13, 1976.

THE DIRECTOR,
Fish and Wildlife Service,
U.S. Department of the Interior,
Washington, D.C. 20240.

Ref: FWS/LE PRT 2-294-25.

DEAR SIR: I am in a quandary over two letters we have received from Mr. C. Bavin, Chief of your Division of Law Enforcement, about our application for a permit to conduct interstate commerce with specimens of captive self-sustained populations. Additional information has been requested for the following:

1. A brief resume on the background and technical expertise of persons responsible for the care of wildlife: Our Keeper force is made up of 6 Senior Keepers, 26 Keepers and 8 Assistant Keepers, and our staff includes a Veterinarian, a Veterinary Aide, a Technician, General Curator, a Supervisor, and a Manager of Operations. Can you confirm if you really need information on all of these individuals? The degrees of experience and expertise varies, of course, between all these people, as does their amounts of involvement and responsibilities.

2. Detailed descriptions of shipping containers, methods of transportation and duration of travel: This item is of such a complexity and so variable that it is even more difficult to attempt a sensibly useful answer than the first item. The size, type, and construction of containers is always different depending upon the animal being shipped. Naturally we always attemp to fabricate or purchase containers suitable to their purpose, but no standards other than safety and experienced common sense can apply. Similarly it is impossible to advocate any single method of transportation. We have shipped animals by air and by road, depending upon distance and convenience, and the length of time involved is always different. In general we always attempt to ensure that the animal will travel in safety and with the minimum disruption and inconvenience to avoid further jeopardizing what is invariably an unhappy or difficult experience for the animal.

3. Outline of our breeding program: With several hundred species in our collection it is impossible and unwise to have one program for breeding. With some species, for example, we expend great effort to try and ensure successful breeding, while with species such as Lions we are using implants to prevent conception.

I am presuming that the problems I have mentioned here are commonly heard from other Zoo organizations. Your assistance in this matter would be grealy appreciated.

Yours sincerely,

DAVID HANCOCKS,
General Director.

ATTACHMENT

1. To engage in interstate commerce in selling, buying and trading of the following:

MAMMALS

Jaguar (*Panthera onca*)
Lemur, black (*Lemur macaco*)
Lemur, Ring-tailed (*Lemur catta*)
Leopard (*Panthera pardus*)
Tiger (*Panthera tigris*)

BIRDS

Duck, Hawaiian (Koloa) (*Anas wyvilliana*)
Goose, Nene (Hawaiian) (*Branta sandvicensis*)
Pheasant, brown-eared (*Crossoptilon mantchuricum*)
Pheasant, Edward's (*Sophura edwardsi*)
Pheasant, Humes (bar-tailed) (*Syrmaticus humiae*)
Pheasant, Mikado (*Syrmaticus mikado*)
Pheasant, Palawon peacock (*Polyplectron emphorium*)
Pheasant, Swinhoe (*Sophura swinhoii*)
Pheasant, White-eared (*Crossoptilon crossoptilon*)
Quail, Maskfied Bobwhite (*Colinus virginianus ridgwayi*)
Teal, Layson (Layson duck) (*Anas laysanensis*)

2. The *Felina House* has both indoor and outdoor facilities. The indoor enclosures consist of (8) 16'x10'x 10' and (2) 16'x20'x10'. The outdoor enclosures consist of (4) approximately 40'x30', and (2) approximately 60'x90'. The outdoor enclosures have indoor resting facilities and there are maternity dens avaialble to all the felines. The *Primate House* has both indoor and outdoor facilities. There are (11) indoor enclosures; (3) 9'x13' x10', (6) 10'x13'x10', (1) 27'x18'x10', and (1) 20'x13'x10'. There are (9) outdoor enclosures; (2) 30'x15'x12', (2) 12'x12'x12', (1) 35'x12'x12', (1) 18'x12'x12', (2) 12'x15' x12', and (1) 18'x12'x12'. The outdoor facilities are available to all the primates, weather permitting. The *pheasants* are enclosed in a facility containing 10 outside enclosures 37'x10'x7'. The outside enclosures are heavily planted with shrubs and small trees. Each enclosure has an inside covered area 10'x7' x10, which can be heated when necessary. Water and feed are available in the covered portion.

3. Woodland Park Zoological Gardens has been in operation since 1900. We have a staff of 43 professional animal keepers. Breeding success has been good with most of our endangered fauna. Some felines include the Snow Leopard *Panthera uncia*, Tiger *Panthera tigris*, and the Leopard *Panthera pardus*. Among the birds, *Palawon Peacock Pheasant* and Trumpeter Swan *Cygnus cygnus buccinator*. Primate include Lion-tailed Macoque *Macocoa silenus* and Cotton-headed Tamarin *Saguinas oedipus*.

4. The Woodland Park Zoological Gardens is a participant in ISIS, International Species Inventory System. The Zoo has specimens both in and out on cooperative breeding programs. We are maintaining and contributing data on all endangered species studbook.

5. Containers used in the transportation of said wildlife shall be constructed of metal, wood, fiberglass or fiberwood and marked WILD ANIMALS, THIS END UP. Size of the container shall allow the animal to move freely. The floor of the container shall be liquid-proof and be covered with sufficient absorbent material. Adequate ventilation shall be provided. Containers constructed of wire mesh shall have wire screening cover on all air vents. Access into the container shall be adequately secured to prevent accidental opening. A water trough with adequate safe access for replenishment shall be provided, as well as receptacle for food as needed. There shall be several labels on each container with instructions on where to hold, when to feed and water. The label shall contain name, address and telephone number of both shipper and receiver.

6. Mortalities involving Jaguar, Leopard and Tiger during the last 5 years:

1976

Tiger twins, March 7, 1976, Aborted.
Tiger cub, April 3, 1976, Trauma by mother (maternal rejection).

1975

Leopard, January 2, 1975, Trauma by Jaguars (management error).
Leopard cub, May 6, 1975, Trauma by mother during birth (Euthanasia).

1974

Jaguar, March 21, 1974, Acute viral pneumonia.
Jaguar, March 25, 1974, Acute viral pneumonia.
Leopard cub, June 12, 1974, Shock following trauma by mother.
Leopard cub, June 29, 1974, Stillborn.
Tiger, August 19, 1974, Euthanized; chronic degenerative kidney disease.

1973

Leopard cub, January 21, 1973, Stillborn.
Leopard cub, February 27, 1973, Bacterial (?) pneumonia.
Tiger, July 3, 1973, Bronchopneumonia.
Leopard, December 2, Chronic glomerular nephritis.
Leopard cub, July 1, 1973, Bronchopneumonia.

1972

Tiger, August 4, 1972, Euthanized; osteoneerosis, sarcoid on maxilla.

Steps being taken to avoid and decrease such mortalities are practicing preventive medicine, improved programs in keeper training and general animal management techniques.

7. The Woodland Park Zoological Gardens is a municipal institution operated by the City of Seattle. It is open seven days a week without an admission charge. The Zoo operates on a philosophy that emphastzes education (through interpretive programs and exhibit of animals), research (through observation), and conservation (through the breeding of selected, especially rare and endangered species). The disposition of surplus animals will be to appropriate institutions, by trade and sale.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-294-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1662 Filed 1-18-77;8:45 am]

National Park Service

LAKE MEAD NATIONAL RECREATION AREA WILDERNESS STUDY

Intent

Notice is hereby given that the National Park Service will hold five public workshops in mid-February, in Arizona, California, Nevada and Utah, to provide for public involvement and citizen participation in the first phase of a new wilderness suitability study of the lands in Lake Mead National Recreation Area.

Each of four workshops will begin at 7:30 p.m., local time, as follows: February 14, 1977, in the National Park Service Southern Arizona Group Offices, 1115 North First Street, Phoenix; February 15, 1977, in Room 3123, New Federal Office Building, 300 North Los Angeles Street, Los Angeles; February 16, 1977, in the Little Theater, William Orr Junior High School, 1562 Katie Drive, Las Vegas, and February 17, 1977, in the Auditorium, Kingman High School, 400 Grandview, Kingman, Arizona. The fifth workshop will be held February 18, 1977, in the Community Room, St. George Savings and Loan Building, 95 East Tabernacle, St. George, Utah, and it will begin at 2:00 p.m. local time.

Concurrent with these workshops, the National Park Service will hold consultations with various Federal, state and local government agencies, individuals and organizations on the designation of wilderness for lands within Lake Mead National Recreation Area.

The purpose of these workshops and consultations is to provide for wide public involvement, including ideas, suggestions, and comments from individuals and organizations on wilderness designation for lands in the recreation area.

After the National Park Service completes the study, a wilderness proposal and draft environmental statement will be prepared and made available for public review followed by public hearings, as required by the Wilderness Act of 1964.

The oral statements at the public hearings and the written comments received while the record remains open will be analyzed and evaluated during the second phase of public involvement. The information will be used to formulate a Wilderness Recommendation and Final Environmental Statement that will be submitted to the Congress.

Anyone wanting information on the National Park Service planning process, or wishing to submit comments for the wilderness study may write to the Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005.

JOHN H. DAVIS,
Acting Regional Director,
Western Region.

JANUARY 6, 1977.

[FR Doc.77-1635 Filed 1-18-77;8:45 am]

[Order No. 7, Amdt. No. 5]

LAND ACQUISITION OFFICER, WESTERN REGION

Delegation of Authority

Western Region Order No. 7, approved March 3, 1972, and published in the FEDERAL REGISTER of March 28, 1972 (37 FR 6326), and Amendment No. 1, approved March 5, 1974, and published in the FEDERAL REGISTER of April 18, 1974 (39 FR 13903), and Amendment No. 2, approved March 27, 1975, and published in the FEDERAL REGISTER of May 5, 1974 (40 FR 19508), and Amendment No. 3, approved January 12, 1976, and published in the FEDERAL REGISTER of May 14, 1976 (41 FR 19993), and Amendment No. 4, approved September 8, 1976, and published in the FEDERAL REGISTER of November 15, 1976 (41 FR 50357), is hereby amended. Section 2, paragraphs (h) and (h)(1) are hereby amended to read as follows:

(h) *Realty Specialists, Joshua Tree National Monument, and Yosemite National Park.* The Realty Specialists stationed at Joshua Tree National Monument and Yosemite National Park are authorized to exercise authority with respect to the following:

(1) Approval and acceptance of options and offers to sell to the United States, lands, or interests in lands, within their respective area, and to execute all necessary agreements and conveyances incident thereto when the amount involved does not exceed $150,000.00.

(NPS Order No. 77, 38 FR 7478, Published March 22, 1973, as amended.)

Dated: November 29, 1976.

JOHN H. DAVIS,
Acting Regional Director,
Western Regional Office.

[FR Doc.77-1633 Filed 1-18-77;8:45 am]

[Order No. 2]

SAN JUAN NATIONAL HISTORIC SITE, PUERTO RICO

Assistant Superintendent, et al.; Delegation of Authority

Section 1. *Assistant Superintendent.* The Assistant Superintendent may execute, approve, and administer contracts not in excess of $2,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 2. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $1,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 3. *Facility Manager.* The Facility Manager may issue field purchase orders not in excess of $500.00 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 4. *Chief Park Ranger.* The Chief Park Ranger may issue field purchase orders not in excess of $100.00 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 5. *Revocation.* This order supersedes Order No. 1, dated August 12, 1963, and published in FR Doc. 63-9539; and Amendment No. 1 dated April 15, 1965, FR Doc. 65-5201.

(National Park Service Order No. 77 (38 FR 7478) as amended; Southeast Region Order No. 5 (37 FR 7721 as amended).)

Dated: December 30, 1976.

LLOYD K. WHITT,
Superintendent,
San Juan National Historic Site.

[FR Doc.77-1636 Filed 1-18-77;8:45 am]

[Order No. 1]

SLEEPING BEAR DUNES NATIONAL LAKESHORE, FRANKFORT, MICH.

Administrative Officer

Section 1. *Administrative Officer.* The Administrative Officer may issue purchase orders not in excess of $2500 for supplies, equipment or services in comformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478) as amended; Midwest Region Order No. 5 (37 FR 6324) as amended.)

Dated: December 30, 1976.

J. A. MARTINEK,
Superintendent, Sleeping Bear Dunes National Lakeshore.

[FR Doc.77-1637 Filed 1-18-77;8:45 am]

[Order No. 1]

BENT'S OLD FORT NATIONAL HISTORIC SITE, COLO.; ADMINISTRATIVE OFFICER, ET AL.

Authority Delegation

Section 1. *Administative Officer.* The Administrative Officer may issue purchase orders not in excess of $500 for supplies or equipment in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478) as amended; Rocky Mountain Region Order No. 1 (39 FR 12369) as amended.)

Dated: December 14, 1976.

JOHN R. PATTERSON,
Park Manager, Bent's Old Fort National Historic Site.

[FR Doc.77-1644; Filed 1-18-77;8:45 am]

[Order No. 10]

BLUE RIDGE PARKWAY, VA. AND N.C.; ADMINISTRATIVE OFFICER, ET AL.

Authority Delegation

Sec. 1. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $500,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds; and may execute and approve revocable special use permits having a term 10 years or less for use of Government-owned lands and facilities. This authority may be exercised by the Administrative Officer in behalf of any office or area administered by Blue Ridge Parkway.

Sec. 2. *General Supply Officer.* The General Supply Officer may execute, approve and administer contracts not in excess of $200,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the General Supply Officer in behalf of any office or area administered by Blue Ridge Parkway.

Sec. 3. *General Supply Specialist.* The General Supply Specialist may execute, approve and administer contracts not in excess of $10,000 for supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the General Supply Specialist in behalf of any office or area administered by Blue Ridge Parkway.

Sec. 4. *Procurement Clerk (Typing).* The Procurement Clerk (Typing) may issue purchase orders not in excess of $500 for supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

Sec. 5. *Assistant Superintendent, Facility Managers, District Rangers, Subdistrict Rangers, Maintenance Foremen, WS-10, Administrative Services Assistants, Signmaker Foreman, District Clerks, and Youth Conservation Corps Project Managers and Camp Directors.* The Assistant Superintendent, Facility Managers, District Rangers, Subdistrict Rangers, Maintenance Foreman (not below WS-10), Administrative Services Assistants, Signmaker Foreman, District Clerks, and Youth Conservation Corps Project Managers and Camp Directors, who are employees of the Blue Ridge Parkway, may issue field purchase orders (SF-44) not in excess of $500 for supplies and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

The limitations in Sections 1 through 5 above apply only to open market or nonmandatory sources of supply. Each office may continue to issue FEDSTRIP orders to GSA centers in accordance with program needs subject to the availability of appropriated funds.

Sec. 6. *Revocation.* This order supersedes Order No. 9 dated April 26, 1976 (41 FR 23986) published June 14, 1976.

(National Park Service Order No. 77 (38 FR 7478), as amended; Southeast Region Order No. 5 (37 FR 7721), as amended.)

Dated: November 8, 1976.

JOE BROWN,
Superintendent,
Blue Ridge Parkway.

[FR Doc.77-1638 Filed 1-18-77;8:45 am]

BRYCE CANYON NATIONAL PARK, UTAH

Designation of Routes Open to Snowmobiles

In accordance with the requirements of paragraph (c) of § 2.34 of Title 36 of the Code of Federal Regulations, notice is hereby given of routes that will be open to snowmobiles in Bryce Canyon National Park.

In arriving at the designations of the snowmobile routes, we have been guided by the criteria contained in Sections 3 and 4 of Executive Order 11644 (37 FR 2877) and also have considered factors such as other visitor uses, safety, wildlife management, noise, erosion, geography, weather, vegetation, resource protection, and other management considerations.

A environmental assessment has been prepared on the designation of the snowmobile routes and is available for public review in the office of the Park Superintendent.

In order to properly designate the snowmobile routes, it is considered necessary to define the portions of the routes where snowmobile use will be permitted.

Available Roadway: On routes designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated road or parking area is closed to all other motor vehicle use by the public.

DESIGNATED ROUTES

1. The Main Park Road from the Bryce Point-Paria Point intersection to Rainbow Point.

2. The Whiteman Bench Fire Road from the Main Park Road to the western park boundary.

3. The Yovimpa Fire Road from the Main Park Road to the western park boundary.

4. The Sunset Campground road system and its access road from the Main Park Road.

5. The Sunset Campground Service Road from the Sunset Campground to the western park boundary.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the decision making process.

The preceding notice of intent published in the FEDERAL REGISTER (44 FR 9407) on March 4, 1976 produced minimal public comment. Seven letters were received. Three in favor of the proposal and four opposed. Therefore, to generate additional public comment prior to a final decision, the public shall be provided an additional 30-day period to comment. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to the snowmobile route designations, to the Park Superintendent, Bryce Canyon National Park, Bryce Canyon, Utah 84717, on or before February 18, 1977.

THOMAS O. HOBBS,
Superintendent,
Bryce Canyon National Park.

DECEMBER 1, 1976.

[FR Doc.77-1639 Filed 1-18-77;8:45 am]

CHAMIZAL NATIONAL MEMORIAL, TEX.; ADMINISTRATIVE OFFICER

Authority Delegation

Sec. 1.—*Administrative Officer.* The Administrative Officer may issue purchase orders not in excess of $10,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

Sec. 2.—*Purchasing Agent.* The Purchasing Agent may issue purchase orders not in excess of $500 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Sec. 3.—*Revocation.* This order supersedes Order No. 3, Chamizal National Memorial, dated: October 6, 1975, and published January 20, 1976 (41 FR 2836, January 20, 1976).

(National Park Service Order No. 77, 38 FR 7478, as amended, Southwest Region Order No. 5, 37 FR 7722 as amended.)

Dated: December 17, 1976.

FRANKLIN G. SMITH,
Superintendent, Chamizal
National Memorial.

[FR Doc.77-1642 Filed 1-18-77;8:45 am]

[Order No. 3]

NAVAJO LANDS GROUP; ADMINISTRATIVE OFFICER AND SUPPLY TECHNICAL

Authority Delegation

Sec. 1.—*Administrative Officer.* The Administrative Officer is authorized to execute, approve and administer contracts, and to issue purchase orders for equipment, supplies or services in amounts not in excess of $50,000, in conformity with applicable regulations and statutory authority and subject to availability of allotted funds. This authority may be exercised by the Administrative Officer in behalf of any unit under the administration of the Navajo Lands Group.

Sec. 2.—*Supply Technician.* The Supply Technician is authorized to execute, approve and administer contracts, and to issue purchase orders for equipment, supplies or services in amounts not in excess of $25,000, in conformity with applicable regulations and statutory authority and subject to availability of allotted funds. This authority may be exercised by the Supply Technician in behalf of any unit under the administration of the Navajo Lands Group.

Sec. 3.—*Revocation.* This order supersedes Order No. 2, Navajo Lands Group, dated May 18, 1972, and published July 25, 1972 (37 FR No. 143, 14822).

(National Park Service Order No. 77, 38 FR 7478, as amended, Southwest Region Order No. 5, 37 FR 7722, as amended).

Dated: December 20, 1976.

ARTHUR H. WHITE,
General Superintendent,
Navajo Lands Group.

[FR Doc. 77-1643 Filed 1-18-77;8:45 am]

(Order No. 4)

PADRE ISLAND NATIONAL SEASHORE, TEX.; ADMINISTRATIVE OFFICER AND SUPPLY TECHNICIAN

Authority Delegation

Section 1.—*Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of $25,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations.

Section 2.—*Supply Technician.* The Supply Technician may issue purchase orders not in excess of $10,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 3.—*Revocation.* This order supersedes Order No. 3 dated May 30, 1972 and published in 37 FR 14822 on July 25, 1972.

(National Park Service Order No. 77, 38 FR 7478 as amended; Southwest Region Order No. 5, 37 FR 7722 as amended.)

Dated: December 6, 1976.

JOHN F. TURNEY,
Superintendent,
Padre Island National Seashore.

[FR Doc.77-1641 Filed 1-18-77;8:45 am]

(Order No. 1, Amdt 4)

ROCKY MOUNTAIN REGION; SUPERINTENDENTS, ET AL.

Authority Delegation

Rocky Mountain Region Order No. 1, approved February 27, 1974, and published in the FEDERAL REGISTER of April 5, 1974 (39 FR 12369), as amended, sets forth in Section 2 limitations on redelegations of authority. This amendment changes Section 2, paragraph (a) to read as follows:

Section 2.—*Delegation.* (a) *Associate Regional Director, Administration.* The Associate Regional Director, Administration is authorized to exercise all the procurement and contracting authority now or hereafter vested in the Regional Director, Rocky Mountain Region, except authority to contract for acquisition of land and related property, and options and offers to sell related thereto. This authority may be exercised by the Associate Regional Director, Administration, in behalf of any office or area for which the Rocky Mountain Regional Office serves as the field finance office.

The Associate Regional Director, Administration, is authorized to approve use of a Government-owned or leased motor vehicle between domicile and place of employment. This authority may not be redelegated.

(National Park Service Order No. 77 (38 FR 7478) as amended.)

Dated: November 24, 1976.

LYNN H. THOMPSON,
Regional Director,
Rocky Mountain Region.

[FR Doc.77-1640 Filed 1-18-77;8:45 am]

(Order No. 5, Amdt. No. 5)

SOUTHWEST REGION; CONTRACT SPECIALIST AND PROCUREMENT ASSISTANT

Authority Delegation

Southwest Region Order No. 5, approved March 22, 1972, and published in the FEDERAL REGISTER of April 19, 1972 (37 FR 7722) as amended, is hereby amended to read as follows:

Section 2.—Delegation.

(g) Contract Specialist. The Contract Specialist may exercise all the procurement and contracting authority now vested in the Regional Director, Southwest Region, up to $50,000, except authority to contract for acquisition of land and related property and options and offers to sell related thereto.

(h) Procurement Assistant. The Procurement Assistant may issue purchase orders not in excess of $500 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of approriated funds.

(National Park Service Order No. 77 (38 FR 7478, as amended).)

Dated: December 23, 1976.

JOSEPH C. RUMBURG, Jr.,
Regional Director,
Southwest Region.

[FR Doc.77-1645 Filed 1-18-76;8:45 am]

Office of the Secretary

ADVISORY COMMITTEES

Renewal

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A-63 (Revised). Pursuant to the authority contained in Section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), I have determined that renewal of the advisory committees listed below is necessary and in the public interest.

1. Advisory Board on the San Jose Mission National Historic Site.
2. Emergency Advisory Committee for Natural Gas.
3. Federal Metal and Nonmetal Mine Safety Advisory Committee.
4. Hot Springs National Park Examining Board for Technicians.
5. Hot Springs National Park Registration Board.
6. National Advisory Board for Wild Free-Roaming Horses and Burros.

The Office of Management and Budget has concurred in the renewal of these committees.

Further information regarding these renewals may be obtained from the Department Committee Management Officer, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-8401.

Dated: January 11, 1977.

THOMAS S KLEPPE,
Secretary of the Interior.

[FR Doc. 77-1671 Filed 1-18-77;8:45 am]

PRINEVILLE RESERVOIR, CROOKED RIVER PROJECT, OREG.

Designation of Certain Areas and Trails for Off-Road Vehicle Use

On July 24, 1974, a document was published in the FEDERAL REGISTER (39 FR 36893) setting forth policy and criteria relating to the use of off-road vehicles on Bureau of Reclamation lands. By virtue of those regulations, Reclamation lands were closed to off-road vehicle use on August 23, 1974.

Reclamation lands and facilities adjacent to Prineville Reservoir are under the administration of two non-Federal entities, Crook County, Oregon, and the Oregon Department of Fish and Wildlife. In accordance with 43 CFR 420.25, Reclamation lands managed by non-Federal entities will be administered in a manner consistent with both part 420 and applicable non-Federal laws and regulations. Existing non-Federal laws, regulations, and policy restrict off-road vehicle use to designated and established roads and trails.

Based on evaluations of current use, existing resources, and current administrative constraints, off-road vehicle use is restricted to designated and established roads and trails on lands within the boundaries of Prineville Reservoir. This restriction is also consistent with existing administration of other public lands in the vicinity of the reservoir lands.

Roads and trails open to off-road vehicle use are delineated on drawing No. 113-100-251 which will be on file and available for inspection at:

Bureau of Reclamation, PN Regional Office, Box 043, 550 West Fort Street, Boise, Idaho, 83724.
Crook County Courthouse, Prineville, Oregon 97754.
Oregon Department of Fish and Wildlife, District Office, Prineville, Oregon.
Prineville State Park (on Prineville Reservoir), Prineville, Oregon.
Prineville Reservoir Resort, Bob 1300, Prineville Lake Route, Prineville, Oregon.

Dated: January 11, 1977.

CHRIS FARRAND,
Deputy Assistant Secretary
of the Interior.

[FR Doc.77-1672 Filed 1-18-77;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

REGISTRATION OF FUTURES COMMISSION MERCHANTS AND ASSOCIATED PERSONS ENGAGING IN COMMODITY OPTIONS FOR CUSTOMERS

Treatment of Pending Applications

On January 13, 1977, the Commodity Futures Trading Commission ("Commission") held a special meeting to consider what, if any, action to take regarding the large number of futures commission merchant ("FCM") and associated person applications filed in recent days by persons hoping to be registered by the January 17, 1977, deadline for persons engaging in commodity options transac-

tions for customers in the United States. Because of the substantial prior notice of the registration deadline and the well-publicized time required for processing applications, the Commission determined not to extend the effective date of the registration requirement. However, the Commission did determine to take no enforcement action against persons who had filed completed associated person applications on or before December 27, 1976. At that meeting, the Commission acted on each pending FCM application individually. The history behind the Commission's action and the details of that action are more fully described below.

On October 8, 1976, the Commission, pursuant to its authority contained in the Commodity Exchange Act ("Act"), as amended,[1] announced interim rules governing commodity options which were to become effective on November 22, 1976.[2] The interim regulations were subsequently modified and adopted in definitive form as published on November 24, 1976.[3] As originally announced, and as finally adopted, the regulations provide, among other things, that persons and firms who wish to engage in commodity option transactions for customers on and after January 17, 1977, are required to register with the Commission either as FCM's or as associated persons. Specifically, § 32.3 provides that it is unlawful for any person to accept funds or other property from an option customer as payment of the purchase price of a commodity option unless the person is registered as an FCM, or to solicit or accept orders for commodity options unless registered as an FCM or as an associated person of a specified FCM.

The January 17, 1977, effective date for the registration requirement was clearly stated in both the original (October 8, 1976) and the subsequent (November 24, 1976) publications of the interim rules. In the FEDERAL REGISTER release of October 8, 1976, the Commission emphasized its intention to implement the registration provisions of the regulations and suggested that those persons who would be affected by the registration requirement file their applications as soon as possible.[4] The Commission stated (footnotes added:

> It should be noted that the anticipated effective date of these rules is November 22, 1976.[5] The registration provisions, however, do not go into effect until 60 days thereafter. This is to allow persons sufficient time to submit, and for the Commission to process, applications for registration. Processing of applications normally take[s] approximately 60 days. Therefore, as indicated above, the Commission urges persons wishing to register as futures commission merchants or associated persons to submit their applications promptly. A person who defers filing an application until the effective date of the regulations runs the risk that the application may not be processed on a timely basis; a person who does not file an application until after the effective date increases the risk that the application will not be processed by the time the registration requirements go into effect. The Commission intends to expedite the processing of such applications, and a prompt filing will enable the Commission to do so on a timely basis.[6]

When the Commission published the adopted interim rules on November 24, 1976, it again reminded persons affected by the new registration requirements of the need to act quickly in submitting their applications (footnote added):

> The Commission also wishes to stress that as proposed and as adopted, § 32.3 of the interim rules provides that on and after January 17, 1977, it will be unlawful for a person to solicit or accept orders for commodity options transactions or for an individual to be associated with any such person, unless registered as a futures commission merchant or as an associated person of such futures commission merchant, respectively, under the Act. Therefore, the Commission again wishes to advise affected persons to file their applications for registration promptly. The Commission is already processing applications for registration which it has received as a result of its announcement of the proposed interim rules. A person who defers filing an application runs the risk that the application may not be processed before the January 17th deadline. Normal requirements for processing are 30–60 days. While the Commission intends to expedite the processing of applications, a prompt filing will enable the Commission to do so on a timely basis.[7]

Notwithstanding the substantial advance notice given to the registration requirements and the repeated warning that deferred applications might not be received in time to permit the Commission to complete its processing, the Commission received a number of FCM applications and an estimated 500 associated person applications (from persons desiring to handle commodity option orders) within the last three weeks before the January 17, 1977, deadline for registration. The vast majority of these applications were received within the last week. It was apparent that the large number of applications could not be processed in the relatively short period of time before the required registration date, January 17, 1977.[8] The Commission therefore held a special meeting on January 13, 1977, to decide how the pending applications should be treated. After considering the liberal advance notice and the extensive publicity given to the registration requirement, the Commission found no basis to disturb the January 17, 1977, effective date of the registration requirements.[9]

However, the Commission also recognized that there were a number of persons who had filed a completed application as an associated person promptly after the regulations were published, but whose application could not be processed (partially because of the volume of applications) by the January 17th deadline. So that persons within this category would not be required to suspend or defer options activities,[10] the Commission determined to take no enforcement action applicants who had filed a completed application on or before December 27, 1976, a date more than 30 days after the adopted regulations were published.[11]

With regard to those individuals[12] the Commission decided that it would bring no enforcement action, based solely on the failure to register, if the applicant meets the following conditions:

(1) a completed application was filed with the Commission on or before December 27, 1976;

(2) The applicant (or his employing futures commission merchant) has not been specifically notified that this no

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[1] Sections 2(a)(1), 4c and 8a of the Act, 7 U.S.C. 2, 6c and 12a (Supp. IV, 1974).

[2] 41 FR 45560.

[3] 41 FR 51809.

[4] 41 FR 44560, 44561.

[5] When the interim rules were adopted, as modified, their effective date (with the exception of the segregation provisions which were further deferred) was changed to December 9, 1976. The effective date of the registration provisions, January 17, 1977, was adopted as proposed.

[6] 41 FR 44560, 44563.

[7] 41 FR 51808, 51810.

[8] As part of registration processing, applicants names are screened through FBI and the Securities and Exchange Commission files for information which may demonstrate a lack of suitability to operate in the capacities for which the applicants seek registration in accordance with the standards set forth in section 8a of the Act and the Commission's interpretation of "other good cause" which was published in the FEDERAL REGISTER, 41 FR 28125. In addition, the Commission staff conducts preregistration audits of FCM applicants to determine whether they meet the minimum adjusted working capital requirements set forth in § 1.17 as a prerequisite to FCM registration and the higher minimum adjusted working capital requirements for engaging in commodity option transactions on behalf of customers.

[9] The plan for interim options regulations, including the proposal for registration, had originally been announced at a public meeting in Washington, D.C. on September 13, 1976. In addition to the notices contained in the FEDERAL REGISTER, a large number of newspapers, journals and trade publications throughout the United States reported on the registration requirement in articles concerning the options requirements.

[10] Section 32.3(b) provides that, on and after January 17, 1977 it shall be unlawful for:

* * * * *

(2) Any futures commission merchant to permit an individual to become or remain associated with such futures commission merchant as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity involving such solicitation, acceptance or supervision if such futures commission merchant knew or should have know that such individual was not registered as an associated person or that such registration has expired, been suspended (and the period of suspension has not expired) or revoked.

[11] The Commission determined that, in view of the substantial notice of the registration requirements and the purpose of the registration requirements, all applications filed after that date were to be processed expeditiously in the order they were received, but that, consistent with Commission's regulations, applicants should not and could not be permitted to engage in commodity option transactions for customers until their application had been processed and they had been registered.

[12] At least 50 associated person applications were received by the Commission on or before December 27, 1976, from persons desiring to handle commodity option orders which the staff could not fully process before January 17, 1977.

action position does not apply to him; and

(3) The applicant has not received a letter from the Commission or its staff advising him that, because of factors revealed during his fitness investigation, he has not been registered but that he is entitled to a hearing on the question of his fitness for registration.

The Commission's "no-action position" applies only to activities relating to the sale of commodity options, and does not apply to activities relating to the sale of commodity futures. Should the fitness investigation of any applicant reveal grounds for denial of registration, the applicant will be notified that the "no-action position" no longer applies to him and that continued activity as an associated person pending a final determination of his fitness for registration would subject him to possible enforcement action.

This "no-action position" for certain associated person applicants will terminate on February 21, 1977, since it is anticipated that the Commission will be able, by that date, to complete the processing of the applications of those persons to whom the "no-action position" applies.

With respect to applications for registration as futures commission merchants, the Commission also found that it would generally be unable to complete processing of applications filed after December 27, 1976. Thus, most of those applicants who filed FCM applications after December 27th were individually notified that they would not be registered by January 17th and could not therefore engage in commodity option transactions for customers on and after that date until they were registered.

The Commission has substantially completed processing of FCM applications which were filed on or before December 27, 1976. They have been treated as follows:

1. Letters advising FCM applicants that registration has been granted were sent to those applicants who satisfied the fitness requirements and met the minimum adjusted working capital requirement of regulation 1.17(b)(1).[13]

2. Certain applicants were able to meet the minimum financial requirement for registration as an FCM under regulation 1.17(a), but were unable to meet the higher minimum financial requirement which regulation 1.17(b)(1) imposes upon FCM's engaging in commodity option transactions. Applicants within this category that met fitness requirements were advised that their registration as a futures commission merchant was granted, but were cautioned not to engage in options transactions after January 17, 1977, unless they comply with the minimum financial requirement of regulation 1.17(b)(1), and that their registration could be suspended or revoked if they were found to be operating in violation of the additional capital requirement with which option dealers are required to conform.

3. Certain applicants appeared to be unable to meet the minimum financial prerequisites to registration as an FCM under regulation 1.17(a). If the fitness requirements were satisfied by such applicants, they were advised that unless they should voluntarily withdraw their application the staff would be obliged to recommend institution of formal proceedings for denial of their application.

4. In those instances where the Commission's audit staff was unable to determine whether an applicant was able to meet the minimum financial prerequisites of regulation 1.17(a) because, among other things, the applicant's books and records were not complete and up to date, or where there existed some other obstacle to registration, the applicant was notified that registration would not be granted by the January 17th deadline.

With respect to three firms that have applied for registration as FCM's, the Commission, on January 14, 1977, instituted formal proceedings pursuant to Section 8a(2) of the Commodity Exchange Act to determine, among other things, whether cause exists under law to refuse to register those firms.[14] In accordance with that section, pending final determination registration of those firms will not be granted.

While persons who are already registered as FCM's or associated persons under the Act need not re-register in those categories in order to engage in commodity option transactions for customers, such persons are required by § 32.2(d) and (e) promptly to notify the Commission in writing of the date on which they commenced or intend to commence engaging in commodity options activities. FCM's must, of course, meet the higher minimum adjusted working capital requirements for engaging in commodity options.

Issued in Washington, D.C. on January 17, 1977.

JOHN V. RAINBOLT II,
Vice Chairman, Commodity Futures Trading Commission.

[FR Doc.77-2046 Filed 1-18-77;8:45 am]

[13] Regulation 1.17(b)(1) prohibits an FCM from engaging in commodity option transactions unless it maintains adjusted working capital in excess of the greater of: (i) $50,000, or (ii) the sum of certain safety factors set forth in the regulation plus five percent of the FCM's aggregate indebtedness. Registered FCM's may lawfully engage in commodity option transactions only so long as they continue to meet the minimum adjusted working capital requirements of regulation 1.17(b)(1).

[14] British American Commodity Options, Ltd.; First New York Commodity Options, Ltd.; and London Commodity House, Inc.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 672-8]

POLYCHLORINATED BIPHENYLS (PCBs)

Public Meeting; Solicitation of Comments

For the purpose of obtaining additional information from interested persons on the development of regulations for the marking and disposal of PCBs, the Agency will hold a public meeting on the implementation of section 6(e) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469. This meeting will be held on January 24, 1977, at 10:00 a.m. in Room 2117, Waterside Mall, Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460. This meeting was announced previously in the January 5, 1977, FEDERAL REGISTER, 42 FR 1067.

Participants are encouraged to focus discussion on the issues set forth below. The suggested approaches are intended to help sharpen the discussion but do not represent the direction that the proposed rulemaking will necessarily follow. The proposed issues for discussion are as follows:

1. Which chemical compounds should be regulated? The Agency has under discussion the following definition of PCB isomers: A PCB isomer is defined as a compound resulting from the replacement of two or more of the hydrogen atoms on the biphenyl molecule with chlorine atoms.

2. What is the definition of PCBs for marking, disposal and manufacturing ban regulations? The Agency has under consideration definitions of the following classes of PCBs: PCB Liquids: A PCB liquid containing an aggregate concentration of all PCB isomers of 10 percent (by weight) or greater. PCB Mixtures: A PCB mixture is defined as any fluid, solid, or multiphase substance containing an aggregate concentration of all PCB isomers of 0.05 percent (by weight) or greater, except for substances categorized as PCB liquids. PCB Equipment: PCB equipment is defined as any manufactured item whose surfaces have been in direct contact with PCB liquids or PCB mixtures and which has not been adequately decontaminated.

3. Which classes of PCB items should be considered for specific regulatory provisions under the disposal and marking regulations? The Agency is considering the following classes of items:

Bulk PCB liquids and mixtures.
PCB mixtures—open system uses (e.g., sealants, contaminated rags and dirt, etc.).
PCB equipment—semiclosed system uses (e.g., heat exchangers, hydraulic systems, turbines, motor coolant systems).
PCB equipment—transformers.
PCB equipment—large power factor capacitors (greater than 2Kg PCB liquids).
PCB equipment—hi-intensity arc light capacitors.
PCB equipment—large industrial and appliance capacitors (greater than 1Kg PCB liquids).
PCB equipment—small industrial and appliance capacitors (less than 1Kg PCB liquids).
PCB equipment—fluorescent light ballasts.

4. Which uses of PCB items should be considered for specific regulatory provisions under the marking regulations? The Agency is considering the following use categories: Newly manufactured; Inventory (storage); Transport; In use; Servicing; Storage for disposal.

5. Considering the use categories for PCB items described in issue 4 above, what implementation schedule should the marking regulations require? The Agency is considering marking for newly manufactured items to be achieved within six months of final rulemaking. Marking for large power factor capacitors, bulk quantities of PCBs liquids, and transformers in storage would be completed within six months. For other items in storage, except open system uses, marking would be achieved within 9 months by either marking items in storage or establishing a marking procedure whereby items are marked when they are removed from storage and entered into a distribution system for use. After nine months, markings for trucks and railroad cars would be required for any transport of a transformer and major transports of bulk PCB liquids and mixtures and other PCB-containing items. A major transport of bulk PCB liquids or mixtures is 100 pounds and a major transport of other PCB-containing items is 500 pounds net weight of PCB liquids or mixtures contained within the items. Large power factor capacitors and transformers in use would be marked within 18 months. Individual large power factor capacitors would not have to be marked if markings are placed in the immediate vicinity of the capacitors and a schematic record is maintained showing the location of PCB-containing units so that the units can be marked when they are removed from use. Existing semi-closed systems and bulk PCB liquids or mixtures not covered under storage would be marked within six months. Other than transformers, large power factor capacitors, semi-closed systems, and bulk PCBs, PCB items and equipment in use would not be marked. Markings would be required after six months whenever major items such as transformers, large power factor capacitors, and semi-closed systems are serviced. Hi-intensity arc light capacitors and large industrial and appliance capacitors would come under similar marking requirements after nine months. After six months, any PCB items and their opaque containers stored for high temperature incineration or chemical waste landfill disposal would be marked. All newly manufactured PCB containing items requiring marking would also require marking on any opaque containers.

6. Which method of disposal should be required for each class of PCB items? The Agency is considering the following methods of disposal: High temperature incineration (2 second residence time at 2000 F or equivalent temperature—residence time relationships) for all bulk PCB liquids and mixtures, and all other PCB mixtures and equipment that are feasible to incinerate based on adequate temperature-residence time relationships, dimensions of the incinerator, feed mechanisms, and other pertinent engineering characteristics. Chemical waste landfill for PCB equipment from which liquids and mixtures have been removed but the equipment has not been adequately decontaminated for recycling, reuse or scrap.

7. The Agency is attempting to determine if high-temperature incineration is the only ultimate technique for disposal of PCBs from the environment during the next few generations. The question is whether or not any PCBs should be allowed to be placed in landfills—chemical or otherwise? If PCB items from private households and small industrial appliance capacitors and fluorescent light ballast from businesses were exempted from high-temperature incineration and chemical waste landfill disposal, approximately 170 million pounds of the 758 million pounds of PCBs currently in service would be ultimately released to the environment. This 170 million pounds are contained in approximately 870 million items. Some control of the 170 million pounds could be achieved by disposal regulation of individuals disposing of more than some poundage amount of PCB items each year. The Agency is particularly interested in comments concerning controls that might be placed on the disposal of small PCB items.

8. What procedures should be followed to achieve satisfactory decontamination of PCB containers and casings? Transformers have been shown to be particularly difficult to decontaminate because of the internal configurations. The Agency is considering adapting methods used for decontaminating pesticide containers and equipment.

9. What will be the economic impact of the marking and disposal regulations?

Persons who wish to respond to these issues or make a presentation at the meeting should call Mr. Harold J. Snyder at 202–755–4880. Persons are also invited to submit written data, opinion, or arguments. Written communication on these or any other aspects of this program should be submitted to: The Environmental Protection Agency, Office of Toxic Substances (WH–557), 401 "M" Street, SW., Washington, D.C. 20460, Attention: Mr. George F. Wirth. All comments received will be made available to the public. Copies will be available for inspection and copying during normal working hours at the U.S. Environmental Protection Agency's Office of Toxic Substances, Room 711, Waterside Mall, East Tower, 401 "M" Street, SW., Washington, D.C. 20460.

Dated: January 12, 1977.

KENNETH L. JOHNSON,
Acting Assistant Administrator for Toxic Substances.

[FR Doc.77-1627 Filed 1-18-77;8:45 am]

[FRL 673-1; OPP—66023]

CHLORANIL

Cancellation of Registrations of Pesticide Products Containing Tetrachloro-p-benzoquinone (Chloranil)

Pursuant to Section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) et seq.), on November 30, 1976, the Aceto Chemical Co., Inc. (Aceto), 126–02 Northern Blvd., Flushing NY 11368, requested that the Environmental Protection Agency (EPA) cancel its registrations for pesticide products containing tetrachloro-p-benzoquinone (chloranil). This request affects two registered products: Chloranil, which is used for repackaging by commercial pesticide formulators (EPA Registration No. 2749–24), and Chloranil 100, which is for manufacturing use only (EPA Registration No. 2749–27).

Aceto, the only Federal registrant of pesticide products containing chloranil, has informed EPA that it terminated sales and delivery of these products to customers several years ago and that it has neither of these products in stock. Accordingly, it is unlikely that any existing stocks of these products are in channels of distribution or being held by users. There are currently no applications pending for Federal registration of pesticide products containing chloranil.

This cancellation shall be effective, February 18, 1977, unless the registrant, or an interested person with the concurrence of the registrant, requests that the registration(s) be continued in effect. After the effective date of these cancellations, the sale, distribution, and use of these products shall be unlawful.

Comments concerning this action, including requests approved by the registrant that the registrations of these products be continued, may be submitted in triplicate to the Federal Register Section, Technical Services Division (WH–569), Office of Pesticide Programs, Environmental Protection Agency, East Tower, Room 401, 401 M St. S.W., Washington D.C. 20460. Comments should bear the identifying notation "OPP—66023." Any comments filed regarding this notice of cancellation will be available for public inspection in the office of the Federal Register section from 8:30 a.m. to 4 p.m. during normal working days.

Dated: January 13, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1631 Filed 1-18-77;8:45 am]

[FRL 673-3; OPP-180107]

WASHINGTON STATE DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Thiabendazole to Control Fungi in Stored Sugar Beets

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the Washington State Department of Agriculture (hereafter referred to as the "Applicant") to use thiabendazole to control various fungi threatening 1,500,000 tons of sugar beets in storage areas in central Washington. This exemption was granted in accordance with, and is subject to, the provisions of 40

CFR Part 166, issued December 3, 1973 (38 FR 33303) which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460.

According to the Applicant, about one and one-half million (1,500,000) tons of sugar beets which were awaiting processing could become infested with various fungi, such as *Penicillium*, *Botrytis*, *Phoma*, *Fusarium*, and others. These fungi cause deterioration while the beets are in storage, resulting in a decline of the sugar content of the beets. These fungal diseases occur naturally in sugar beets; however, only those beets to be stored for more than seventy-five days could be seriously affected. The problem was increased by use of ventilated canopy storage. This was needed to prevent the stored beets from freezing and then thawing, which renders them unfit for processing.

There are no registered alternative pesticides that can be applied as a post-harvest treatment to control fungal deterioration in sugar beets. The logistics and economics of the processing equipment made immediate processing of the beets undesirable.

The Applicant proposed to use Mertect 340-F, EPA Reg. No. 618-75-AA; this product is already registered for preharvest field use on sugar beets to control *Cercospora* Leaf Spot. The rate of application is 0.42 fluid ounces Mertect 340-F in sufficient water to cover one ton of beets. The total amount of the product that could be used would be 4,922 gallons (630,000 fluid ounces) on 1,500,000 tons of sugar beets. Applications will be made in beet storage areas of the Utah and Idaho Sugar Company in central Washington by trained employees of that Company. The estimated loss of value without this treatment ranged from two to three dollars per ton. The Applicant predicted a maximum loss for the entire crop would be about four and one-half million dollars ($4,500,000).

Permanent pesticide tolerances of 0.25 ppm on sugar beets, 10 ppm on sugar beet tops, and 0.1 ppm in milk and meat have been established (40 CFR 180.242). The existing registered product and the limited use site indicates that no adverse long- or short-term effects on the environment are likely to occur. The requested use will add only an insignificant amount of thiabendazole to the human diet.

It should be noted that an experimental use permit under the section 5 regulations of the amended FIFRA was issued for the use of Mertect 340-F on sugar beets in North Dakota and Washington; temporary tolerances were established concurrent with the experimental use permit, which expired on October 31, 1976. Quarterly reports regarding that permit indicated that the product was efficacious for that use. Although the limited use of thiabendazole under the section 5 permit could not have been intended to deal with the present emergency, EPA felt that the issuance of this emergency exemption might mitigate efforts to register the product for this use. Therefore, it was recommended that the Applicant gather and submit both efficacy and residue data as a result of this treatment to facilitate registration of thiabendazole for this use.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of various fungi has or is about to occur; (b) here is no pesticide presently registered and available for use to control the fungi on stored sugar beets in Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic losses may result if the various fungi are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 1, 1976, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The thiabendazole product Mertect 340-F, EPA Reg. No. 618-75-AA, will be used;

2. The rate of application will be 0.42 fluid ounces of the product in sufficient water for coverage of one ton of sugar beets;

3. A maximum of 4,922 gallons of the product will be applied;

4. A maximum of 1,500,000 tons of sugar beets will be treated;

5. All applications will be made by trained employees of the Utah and Idaho Sugar Company;

6. The Applicant is responsible for ensuring that the restrictions pursuant to this specific exemption are met;

7. A thiabendazole residue not to exceed for (4) ppm in or on sugar beets has been determined to be adequate to protect the public health. In addition, a residue level of 20 ppm for sugar beet pulp and sugar beet molasses indicates that established tolerances for meat and milk will not be exceeded. EPA has determined that a residue level of 20 ppm for sugar molasses will not result in significant residues in poultry or eggs. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action; and

8. Efficacy and residue data will be gathered and submitted to facilitate registration of thiabendazole for this use.

Dated: January 12, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1630 Filed 1-18-77;8:45 am]

[FRL 673-2 OPP—180102]

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Issuance of Specific Exemption To Use Sodium Chlorate as a Harvest Aid To Dessicate Lima, Navy, and Pinto Beans

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use sodium chlorate as a harvest aid to desiccate lima, navy, and pinto beans in Sacramento Valley and San Joaquin Valley in California. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460.

According to the Applicant, the moisture content of the bean crop is unusually high due to heavy rains in California. The wet beans have prevented the proper operation of harvest machinery; green foliage on the plants prevents the soil from drying enough to permit the machinery to pass through the field. The Applicant further stated that seasonal rains normally start during the latter half of October, and it was esential that harvest be completed before the rains began. Finally, the Applicant stated that there was no desiccant registered for this use or alternative method of control presently available. Without the use of a desiccant chemical to facilitate harvesting, heavy losses are likely to occur; the Applicant estimated that the entire crop, valued at $65,411,000 was in jeopardy. Some 154,000 acres of lima, navy, and pinto beans located in the Sacramento and San Joaquin Valleys in California are involved. It was proposed that sodium chlorate be applied by aircraft at a rate of not more than 6 pounds per acre of crop.

There is neither an established tolerance, nor an exemption from the requirement of a tolerance for sodium chlorate on lima, navy, and pinto beans. However, sodium chlorate is exempted from the requirement of a tolerance for residues in or on cottonseed, chili peppers, rice, and sorghum grain. The maximum rate of application proposed by the Applicant was equivalent to six (6) pounds of sodium chlorate per acre, which is the same rate as that granted by EPA for the use of this pesticide on sorghum and rice; furthermore, the use

pattern is essentially the same. The Applicant requested the use of FMC Corporation's Liquid MC Defoliant, which is registered by EPA and which has fire retardant capabilities.

After reviewing the application and other available information, EPA has determined that: (a) There is no pesticide presently registered and available for use to dessicate the lima, navy, and pinto beans in California; (b) there are no alternative means of control, taking into account the efficacy and hazard; (c) significant economic problems may result if the situation is not controlled; and (d) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 15, 1976, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The dosage rate shall not exceed six (6) pounds of active ingredient sodium chlorate per acre;

2. FMC Corporation's Liquid MC Defoliant (EPA Reg. No. 279–1993) will be the product used;

3. The treated areas shall not exceed 154,000 acres located in the two Valleys mentioned above;

4. A fourteen (14) day pre-harvest interval for all treated beans will be observed;

5. A restriction prohibiting grazing of treated fields or feeding treated bean foliage to livestock will be imposed;

6. Applications are limited to lima, navy, and pinto beans;

7. The Applicant will be responsible for instructing personnel applying the sodium chlorate in the proper application procedures;

8. The Applicant must supervise aerial applications to avoid or minimize drift to non-target areas; and

9. EPA has determined that dried beans treated according to the conditions of use listed above should not pose a threat to human health. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action.

Dated: January 12, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77–1628 Filed 1–18–77;8:45 am]

[FRL 673–H; OPP–180108]

FLORIDA DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Heptachlor To Control West Indian Sugarcane Rootstalk Borer Weevil on Ornamental Plants and Non-bearing Citrus

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the Florida Department of Agriculture (hereafter referred to as the "Applicant") to use a five (5) percent granular heptachlor formulation as a soil treatment to control the West Indian Sugarcane Rootstalk Borer Weevil in Broward, Orange, and Seminole Counties, Florida. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH–567), Office of Pesticide Programs, EPA, 401 M Street S.W., Room E–315, Washington, D.C. 20460.

According to the Applicant, the West Indian Sugarcane Rootstalk Borer Weevil (*Diaprepes abbreviatus*) poses a serious threat to both the citrus and ornamental industries in the State of Florida. The pest was first detected in this State in Orange County about 1964; however, no serious outbreaks of infestations occurred until 1968, the Applicant stated. Since that time, the weevil has expanded its range until it now infests approximately 40,000 acres which have been placed under regulation by the Florida State Department of Agriculture. Although the heavily concentrated growing areas of foliage and containerized ornamentals are not presently infested, the proximity of weevil infestations presents a continuous threat to the $40 million a year containerized ornamentals industry. The State of California has already enacted a quarantine against the State of Florida, prohibiting shipments of nursery stock from the weevil-regulated areas. According to the Applicant, without the use of an effective soil treatment, the States of Arizona, Hawaii, Louisiana, Texas, and other important markets for nursery products will probably enact similar quarantines.

Although the adult weevil consumes large amounts of foliage, the larvae present the greater threat to the plant. In the larval stage, the pest lives underground, feeding on both the root and stem system of the plant. Symptoms of damage to citrus include growth decline, loss of production and ultimate death of the trees. The weevil is known to infest 10,000 acres of commercial citrus, mostly in Orange County, and continues to be a pest of the $2 billion Florida citrus industry. In addition, the spread of the weevil presents a potential threat to the sugarcane industry in the State. This pest is known to feed on 40 native plant species and could also harm such fragile ecosystems as the Florida Everglades.

According to the Applicant, an effective soil treatment was necessary to assure the absence or eradication of the larval stage in nursery shipments; of the chemicals tested, only heptachlor has been shown to be effective as a soil control pesticide at application rates that will not cause significant damage to the plant. The Applicant has submitted data showing that five (5) percent granular heptachlor incorporated in potting soil at the rate of 0.2 ounce actual ingredient per cubic yard gives 100 percent control of neonate larvae of the West Indian sugarcane rootstalk borer weevil. Although methyl bromide has also been shown to be efficacious against larvae of the weevil, it is not sufficiently persistent to prevent reinfestation shortly after treatment.

After reviewing the application and other available information, EPA has determined that: (a) An outbreak of the West Indian sugarcane rootstalk borer weevil has or is about to occur; (b) there is no pesticide presently registered and available for use to control this pest in Florida; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until October 1, 1977, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The treatment area is limited to nurseries in Broward, Orange, and Seminole Counties;

2. The total amount of heptachlor to be used is limited to 2,000 pounds active ingredient (40,000 pounds of a five percent granular heptachlor formulation) at a rate of 0.2 ounce actual ingredient per cubic yard of potting soil;

3. Heptachlor is restricted to use as a soil treatment for bedded, non-bearing citrus nursery stock which is at least two (2) years from commercial fruit production, and for potted ornamentals;

4. Proper isolation clothing and equipment will be used by applicators to minimize their exposure to heptachlor. The isolation clothing and equipment shall consist of a respirator, goggles, helmet, face protector, protective clothing, gloves, and waterproof boots;

5. The Florida Division of Plant Industry and the U.S. Department of Agriculture will supervise the application of heptachlor; and

6. The Applicant will continue to vigorously pursue research on substitute chemicals for control of this pest.

Dated: January 12, 1977.

EDWIN J. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77–1629 Filed 1–18–77;8:45 am]

[FRL 672-6; OPP-42005 B]

WYOMING

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)), the Honorable Ed Herschler, Governor of the State of Wyoming, submitted a State Plan for Certification of Pesticide Applicators to the Environmental Protection Agency (EPA) for approval, contingent upon promulgation of implementing regulations. On January 9, 1976, the Regional Administrator, EPA, Region VIII, approved the Plan on a contingency basis, allowing one year for promulgation of the regulations. Notice of the approval was published in the FEDERAL REGISTER on January 29, 1976 (41 FR 4359).

Subsequently, on December 30, 1976, the State of Wyoming requested an extension of the period of the contingency approval in order to allow additional time to promulgate the regulations required for full approval. The Agency finds that there is good cause for approving this request and as such has granted an extension until June 30, 1977.

JOHN A. GREEN,
Regional Administrator.

JANUARY 14, 1977.

[FR Doc.77-1626 Filed 1-18-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20290]

AERONAUTICAL MOBILE SERVICE

Single Sideband Techniques

Adopted: January 12, 1977.

Released: January 13, 1977.

In the matter of preparation for a proposed International Telecommunication Union World Administrative Radio Conference on the Aeronautical Mobile (R) Service to renew and revise appendix 27 of the International Radio Regulations pertaining to the Aeronautical Mobile (R) Service, as necessary, to provide for the possibility of adopting single sideband techniques; order extending time for filing comments (see 40 FR 30317, July 18, 1975).

1. On December 10, 1976, we released a Third Notice of Inquiry in this docket which, essentially, reported the proceedings of the 1976 International Civil Aviation Organization Communications Divisional Meeting and requested comments from interested parties. The deadline for filing comments was January 7, 1977, in order for us to file comments by January 31, 1977, to the International Telecommunication Union through the U.S. Department of State.

2. Because of the complexity and volume of the Third NOI and its attachment, and certain other administrative difficulties, we were unable to effect the timely publication of the inquiry in the FEDERAL REGISTER. As a practical matter, we believe that most parties interested did in fact receive copies of the Third Notice and have filed comments. In the event, however, that there are others desire to comment on the Third Notice, we are extending the deadline for filing comments until February 15, 1977. Although comments made in accordance with this extension will probably not be received in sufficient time for inclusion in the January 31st comments to the ITU, we will consider any comments so received in the development of the final U.S. position in this matter. Persons interested in filing comments can obtain copies of the Third NOI and attachment from us upon request at our Washington office (Telephone 202-632-7197; mailing address—Aviation and Marine Division, 2025 M Street, NW, Washington, D.C. 20554).

3. Accordingly, pursuant to §§ 0.331 and 1.46 of the Commission's Rules, the time for filing comments in this proceeding is extended, as provided above, until February 15, 1977.

CHARLES A. HIGGINBOTHAM,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.77-1724 Filed 1-18-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with Section 252 (c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163) notice is hereby provided of a meeting of Subcommittee C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) to be held on January 27 and 28, 1977, at the offices of Mobil Oil Corporation, 150 East 42nd Street, New York, New York, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks by the Chairman.
2. Pricing in an emergency, including review of SEQ discussion of IEA/SEQ(76)35.
3. Extraordinary Costs.
4. Settlement of Disputes.
   a. Principles.
   b. Disputes Settlement Center.
5. Future work of Subcommittee C.

As provided in Section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., January 13, 1977.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.77-1607 Filed 1-14-77;7:54 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant 46 CFR Part 542 and section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	*Owner/operator and vessels*
01011	Atkieselskabet Det Ostasiatiske Kompagni: *Ancona.*
01059	London & Overseas Freighters, Ltd.: *London Tradition, Overseas Ambassador, London Independence.*
01061	London & Overseas Tankers Ltd.: *Overseas Discoverer.*
01306	Shaw Savill & Albion Co. Ltd.: *Iberic.*
01343	Hamburg - Sudamerikanische Dampfschiffahrts - Gesellschaft Eggert & Amsinck: *Polar Argentina.*
01503	Las Minas Companja Naviera Panamena S. A.: *Halcon.*
01514	Alframar S. N. C.: *Ninfea.*
01574	Fearnley & Eger: *Fernlake.*
01760	Kornelius Olsen: *Byfjord.*
01761	Union Steam Ship Co. of New Zealand Ltd.: *Union Wellington.*
01818	Houston Line Ltd.: *Clan Ross.*
01890	A/S Billabong: *Star Billabong, Star Ballarat.*
01893	Silver Line Ltd.: *Avon Bridge.*
01935	Partnership between Steamship Co., Svendborg Ltd., and Steamship Co. of 1912 Ltd.: *Nelly Maersk.*
01988	Angfartygsaktiebolaget Tirfing: *Kungaland.*
02037	Shosen Mitsui Kyakusen K. K.: *Nippon Maru.*
02158	Koraal Scheepvaart Maatschappij N.V.: *Coral Rubrum.*
02241	Cape Continent Shipping Co. (Proprietary) Ltd.: *Maritime Transporter.*
02834	Transportes Pruteros Del Mediterraneo S. A.: *Glaciar Blanco.*
02929	Soflumar-Societe D'armement Fluvial & Maritime: *Port Etienne.*
02959	Kokuyo Kaiun Kabushiki Kaisa: *Chitosegawa Maru.*
02976	Arthur-Smith Corp.: *Tenneco 150.*
03214	Saleninvest AB: *Seven Seas.*
03216	Salenrederierna AB: *Segero.*
03428	Hachiuma Kisen K. K.: *Kure Maru.*
03471	Nippo Kisen Kabushiki Kaisha: *Hokaku Maru.*
03482	Ryutsu Kaiun K. K.: *Ryushun Maru.*
03501	Osaka Shosen Mitsui Senpaku K. K.: *Orion Maru.*
03692	Marmac Corp.: *Ace 101.*
03743	Ypapantia Shipping Inc.: *Melias.*
03971	Korea Shipping Corp.: *Sun Duck.*
04037	C. F. Bean Corp.: *C.S.E. Holland, BDCO 93.*
04038	Carbosider Societa Di Navigazione S.P.A.: *Oscar Sinigaglia.*
04113	Mon River Towing Inc.: *GBL-2, GBL-6, GBL-4, GBL-1, MRBL-88, GBL-7, GBL-8, GBL-3, GBL-5.*

Certificate No.	Owner/Operator and Vessels
04136	Thomas Marine Co.: *FTW–14, FTW–16.*
04264	Outerocean Navigation Corp. Ltd.: *Shelley.*
04394	Philippine President Lines Inc.: *Pres. Aquinaldo.*
04398	Hapag-Lloyd Aktiengesellachaft: *Regenstein, Riederstein.*
04404	Lars Rej Johansen: *Jocare.*
04433	Allied Chemical Corp.: *AC–4.*
04675	Naviera Santa Catalina, S. A.: *Cimadevilla Tres.*
05041	Transatlantic Bulk Carriers Inc.: *Ruhr Ore.*
05320	Madrigal Shipping Co. Inc.: *V. Madrigal.*
05374	Compania Argentina de Navegacion Intercontinental S.A.C.I.F.: *Pampa Argentina, Patagonia Argentina, Halandsville, Greenville.*
05520	Union Carbide Corp.: *CC–104.*
06759	Continental Armadora S. A.: *Commander Colocotronis.*
07183	Elenmaris Shipping Co., Ltd.: *Eleni M.*
07418	Venduerada Armadora S. A.: *Crusadar Colocotronis.*
07492	The Crystal Shipping Co., S. A.: *Freesia.*
07550	Erato Shipping Inc.: *Regent Azalea.*
07598	Vroon Shipping (Liberia) Ltd.: *Arabian Express.*
07817	Yick Fung Shipping and Enterprises Co. Ltd.: *Crete Sea, Norwegian Sea, Sulu Sea, Fuchunkiang, Baltic Sea, New East Sea.*
07993	Cosmopolitan Tankers Inc.: *Allison Conway*
08083	Gantline Compania Naviera S. A.: *Nedi.*
08196	Interessentskabet AF 15, April 1972: *Nordkap, Nordpol, Nordtramp.*
08305	Duchess Shipping Co.: *Galva.*
08853	Interessentskapet Saga Sierra: *Carbo Sierra.*
08935	Camelford Shipping Co. (of Liberia): *Georgios K.*
09074	Zuito Shipping Co. Ltd.: *Zenkoren Maru No. 6.*
09405	Seasia Shipping Co., Inc. of Liberia: *Eastern Palmas.*
09705	Transmar S. A.: *Stratus.*
09796	China Pacific S. A.: *Seamaco II.*
09803	Ocean Clue Shipping Co.: *Rania.*
80924	Lacerta Shipping Ltd.: *Golden Portsmouth.*
09867	*K/S Bewa XXV: Rikke Bewa.*
09868	*K/S Bewa XXVI: Mette Bewa.*
10183	Conship Compania S. A.: *Loukia. 2200.*
10260	Hollywood Marine Inc.: *Hollywood 2200.*
10979	Commercial Transports Navigation Corp.: *Aristeidis.*
10990	Silver Coast Second Compania Naviera: *Kandelfels.*
10998	Schiffahrtsgesellschaft Jacob & Co. K. G.: *Olga Jacob.*
11102	Commercial Cable Co. (Marine) Ltd.: *John W. MacKay.*
11153	Sea Containers International Corp.: *Maersk Tempo.*
11225	Cancer Shipping Corp.: *Dafra Merchant.*
11286	Binion Marine Service, Inc.: *T 200.*
11316	El Taino Operations, Inc.: *El Taino.*
11452	Hot Sand S. A.: *Haensel.*
11524	St. Dodric's Shipping Co. Ltd.: *Caricom Adventurer.*
11665	Houston Oil & Minerals Corp.: *W–143.*
11943	Nazca Marine Corp. of Panama: *Lady Salla.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77–1729 Filed 1–18–77;8:45 am]

[Independent Ocean Freight Forwarder License No. 1078]

EMPIRE HOUSEHOLD SHIPPING CO. OF NEW YORK INC.

Order of Revocation

By letter dated December 14, 1976, Mr. Alan D. Gould, President, Empire Household Shipping Co. of New York Inc., 210 Verdi Street, Farmingdale, NY 11735, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1078 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before January 12, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Empire Household Shipping Co. of New York Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) § 5.01(c) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1078 issued to Empire Household Shipping Co. of New York Inc., be returned to the Commission for cancellation.

It is further ordered, That independent Ocean Freight Forwarder License No. 1078 be and is hereby revoked effective January 12, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Empire Household Shipping Co. of New York Inc.

LEROY F. FULLER,
Director, Bureau of Certification & Licensing.

[FR Doc.77–1730 Filed 1–18–77;8:45 am]

[Agreements Nos. 8210–29 and 9214–19]

A/AA MODIFICATIONS

Request for Comments

Agreements Nos. 8210–29 and 9214–19 have been filed with the Commission for approval under section 15 of the Shipping Act, 1916, by the Continental North Atlantic Westbound Freight Conference (CNAWFC) and the North Atlantic Continental Freight Conference (NACFC) respectively. These two identical amendments to the basic conference agreements generally provide that full members of each of the two conferences shall be divided into two categories designated as Class A and Class AA; that Class A/AA status shall be determined on the basis of cellular/noncellular vessel configuration, utilization, and service frequency; and that Class AA members may quote rates lower than those of a Class A member by a fixed percentage, all as more fully described hereinafter. Approval of these amendments is requested for a period of two calendar years beginning with the effective date of the approval.

HISTORY OF A/AA AMENDMENTS

Agreement No. 8210–29 was originally filed by CNAWFC on May 23, 1975, and was noticed in the FEDERAL REGISTER on June 2, 1975. It read as follows:

> Full members of the Conference shall be divided into two categories designated as Class A and Class AA. All full members shall be equally bound to the provisions of the Agreement and shall enjoy equal rights thereunder; provided, however, that rates and charges published in Section II of the Conference tariff shall be applicable to Class AA members only.

The National Association of Alcoholic Beverage Importers (NAABI) was the only protestant to the originally filed agreement.

As a result of Commission staff insistence that the A/AA provisions must spell out the membership criteria, the CNAWFC filed the following amended provisions (new language italicized):

> Full members of the Conference shall be divided into two categories designated as Class A and Class AA. All full members shall be equally bound to the provisions of the Agreement and shall enjoy equal rights thereunder; provided, however, that rates and charges published in Section II of the Conference tariff shall be applicable to Class AA members only. *Class A/AA status shall be determined and redetermined on the basis of cellular/non-cellular vessel configuration, utilization and service frequency as specified in the Conference tariff and such tariff shall also plainly show the current membership status of each carrier party.*

Still later, more specific provisions were filed which set forth the A/AA criteria as follows:

A. *Class AA privileges.* (1) May quote rates up to 8½ percent below Class A rates the first year and up to 6½ percent the second year.

(2) May pay up to 1 percent additional freight forwarder compensation for first two years.

All second year provisions to remain in effect unless otherwise agreed by the parties and approved by the Federal Maritime Commission.

B. *Class AA qualifications.* (1) At least 50 percent of under-deck cargo capacity of each multi-purpose ship must be noncellular and used for common carrier operations.

(2) Total TEU capacity of any vessel allocated to the conference trade may not exceed 550.

(3) May allocate to the conference trade no more than 2400 TEU's per month, cumulative, nor more than 7200 TEU's per quarter, non-cumulative.

(4) No more than two sailings a month in the conference trade with fully cellularized, ro/ro or LASH/Seabee vessels.

(5) On ro/ro vessels employed in the conference trade no more than 30 percent of under-deck cargo capacity shall be allocated per voyage to non-containerizable cargo.

(6) In the event a Class AA member fails, at any time, to meet one or more of the requirements for such status, it shall operate as a Class A member as soon thereafter as such facts are established and applicable tariff filings take effect except that in the event of allocations in excess of that provided in (3) above, not resulting in a change of membership status, a full report thereof shall be provided to the Federal Maritime Commission justifying the determination not to make the change in membership status within 15 days of the last day of the month in which such excess allocation occurs.

The Commission gave notice of its intent to conditionally approve Agreement No. 8210-29 on February 5, 1976 (41 FR 5307), for the purpose of providing the basis upon which the two Eastern Bloc carriers, operating as independents in the trade, i.e., Baltic Shipping Company (BSC) and Polish Ocean Line (POL), would join the conference. In this respect, the Commission observed:

> It is the Commission's opinion that the proposed two-class membership system may be a practical means of accommodating both modern container operators and traditional breakbulk operators in the same conference. It would also appear that it is a legitimate attempt to resolve a serious transportation problem in the trades involved. Based on recent reports of declining trade and continuing increase in carrier services and capacity in the U.S. Atlantic/European trades, it would seem that competition, especially from state-owned non-conference carriers, may be posing a serious threat to the stability of the trades involved.
>
> We believe trade conditions on the North Atlantic warrant a strong and viable conference system. We believe the proposed amendments may help assure continuation of such a system.

On the basis of the above, the Commission stated that it intended to approve the A/AA membership provision (as amended) subject to specified conditions, unless NAABI "* * * or any other interested person is able to come forward with a clear, concise statement of material matters upon which it desires to adduce evidence and a statement of facts which, if so adduced, would result in disapproval."

On October 22, 1976, the CNAWFC filed an amended version of Agreement No. 8210-29 and the NACFC filed an initial A/AA amendment, Agreement No. 9214-19. (FEDERAL REGISTER Notice of November 3, 1976.)[1]

These differ from the previously noticed provisions as follows:

1. AA carriers may charge up to 10 percent below Class A rates the first year (1977) and 6½ percent after the first year.

2. AA carriers may allocate no more than 500 TEU's per week, or 2,166 TEU's per month, cumulative, or 6,500 TEU's per quarter non-cumulative.

3. Class AA carriers may have up to 20 sailings per quarter.

PROTESTS AND COMMENTS

As indicated above, NAABI was the only protestant of the original filing (Agreement 8210-29). After the Commission gave notice of its intent to conditionally approve this agreement on February 5, 1976, protests and/or requests for hearing on the original amendments were filed by NAABI, Boston Consolidation Service (an NVO), Outboard Marine Corporation (an importer/exporter), the Wine and Spirits Wholesalers of America (importers), the American Importers Association (importers), and the Department of Transportation (DOT). Although the Department of Justice did not file comments at this time, DOT stated that it had consulted with Justice in this matter and that it expressed concern about the anticompetitive implications of the proposed agreements.

In addition to the above, Baltic Shipping Company (BSC) filed comments relative to the subject amendments wherein it advised that the proposed membership criteria would have to be changed in two respects before it would be in a position to apply for Class AA membership in the conferences. One, the rate differential between A and AA rates would have to be increased from 8½ percent to 10 percent for the first year and from 6½ to 8½ percent for the second year. Two, the limit on the number of TEU's which AA carriers may allocate per quarter must be on a cumulative rather than a non-cumulative basis.

The primary stated objection of protestants to these amendments was apprehension that these would almost certainly result in the elimination of all nonconference competition in the involved trades thereby removing any control or restraint on the level of conference rates by depriving shippers of any bargaining power. Protestants feared that, once nonconference competition has been eliminated, the conference would then introduce a dual rate system to prevent the future entry of nonconference operators. In this respect, DOT stated that this total elimination of independent operators would be contrary to the intent of Congress underlying the Shipping Act, 1916, that approval of the conference system depends in part on the existence of independent operators to maintain the integrity of the pricing system. DOT claimed that during the drafting of the 1961 amendments to the Shipping Act, "* * * Congress deliberated long and hard to come up with a formula that would retain and strengthen independent competition in the conference-dominated shipping industry."

Most protestants requested a hearing with respect to the amendments on the grounds that they were "anti-competitive" or had "potentially serious anti-competitive effects" for which no cogent justification had been given. They contended that there was no evidence that BSC and POL now posed, or would pose in the near future, a "serious threat" to the conferences or the stability of rates and services in the involved trades. To illustrate the lack of any disruptive competitive practices, NAABI provided a rate comparison on 37 major moving commodities in the Continental Westbound trade for the first half of 1975 between the Eastern Bloc carriers and the CNAWFC. As NAABI pointed out, this comparison showed that the "* * * independent carriers either had the same rate level as the conference for many commodities or up to 10 percent lower rates, which is nothing unusual for an independent operator." On this basis, NAABI concluded that the 48-Hour Rate Agreement between CNAWFC and the two independents "* * * is an effective controlling device." Other protestants, such as DOT, discounted the "serious threat" posed by BSC and POL on the basis that they "* * * offer only a very small percentage of the capacity available in the trades."

With respect to the demand in the Commission's Order that protestants must bring forth facts "* * * which * * * would result in disapproval," protestants objected to this as shifting the burden of proof from the conferences to the shippers and other protestants. They argued that, since these amendments have serious anti-competitive potential, the burden of proof as to the need for their approval should rest with the proponents at the Commission and the Courts have said it should.

Responses to the November 3, 1976, FEDERAL REGISTER Notice of the (present) revised amendments indicate that the only new protestants are the Department of Justice and the Great Lakes Task Force (GLTF). Three of the earlier protestants did not file comments this time: AIA, Wines and Spirits Wholesalers of America and Boston Consolidation Service. Neither BSC nor POL filed comments at this time.

Examination of these later protests reveals that no additional reasons for holding a full evidentiary hearing were advanced. As before, the primary reasons cited are (1) the probability that the agreements will result in the elimination of all independent competition in the trade thereby removing any restraint on the level of conference rates, (2) the failure of the proponents to demonstrate that the agreements are in the public interest, (3) lack of evidence that the Eastern Bloc carriers pose a serious threat to stability, (4) no evidence of over-tonnaging or serious competitive problems in the trade, (5) no evidence of declining trade, and (6) because the agreements have not been justified and have been protested, a hearing is mandatory.

DOT and Justice also argue that the likelihood that these agreements will result in the elimination of independent competition, renders them contrary to the intent of Congress in preserving such

competition as manifest in the legislative histories of the Shipping Act.

Outboard Marine additionally contends that the agreements will result in violations of sections 16 and 17 of the Shipping Act, 1916, i.e.:

Section 16 First of the Shipping Act, 1916 declares it to be unlawful for any common carrier by water to make or give any undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or to subject them to undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 15 of the Shipping Act directs the Commission to reject, cancel or modify any agreement submitted to it for approval that it finds, after notice and hearing, to be unjustly discriminatory or unfair between carriers, shippers, exporters, importers, or ports. FMC Agreement No. 9214–19 would violate Section 16 First. By limiting the number of sailings and the carrying capacity of Class AA members, FMC Agreement No. 9214–19 will restrict the availability of ocean common carrier service by placing artificial, capricious limits thereon. Class AA members will be restrained from serving all ports at which a demand for service occurs merely because the number of sailings they may undertake is limited by FMC Agreement No. 9214–19. Section AA members will be restrained from serving all those who indicate a need or desire for their services since the vessel carrying capacity of Class AA members is restricted by FMC Agreement No. 9214–19. These restrictions will unduly prefer those who are able to secure carriage by Class AA members and will unduly prejudice those who are not able to secure such carriage, thereby forcing the latter to utilize the higher cost Class A carrier's services. Such a result should not be permitted without a hearing on the propriety thereof.

Section 17 of the Shipping Act, 1916, forbids common carriers subject to the Act to demand, charge, or collect a rate, fare or charge which is unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Section 15 of the Shipping Act, 1916, commands the Commission to reject, cancel or modify any agreement that it finds, after notice and hearing, to be unjustly discriminatory between exporters from the United States and their foreign competitors. Under the auspices of a grant of Commission approval, FMC Agreement No. 9214–19 would permit carriers to openly practice such discrimination. No limitation is placed upon the possibility of a given carrier operating as a Class A (high rate) carrier in the NACFC while simultaneously offering reduced rates as a Class AA (lower rate) carrier in the trade from Europe to the United States. By so doing, the carrier would be operating under color of Commission permission subject to a filed and approved agreement. This matter deserves the closer attention of the Commission and should be made the subject of hearings.

Discussion and Conclusions

The Eastern Bloc carriers are, and may be expected to continue to be instruments of the national policies of their governments. For this reason, it is impossible to determine conclusively what may be the competitive practices of those carriers in the future, either as members of conferences or as independents. However, it is a fact that, even as some protestants concede, Soviet rate levels are currently less disparate than in the past. This condition may well result from interim actions by the Soviets showing their good faith in anticipation of conference membership. However, it is also reasonable to conclude that if their membership in these conferences were thwarted, they would consider rate policies and levels that are feasible only for carriers of non-market economy countries.

Even a full evidentiary hearing could not reveal the future intentions of these carriers. The nature of this situation, therefore, requires something other than ordinary commercial evidence.

The factual materials submitted by proponents and protestants have only shown ordinary commercial evidence. We, however, are obligated to explore all sources of relevant evidence in order properly to resolve this matter, which is of most serious concern to this Commission, to U.S. importers and exporters, and to vessel operators in our foreign commerce, both independents and conference members, both U.S. flag and foreign. This Commission's obligation extends in this particular case to the scrutiny of certain heretofore unpublished material from government sources as well as of the most current information now available from public sources, not referred to by protestants because most of it was not available to them. These sources are found in the footnotes in the appendix to this notice. We have studied these sources and have reached the following conclusions:

By Western standards, the Soviet shipping system has been, up until recently, inefficient.[8] As late as December 31, 1974, the U.S.S.R. had 15 full containerships in service with a combined capacity of 3,350 TEU's and 60,000 DWT, the largest of these vessels being a 6,400 DWT ship with a speed of only 17 knots and a TEU capacity of 358.[9] In contrast, Western container fleets included individual ships with space for 3,000 containers and speeds as high as 33 knots.[10]

At the end of the five year plan ending in 1975, 65 percent of Soviet merchant tonnage was less than 10 years old but there were a number of long-standing qualitative deficiencies, placing the Soviet fleet behind Western fleets in maritime technology. Because of draft limitations in U.S.S.R. ports, the average size of a Soviet ship was less than half the world average. At a time when the movement of general cargo in scheduled liner service on major routes like the North Atlantic and the North Pacific was becoming dominated by containerships, roll-on/roll-off (ro/ro) vessels and other craft that carry cargo in modular units to minimize time in port, the U.S.S.R. still relied heavily on conventional general-purpose dry cargo ships on which general cargo is loaded piece by piece.[8]

In 1975, however, the first Soviet full containership, suitable for trans-Pacific or trans-Atlantic service was delivered. This was the East-German built *Khudozhnik Saryan* (13,000 DWT—774 TEU's).[9] From that modest level of trade penetration, the Soviets have progressed to such a point that it is expected that at the end of the five-year plan ending in 1980, the following increases in tonnage of competitive-type container vessels are expected over levels prevailing in 1976:[7]

	Deadweight tons	
	From—	To—
Ro/Ro	89,200	298,400
Container carriers	68,300	198,300
Barge carriers	0	78,400
Total	157,500	566,100

In addition to the *Saryan* (supra) other new classes of containerships and ro/ro ships introduced or anticipated in 1975 and after are:[8]

Class	Type	Dead-weight tons	TEU capacity
Magnitogorsk	Ro/Ro	21,000	1,368
Kapitan Smirnov	Ro/Ro	20,000	1,000+
Skulptor Konenkov	Ro/Ro	13,200	774
Akademik Tupolev	Ro/Ro	4,200	235
Ivan Skuridin	Ro/Ro	4,800	242

Ro/ro vessels offer expeditious handling and carriage of wheeled vehicles and general cargo in trailers and can accommodate containers and palletized cargo. Although there is some skepticism as to the ability of such ships to compete in terms of cost and port turnaround time with the latest cellular containerships in the movement of containerized cargo, modern Soviet ro/ro's will be fully competitive with Western ro/ro's.[9]

The current Soviet 5-year plan for the merchant fleet is designed to procure the largest ro/ro and LASH/Seabee fleet in the world. These vessels are uniquely suited for transporting cargo to regions lacking adequate port facilities and specialized cargo handling equipment. It has also been observed that ro/ro and LASH ships are highly adaptable for the transport of arms and materials to support onshore military operations.[10]

Even as of January, 1977, however, the Soviets were still serving the North Atlantic mostly with 4 or 5 general cargo ships which can carry about 368 TEU's each and one ro/ro which has the capacity for 774 TEU's.[11] Polish Ocean Lines, in the same month utilized 5 smaller vesssels, 4 with the capacity of about 310 TEU's each and one which can carry about 168 TEU's.[12]

The impact in the North Atlantic trades of Eastern Bloc technologically-effective competition, therefore, appears to be a year or two hence when, it is reported, the Soviets will put in four more ro/ros and the Poles will begin operation of five 23-knot containerships.[13]

While the future threat of Soviet domination of foreign trades is our paramount concern, the importance of the history of the Soviet economic penetration in world markets and their present capability to so penetrate may not be minimized. As of June 30, 1975, the U.S.S.R. had 58 separate international cargo lines, only five of which were affil-

Footnotes at end of document.

iated with conferences.[14] From an original complement of 132 ships operating in these liner services in 1970, by June 1975 the Soviets had increased their fleet to 316 vessels.[15]

The Soviet fleet's role as a cross trader has been on the increase since the mid-1960's. The tonnage of cross-trade cargo carried by it increased from 7.5 million tons in 1965 to 15 million tons in 1970, and more than 22 million in 1974.[16] Twenty of the 58 liner services operated largely or entirely outside Soviet trades by mid-1975.[17] Of an estimated 29,848 reported voyages in 1975 for the Soviet merchant fleet, some 10,358 were made in cross trades (Western port to Western port).[18]

Soviet shipping will probably remain in these cross trades because of the uneven distribution of the U.S.S.R.'s external trade. The country and commodity composition of Soviet trade has ensured that shipping capacity is pushed toward cross trading. Such cross trading can help toward capacity utilization as well as toward the accumulation of so-called "hard" currency.[19] We will discuss this latter concern more fully below.

In addition, the seasonality of many Soviet sea routes, which are blocked by ice in winter, releases ships for use elsewhere.[20] Department of Commerce figures indicate that by 1975 the Soviets had obtained 13% of the U.S. North Atlantic-West Germany trade, and 12 percent of the West German-U.S. Atlantic trade.[21]

A further factor which may not be ignored is the economic leverage of the Soviets which is inherent in their marketing system. There is strong evidence that Soviet lines are heavily subsidized by their government and that their profits are based on cost concepts completely different from those of the West. A Soviet line does not have to bear the capital costs of building ships, of securing loans, of making provision for replacement or allowance for depreciation since the trade ministry buys its ships. A Soviet line does not have to pay its own insurance costs; it will bunker as much as possible in home ports where fuel costs are one third current world prices; and it can pay much lower wages.[22] Indeed, the Soviets themselves admit that they have substantial economic advantages which result from such lesser expenses. They also readily agree that they have: a social system which provides that all employee benefits be paid by the Government; constant fuel prices; a longer useful life for vessels; the absence of hull and machinery insurance for Soviet vessels; and lower crew wages. Indeed, it has been conceded that the lower operating expenses resulting from these and other economic advantages over Western carriers permit lower ocean cargo rates.[23]

This lower threshold for profitability, in the Western sense of the word, indeed makes plausible lower freight rates by which the Soviets may attract cargo. In the long run, this gathering of cargo would result in greater profitability based on sheer volume than could be achieved be a competitor who is hampered by commercial pricing and profit controls that may make the carrier unable to compete effectively on a cost basis.[24]

More carog for the Soviets in the cross trades, however obtained, generates foreign currencies, which are now at a premium in the Soviet Union.[25] Foreign exchange earnings became a major criterion of maritime success and a yardstick for bonus payments commencing in 1960. An elaborate system of bonuses and above-plan performance for ships involved in foreign trading shows the strict control over foreign exchange expenditure. Under that system, a certain percentage of foreign currency saved by each vessel is distributed among the crew, and foreign exchange earnings are marked up before assessing the overall profitability of a shipping operation. The importance of this gathering of foreign currency is enhanced by rigorous adherence to other currency-savings stratagems such as bunkering to the greatest extent possible in Soviet ports, restricting crews' foreign spending allowances, delaying most repairs for the home port, and dispensing with foreign pilots wherever possible.[26] This Soviet emphasis on shipping as a prime earner of foreign currency likely heralds more aggressive expansion into the major Western liner trades such as the North Atlantic.[27] This likelihood is even more dramatic when it is noted that the U.S.S.R.'s Hard Currency Trade Deficit went from $911 million in 1974,[28] to $5 billion in 1976.[29]

Soviet freedom from the normal commercial disciplines of a market economy, and their desire to obtain cargo which generates hard foreign currency, have thus enabled them to undercut the rates of Western steamship operators by an admitted 10 to 20 percent, even when operating conventional vessel service on key trade routes such as the North Atlantic.[30] The U.S.S.R. subsidization of its merchant marine also enables it to offer cut rates to Third World countries in order to reduce the developing countries' dependence on the Western industrialized nations for maritime transportation.[31] When the sophistication of the Soviet competitive ships increases, the incentive to penetrate lucrative trades will become much more pressing.[32]

The level of disparity between Soviet and conference rates is, of course, open to dispute depending on how the study is made. Protestant NAABI contends that a recent comparison of conference rates for the major moving commodities in the trade with those filed by state-owned operators in the North Atlantic "reveal no unusual, or excessive, differentials." On the other hand, a Commission staff study of rates during the same period shows that Soviet rates average well below conference rates—in some cases 21 to 36 percent lower—indicating a Soviet capability to impose "unusual" or "excessive" differentials. The reliability of such studies, of course, depends upon the selection of commodities, the complication of differing commodity descriptions, and the timing of the comparison. If the comparison is made at the time of the Eastern Bloc carrier's reduction in rates rather than when the conference was forced to reduce its rates to meet that new competition, one result will be shown. If the comparison is made later, the variation will likely have changed.

Whatever the current differentials—even were there none—their relative importance pales when compared to the potential threat of the Eastern Bloc countries which results from organization, historical operation in these and other trades, ability to compete, and announced plans and policies. No commercially profit-motivated independent carrier can wield the power available to the Soviets. By a twin policy of severe rate cutting and control over the transport of their own national cargoes, the Soviets could present profound problems for Western lines historically operating in the major liner trades, especially if aided by opportunistic shippers.[33] Chaos would result were such an event to occur because of further trade deterioration in the North Atlantic. Under such circumstances the Soviet carriers could attract the more lucrative higher rated cargoes leaving to the Western lines only the lower paying traffic. No Western carrier would permit such an act without struggling to maintain its market share. The Western carriers' attempts to survive would result undoubtedly in a vicious rate war. However, it is also clear that the survival for any length of time for commercially profit-motivated Western carriers would be dubious at best.[34]

In the words of the National Ocean Policy Study Staff, recently released:

> The Soviet Union has managed to compete with the Western maritime nations by cutting shipping rates of their Government-owned merchant fleet to well below the minimum offered by the Western shipping companies. This has enabled the Soviet Union to enhance their contacts with the developing countries and reduce the Third World countries' dependence upon the Western shipping industry.[35]

As a result of all these concerns, it is the opinion of this Commission that a feasible, commercially-sound resolution of these threats is advisable now. Without this sort of commercial solution, the industry will be hard-pressed to deal with the probable conditions of the future.

The present Shipping Act machinery, (such as section 18(b)(5), dealing with unfair rate levels) requires in most situations a protracted hearing before a rate can be found unreasonable. Proposed legislation, such as H.R. 14564, introduced in the Second Session of the 94th Congress, while designed to correct some of these problems, would, in our opinion, not be as effective as having the rates and services controlled under a voluntary, approved section 15 arrangement. Furthermore, action under that proposal, in all probability, would not be feasible until after a full evidentiary hearing.

These are changing times. We are not required to wear blinders restricted either by experience in times past or by prior decisions which were issued within the atmosphere then existing. Furthermore, we think it to be in the public

Footnotes at end of document.

interest to encourage and approve a modus vivendi by the operators in the trades arrived at by the give and take of the market place and commercial realities rather than to utilize, for example, section 19 of the Merchant Marine Act, 1920 (46 U.S.C. 876) to impose impediments on the access by state-controlled common carriers to our trades with the consequent hazard of government-to-government confrontation of major world powers.

Approval of the agreements now before us presents what may be a timely opportunity to avoid commercially detrimental and unacceptable conditions before they happen. With voluntary Soviet participation in the conference system in the North Atlantic trades, this solution is, in our opinion, preferable to protracted proceedings, court actions, government-to-government confrontation, or legislation after the fact.

The Soviet experience with conferences would be a crucial element in allocation of their future tonnage to world liner routes. As has been the case in other trades, the Soviets, now becoming established in this trade, may be ready to join a conference.[24] The advantages to them would be a voice in formulating policy and in developing rate structures.[25]

The Chairman of this Commission did obtain the commitment of the Soviet Ministry of Merchant Marine that it would use its good offices to have Soviet Lines actively pursue conference membership in major U.S. trades. The approval of these amendments which are tailored to fit the peculiar circumstances of the present developmental stage of the Soviet fleet, would provide an opportunity for the Soviet lines to honor this commitment by becoming conference members, albeit Class AA. Moreover, there is every indication that they intend to join the conferences if these amendments are approved.

The importance of this system as outlined above cannot be doubted. However, one protestant, OMC, is of the opinion that the system is, of itself, violative of sections 16 and 17 of the Shipping Act, 1916. OMC misconceives the system envisioned by the A/AA amended agreements. The Soviets are not, thereby, restricted from carrying or port access in any way. The system simply requires that if the Soviets only carry so much cargo, etc. thereby qualifying as Class AA members, they may charge a separate and reduced rate commensurate with that limited service capability. If, on the other hand, the Soviet's capacity and service capability increase to "A" levels, they will no longer be permitted a reduced rate structure but will become full members of the Conference, required to charge the same rates and to compete only on service, not on rates. Viewed in this light, these proposals cannot be seen to result in any violations of sections 16 or 17 as alleged by OMC. These proposals merely protect the stability of a trade by allowing the voluntary, self-regulation of the Soviets under the Conference umbrella.

Footnotes at end of document.

If these agreements are approved, other protestants express fear that this Commission will hereafter approve a dual rate contract system for use in these trades and thereby, so they assert, effectively foreclose opportunity of non-conference operators to survive and provide rate competiton in these trades. We cannot predict what reactions the Commission may have if request is made for dual rate contract system authority, but we can confidently state that it will, within its sound judgment, rule upon any such requests within the guidelines of sections 14b and 15, Shipping Act, 1916. In fact, however, independent operators exist in most if not all our foreign commerce trades, even those where these conference tying contracts exist.

We are concerned, however, that non-commercially-profit motivated independents are more capable of engaging in unbridled and disruptive competition with conference lines than are Western, commercially profit-motivated independents. For this reason, we agree in principle with the following UNCTAD resolution adopted on April 6, 1974[26] which was not objected to in the United States position:[27]

> Non-conference shipping lines competing with a conference should adhere to the principle of fair competition on a commercial basis.

We believe that the A/AA agreements here are the best accommodation of this policy, considering the fact that Eastern Bloc carriers are not motivated on a truly commercial basis as we have come to understand the term.

This type of conference agreement appears to be the only type that the Eastern Bloc carriers will enter into in these trades. As we noted earlier, no evidentiary hearing would shed light on their future intention. Further, without our approval of these agreements there looms the risk of a destructive rate war, as real and as serious as any situation which occasioned the Shipping Act, 1916, and which section 15 was designed to prevent.

Thus, there is a particularly persuasive and valid regulatory purpose to be served by their approval. For this reason, and because our ultimate disposition of these agreements will depend upon the foregoing considerations, not heretofore directly addressed by the protestants herein, we believe due process dictates that we allow any interested party an opportunity to address such considerations. To that end, we are inviting interested parties to submit affidavits and memoranda of law on the matters discussed above, i.e., the capability of the Eastern Bloc fleets to charge rates well below those which can be charged by Western commercially-profit motivated carriers, the disposition toward and possibility of those fleets taking such actions in the future, and the potential of these agreements to inhibit the risk of such rate wars.

Any person wishing to submit affidavits or memoranda, addressing the above-described issues, must do so on or before the close of business February 18, 1977.

Therefore, it is ordered, That a copy of this Notice be published in the FEDERAL REGISTER.

By the Commission, January 14, 1977.[28]

FRANCIS C. HURNEY,
Secretary.

APPENDIX

FOOTNOTES

[1] The A/AA amendment of the North Atlantic French Atlantic Freight Conference, Agreement No. 7770-13, has been withdrawn.

[2] Lambert Brothers Shipping Ltd. "Russian Shipping: Background Data and Analyses," May, 1976. p. iii.

[3] William Carr, "Soviet Shipping Strength and its Employment" in "Soviet Oceans Development," Committee Print of the U.S. Committee on Commerce and National Ocean Policy Study, Pursuant to S. Res. 222, 94th Congress, 2nd Session, October, 1976, available to the public on January 6, 1977; p. 334.

[4] Id., p. 334.

[5] Id., p. 331.

[6] Id., p. 342.

[7] Seatrade, "Soviet Shipping," February, 1976, p. 7, indicating the source to be "Morflot, Moscow."

[8] William Carr, supra, p. 342 and Lloyd's Register.

[9] Id., p. 342.

[10] National Ocean Policy Study Staff, "Summary: Soviet Ocean Development," in supra note 3, p. 4.

[11] Journal of Commerce, January 13, 1977. Sailing card No. 24 and Lloyd's Register. The *DeKabrist, Walter Ulbricht, Polessk,* and *Primorsk* are all about 12,000 dwt. In November, 1976, the one ro/ro allocated to this trade was the *Magnitogorsk* (1368 TEU's) but the only ro/ro advertised in January, 1977 was the *Skulptor Konenkov* (774 TEU's). Id.

[12] Journal of Commerce, January 13, 1977, Sailing card No. 9 and Lloyd's Register. The *General Stanislaw Poplawski, Franciszek Zubrzycki, Bronislaw Lachowicz* and *Mieczyslaw Kalinowski* are all about 10,110 dwt and the *Roman Pazinski* is about 5606 dwt. Id.

[13] *Seatrade*, supra, p. 7.

[14] William Carr, supra, p. 337.

[15] Lambert Brothers Shipping Ltd., supra, p. 13.

[16] William Carr, supra, p. 336.

[17] Id., p. 336.

[18] Lambert Brothers Shipping Ltd., supra, p. 23.

[19] Seatrade, supra, p. 16.

[20] Id., p. 16.

[21] Id., p. 7.

[22] Id., pp. 5–7.

[23] Id., p. 15.

[24] Lambert Brothers Shipping Ltd., supra, p. 15.

[25] Id., p. 15.

[26] Seatrade, supra, p. 15.

[27] Id., p. 11.

[28] "Vneshnaia Torgovlia SSSR, 1975" ("Foreign Trade USSR," 1975), pp. 9–13 and passim.

[29] U.S. Government estimate based on U.S.S.R. Trade Statistics. Morgan Guaranty Trust Company of New York's "World Financial Markets," December, 1976, p. 6, estimates the external debt of the U.S.S.R. at end of 1975, at $12,500,000,000.

[30] Lambert Brothers Shipping Ltd., supra, p. 14.

[31] National Ocean Policy Study Staff, supra, p. 7.

[32] William Carr, supra, p. 337.

[33] Seatrade, supra, p. 3.

[34] *Id.*, pp. 7–9.

[35] National Ocean Policy Study Staff, supra, p. 3.

[36] Seatrade, supra, p. 9. The Soviets are full members of over a dozen conferences,

and party to various rate agreements, though they have been less willing to join than East German or Polish Lines, Id.

[3] Id., p. 11.

[4] "United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences," Volume II. (Final Act), July 1975, Annex to Resolution 1, p. 22.

[5] Closing Statement of U.S. Delegation, April 7, 1974.

[6] Chairman Bakke has recused himself from consideration of this matter.

[FR Doc.77-1726 Filed 1-18-77;8:45 am]

FEDERAL POWER COMMISSION

PRIVACY ACT OF 1974

New or Intended Routine Uses of Information in Existing Systems of Records

The Privacy Act of 1974, Publ. L. No. 93-579 (88 Stat. 1896), requires that each agency publish at least annually a notice of the existence and character of each "system of records," as defined in 5 U.S.C. 552a(a)(5), which the agency maintains, 5 U.S.C. 552a(e)(4). The Federal Power Commission has published such notice in the FEDERAL REGISTER at 40 FR 39353 (August 27, 1975), 40 FR 41984 (September 9, 1975), 40 FR 45118 (September 30, 1975), 40 FR 52806 (November 12, 1975), 41 FR 9010 (March 2, 1976) and 41 FR 38932 (September 13, 1976).

Pursuant to 5 U.S.C. 552a(e)(11), section 309 of the Federal Power Act, as amended (49 Stat. 858-859; 16 U.S.C. 825h), and section 16 of the Natural Gas Act, as amended (52 Stat. 830; 15 U.S.C. 717o), notice is hereby given that the Federal Power Commission proposes the adoption of new or intended uses of information in existing record systems which have been published in the FEDERAL REGISTERS cited above.

The Privacy Act requires that the Agency publish in the FEDERAL REGISTER annually a notice of the existence and character of the system of records, which notice shall include, in part, "each routine use of the records contained in the system, including the categories of users and the purpose of such use;" (5 U.S.C. 552a(e)(4)). Further, the Commission's Rules require the notice contain, at a minimum, the categories of recipients for each proposed routine use (18 CFR 3b.3(c)(5)). In accordance therewith, the Agency published in the FEDERAL REGISTER, on September 13, 1976, (41 FR 38932) its required annual notice of the existence and character of its systems of records. Included in that notice is System of Records FPC-20, "Pay and-Related Records (Payroll, Travel, Attendance, Leave)—FPC" (41 FR 38941). Routine Use j., thereunder, states (page 38941):

j. To report to unemployment compensation agencies or boards gross wages and separation information for unemployment compensation.

The Notice invited comments pertinent to proposed systems of records pursuant to the requirements cited, infra.

On October 13, 1976, the Commission received a comment from the U.S. Department of Labor, Lawrence E. Weatherford, Jr., Administrator, Unemployment Insurance Service, suggesting that in accordance with the Unemployment Compensation for Federal Employees Program (5 U.S.C. 8506), Routine Use j. be changed to include a specific reference to the U.S. Department of Labor and State employment security agencies. In response to this request, the FPC Office of the Comptroller further suggested that "District of Columbia" be incorporated, in addition to the Labor suggestions, in Routine Use j. in order to further specify the uses to which these records shall be put and the recipients of such requests for use.

Accordingly, the Federal Power Commission hereby gives notice of the addition of the following new routine use to the FPC record systems 20 entitled, "Pay and Pay-Related Records (Payroll, Travel, Attendance, Leave)—FPC" (41 FR 38941).

j. To respond to requests from State, District of Columbia employment security agencies, and the U.S. Department of Labor for employment, wage, and separation date of former employees, to determine eligibility for unemployment compensation.

The categories of records maintained in the affected systems and the authorities authorizing the maintenance of the information contained in these systems are set forth in the appropriate FEDERAL REGISTERS cited above.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, on or before February 18, 1977, comments or suggestions, in writing, concerning all or part of the notice proposed herein. Submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. The Commission will consider all such submittals before acting on the matters proposed herein. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name and mailing address of the person filing the comments or suggestions.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1712 Filed 1-18-77;8:45 am]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

COMMITTEE MEETINGS

Pursuant to the provisions of section 10 of Pub. L. 92-463, effective January 5, 1973, notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, February 3, 1977.
Thursday, February 10, 1977.
Thursday, February 17, 1977.
Thursday, February 24, 1977.

The meetings will convene at 10 a.m. and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street, NW., Washington, D.C.

The committee's primary responsibility is to study the prevailing rate system and from time to time advise the Civil Service Commission thereon.

At these scheduled meetings, the committee will consider proposed plans for implementation of Pub. L. 92-392, which law establishes pay systems for Federal prevailing rate employees.

The meetings will be closed to the public on the basis of a determination under section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C., section 552(b)(2), that the closing is necessary in order to provide the members with the opportunity to advance proposals and counter-proposals in meaningful debate on issues related solely to the Federal Wage System with the view toward ultimately formulating advisory policy recommendations for the consideration of the Civil Service Commission.

However, members of the public who wish to do so, are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the committee's attention. Additional information concerning these meetings may be obtained by contacting the chairman, Federal Prevailing Rate Advisory Committee, Room 1338 1900 E Street, NW., Washington, D.C. 20415.

DAVID T. ROADLEY,
Chairman, Federal Prevailing Rate Advisory Committee.

JANUARY 14, 1977.

[FR Doc.77-1734 Filed 1-18-77;8:45 am]

FEDERAL RESERVE SYSTEM

CONDITION OF STATE MEMBER BANKS

Call for Report

Pursuant to section 9 of the Federal Reserve Act, as amended (12 U.S.C. 324), and to section 7(a)(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(a)(3)), the Board of Governors of the Federal Reserve System, effective January 20, 1977, has issued a call to each insured State bank that is a member of the Federal Reserve System to make a Report of Condition as of the close of business December 31, 1976. Pursuant to section 7(a)(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(a)(3)), each insured State bank that is a member of the Federal Reserve System is required to make a Report of Condition as of the close of business December 31, 1976. That date has been selected for the Report of Condition by the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System. The Report of Condition

should be filed with the Federal Reserve Bank of the district wherein the bank is located, within ten days after notice that such report shall be made: *Provided*, That if such reporting date is a nonbusiness day for any bank, the preceding business day shall be its reporting date.

Each insured State bank that is a member of the Federal Reserve System, except a bank in the District of Columbia, shall make its original Report of Condition on Federal Reserve Form 105—Call No. 222[1] and shall send the same to the Federal Reserve Bank of the district wherein the bank is located and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. The original and copy of the Report of Condition shall be prepared in accordance with "Instructions for the Preparation of Reports of Condition by State Member Banks of the Federal Reserve System," dated March, 1976.[1]

Board of Governors of the Federal Reserve System, January 14, 1977.

STEPHEN S. GARDNER,
Vice Chairman, Board of Governors of the Federal Reserve System.

[FR Doc.77-1838 Filed 1-18-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 742-3262]

RICHARD D. JONES MORTGAGE SERVICE, INC., ET AL.

Consent Agreement With Analysis To Aid Public Comment

Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, 40 F.R. 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 18, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commissions' rules of practice (16 CFR 4.9(b)(14), 40 F.R. 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[File No. 742-3262]

RICHARD D. JONES, MORTGAGE SERVICE, INC. ET AL.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Richard D. Jones, Mortgage Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Richard D. Jones Mortgages Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation, and it now appearing that Richard D. Jones Mortgage Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated:

It is hereby agreed by and between Richard D. Jones Mortgage Services, Inc., a corporation, by its duly authorized officer, and Richard D. Jones, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Richard D. Jones Mortgage Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 8580 La Mesa Boulevard, La Mesa, California 92041.

Proposed respondent Richard D. Jones is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and it's decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondents Richard D. Jones Mortgage Services, Inc., a corporation, its successors and assigns, and its officers, and Richard D. Jones, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the implementing regulation of the Truth in Lending Act (15 U.S.C. sections 1601-1665 (1970), as amended, 15 U.S.C. sections 1601-1665(a), (Supp. IV, 1974)), do forthwith cease and desist from:

1. Failing to make the disclosures required by § 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by § 226.6(a) of Regulation Z.

2. Failing to include in the finance charge the service, transaction, activity or carrying charges, loan fees, points, finder's fees and similar charges as required by § 226.4(a) of Regulation Z.

3. Failing to include in the finance charge fees for title examination, abstract of title, title insurance, preparation of deeds, settlement statements, other documents, appraisal fees and credit reports, in excess of reasonable amounts, as required by § 226.4(e) of Regulation Z.

4. Failing to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as required by § 226.6(a) of Regulation Z.

5. Disclosing additional information or explanation stated, utilized or so placed so as to mislead or confuse the customer or to contradict, obscure or detract attention from the information required to be disclosed by § 226.8 of Regulation Z, including, but not limited to, setting forth any rate of interest or annual percentage rate in percentage terms which is not the true annual percentage rate required to be disclosed by Regulation Z and this order, as required by § 226.6(c) of Regulation Z.

6. Failing to preserve, for two years, evidence of compliance with the disclosure requirements of Regulation Z, other than the advertising requirements under § 226.10, as required by § 226.6(i) of Regulation Z.

7. Failing to make the disclosures required by § 226.8 of Regulation Z on either (1) the

[1] Filed as part of the original document.

note or instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or (2) on one side of a separate statement which identifies the transaction, as required by § 226.8(a) of Regulation Z.

8. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, computed in accordance with § 226.5 of Regulation Z, using the term "annual percentage rate," as required by § 226.8(b) (3) of Regulation Z.

9. Failing to disclose the due dates or periods of payment scheduled to repay indebtedness, as required by § 226.8(b) (3) of Regulation Z.

10. Failing, in arranging for the extension of credit loans secured by other than a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling, to disclose the sum of all payments and failing to use the term "total of payments" to describe said sum, as required by § 226.8(b) (3) of Regulation Z.

11. Failing, in transactions where a payment is more than twice the amount of an otherwise regularly scheduled equal payment, to identify the amount of such payment by using the term "balloon payment," as required by § 226.8(b) (3) of Regulation Z.

12. Failing to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by § 226.8(b) (4) of Regulation Z.

13. Failing to describe the penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation with an explanation of the method of computing such penalty and the conditions under which it may be imposed, as required by § 226.8(b) (6) of Regulation Z.

14. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by § 226.8(b) (7) of Regulation Z.

15. Failing to identify the amount of the credit which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge, using the term "amount financed," as required by § 226.8 (d) (1) of Regulation Z.

16. Failing to disclose, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge, using the term "finance charge," as required by § 226.8 (d) (3) of Regulation Z.

17. Failing, in the case of a transaction in which a security interest is or will be retained or acquired in any real property which is used or expected to be used as the principal residence of the customer, except in the case of the creation, retention or assumption of a first lien or equivalent security interest, as set forth in § 226.9(g) of Regulation Z, to:

a. Disclose that the customer has a right to rescind the transaction by midnight of the third business day following the transaction, as required by § 226.9 of Regulation Z; and

b. Furnish the customer with two copies of the notice set forth at § 226.9(b) of Regulation Z, as required by § 226.9(b) of Regulation Z; and

c. Set forth, along with the notice contemplated and required by § 226.9(b) of Regulation Z, § 226.9(d) of Regulation Z, as required by § 226.9(b) of Regulation Z; and

d. Delay performance of respondents' obligations under contract until the rescission period has expired, as required by § 226.9(c) of Regulation Z.

18. Failing in any consumer credit transaction to make all disclosures determined in accordance with §§ 226.4 and 226.5 of Regulation Z at the time and in the manner, form, and amount required by §§ 226.6, 226.8, and 226.9 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of each change in his business or employment status, including discontinuance of his present business or employment, and each affiliation with a new business or employment for a period of ten years following the effective date of this order. Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the business or employment as well as a description of the respondent's duties and responsibilities in that business or employment.

[File No. 742 3262]

RICHARD D. JONES MORTGAGE SERVICES, INC.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Richard D. Jones Mortgage Services, Inc. and Richard D. Jones.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent Richard D. Jones Mortgage Services, Inc. is a California corporation engaged in the arranging of consumer loan transactions between private investors and individual borrowers. Respondent Richard D. Jones is the President of the corporate respondent. The complaint alleges that in connection with the arrangement of consumer credit, respondents have failed to make the required truth in lending disclosures to consumer borrowers as mandated by Regulation Z, the implementing regulation of the Truth in Lending Act. In addition, respondents have failed to make complete disclosures of the right of rescission to eligible consumers, and have failed to retain evidence of compliance with truth in lending as required by Regulation Z.

The consent order in this matter requires Richard D. Jones Mortgage Services, Inc. and Richard D. Jones to commence compliance with the disclosure requirements of the Truth in Lending Act. The order also requires respondents to file a report with the Commission setting forth the manner and form in which they have complied with the order. Respondents are further required to retain evidence of compliance with truth in lending for a period of two years following each transaction.

The order is generally designed to enable consumers to evaluate more accurately the terms and conditions of loan transactions arranged by the respondents.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1678 Filed 1-18-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on January 10, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed SEC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 7, 1977, and should be addressed to Mr. John M. Lovelady, Regulatory Reports Review, United States General Accounting Office, Room 5033, 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.

SECURITIES AND EXCHANGE COMMISSION

SEC requests clearance of a revision to Form R–31, Value and Volume of Sales on U.S. Stock Exchange. Form R–31 is used in the collection of Market Value and Volume of Sales on all U.S. Stock Exchanges. The form has been revised so that Bond Market Value and Volume is no longer reported by the exchanges. Potential respondents are the 10 U.S. Stock Exchanges and reporting burden is 10 minutes per monthly report.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77–1767 Filed 1–18–77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

BENDIX CORP. COAL MINE DUST PERSONAL SAMPLER UNITS

Revocation of Certificates of Approval

Pursuant to notice published in the FEDERAL REGISTER (41 FR 52103), a public hearing was held by the National Institute for Occupational Safety and Health on December 13, 1976, to receive relevant evidence concerning whether certificates of approval TC–74–018, TC–74–019, TC–74–020, TC–74–021, and TC–74–022, issued to the Bendix Corporation for its coal mine dust personal sampler units should be revoked for cause under 30 CFR 74.11 on the ground that the capsules required to be used with such units produce unreliable and inaccurate measurements of dust concentrations.

The evidence introduced by the Government showed that substantial numbers of capsules used in the Bendix Corporation sampler units spontaneously gain in excess of 0.1 milligram in weight after weighing by Bendix and prior to use in the sampler unit, with the result that determinations of dust concentrations using the Bendix units could be greater than the actual concentrations, and that measurements obtained by such units were therefore unreliable. Moreover, as a result, operators of coal mines which are, in fact, in compliance with the Federal standard for respirable dust, would be subject to citation and penalty for non-compliance under the Federal Coal Mine Health and Safety Act on the basis of inaccurate results.

The Bendix Corporation did not dispute the Government's evidence. Bendix, however, presented extensive evidence which related to the identification of, and corrective action to eliminate, the causes which it believes resulted in the capsule weight gains observed by the Government. The corrective actions proposed to be taken by the Bendix Corporation, however, are of such scope and extent that substantial retesting and reevaluation under 30 CFR Part 74 is required.

In view of the evidence that the accuracy of the samples obtained by the units using the Bendix capsules is not predictable, I find that under 30 CFR 74.11, cause exists on the stated ground for the revocation of the certificates of approval. Therefore, notice is given that certificates of approvals, numbers TC–74–018, TC–74–019, TC–74–020, TC–74–021, and TC–74–022, issued to the Bendix Corporation coal mine dust personal sampler units are hereby revoked, effective on January 19, 1977.

Dated: January 12, 1977.

JOHN F. FINKLEA,
Director, National Institute for Occupational Safety and Health.

[FR Doc.77–1680 Filed 1–18–77;8:45 am]

Health Resources Administration

NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, (5 U.S.C. Appendix I), the Health Resources Administration announces the rechartering by the Secretary, HEW, on December 23, 1976, of the following advisory Council:

Council	*Termination date*
National Advisory Council on Health Professions Education.	Continuing.

Authority for this Council is continuing. Section 14 of the Federal Advisory Committee Act shall not apply with respect to the filing of future Council charters.

Dated: January 13, 1977.

CLIFFORD ALLEN,
Acting Associate Administrator for Operations and Management.

[FR Doc.77–1681 Filed 1–18–77;8:45 am]

Health Services Administration

COMPREHENSIVE HEALTH SERVICES PROJECTS

Delegation of Authority

Notice is hereby given that the following delegations have been made under section 401 of the Economic Opportunity Act of 1964, as amended by section 7 of Pub. L. 93–644, providing for Comprehensive Health Services Projects:

1. Delegation from the Secretary of the Assistant Secretary for Health, with the authority to redelegate, of all authorities vested in the Secretary of Health, Education, and Welfare by Section 401 of the Economic Opportunity Act with the exception of authority to issue regulations.

2. Delegation from the Assistant Secretary for Health to the Regional Health Administartors, with authority to redelegate, of authority under section 401 of the Economic Opportunity Act for grants wtihin their respective regions, other than for grants national or multi-regional in scope.

3. Delegation from the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of all authorities of the Assistant Secretary for Health under Section 401 of the Economic Opportunity Act except those specifically delegated to the Regional Health Administrators.

The above delegations were effective on December 30, 1976.

Dated: January 10, 1977.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.77–1689 Filed 1–18–77;8:45 am]

NATIONAL ADVISORY COUNCIL ON HEALTH MANPOWER SHORTAGE AREAS

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, (5 U.S.C. Appendix I), the Health Services Administration announces the rechartering by the Secretary, HEW, on December 23, 1976, of the following advisory Council:

Council	*Termination Date*
National Advisory Council on Health Manpower Shortage Areas.	Continuing.

The Authority for this Council expires on September 30, 1977. At that time the Council will be rechartered and renamed the National Advisory Council on the National Health Service Corps.

Dated: January 13, 1977.

ARTHUR SCHWARTZ,
Acting Associate Administrator for Management.

[FR Doc.77–1679 Filed 1–18–77;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92–463 that a meeting of the Executive Committee of the National Advisory Council on Extension and Continuing Education will be held on January 31, 1977 in the Council office at 425 13th Street, NW., Suite 529, Washington, D.C. The meeting on January 31 will begin at 9:00 a.m. and adjourn at 4:30 p.m.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89–329. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report annually to the President on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Executive Committee will be open to the public, but because

of the limited space available in the Council office, anyone wishing to attend the meeting should inform the Council's staff office (376-8888) no later than January 24, 1977. The purpose of the meeting is to review the content and recommendations of the Council's eleventh annual report.

All records of Council proceedings are available for public inspection at the Council's staff office, located in Suite 529, 425 Thirteenth Street, NW., Washington, D.C.

Dated: January 14, 1977.

JAMES A. TURMAN,
Executive Director.

[FR Doc.77-1720 Filed 1-18-77;8:45 am]

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Meeting Correction

In the FEDERAL REGISTER of January 12, 1977, at page 2541 (FR Doc. 77-1032), the National Advisory Council on Indian Education published a notice of its forthcoming meetings. The contact person and address should be changed to read as follows:

For further information contact:

Stuart T. Tonemah, Acting Executive Director, Office of National Advisory Council on Indian Education, 425 13th Street, N.W., Room 326, Washington, D.C. 20004 (202-376-8882).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. Nfd-386; FDAA-3017-EM]

MISSOURI

Emergency Declaration; Amendment

Notice of emergency for the State of Missouri dated September 24, 1976, and amended on November 9, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 24, 1976:

The Counties of:

Boone	Miller
Camden	Pettis
Crawford	Phelps
Dent	Pulaski
Hickory	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

Dated: January 12, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

[FR Doc.77-1715 Filed 1-18-77;8:45 am]

[Docket No. NPD-387; FDAA-3018-EM]

VIRGINIA

Emergency Declaration; Amendment

Notice of emergency for the State of Virginia dated October 15, 1976, and amended on November 30, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 15, 1976:

The Counties of:

Amelia	Halifax
Amherst	Henry
Appomattox	Lunenburg
Bedford	Mecklenburg
Brunswick	Nottoway
Campbell	Patrick
Charlotte	Pittsylvania
Cumberland	Powhattan
Franklin	Prince Edward

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

Dated: January 7, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

[FR Doc.77-1716 Filed 1-18-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[TA-203-2]

CERTAIN ALLOY TOOL STEEL

Investigation and Hearing

Investigation instituted. Following receipt on December 7, 1976, of a request from The Special Representative for Trade Negotiations, pursuant to section 203(i)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11846 of March 27, 1975, the United States International Trade Commission on January 12, 1977, instituted an investigation under section 203(i)(2) for the purpose of advising the President as to the probable economic effect on the domestic industry concerned if the relief provided by Proclamation 4445 of June 11, 1976, as modified by Proclamation 4477 of November 16, 1976, were to be terminated in part by excluding from the quantitative restrictions imposed thereby the alloy tool steel covered by item 923.25 of the Appendix to the Tariff Schedules of the United States. The letter from The Special Trade Representative requesting the investigation is attached hereto and made a part thereof.

Public hearing. A public hearing in connection with this investigation will be held in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street NW., Washington, D.C., beginning at 10 a.m., e.s.t., on Tuesday, January 25, 1977. All interested parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Commission at his office in Washington, D.C., not later than noon, Friday, January 21, 1977.

Issued: January 14, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

DEAR MR. CHAIRMAN: The President, on June 11, 1976, acted to provide import relief to U.S. producers of stainless steel and alloy tool steel, pursuant to section 202 of the Trade Act of 1974. For this purpose, Presidential Proclamation 4445 inserted new provisions in the Appendix to the Tariff Schedules of the United States (TSUS) imposing temporary quantitative limitations on imports of such steel under new items 923.20 through 923.24.

Subsequent to the issuance of that proclamation it was ascertained that certain alloy tool steel covered by the quantitative limitations under item 923.24 had not either consistently or substantially been historically reported in import statistics as alloy tool steel prior to June 14, 1976. Therefore, the statistics used as a basis for establishing the quantitative limitations for alloy tool steel were inaccurate, and the quota quantity provided for that category was substantially understated.

To provide a temporary alleviation of the immediate problem which this created, I directed that certain changes be made in the provisions of the Appendix to the TSUS which govern the quantitative limitations. Subsequently, in order to provide appropriate quantitative limitations in accordance with the statutory requirements, Proclamation 4477 modified the restrictions by deleting item 923.24 and including alloy tool steel formerly provided for in item 923.24 in two new items 923.25 and 923.26, and proclaiming separate quantitative limitations for imports included in each of the new items.

Pursuant to section 203(i)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11846 of March 27, 1975, I request that the Commission advise the President of its judgment as to the probable economic effect on the domestic industry concerned if the relief provided by Proclamation 4445, as modified by Proclamation 4447, were to be terminated in part by excluding from the quantitative restrictions imposed thereby the alloy tool steel covered by item 923.25.

We understand that part of the information on relevant imports of steel required for the Commission's advice must be obtained from entry documents (record copy of Customs form 7501, commercial and special invoices, and all other accompanying papers) retained by the U.S. Customs Service at the ports through which the merchandise has been and is being entered. I therefore have requested the Treasury Department to make these entry documents available to the Commission promptly. It is understood that the Commission will notify the Department of the specific entries (month, year, entry number, and port) of which it has knowledge from its analysis of statistical documents.

Sincerely,

FREDERICK B. DENT.

HON. WILL E. LEONARD,
Chairman,
U.S. International Trade Commission,
701 E Street NW.,
Washington, D.C. 20436.

[FR Doc.77-1737 Filed 1-18-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Deletion of Agenda Items

At its meeting of January 14, 1977, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.38, voted to delete the following items from its agenda for the meeting of January 14, 1977:

4. Briefing by the staff on sugar (Inv. TA-201-16);

6. Mushrooms (TA-201-17)—consideration of draft determination (see action jacket GC-76-162);

7. Any other items left over from previous agenda.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi voted by unanimous consent that Commission business requires the change in subject matter by deletion of these agenda items, affirmed that no earlier announcement of the deletion of these agenda items was possible, and directed the issuance of this notice at the earliest practicable time.

Issued: January 14, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1735 Filed 1-18-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Modification of Agenda Item

At its meeting of January 14, 1977, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with proposed 19 CFR 201.38, voted to modify item No. 6 of its agenda for the meeting of January 17, 1977, as follows:

6. Footwear (Inv. TA-201-18)—reconsideration of determination and consideration of draft determination previously circulated in action jacket GC-76-163.

Commissioners Minchew, Parker, Leonard, Bedell, and Ablondi voted by unanimous consent, that Commission business requires the change in subject matter by modification of this agenda item, affirmed that no earlier announcement of the modification to this agenda was possible, and directed the issuance of this notice at the earliest practicable time. (Commissioner Moore was not present for the vote.)

Issued: January 14, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1736 Filed 1-18-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. BECHTEL CORPORATION, ET AL.

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Northern District of California in Civil Action No. C 76 99, *United States of America* v. *Bechtel Corporation, et al.* The complaint in this case alleges that defendants implemented in the United States a conspiracy to refuse to deal and require others to refuse to deal with persons and firms which were blacklisted pursuant to the Arab Boycott of Israel as subcontractors on major construction projects in Arab League countries. The Judgment prohibits defendants from continuing the conduct alleged in the complaint to be illegal, from entering into agreements to refuse to deal with blacklisted persons and firms in the United States, from refusing to recommend persons and firms as subcontractors on major construction projects in Arab League countries because such persons and firms are blacklisted, and from maintaining or using blacklists in the United States in connection with major construction projects. Public comment is invited on or before March 14, 1977. Such comments and responses will be published in the FEDERAL REGISTER and filed with the United States District Court for the Northern District of California and made available for inspection and copying in Room 3305, Department of Justice, Washington, D.C. Comments should be directed to Joel Davidow, Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C. 20530.

Dated: January 10, 1977.

DONALD I. BAKER,
Assistant Attorney General,
Antitrust Division.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc. and Bechtel International Corporation*, Defendants.

Civil No. C 76 99 (GBH).

Filed: January 10, 1977.

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 either 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(b) et seq.) 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 the plaintiff and defendants in this or any other proceeding.

Dated: January 10, 1977.

For the Plaintiff: Donald I. Baker, *Assistant Attorney General*; William F. Swope, Joel Davidow, By: Douglas E. Rosenthal, Charles F. B. McAleer, Douglas E. Rosenthal, Donald A. Kaplan, Jonathan J. Groner, *Attorneys, Department of Justice.*

For the Defendants: Hogan & Hartson, By Lee Loevinger; Thelen, Marrin, Johnson & Bridges, *By* Edward J. Ruff.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc. and Bechtel International Corporation*, Defendants.

Civil No. C 76 99 (GBH).

Filed: January 10, 1977.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 16, 1976, and defendants, Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc. and Bechtel International Corporation, having filed their Answer thereto on April 26, 1976; and plaintiff and defendants by their attorneys having consented to the entry of this Final Judgment, without the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue:

Now therefore, without the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of plaintiff and of each of said defendants, it is hereby,

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter hereof and the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U.S.C. § 1), as amended.

II

As used herein, the term:

(A) "Person" means any individual, corporation, partnership, association, joint venture, firm or other business entity;

(B) "Arab League Countries" means the following countries and other present and future members of the League of Arab Countries and each of them: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Peoples' Democratic Republic of Yemen, Qatar, Saudi

Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates (including Abu Dhabi and Dubai) and Yemen Arab Republic;

(C) "Blacklisted Person" means any Person included in one or more lists maintained, in connection with the boycott by Arab League Countries of Israel, by the Central Office for the Boycott of Israel or by any of the Arab League Countries, of Persons with whom citizens, business or nonbusiness entities and governments or other public bodies in Arab League Countries may conduct only limited, if any, trade or commerce;

(D) "United States", when used in conjunction with "Blacklisted Person", means that such individual resides in the United States, or such entity (whether or not a subsidiary or Affiliate of a foreign business entity) maintains its principal office or place of business in the United States or is organized under the laws of the United States or of any State, Territory, District, Commonwealth or Possession of the United States;

(E) "Major Construction Project" means any project in an Arab League Country, the purpose of which is to construct an installation, facility, building or system, including, but not limited to, oil or gas refineries, oil or gas pipelines, airports, nuclear or conventional power generating facilities, harbors, gas liquefication facilities, transportation systems or hotel or office buildings;

(F) "Prime Contractor" means any Person which has principal responsibilities for managing, supervising or administering a Major Construction Project or for providing construction, engineering, procurement or consulting services in connection with such Major Construction Project;

(G) "Subcontractor" means any Person, other than a Prime Contractor, which produces or provides parts, systems, material, equipment or services used in connection with Major Construction Projects, whether or not said Person enters into any contractual relationship with a Prime Contractor;

(H) "Affiliate" means any Person that directly, or indirectly through one or more intermediaries, is under common control with any defendant;

(I) "Client" means any Person, government or governmental agency which retains a defendant as a Prime Contractor or Subcontractor on a Major Construction Project, or, in the case where a defendant is a Subcontractor, which retains the Prime Contractor; and

(J) "International Agreement" means any treaty to which the United States is a party, any international agreement entered into by the United States pursuant to the independent powers of the President provided under the Constitution, or any international agreement entered into by the United States which has subsequently been approved pursuant to a joint resolution of Congress.

III

The provisions of this Final Judgment shall apply to each defendant and each of its officers, directors, agents, employees, subsidiaries, Affiliates, and to the successors and assigns of Bechtel Corporation or Bechtel Incorporated, and to all other Persons in active concert or participation with any defendant that shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

The defendants are each enjoined and restrained from:

(A) Performing, implementing or enforcing any provision or term in any contract, agreement, arrangement or understanding which provides that any defendant boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project in which any defendant is acting as a Prime Contractor or Subcontractor; or

(B) Requiring that any other Person boycott or refuse to deal with any United States Blacklisted Person in connection with any Major Construction Project in which any defendant is acting as a Prime Contractor or Subcontractor; or

(C) Performing, implementing or enforcing any provision or term in any contract, agreement, arrangement or understanding which provides that any other Person boycott or refuse to deal with any United States Blacklisted Person in connection with any Major Construction Project in which any defendant is acting as a Prime Contractor or Subcontractor; or

(D) Entering into within the United States any contract, agreement, arrangement or understanding:

(1) To boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project; or

(2) Which provides that any Subcontractor boycott or refuse to deal with any United States Blacklisted Person in connection with any Major Construction Project in which any defendant acts as a Prime Contractor or Subcontractor; or

(E) Serving as an agent or representative for any other Person or Client for the purpose of the making, performing, implementing or enforcing in the United States of a provision or term of any contract, agreement, arrangement or understanding which provides that any Person or Client boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project, if any defendant knows or has reason to believe that such provision or term exists therein and that such agreement or refusal is being made, performed, implemented or enforced; or

(F) Failing to recommend or include any Person because such Person is a United States Blacklisted Person in making any recommendation or evaluation, or submitting any list of possible Subcontractors, or soliciting bids from possible Subcontractors, in connection with any Major Construction Project; or

(G) Selecting a Subcontractor for purchases, or recommending a possible Subcontractor for purchases by any defendant, or soliciting bids from possible Subcontractors, to provide parts, systems, material, equipment or services produced within the United States for a Major Construction Project from a list or group of possible Subcontractors limited by the Client to those named or approved by the Client if any defendant knows or has reason to believe that any Person, otherwise qualified, has been excluded or struck from such list or group because it is a United States Blacklisted Person; or

(H) Maintaining in the United States or using for any purposes prohibited in this Section IV, in connection with any Major Construction Project, any list which any defendant knows or has reason to know is a list of (1) United States Blacklisted Persons, or (2) approved or accepted possible Subcontractors, from which any Person, otherwise qualified, has been excluded because it is a United States Blacklisted Person.

V

Nothing in the preceding Section IV shall be construed to preclude or prevent any defendant from:

(A) Entering into outside the United States any contract, agreement or purchase order pertaining to work on a Major Construction Project in which it is provided in form or substance that a defendant or Subcontractor shall abide by the requirements of the laws of the country in which such Major Construction Project is located, or that such agreement, contract or purchase order shall be construed according to said laws, provided, however, the existence of any such clause shall not relieve any defendant from any specific prohibition or obligation of this Final Judgment; or

(B) Purchasing for and providing to any Major Construction Project, in whole or in part, and on such basis of selection as may be desired by a defendant or required by a Client, parts, systems, material, equipment or services of Subcontractors produced and utilized outside the United States; or;

(C) Purchasing for and providing to any Major Construction Project, in its own name or in the name of its Client, parts, systems, material, equipment or services produced in the United States by a Subcontractor which has been specifically and unilaterally selected by the Client, whether or not such selection is made from a list, report or recommendation prepared and furnished by any defendant and without regard to the basis of selection or designation by the Client; or

(D) Performing work on or providing services (including, without limitation, expediting, inspection and traffic) to any Major Construction Project where the Client has independently purchased or procured parts, systems, material, equipment or services, regardless of the source or basis of selection thereof, provided, however, that any such work or services performed within the United States do not include inspection to determine whether the Subcontractor is a United States Blacklisted Person; or

(E) Using competitive bidding to procure parts, systems, material, equipment or services for a Major Construction Project by issuing invitations to bid to possible Subcontractors, including but not limited to Subcontractors proposed by the Client, and, by analysis and evaluation of bids received, making a recommendation or recommendations to the Client based on such analysis and evaluation for selection of the Subcontractor by the Client independently of any defendant, provided that any analysis or evaluation referred to in this Subsection does not include whether a possible Subcontractor is a United States Blacklisted Person.

VI

If any Act of Congress is enacted or the United States becomes a party to any International Agreement, either of which creates rights or benefits with respect to business in Arab League Countries which Persons not subject to the provisions of this or a similar Final Judgment are entitled to exercise or enjoy consistent with the Antitrust Laws, then, upon application to the Court by any defendant, the terms set forth herein shall be deleted or modified as in the Court's determination is necessary to permit said defendant to exercise or enjoy such rights or benefits.

VII

If plaintiff herein becomes plaintiff in an action in which a final judgment is entered by consent which relates to the same or similar matters as those covered herein, and if the terms of such judgment are different than the terms specified herein, then, upon application to the Court by any defendant, the terms set forth herein shall be modified as is necessary to prevent any defendant from being placed at a competitive disadvantage with respect to Major Construction Projects, provided, however, that this Section VII neither adds to nor derogates from the

right of any party to move under Section IX hereof in the light of any final judgment in a litigated case.

VIII

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives 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 a consenting defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the consenting defendant, who may have counsel present, relating to any of the 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, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a consenting defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII 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 in 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 the time information or documents are furnished by any defendant to plaintiff, said defendant represents and identifies in writing the material in any such information or documents which is of the type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, or the material which is diplomatically sensitive, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten days' notice shall be given by plaintiff to said defendant prior to divulging such material other than (i) to a duly authorized representative of the Executive Branch of the United States, (ii) in a Grand Jury proceeding, or (iii) in any legal proceeding to which any defendant is a party.

IX

Jurisdiction is retained for the purpose of enabling any of the parties consenting 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 of this Final Judgment, modification of any of the provisions hereof, enforcement of compliance herewith, or punishment of any violations hereof, and for the purpose of enabling any defendant to object to any request made pursuant to Section VIII hereof or to any divulgence or disclosure proposed in any notice given by plaintiff pursuant thereto.

X

All provisions of the Final Judgment, unless terminated or modified prior thereto, shall terminate twenty (20) years from the date of entry hereof.

XI

Entry of this Judgment is in the public interest.

Dated: San Francisco, California ----------, 1977.

United States District Judge.

Attorneys for Plaintiff: Douglas E. Rosenthal, Donald A. Kaplan, Antitrust Division Department of Justice, Washington, D.C. 20530. Telephone: (202) 739-2464.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc., and Bechtel International Corporation*, Defendants.

Civil No. C 76 99 (GBH).

Filed: January 10, 1977.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h) P.L. 93-528 (December 21, 1974)) ("APPA"), the United States of America hereby files this Competitive Impact Statement ("C.I.S.") relating to a proposed Final Judgment in the above-entitled action to be entered against all defendants.

(1) NATURE AND PURPOSE OF THE PROCEEDING

This action was filed on January 18, 1976, against Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc., and Bechtel International Corporation ("defendants"). Either Bechtel Corporation or Bechtel Incorporated, which are themselves affiliated, wholly own, directly or indirectly, the other defendants. The Complaint alleged that defendants and certain co-conspirators entered into and, in the United States, implemented a combination and conspiracy which resulted in an unreasonable restraint in the provision of parts, systems, material, equipment or services in connection with Major Construction Projects[1] in Arab League Countries in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The defendants filed their Answer to the Complaint on April 26, 1976. They raised several affirmative defenses to the Complaint's allegations. Principal among these were that (a) the Arab League Boycott of Israel is political in nature and beyond the scope of the Sherman Act; (b) other agencies of the United States Government sanctioned the very participation in the Boycott with which defendants were charged and the Government is therefore estopped from this prosecution; and (c) the defendants are not liable because of the sovereign compulsion and act of state defenses.

More than one month prior to the filing the Answer preliminary discussions exploring possible settlement of this action were commenced. Negotiations continued for the next eight months and led to the submission of this proposed Final Judgment.

[1] When terms are used in this C.I.S. that are defined in Section II of the proposed Final Judgment, the definition appearing there shall also apply here. Such terms will appear in both documents with initial capital letters.

(2) PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

(a) *The Commerce Involved.* Defendants and other affiliated companies ("Bechtel Group") jointly constitute one of the largest Prime Contractors for Major Construction Projects in the world. Prime Contractors sell their services primarily to governmental and large commercial Clients. These services generally include some or all of the following: construction design, construction engineering, procuring and delivering equipment and supplies, site and economic feasibility studies, consulting and managing in connection with construction, and actually constructing such Major Construction Projects as refineries, pipeline systems, airports, nuclear or conventional power generating facilities, harbors, transportation systems, and building complexes.

In providing these services, Prime Contractors regularly deal with Subcontractors which produce or provide parts, systems, material, equipment or services used in connection with Major Construction Projects.[2] Prime Contractors frequently provide one or more of the following services to Clients in dealing with Subcontractors: suggest to the Client a list of qualified Subcontractors from which bids may be solicited; solicit Subcontractor bids; contract with specific Subcontractors for the furnishing of specified goods or services on their own behalf or on behalf of the Client; expedite the production, shipping and use of goods or services; inspect the quality of goods or services provided; arrange for forwarding goods and services to the construction site; and manage or monitor the use of those goods and services at the project site.

Three types of contractual arrangements between Prime Contractors and Clients on Major Construction Projects are most common. First, the Prime Contractor may be engaged on a "turn-key" basis. This means that the Client pays the contractor a single price (either in one lump sum or in installments paid at various stages of the construction) for all design, procurement and construction services provided by the Prime Contractor, and for all Subcontractors' goods and services which the Prime Contractor has purchased for the project in its own name. Second, the Prime Contractor's fee for the project may be determined on a "cost-plus" basis. In this arrangement the Client pays for the Prime Contractor-supplied services either at a cost plus mark-up which reflects the time spen on the Client's project by the Prime Contractor's personnel, or reflects the nature of the specific tasks performed. Subcontractors' goods and services are purchased by the Prime Contractor, usually in its own name, and then resold to the Client at a mark-up, specified in the contract, to cover the cost of procurement services. Third, the Prime Contractor may charge the Client for its services, either on a time or task basis, including procurement services, and the Client directly purchases all Sub-

[2] As used here and in the proposed Final Judgment, Subcontractors are businesses which sell goods as well as services for use in Major Construction Projects. Thus, for example, a manufacturer of steel or electronic equipment which is purchased for use in a Major Construction Project would be a Subcontractor, as would an electrical contractor which installs wiring and circuitry. Subcontractors in some cases enter into contractual relationships directly with Clients. However, the Prime Contractor usually has a substantial role in the Subcontractor selection process in those situations as well.

contractors' goods and services. The Subcontractor selection procedures used by the Prime Contractor with the second and third types of arrangements are customarily the same. In both, the Prime Contractor usually develops and evaluates bids and makes a purchase recommendation to the Client. The Client then makes the final Subcontractor selection. The difference between the second and third type of arrangement lies in the party which directly pays the Subcontractor. Turn-key arrangements leave construction contracting decisions and payments to the Prime Contractor's discretion, subject to any specific contractual limitations.

There are several large Prime Contractors operating throughout the world. Some of the largest of these, including the Bechtel Group, are incorporated in the United States. These large Prime Contractors are capable of serving Clients in any region of the world. In the past few years an increasing percentage of large-scale construction projects have been undertaken in the Arab League Countries and elsewhere in the Middle East. Of the approximately $12 billion in overseas new construction contracts awarded to United States Prime Contractors in 1974, $1 billion was awarded for the construction of projects in the Middle East. In 1975, total foreign contracts increased to approximately $22 billion, with approximately $7½ billion in awards from Middle East clients—nearly two-thirds of the total increase. The Bechtel Group has current construction projects in a number of Middle East states which, upon completion, will have cost a total of several billion dollars. Parts, systems, material, equipment and services supplied by Subcontractors generally represent 30–50% of the total cost of a Major Construction Project. The terms of trade with respect to Major Construction Projects are substantially similar throughout the world. One exception affects Major Construction Projects in many Arab League Countries: on these projects, the parties must generally observe the Arab League Boycott of Israel ("Boycott").

(b) *The Arab Boycott.* In 1946 the Council of the Arab League established a permanent boycott committee to implement its decision to institute a member state boycott of "Zionist" goods and products. Pursuant to this decision the Arab League established local boycott offices in several of its member countries. While the initial boycott of 1946 was designed only to prevent entry of "Zionist" goods into Arab countries, its scope was broadened in 1951 to encompass a secondary boycott against third parties viewed as being friends of or providing assistance to the State of Israel. To effectuate this broader purpose, the Arab League established the Central Office for the Boycott of Israel in Damascus, Syria. The Central Boycott Office assumed primary responsibility for establishing the terms of and for policing the Boycott.

The principal means for effectuating the Boycott is the preparation and publication of blacklists which name business entities and individuals with whom Arab League Country purchasers may not deal, or whose goods and services may not be imported into Arab League Countries. These blacklists are not widely published; however, constantly updated versions are regularly provided to the local boycott offices in those Arab League member states which actively participate in the Boycott. Some member states prepare individualized blacklists effective within their own jurisdiction. These are based upon the master blacklist furnished by the Central Boycott Office, but reflect particular local considerations. A recent version of the blacklist promulgated in Saudi Arabia contains the names of more than twelve hundred United States business entities, including firms which manufacture goods or provide services used in construction projects. Those United States firms designated on this and similar boycott lists are referred to as "United States Blacklisted Persons".

The terms of the Boycott include the requirement of adherence to the blacklist with respect to business in Arab League Countries. Several member states, including Saudi Arabia, have promulgated decrees, including codes of regulations, which require compliance with the Boycott as a matter of national law by all Persons within their respective jurisdictions. These laws provide penalties ranging from confiscation of blacklisted goods, to fines, to imprisonment for several years. Accordingly, those doing business in such states are under compulsion to participate in the Boycott. Arab League Country purchasers of goods and services, including Clients undertaking Major Construction Projects, are responsible for seeing that goods and services furnished by Blacklisted Persons are not imported into Arab League Countries. The customs services of these member states police compliance with the Boycott through their power to inspect, confiscate or refuse entry to unauthorized imports.

In sum, the Boycott is a long-standing arrangement among certain Arab League Countries, the Central Boycott Office, enterprises doing business in those Arab League Countries, and others, pursuant to which international import trade and commerce in those countries is conducted consistent with a concerted refusal to deal with Blacklisted Persons—including United States Blacklisted Persons. It is, as such, a horizontal agreement among purchasers in Arab League Countries, the purpose of which is to restrain the trade between those countries and others in the products of Blacklisted Persons.

(c) *The Nature of the Violation of the Antitrust laws.* A conspiracy, even if entered into abroad among foreigners, may be subject to United States antitrust law if it is capable of effecting a restraint upon, and is intended to affect United States domestic or foreign commerce. (*See, e.g., United States v. Aluminum Company of America*, 148 F.2d 416, 444 (2d Cir. 1945)). However, here, since (1) the United States may not be reasonably expected to achieve compliance by the attempt to impose its own law in conflict with that of a foreign jurisdiction; (2) the illegal conduct is to take place in the territory of the foreign sovereign; and (3) the application of United States antitrust law to foreign conduct directly conflicts with foreign law valid in a foreign sovereignty thereby imposing substantial hardship upon the one against whom it would be applied, it would be inappropriate both as a matter of law and enforcement policy to apply United States law to this concerted refusal to deal as it operates in Arab League Countries. This is the principle of comity which makes it possible for nations with conflicting laws and policies to deal among themselves. (Restatement, Second, Foreign Relations Law of the United States, Section 40, A.L.I. 1965). Accordingly, for the reasons just stated, it would be inappropriate to apply United States antitrust law to the Arab Boycott as so far described.

However, a principal element of the charge against the defendants contained in the Complaint was that they had not only agreed to implement the Boycott as to several Major Construction Projects in Arab League Countries, but had, in fact, implemented it within the sovereign jurisdiction of the United States by means of actions and agreements aimed against Blacklisted Persons. It was this actual implementation in restraint of United States commerce which clearly subjected defendants to United States antitrust law. Such implementation in the United States could not be excused on the ground that it was directed by a foreign state, since that would intrude on the terms of trade within the sovereign territory of the United States where United States law is paramount. If Arab states have a valid claim to control significant commercial conduct within their sovereign territories under the principle of comity, so does the United States Government within its sovereign territory. Accordingly, a restraint of trade in United States commerce in violation of the Sherman Act may result from the Boycott although it is a requirement of law in a foreign jurisdiction.

The Complaint alleges that, beginning at least as early as 1971, and continuing to at least the date of the filing of the Complaint, the defendants joined the Boycott conspiracy against United States Blacklisted Persons and furthered that conspiracy in the United States. At trial the Government would have shown that the defendants signed contracts requiring them to blacklist certain United States Persons with whom they might otherwise deal in the procurement of Subcontractor services as to Major Construction Projects; that they actually effectuated these contracts to the detriment of certain blacklisted potential United States Subcontractors; and that they entered into agreements with non-blacklisted United States Subcontractors requiring them to refuse to deal with United States Blacklisted Persons as their own Subcontractors in connection with providing goods and services to Major Construction Projects in Arab League Countries where the Bechtel Group was the Prime Contractor.

The Government was prepared to show further, that defendants' actions implementing the Boycott had a substantial and direct effect on United States commerce in that (i) certain Persons were denied the opportunity to sell goods and services for use in connection with Major Construction Projects in Arab League Countries or even to submit bids to supply such goods and services because they were United States Blacklisted Persons; or (ii) Persons which were or desired to become Subcontractors on Arab League Country Major Construction Projects were restrained from freely doing business in or with Israel for fear of being blacklisted themselves. The relief sought in the Complaint was a judgment decreeing that the alleged conduct was a violation of the Sherman Act and enjoining defendants from continuing that conduct.

The Government further would have contend that, as a matter of law, none of the affirmative defenses raised in defendants' Answer (see page 2 above) could defeat the relief sought in the Complaint. First, in response to the assertion that the Arab Boycott was politically motivated, the United States would have contended, inter alia, that its implementation by defendants had an anticompetitive effect on United States interstate and foreign commerce and, thus, was illegal under the Sherman Act regardless of the motivation (*see, e.g., Fashion Originators' Guild of America* v. *Federal Trade Commission*, 312 U.S. 457 (1941)). Second, even if it were found as a matter of fact that certain agencies of the United States Government had acquiesced in, or even encourage, participation in the Boycott by United States enterprises of the kind with which defendants were charged (a fact which the Government would have vigorously disputed), the United States could not be estopped from seeking prospective relief by enforcing a law expressing its sovereign and public interest (*see, e.g., Pan American Co.* v. *United States*, 273 U.S. 456 (1927)). Finally, as to the third principal defense, foreign sovereign compul-

sion and act of state) the Government would have contended that foreign sovereign compulsion may not override enforcement of conflicting United States law expressing a sovereign and public interest as to conduct within the United States (*see, e.g., Sabre Shipping Co.* v. *The American President Line Ltd.*, 285 F. Supp. 949 (S.D.N.Y. 1968)) and that the act of state defense does not apply to conduct outside the territory of the state whose acts are invoked as its basis, especially where the law of that state is not the applicable law for testing the legality of the extra-territorial conduct (*see, e.g., Banco Nationale de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964); *United States* v. *Sisal Sales Corp.*, 274 U.S. 268 (1927)). While the Government believes it would prevail at trial, this proposed settlement means that these issues as raised by the facts of this case will not be judicially determined in this action.

(3) EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS EFFECTS ON COMPETITION

This section of the C.I.S. is divided into two parts. In the first part the principal prohibitory provisions of the proposed Final Judgment, which are found in Section IV, are described and explained, followed by a similar description and explanation of specific limitations set forth in Section V. The second part will discuss the various procedural and formal provisions of the proposed Final Judgment.

(a) *The Conduct Prohibited by the Proposed Final Judgment.* The heart of this proposed Final Judgment is found in Sections IV and V. Section IV describes the conduct in which defendants may no longer engage. Section V describes five specific forms of conduct which might possibly be interpreted as falling within Section IV's prohibitions, but which the proposed Final Judgment intends to permit defendants to continue.

The framework created by Sections IV and V is designed to prohibit defendants from continuing to engage in the conduct to which the allegations of the Complaint were addressed. In paragraph 22 of the Complaint, it is alleged that, pursuant to the Arab Boycott conspiracy, defendants and Persons acting on their behalf, within the jurisdiction of the United States, did a number of things including: (i) refusing to deal with Blacklisted Persons as Subcontractors in connection with Major Construction Projects; (ii) requiring Subcontractors to refuse to deal with Blacklisted Persons on such projects where defendants were Prime Contractors; and (iii) obtaining lists and other identification of Blacklisted Persons to aid in the foregoing refusals to deal. The proposed Final Judgment specifically enjoins these practices and a number of related practices as well.

Section IV(A)

This section generally enjoins and restrains defendants from refusing to deal with United States Blacklisted Persons as Subcontractors in connection with Major Construction Projects where a defendant is acting as a Prime Contratcor or Subcontractor. The provision refers to performing, implementing or enforcing a contract, agreement, arrangement or understanding since it is only contracts, combinations or conspiracies in restraint of trade which are prohibited by Section 1 of the Sherman Act.

Section IV(A) prevents defendants from taking steps to effectuate such an agreement in the United States, but not in an Arab League Country. The focus of the Complaint in this case was that defendants be subject to United States antitrust enforcement if they did some act implementing an agreement to boycott blacklisted United States Subcontractors, even if that agreement was entered into in an Arab League County under a requirement of that country's law. Such an agreement cannot be the basis for justifying any conduct or imposing any binding obligation to perform acts in violation of this Final Judgment. When United States Prime Contractors act to prevent the use of goods or services of United States Blacklisted Persons in connection with Major Construction Projects in Arab League Countries, they implement the Arab Boycott conspiracy in United States com merce and, it follows, the Court can enjoint such conduct under the Sherman Act. This is what Section IV(A) and other provisions of the proposed Final Judgment are designed to do.

Section IV(B)

This section prevents defendants from requiring that other Persons refuse to deal with United States Blacklisted Persons in connection with Major Construction Projects. For example, defendants would not be permitted to require a Subcontractor to use only those products manufactured by a company which is not a United States Blacklisted Person. Imposing such a requirement on Subcontractors pursuant to the Arab Boycott would be yet another form of Boycott implemenation in the United States beyond the power of Arab sovereign compulsion.

Section IV(C)

This section would reach possible situations of Arab Boycott implementation not reached by Sections IV(A) and IV(B). Defendants are here enjoined from implementing the Boycott even where there is no direct contractual relationship between them and a Client or other Prime Contractor, or where they do not directly contract with Subcontractors. For example, Prime Contractors often organize separate corporations, the activities of which are limited to doing business in particular countries or areas of the world, or to building a single Major Construction Project. While the actual work is performed by the parent corporation itself or by personnel normally associated with the parent corporation, these separate corporations are the contracting parties. Thus, this proposed Final Judgment would prohibit defendants from carrying out those provisions of agreements, on behalf of a separately incorporated Arab League Country signatory, which require that the signatory refuse to deal with United States Blacklisted Persons in connection with a Major Construction Project.

Also, under this section, defendants would be prohibited from interfering with a Subcontractor which selects a United States Blacklisted Person as its own Subcontractor, or from acting in any way to review or approve a list of Persons the Subcontractor proposes to use as its own Subcontractors, for the purpose of eliminating United States Blacklisted Persons. This prohibition would apply even where the Prime Contractor is not a signatory to Subcontractor agreements between the Client or one of its agents and the Subcontractor. This is consistent with the terms of Section V(D) (see page 20 below).

Section IV (D)

Agreements in restraint of United States commerce negotiated and entered into within the United States are violations of United States law which always can be reached by our Courts, whether or not they are implemented, since the Sherman Act prohibits conspiracies in restraint of trade themselves as well as acts in furtherance of those conspiracies. *See e.g., United States* v. *Trenton Potteries Co.*, 273 U.S. 392 (1927); *United States* v. *Socony Vacuum Oil Co., Inc.*, 310 U.S. 150 (1940). Thus, defendants are specifically enjoined from negotiating and entering into agreements within the United States to refuse to deal with United States Blacklisted Persons or to require others to do so regardless of any requirement by the Arab state in which the project is located.

Section IV(E)

As United States Prime Contractors in many instances, do not directly purchase the products of Subcontractors, this section is designed to prohibit defendants from doing anything in United States commerce which would knowingly facilitate direct enforcement of the Boycott by the Client or any other Person. Of the situations to which this provision would apply, the following occurs most frequently: The Prime Contractor selects qualified Subcontractors for a Client and then, either before or after bids are solicited, participates in the Client's decision to remove all United States Blacklisted Persons from consideration. The Client then contracts directly with the selected Subcontractor. This section would prohibit any such participation in Subcontractor selection decisions where the Client refuses to deal with United States Blacklisted Persons, and would prohibit defendants, as well, from providing any other services related to the procurement of Subcontractor goods and services. However, if the Client specifically and unilaterally selects the Subcontractor, even if according to Boycott principles, and simply directs defendants to procure the required goods or services from its choice, under Section V(C) defendants will be permitted to do so and to perform certain other procurement-related services since they will not be taking any conspiratorial action which violates antitrust law.

On some Middle East Major Construction Projects, Clients have engaged a second Prime Contractor to act as a consultant only. Such second Prime Contractor may either select the Subcontractor for the Client or participate in the Client's Subcontractor selection decision, leaving to defendants all other procurement services, such as issuance of purchase orders and inspection of Subcontractor performance, even though defendants were not involved in the selection of Subcontractors. If defendants know or have reason to know of the participation of this second Prime Contractor or any other Person in a Client's Subcontractor selection decision and that in making that decision, United States Blacklisted Persons were excluded from consideration, then Section IV(E) prohibits defendants from providing any procurement services related to the Subcontractor selection process. This is so because to do so, in the language of Section IV(E), defendants would be implementing a "contract, agreement, arrangement or understanding which provides that [a] Client boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project. * * *." However, if defendants have reason to believe that a Subcontractor was "specifically and unilaterally" selected by the Client, then under Section V(C) (see pages 18–19 below), they may continue to provide procurement services.

This provision is designed to complement other provisions of Section IV, in particular Section IV(E). As Clients for Major Construction Projects in Arab League Countries become more sophisticated in the manner in which they undertake such projects, they are likely to assume some of the functions which Prime Contractors have in the past performed, especially the final selection of Subcontractors of significant services and materials. However, these Clients may well con-

tinue to require the assistance of Prime Contractors to develop lists of bidders, write the specifications furnished to bidders, actually solicit the bids, evaluate them and make a recommendation as to which Subcontractor to select on technical grounds. Under Section IV(F), defendants must not discriminate against United States Blacklisted Persons in performing any of these functions.

Section IV(F) could, as well, facilitate the opening up of Arab League Country Major Construction Project business to United States Subcontractors which are blacklisted. Under this section the bid solicitation process may, in some instances, result in the Bechtel Group recommending a Subcontractor for the Client's selection which is a United States Blacklisted Person because that Subcontractor submitted the low bid or was otherwise the best choice. A Client, operating wholly within an Arab League Country, would be free to ignore that recommendation for the sole reason that the Subcontractor was blacklisted. However, the Client would at least receive the bid of a United States Blacklisted Person—something which under present practices would not happen.

Section IV(G)

This provision involves the reverse situation from that dealt with by Section IV(F). Here it is contemplated that the Client might present the defendants with a list of possible Subcontractors for bid solicitations from which United States Blacklisted Persons have been excluded. If defendants are not permitted to add to this list the names of qualified potential bidders who are United States Blacklisted Persons, or if defendants know or have reason to know that United States Blacklisted Persons have been excluded from this list, then the services which defendants can provide to the Client are limited to making a recommendation only as to which listed Subcontractor would be the best choice. They may not then proceed to solicit bids, make a final selection from among submitted bids or even procure, in their own name or in the name of the Client, goods or services from the selected Subcontractor. By prohibiting defendants from providing normal Prime Contractor procurement services where it is clear that the Client will not even consider bids from potential Subcontractors which are United States Blacklisted Persons, the proposed Final Judgment will prevent defendants from actively aiding Clients seeking to enforce the Arab Boycott conspiracy in United States commerce.

Section IV(H)

As the Arab Boycott blacklist is the means by which this conspiracy has been implemented, this section prohibits defendants not only from using the blacklist for any purpose prohibited by Section IV, but even simply from maintaining it in the United States, in connection with Major Construction Projects in Arab League Countries. The provisions of this section apply both to blacklists and lists of approved or accepted Subcontractors from which the names of qualified United States Blacklisted Persons have been excluded. Defendants are not prevented, however, from having any copy of the blacklist in their possession, so long as it is not used to further the conduct enjoined in the proposed Final Judgment.

Section V(A)

It is a common practice in the construction industry (which is required in some Arab League Countries) that the parties provide in the prime contract that it be interpreted according to the laws of the country in which the project is located. As defendants may not be able to negotiate such clauses out of contracts for Major Construction Projects in Arab League Countries, and as such clauses cannot in themselves be made the subject of antitrust enforcement under the theory of this action, since this action focuses on their implementation, the United States has agreed to permit such clauses to be included, provided that their language, in form or substance, is limited to a simple statement of which jurisdiction's laws shall apply, provided that the import of such an agreement is limited by the conditions of this Final Judgment and, provided further, that these contracts are negotiated and signed outside the United States. The position of the Department is that entering into an agreement in the United States which incorporates by reference a body of law including Boycott statutes, if intended to bring the Arab Boycott to United States shores, falls within the Sherman Act's prohibition against conspiracies in restraint of trade. All such agreements entered into in the United States are proscribed to avoid the necessarily difficult inquiry into the intent of such language. (See the discussion at pages 7–8 and 12–13 above.)

Section V(A) was not intended, however, to permit or empower defendants to engage in any conduct, directed or authorized by such clauses, which would be in violation of the proposed Final Judgment, as the proviso at the end of the section makes clear. This provision deals solely with permissible agreements outside the United States and does not pertain to any activity by defendants within the United States.

Section V(B)

This provision recognizes that the proposed Final Judgment, like the Complaint, is directed at Arab Boycott enforcement in United States commerce. If defendants, acting outside the United States, solicit bids on an Arab League Country project from only non-Blacklisted foreign companies operating outside the United States, and specifically do not solicit bids from any United States Subcontractors, they will not be discriminating among United States Persons based on the Arab Boycott. However, if defendants solicit a bid from even one United States firm then, under Section IV(F), they must not exclude Persons from that bid solicitation because they are United States Blacklisted Persons. It would be the act of excluding United States Blacklisted Persons when bids are being solicited from other United States businesses which results in the requisite effect on United States commerce for appropriate Sherman Act application. It should be noted that under Section II(D), a United States Blacklisted Person would include either a Blacklisted Person organized under the laws of a foreign country, but which has its principal office or place of business in the United States, or a subsidiary or Affiliate of any foreign Blacklisted Person which is organized under the laws of the United States or one of its subdivisions.

Section V(C)

This section establishes what may well be the basic structure of future Subcontractor selection with respect to Major Construction Projects in Arab League Countries, if Clients there persist in observing the Boycott. Under this section, defendants will have to inform the Client that, under Sections IV(E) and IV(F), they cannot screen potential bidders for United States Blacklisted Persons and similarly cannot participate in any manner in the decision to select a Subcontractor. They can simply solicit bids from all Persons who, in defendants' professional judgment, should be invited to bid on the project. They also can study those bids independently, recommend a Subcontractor, and then proceed to procure the equipment after the Client has specifically and unilaterally made its choice from the submitted bids. The Department realizes that even this total isolation of defendants from the Client's Subcontractor determination does not prevent the Client from refusing to deal with low-bidding United States Subcontractors which are blacklisted. Rather, this provision recognizes the Client's right to determine independently the specific source of the goods or services it wishes to procure. However, at the very least, the United States Prime Contractor will no longer be doing any screening or gatekeeping.

Even though defendants will continue to be able to participate in Major Construction Projects where the Client refuses to deal with United States Subcontractors who are blacklisted, Sections IV(E), IV(F) and V(C) should have a beneficial effect on competition in that United States Blacklisted Persons will be able to, at least, bid upon the major business opportunities relating to projects in Arab League Countries and, perhaps, on economic grounds, even to convince a few Arab purchasers to relax their adherence to the Boycott. Further, if a Client seeks to use defendants' procurement expertise in making its final Subcontractor selection decision, the Client must agree not to reject a bidder solely because that bidder is a United States Blacklisted Person. Otherwise the defendants would be participating in the Boycott process.

Section V(D)

In some Major Construction Projects, Clients independently procure the goods and services of Subcontractors leaving to the Prime Contractor only design and construction functions. Where the Client has truly acted independently, without defendants' participation, in soliciting bids, evaluating those bids, and selecting a Subcontractor, defendants have not enforced the Arab Boycott conspiracy against United States Blacklisted Persons, no matter what the source or basis of the Client's selection of Subcontractors. Thus, this provision permits defendants to continue to perform construction, design and other functions on Major Construction Projects in such a situation. However, to assure that defendants remain totally removed from the Boycott influenced Subcontractor selection process, a proviso reaffirms the affirmative requirements of Section IV(E) (see pages 13–15 above) by prohibiting defendants from performing any inspection services in the United States where the object of such inspection is to determine whether Subcontractors are United States Blacklisted Persons.

Section V(E)

This section simply assures that defendants will be able to continue to engage in the normal process of soliciting competitive bids, evaluating those bids and making a recommendation based on professional judgment and normal criteria, where such practices are permitted elsewhere within Sections IV and V. Defendants can perform these normal functions where a Client has proposed a list of Subcontractors (even though defendants arguably knew or may have known that no United States Blacklisted Persons were included), provided defendants are not limited to soliciting bids from only those Subcontractors suggested by the Client. As Section IV(F) requires, they must solicit bids, as well, from qualified United States Subcontractors who are blacklisted.

(b) *Procedural Provisions. The Stipulation.*—The United States and defendants have stipulated that the proposed Final Judgment, in the form negotiated by the parties, may be entered by the Court at any time after compliance with the procedures of the

APPA, provided that the United States has not withdrawn its consent. This stipulation also provides that there has been no admission by either party with respect to any issue of fact or law.

Section I

Section I of the proposed Final Judgment is a statement by the Court that it has jurisdiction over the subject matter and the parties and that the Complaint states a cause of action under Section 1 of the Sherman Act.

Section III

The proposed Final Judgment applies to the defendants and each of their respective directors, officers, agents, members, employees and subsidiaries, and to all persons in active concert or participation with defendants, who received actual notice that the proposed Final Judgment has been entered. It would also apply to successors and assigns of Bechtel Corporation or Bechtel Incorporated, of which all companies of the Bechtel Group are subsidiaries.

Section VI

This section and Section VII would entitle defendants to a modification of the proposed Final Judgment in certain specific instances. Under Section VI, defendants would be entitled to a modification permitting them to exercise rights or benefits with respect to business in Arab League Countries that others, not subject to the proposed Final Judgment, may be entitled to exercise or enjoy, where such rights are created by an Act of Congress or an International Agreement. "International Agreement," as defined by Section II(J), is limited to formal treaties, Presidential agreements and other agreements entered into on behalf of the United States which are sufficiently important to require subsequent Congressional approval. Further, such rights or benefits are limited only to those which defendants could enjoy consistent with antitrust law. This provision, while unusual in antitrust consent judgments, recognizes that the Arab Boycott involves issues other than those of antitrust enforcement which may be the subject of overriding diplomatic or legislative action.

Section VII

As it is conceivable that the United States may seek to enforce antitrust law against other United States Prime Contractors for Boycott-related violations similar to those alleged in the Complaint in this case, Section VII was included to protect defendants from being placed at a competitive disadvantage where another such case is terminated by a consent judgment more favorable than this proposed Final Judgment. Defendants would have to show that they would, in fact, necessarily be placed at a competitive disadvantage with respect to Major Construction Projects by being held to the terms of this proposed Final Judgment.

Section VIII

The proposed Final Judgment also affords the United States a method for monitoring compliance with its provisions by inspecting documents and records in control of defendants and by conducting interviews with officers, directors, employees and agents of each defendant, provided that counsel may be present at any such interviews. Defendants may also be required to report to the plaintiff in writing under oath with respect to any matters contained in the proposed Final Judgment. Section VIII further gives certain specified documents or other information obtained pursuant to this section defendants the right to receive notice before are disclosed to other persons by the Department. This applies only where documents are pre-marked and are of the type described in Rule 26(C)(7) of the Federal Rules of Civil Procedure, or are diplomatically sensitive. Such notice need not be given where the disclosure contemplated would be (i) to a duly authorized representative of the Executive Branch of the Federal Government, (ii) in a Grand Jury proceeding or (iii) in any legal proceeding where a defendant is a party. This provision, however, gives defendants no automatic right to prevent or limit disclosure. Once they receive notice, defendants will have the option of making an application to the Court (pursuant to Section IX) for a protective order, which the Department is free to oppose.

Section IX

Under this section the Court will retain jurisdiction for the purpose of enabling any of the parties to the Final Judgment to apply at any time for any order as may be necessary for the interpreting and carrying out of the Final Judgment or its modification or enforcement, for the punishing of violations of the Final Judgment, or for the purpose of enabling any defendant to make objections arising out of Section VIII.

Section X

The proposed Final Judgment provides that it shall be terminated twenty years from the date of its entry. This does not mean defendants will then be free to resume the activities upon which the Complaint was based.

Section XI

Finally, this Section constitutes a determination that entry of the proposed Final Judgment is in the public interest. Under the provisions of Section 2(e) of the APPA (15 U.S.C. § 16(e)), entry is conditioned upon this Court's determination that it is in the public interest.

(4) EFFECTS ON PRIVATE PLAINTIFFS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. The entry of the proposed Final Judgment will not have any effect on the right of any potential private plaintiff who claims to have been damaged by the alleged violation to sue for monetary damages or any other legal or equitable remedies. However, this Final Judgment may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)).

(5) PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed Final Judgment is subject to a stipulation between the United States and the defendants providing that the United States may withdraw its consent to the proposed Final Judgment until such time as the Court has found that its entry is in the public interest. The proposed Final Judgment provides, in Section IX, for retention of jurisdiction of this action by the Court to permit, among other things, the parties thereto to apply to the Court for such orders as may be necessary or appropriate for its modification.

As provided in the APPA, any person wishing to comment upon the proposed Final Judgment may, for a 60-day period prior to the effective date of the proposed Final Judgment, submit them in writing to the United States Department of Justice, Joel Davidow, Chief, Foreign Commerce Section, Antitrust Division, Washington, D.C. 20530. The comments and the Department's response to them will be filed with the Court and published in the FEDERAL REGISTER. The Department of Justice will thereafter evaluate any and all such comments and determine whether there is any reason for withdrawal of its consent to the proposed Final Judgment.

(6) ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT ACTUALLY CONSIDERED BY THE UNITED STATES

The United States gave active consideration to several alternative proposals for final relief in this proceeding. These alternative proposals fall into two general categories: (a) full trial on the merits or motion for summary judgment, either of which would have led to a litigated judgment imposed by the Court, or (b) a proposed final judgment with provisions different from, or not included in the proposed Final Judgment being submitted with this C.I.S.

(a) *A Litigated Judgment.* As in any antitrust case, the Department had the alternative of rejecting all settlement proposals and proceeding to a determination of the lawsuit by the Court on the merits. This may have been achieved either by a full evidentiary trial or by a motion for summary judgment based on facts not in dispute. These alternatives are never finally rejected until the Department is able to examine and compare a proposed judgment against the relief which might have been obtained after a successful determination by the Court of the issues in dispute. Here it was determined that no significant additional relief could have been obtained in a litigated judgment. Accordingly, there was no justification for undertaking the risks and costs of litigation.

(b) *Alternative Provisions for a Proposed Final Judgment.* Throughout its negotiations with defendants, the Department considered various provisions not found in the proposed Final Judgment and different versions of the provisions which have been included. While numerous proposals have been considered and rejected for grammatical, technical and legal reasons, only those provisions discussed below were given serious consideration as alternatives to the language finally agreed to.

Section IV

The United States initially considered proposals regarding the principal prohibitory section of the proposed Final Judgment, Section IV, which did not include the present subsections, IV(F), IV(G) and IV(H). Section IV(F) and IV(G) were added, as is stated in Part 3 of this C.I.S., to reach particular aspects or methods of Subcontractor selection.

The original proposal for Section IV(H) considered by the United States would have prohibited defendants from obtaining, maintaining, communicating or using, in connection with any Major Construction Project, the two types of lists described in this provision. This broad alternative was rejected since the Complaint charged only using the blacklist to aid in the refusal to deal with United States Blacklisted Persons. This Section was further limited to prohibit only maintenance of the described lists in the United States since: (i) it is the enforcement of the Boycott in the United States which is the offense charged; and (ii) defendants may be required to maintain such lists within the Arab League Country in which they are doing business.

Section V

The original proposal the United States considered did not include any of the provisions of Section V. In general, the United

States agreed to include these limitations because a judgment without them would have jeopardized the continued conduct of any business by defendants (and possibly others) in Arab League Countries, and would have forced conduct by the defendants which went beyond the theory of the case. Without these provisions, some of the broad prohibitions of Section IV could have been interpreted to require defendants to refrain from acting as Prime Contractors wherever they had reason to believe that the Arab Boycott was a factor in the selection of any Person to participate in Major Construction Projects—a fact that can be reasonably inferred with respect to every Major Construction Project in certain Arab League Countries, including those where the Bechtel Group does extensive business. Further, these provisions may have appeared to impinge upon the sovereignty of Arab League Countries over their internal affairs with a possible result that, instead of opening up this commerce to United States Blacklisted Persons, it would be closed off entirely for all United States Prime Contractors and Subcontractors. This would have been beyond the purpose and allegations of the Complaint.

The following alternative or additional proposals were considered with respect to individual subsections of Section V.

Section V(A)

The United States considered an alternative which would have limited this section's scope to contracts, agreements and purchase orders which provide that defendant abide by the laws of the country in which the Major Construction Project is located only as to its activities within that country. As explained in Part 3 of this C.I.S., it is standard practice in the construction industry to provide in contracts that the law of the locality in which a project is located shall govern the performance of such contracts wherever that performance takes place. Thus, if defendants were building an oil refinery in Texas, it would be common to provide that the state law of Texas would apply, or, if they were building a pipeline in Venezuela, the law of that country would be stipulated. As long as there is no specific reference to the Arab Boycott, or no inclusion of a specific Boycott clause, the United States believes it is not necessary to create a special exception to the normal construction industry practice for projects in Arab League Countries.

As it originally appeared in the proposed Final Judgment, this Section did not include the proviso stating that defendants were not otherwise relieved from any specific prohibitions or obligations of the judgment. The original proposal, while intended to apply only to the language of contracts, agreements or purchase orders and not defendants' conduct or performance under them, was believed to create a potential ambiguity which could permit defendants to engage in Boycott enforcement in the United States because the laws of the Arab League Country in which the project was located would invariably include specific statutes requiring Boycott enforcement as to business conducted in that country. The proviso eliminates any such ambiguity.

Section V(B)

An alternative provision considered included a clause at the end of Section V (B) which would have denied to defendants protection where they were engaging in a concerted refusal to deal with all United States Persons. Since the investigation uncovered no evidence of such a conspiracy, and the Complaint only dealt with what uncovered, a refusal to deal with United States Blacklisted Persons, this clause was not required. If it is found in the future that defendants are refusing to deal with all United States Subcontractors for all of its Major Construction Projects in Arab League Countries in order to avoid dealing with United States Blacklisted Persons, the Department will have to make an independent determination as to the appropriate course of action.

Additional Section V Provision Considered

An additional provision of Section V which was considered would have permitted defendants to insert in their agreements with Subcontractors a clause providing that, if that Subcontractor's goods or personnel were refused admittance into the country in which the Major Construction Project was located due to the laws, regulations, policies or official acts of that country, the Subcontractor would assume the risks of loss and hold defendants harmless. Another alternative version of this provision would have required, where such a clause was included, that defendants make a good faith effort to obtain the admission of the Subcontractor's goods or personnel into the project country. It was agreed that the question of who shall bear the cost of any failure or inability of the Subcontractor's goods or personnel to gain admission into the project country should be left either to general principles of law or contractual negotiations between Subcontractors and the defendants. Including this provision in the proposed Final Judgment was viewed as creating unnecessary inflexibility for all parties: Subcontractors, defendants and the Department; and it was agreed that the wiser course would be to handle each situation on a case-by-case basis. The Department does not believe that the defendants are necessarily obligated to assume all risks of loss to be in compliance with this proposed Final Judgment.

Section VII

As originally considered by the United States, this section would have empowered the Court to modify the Final Judgment to conform to any judgment entered in any other antitrust case, arising out of the Arab Boycott, brought by the Department of Justice, even if the United States lost that case and the judgment entered discharged that defendant from any liability. This provision was not acceptable because of the vagaries of litigation and because special facts might result in the loss of other Arab Boycott cases while the Department's legal theory remained unaffected. Consequently, the right of defendants to a modification of the Final Judgement was limited only to those instances where a consent judgment was entered in a similar case. At the same time a proviso was added making it clear that all parties retained their right to petition the Court for a modification, pursuant to the general jurisdictional grant reserved to the Court under Section IX, in light of the results of a litigated case.

Section VIII

The United States considered an alternate version of this clause which did not include the second sentence of the last paragraph of the section providing for ten days' notice to defendants before the disclosure, under some circumstances, of certain pre-designated material obtained pursuant to this section. As the additional language created no prohibition to the disclosure otherwise permitted under the section, but simply set up a notice procedure, the Department agreed to its inclusion on the grounds of fairness.

Early proposals for a Final Judgment in this case did not include a date for the expiration of its provisions. Such a perpetual judgment was rejected because of the volatile nature of Middle East relationships. Neither the Department nor the defendants should be forever wedded to a judgment based upon 1977 facts and the present statutory and decisional state of antitrust law. Automatic termination of the judgment would permit the parties to adjust their positions accordingly at that time.

Additional Separate Sections Not Included in the Proposed Final Judgment

The United States originally considered including in the proposed Final Judgment provisions which would have required the defendants to file with the Department of Justice extensive and detailed reports of all phases of the Subcontractor selection process if defendants entered into any contract, outside the United States, which included a clause requiring them or their Subcontractors to refuse to deal with United States Blacklisted Persons. As with this proposed Final Judgment, this earlier version would not have specifically prohibited *entering into* such contracts outside the United States so long as, pursuant to such clauses, defendants did not refuse to deal, or require others to refuse to deal with United States Blacklisted Persons. Also included was a provision requiring defendants to use "good faith efforts" to attempt to gain the entry of the products of Blacklisted Persons selected as Subcontractors into Arab League Countries.

These provisions were rejected in favor of the more standard and general visitation provisions (Section VIII of the proposed Final Judgment) since they would have required the Antitrust Division to become involved extensively in the regulation of defendants' daily business affairs. This would be a highly undesirable precedent and would create an undue strain on the Antitrust Division's resources. It might also so severely increase the cost to defendants in doing business in the Middle East that they would be placed at a competitive disadvantage with respect to other United States and foreign contractors—a result inconsistent with the Department's objective, under the antitrust laws, to promote competition. Further, when the prohibitions and obligations of Section IV were made more specific, and Section V's narrow and limited exceptions were added, it became unnecessary to require defendants to submit to detailed regulatory-type observation of their affairs. The Department's power under Section VIII should be sufficiently broad to meet any need for discovery into the conduct of defendants on Arab League Country Major Construction Projects which the Department could reasonably have under its judgment enforcement and monitoring responsibilities.

Finally, any requirement that defendants make a good faith effort to achieve the entry of the goods or personnel of selected blacklisted Subcontractors was similarly rejected as impractical and not capable of policing. It is possible that this requirement would have placed the Department of Justice, a law enforcement agency, in the anomalous position of requiring defendants to engage in conduct subject to another country's sovereign jurisdiction which violated the laws of that country.

(7) DETERMINATIVE DOCUMENTS

There are no materials or documents which the Government considered determinative in formulating this proposed Final

Judgment. Therefore, none are being filed with this document.

Respectfully submitted,

Dated: Washington, D.C., January 10, 1977.

DOUGLAS E. ROSENTHAL,
DONALD A. KAPLAN,

[FR Doc.77-1673 Filed 1-18-77;8:45 am]

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Meeting

Notice is hereby given that the Advisory Committee of the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, will meet on February 9, 1977 from 9:15 a.m. to 5:00 p.m. at the Twin Bridges Marriott Motor Hotel, U.S. 1 and I-95, Arlington, Virginia.

The major topic of discussion will concern long-range planning for Institute-sponsored research and evaluation.

The meeting will be open to the public.

For further information, please contact Gerald M. Caplan, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531. (202) 376-3606.

JAY BROZOST,
Attorney-Advisor,
Office of General Counsel.

[FR Doc.77-1727 Filed 1-18-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR NEUROBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neurobiology.
Date and Time: February 10-11, 1977; 9:00 am each day.
Place: Room 338, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.
Type of Meeting: Closed.
Contact Person: Dr. N. Herbert Spector, Program Director for Neurobiology, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone (202) 634-4036.
Purpose of Panel: To provide advice and recommendations concerning support for research in neurobiology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close Meeting: This determination was made by the Committee pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Office was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 14, 1977.

[FR Doc.77-17-19;Filed 1-18-77;8:45 am]

POSTAL RATE COMMISSION

VISITS TO POSTAL FACILITIES

Washington, D.C.

JANUARY 13, 1977.

Notice is hereby given that employees of the Postal Rate Commission will be visiting Postal Service facilities on the dates indicated for the purpose of acquiring general background knowledge of postal operations.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed.

Reports of the visits will be on file in the Commission's docket room.

Place of visit	*Date of visit*
20th Street Station, Washington, D.C.	
Temple Hills Station Washington, D.C.	Jan. 26 and 27, 1977.

By direction of the Commission.

JAMES R. LINDSAY,
Secretary of the Commission.

[FR Doc.77-1674 Filed 1-18-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

SPOKANE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Spokane District Advisory Council will meet at 9:00 a.m., Friday, February 4, 1977, in Room 485, U.S. Court House Building, West 920 Riverside Avenue, in Spokane, Washington, to discuss such business as may be presented by members, the staff of the Small Buisness Administration, or others attending. For further information, write or call William S. Schumacher, Small Business Administration, U.S. Court House, Room 651, P.O. Box 2167, Spokane, Washington 99210, (509) 456-3781, FTS 439-3781.

Dated: January 14, 1976.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for
Advisory Councils.

[FR Doc.77-1834 Filed 1-18-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice 512]

DISCLOSURE OF MARKET-SENSITIVE INFORMATION

Proposed Guidelines

The Department of State plans to issue internal guidelines to its personnel concerning the release of market-sensitive information. Because of the potential effect of these guidelines on the general public, as well as on individual members of the public who might approach the Department directly for information which is determined to be of this kind, the proposed guidelines are being published in the FEDERAL REGISTER for public comment prior to being promulgated in Volume 10, Economic Affairs, Foreign Affairs Manual.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted to the Assistant Legal Adviser for Economic and Business Affairs, Department of State, 2201 C Street, NW., Washington, D.C. 20520. All comment received on or before February 18, 1977, will be considered.

760 DISCLOSURE OF MARKET-SENSITIVE INFORMATION

761 DEFINITION

Market-sensitive information is information of a nature such that its public release would be likely to have an immediate effect on relevant trading markets, such as the Commodities Foreign Currency or Securities Exchanges. Such information as crop forecasts or failures or agreements entered into in the economic-trade-commodities field may be of such significance that its release would immediately affect trading in specific commodities, currencies or stocks. Similarly, information as to balance-of-payments performance or revaluations of currency may be important enough once known to affect currency markets. Information as to a specific enterprise, such as pending expropriation or the fact that a lawsuit may be brought against it by the government, could affect trade in the securities of that company.

762 DEPARTMENT OF STATE RESPONSIBILITIES AND OBJECT OF DIRECTIVE

Department and Foreign Service officers in all areas can expect to acquire market-sensitive information in the normal course of their duties. Such information will not necessarily be classified. It is the responsibility of all officers (especially those whose duties entail public press briefings, providing background statements to the press, dealing with freedom of information requests, or frequent contact with the public) to make every effort to insure that they not release market-sensitive information in such a manner as to unduly disturb trade

in the relevant market or so as to provide private, selective notification of that information. To assist officers in fulfilling their responsibilities, guidelines are set forth below.

763 DETERMINATION OF WHETHER INFORMATION IS MARKET-SENSITIVE

If an officer is not certain whether particular information which is to be released either selectively or to the public at large is market-sensitive, the officer should direct the question to the office in the Department which is best equipped to determine the significance of the information, such as the Office of International Commodities (EB/ORF/ICD), for commodity information, the Office of Food Policy (EB/ORF/OFD), for agricultural information, the Office of Monetary Affairs (EB/IFD/OMA), for foreign currency information, the Office of Investment Affairs (EB/IFD/OIA), for information relating to investment matters. It will not always be possible for officers in these offices to make a final determination of the matter, as this might require a more complete appraisal of the information in the context of the market in general and perhaps the commodity or security in particular than the officer can be expected to undertake. In such cases, the economic officer should consult the relevant government agency or agencies (such as the SEC, Department of Agriculture, Commodity Futures Trading Commission, Treasury). The offices to contact are as follows:

SEC—Directorate of Economic and Policy Research.
Agriculture—Director of Agricultural Economics.
Treasury—Office of Securities Markets Policy.
Commodity Futures Trading Commission—Office of Intergovernmental Affairs.

Officers should, of course, use their judgement in deciding whether any additional agencies should be consulted in any particular situation.

764 RELEASE OF MARKET-SENSITIVE INFORMATION

Market-sensitive information should be released in such a manner as to: (1) Limit to the greatest extent possible any disturbance in the relevant market; and (2) attempt to assure that all interested parties and the public receive access to such information at the same time, so as to prevent a few privileged parties from obtaining a trading advantage. Therefore, market-sensitive information should, as a general matter, only be released after the colse of any relevant trading market for the day. The information should then be released to news media in a manner such as to ensure the broadest possible dissemination, for example, by utilizing the Dow Jones and Reuters services. Where it is impossible to await the close of the market and it is considered that the information would have a significant impact on trading, the Department officer should coordinate with the SEC or other appropriate agency before the information is released, as certain agencies such as the SEC and Agriculture have established procedures to effect a suspension of trading in the relevant commodity or security.

While release of market-sensitive information to selected persons is to be avoided if at all possible, in certain instances (e.g., release of documents in response to a freedom of information request) such release may be unavoidable. In such instances, the Department officer should take concurrent steps (in cooperation with other agencies, if appropriate) to ensure the public dissemination of the information, thereby avoiding the possibility of the selected recipient gaining trading advantage.

Dated: January 10, 1977.

MONROE LEIGH,
Legal Adviser.

[FR Doc.77-1675 Filed 1-18-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

CITIZENS' ADVISORY COMMITTEE ON TRANSPORTATION QUALITY

Committee Renewal

Notice is hereby given that the Citizens' Advisory Committee on Transportation Quality is being renewed effective January 5, 1977. The Secretary of Transportation has determined that renewal of this Committee is in the public interest in connection with the performance of duties imposed on the Department of Transportation by law.

This notice is given pursuant to section 9(a)(2) of the Federal Advisory Committee Act.

Issued in Washington, D.C., on January 12, 1977.

JUDITH T. CONNOR,
Assistant Secretary for Environment, Safety, and Consumer Affairs.

[FR Doc.77-1649 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Department Order No. 221-3 (Revision 2)]

TRANSFER OF FUNCTIONS TO THE INTERNAL REVENUE SERVICE

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in Reorganization Plan No. 26 of 1950, it is ordered that:

1. There is hereby transferred to the Commissioner, Internal Revenue Service those functions, powers and duties of the Director of the Bureau of Alcohol, Tobacco and Firearms arising under laws relating to taxes on wagering and the provisions of Treasury Department Order 221-3.

2. All regulations prescribed, all rules and instructions issued, and all forms adopted for administration of the wagering tax laws in effect or in use on the date of this Order shall continue in effect or in use until superseded or revised by the Commissioner.

3. To the extent that any action taken by the Director of the Bureau of Alcohol, Tobacco and Firearms, or his delegates, under Treasury Department Order 221-3, before the effective date of this Order may require ratification, such action is hereby ratified.

4. Each wagering tax case or investigation open or otherwise in process as of the date of this Order shall be pursued to conclusion by the agency processing the same on that date.

5. This Order is effective immediately. All delegations in consistent with this Order are revoked.

Dated: January 14, 1977.

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.77-1912 Filed 1-18-77;8:45 am]

TUNERS (OF THE TYPE USED IN CONSUMER ELECTRONIC PRODUCTS) FROM JAPAN

Tentative Determination To Modify or Revoke Dumping Finding

A finding of dumping with respect to tuners (of the type used in consumer electronic products) from Japan was published as Treasury Decision 70-257 in the FEDERAL REGISTER of December 12, 1970 (35 FR 18914).

Subsequently, the dumping finding was modified to exclude the subject tuners produced and/or sold by the following companies:

I. Matsushita Electrical Co. Ltd., and Matsushita Electric Trading Co., Ltd. in T.D. 75-80 (40 FR 14591);
II. Victor Company of Japan Ltd. in T.D. 75-80 (40 FR 14591);
III. Tokyo Shibaura Electric Co., Ltd. T.D. 76-143 (41 FR 21185);
IV. Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd. in T.D. 76-215 (41 FR 32421); and
V. Sony Corporation of Japan in T.D. 77-26 (42 FR

After due investigation, it has been determined tentatively that the subject tuners from Japan are no longer being, nor likely to be sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

STATEMENT OF REASONS ON WHICH THIS TENTATIVE DETERMINATION IS BASED

The investigation indicated that: 1. Sales of subject tuners by Alps Electric Co., Ltd., accounting for approximately 83.3 percent of all subject tuner sales from Japan to the United States during the years 1970 through 1975, have not, with the exception of certain sales for which dumping duties in a *de minimis* amount were found to accrue, been made at less than fair value for a 2-year period since the finding of dumping. Written assurances have been given by Alps that future sales of subject tuners to the United States will not be made at less than fair value.

2. Sales of subject tuners by Waller Japan K.K. accounting for roughly 6.2 percent of all subject Japanese tuner sales to the United States during the years 1970 through 1975, have not been made at less than fair value for a 2-year period since the finding of dumping. Written assurances have also been given that future sales by Waller Japan K.K. to the United States will not be made at less than fair value.

3. All of the above firms, for which the finding has been modified, together with Alps Electric Co. Ltd., and Waller Japan K.K., account for approximately 96.4 percent of all subject tuners from Japan sold to the United States during the years 1970 through 1975. Only *de minimis* dumping duties have been assessed on all such shipments from the Japanese firms as a whole, during a 2-year period since the findings of dumping.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the finding of dumping with respect to tuners (of the type used in consumer electronic products) from Japan.

In accordance with § 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, Northwest, Washington, D.C. 20229, in time to be received by his office on or before January 31, 1977. Such request must be accompanied by a statement outlining the issues, wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office on or before February 18, 1977.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

Dated: January 13, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-172, Filed 1-18-77;8:45 am]

Internal Revenue Service

[Order No. 112 (Rev. 4)]

DISTRICT DIRECTOR OF INTERNAL REVENUE

Authority To Issue Determination Letters Relating to Employee Plans Matters

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-37, dated March 17, 1955, there is hereby delegated to the District Director of Internal Revenue for each of the Key Districts for Employee Plans and Exempt Organizations matters the authority to:

(1) Issue determination letters involving the provisions of sections 401, 403(a), 405, and 501(a) of the Internal Revenue Code of 1954 with respect to:

(a) Initial qualification of stock bonus, pension, profit-sharing, annuity, and bond purchase plans;

(b) Initial exemption from Federal income tax under section 501(a) of trusts forming a part of such plans, provided that the determination does not involve application of section 502 (feeder organizations) or section 511 (unrelated business income), or the question of whether a proposed transaction will be a prohibited transaction under section 503;

(c) Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4)); and

(d) Amendments, curtailments, or terminations of such plans and trusts.

(2) With respect to applications for determination received by the Internal Revenue Service prior to the effective date of this Delegation Order, issue determination letters involving the provisions of section 408(c) of the Internal Revenue Code of 1954 with respect to exemption from Federal income tax under section 408(e) of trusts creating individual retirement accounts.

(3) Issue determination letters with respect to whether a plan constitutes an employee stock ownership plan as contemplated in section 46(a)(1)(B) of the Internal Revenue Code of 1954.

(4) Issue modifications or revocations of determination letters described above.

(5) Redelegate this authority as follows:

(a) With respect to issuance and modification of determination letters, not below Internal Revenue Agent and Tax Law Specialist, GS-12, provided such individual is a person other than the initiator.

(b) With respect to revocation of determination letters, not below Chief, Employee Plans and Exempt Organizations Division.

Delegation Order No. 112 (Rev. 3), issued November 19, 1975, is hereby superseded.

Date of issue: January 14, 1977.

Effective date: January 19, 1977.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.77-2064 Filed 1-18-77;11:16 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 307]

ASSIGNMENT OF HEARINGS

JANUARY 14, 1977.

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.

MC 73165 (Sub-No. 390), Eagle Motor Lines, Inc., now assigned March 4, 1977, at Dallas, Tex. is canceled and application dismissed.

MC 141097 (Sub-No. 4), Cal-Tex, Inc., now assigned March 8, 1977, at Los Angeles, Calif. is canceled and application dismissed.

MC 125076 (Sub-No. 8), Superior Bus Service, Inc., DBA Travelines United, application dismissed.

MC 141804 (Sub-No. 24), Western Express Division of Interstate Rental, Inc., application dismissed.

MC 141663, Robert E. Moore, d.b.a. Moore Trucking Company, now being assigned February 15, 1977 (4 days) at Greensboro, N.C., in a hearing room to be later designated.

Ex Parte No. 315 (Sub-No. 1), In the Matter of Kenneth R. Davis, now being assigned February 23, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142174, Loiselle Transport Limited, now assigned February 8, 1977 at Helena, Montana, will be held in The Conference Room Montana Public Service Commission, 1227 11th Avenue.

MC 128273 (Sub-No. 234), Midwestern Distribution, Inc., now being assigned March 8, 1977 (2 days) at Los Angeles, California, in Room 8041 Federal Building, 300 North Los Angeles Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1796 Filed 1-18-77;8:45 am]

[I.C.C. Order No. 16; Service Order No. 1233]

BALTIMORE AND OHIO RAILROAD CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, The Baltimore and Ohio Railroad Company (B&O) is unable promptly to transfer shipments of coal from rail to water because of an accumulation of cars awaiting unloading at its coal unloading piers at Baltimore, Maryland, caused by adverse weather conditions, resulting in excessive car delays and serious shortages of cars at the mines.

It is ordered, That: (a) The B&O being unable promptly to transfer shipments of coal from rail to water because of an accumulation of cars awaiting unloading at its coal unloading piers at Baltimore, Marvland, caused by adverse weather conditions; that carrier is hereby authorized to divert to Newport News, Virginia, via any available route, for unloading at the coal piers located at that point.

(b) *Concurrence of receiving roads to be obtained.* The B&O, when diverting traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted, before the diversion is ordered.

(c) *Notification to shippers.* The B&O, when diverting cars in accordance with this order shall notify each shipper at the

time each car is diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the division of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2:00 p.m., January 3, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1977, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 3, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1997 Filed 1-18-77;8:45 am]

[AB 19 (Sub-No. 28)]

BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY CO. AND BALTIMORE AND OHIO RAILROAD CO.

Abandonment Between Ashford and Leroy, Including Silver Lake Branch Between Silver Lake Junction and Chace, in Genesee, Wyoming, Allegany and Cattaraugus Counties, New York

JANUARY 5, 1977.

The Interstate Commerce Commission hereby gives notice that: 1. The Commission's Section of Energy and Environment has prepared an environmental threshold assessment survey in the above-entitled proceeding in which it was concluded that the proceeding does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq. 2. A notice setting forth this conclusion as served November 9, 1976, and no substantive comments in opposition, of an environmental nature, have been received by the Commission in response to said notice. 3. This proceeding is now ready for further disposition within the Office of Hearings or the Office of Proceedings as appropriate.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1795 Filed 1-18-77;8:45 am]

[I.C.C. Order No. 8, Amdt. 1; Service Order No. 1252]

LOUISVILLE AND NASHVILLE RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 8, (Louisville and Nashville Railroad Company) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 8 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 15, 1977, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., January 15, 1977, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 7, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1798 Filed 1-18-77;8:45 am]

[Notice No. 106]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JANUARY 19, 1977.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 8, 1977. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76362 By order dated December 22, 1976, the Motor Carrier Board approved the transfer to James Meyers, Doing Business As Meyers Transfer, of Permits No. MC-124957 and MC-124957 (Sub-No. 3), MC-124957 (Sub-No. 4), and MC-124957 (Sub-No. 7), issued by the Commission, July 25, 1963, October 26, 1967, June 21, 1971, and January 2, 1974, respectively, to Kenneth Kohls, Mankato, Minnesota, authorizing the transportation of concrete conduit, brick and tile, concrete pedestals, concrete, manholes, concrete manhole extension sections, and concrete collars, from specified points in Minnesota, Iowa and Wisconsin to points in Iowa, Missouri, Nebraska, North Dakota, South Dakota, Minnesota, Illinois, and Wisconsin. Earl Hacking, 1700 New Brighton Blvd., Minneapolis, Minnesota, 55413, attorney for applicants.

No. MC-FC-76423 By order entered December 21, 1976, the Motor Carrier Board approved the transfer to Nebraska-Iowa-Missouri Express, Inc., Trenton, Missouri, of Certificate No. MC-121540 (Sub-No. 2), issued March 26, 1970, to East Nebraska Motor Freight, Inc., Lincoln, Nebraska, authorizing the transportation of General Commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Omaha, Nebr., and Utica, Nebr., serving the intermediate and off-route points of Lincoln, Milford, Beaver Crossing, and Goehner, Nebr. This authority is restricted against serving points in Iowa within the Omaha, Nebr., Commercial Zone, as defined by the Commission. Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebraska, 68501, attorney for applicants.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1799 Filed 1-18-77;8:45 am]

[AB 12 (Sub-No. 24)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between Alla and Venice in Los Angeles County, California

JANUARY 5, 1977.

The Interstate Commerce Commission hereby gives notice that: 1. The Commission's Section of Energy and Environment has prepared an environmental threshold assessment survey in the above-entitled proceeding in which it was concluded that the proceeding does not constitute a major Federal action significantly affecting the quality of

the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq. 2. A notice setting forth this conclusion was served November 22, 1976, and no substantive comments in opposition, of an environmental nature, have been received by the Commission in response to said notice. 3. This proceeding is now ready for further disposition within the Office of Hearings or the Office of Proceedings as appropriate.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1794 Filed 1-18-77;8:45 am]

[AB 10 (Sub-No. 7)]

WABASH RAILROAD CO. AND NORFOLK AND WESTERN RAILWAY CO.

Abandonment Between Bement and Sullivan in Piatt and Moultrie Counties, Illinois

JANUARY 5, 1977.

The Interstate Commerce Commission hereby gives notice that: 1. The Commission's Section of Energy and Environment has prepared an environmental threshold assessment survey in the above-entitled proceeding in which it was concluded that the proceeding does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq. 2. A notice setting forth this conclusion was served November 22, 1976, and no substantive comments in opposition, of an environmental nature, have been received by the Commission in response to said notice. 3. This proceeding is now ready for further disposition within the Office of Hearings or the Office of Proceedings as appropriate.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1793 Filed 1-18-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 14, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed by February 3, 1977.

FSA No. 43303—*Building, Roofing or Sheating Paper Between Points in Southern Territory.* Filed by M. B. Hart, Jr., Agent, (No. A6348), for interested rail carriers. Rates on building, roofing or sheathing paper, and related articles, in carloads, as described in the application, between points in southern territory.

Grounds for relief—Short-line distance formula and grouping.

Tariff—Supplement 26 to Southern Freight Association, Agent, tariff 862-G, I.C.C. No. S-1269. Rates are published to become effective on February 17, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1802 Filed 1-18-77;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

JANUARY 14, 1977.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission by January 31, 1977. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC-61825 (Sub E 769), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000—16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials* (except in bulk), from points in Oregon and Washington, and points in California, Idaho, Montana, and Nevada on and northwest of a line beginning at Los Angeles, Calif., and extending northwest along Interstate Highway 5 to junction California Highway 14, thence north along California Highway 14 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction California Highway 168, thence northeast along California Highway 168 to junction California Highway 266, thence northwest along California Highway 266 to junction Nevada Highway 3A, thence north along Nevada Highway 3A to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Nevada Highway 8A, thence north along Nevada Highway 8A to junction Nevada Highway 82, thence north along Nevada Highway 82 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Nevada Highway 46, thence north along Nevada Highway 46 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 26, thence northeast along U.S. Highway 26 to junction Idaho Highway 22, thence northeast along Idaho Highway 22 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the Idaho-Montana State line, thence east along the Idaho-Montana State line to the Montana-Wyoming State line, thence north and east along the Montana-Wyoming State line to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction Montana Highway 19, thence north along Montana Highway 19 to junction U.S. Highway 191, thence northeast along U.S. Highway 191 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction Montana Highway 247, thence north along Montana Highway 247 to the United States-Canadian International Boundary line, to points in Tennessee on and bounded by a line beginning at the North Carolina-Tennessee State line and extending northwest along Tennessee Highway 32 to junction U.S. Highway 411, thence west along U.S. Highway 411 to junction U.S. Highway 25E, thence north along U.S. Highway 25E to junction U.S. Highway 11E, thence southwest along U.S. Highway 11E to junction U.S. Highway 441 at Knoxville, Tennessee, thence southeast along U.S. Highway 441 to the Tennessee-North Carolina State line, and thence northeast along the Tennessee-North Carolina State line to point of beginning. The purpose of this filing is to eliminate the gateway of Martinsville, Va.

No. MC-61825 (Sub E 770), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harrry J. Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials* (except in bulk) from points in Washington, and points in California, Idaho, Montana, Nevada, and Oregon on and northwest of a line beginning at San Francisco, Calif., and extending south along Interstate Highway 280 to junction California Highway 92, thence east along California Highway 92 to junction California Highway 238, thence north along California Highway 238 to junction Interstate Highway 580, thence east along Interstate Highway 580 to junction California Highway 84, thence north along California Highway 84 to junction California Highway 4, thence east along California Highway 4 to junction California Highway 26, thence northeast along California Highway 26 to junction California Highway 88, thence east along California Highway 88 to junction Nevada Highway 88, thence north along Nevada Highway 88 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junc-

tion U.S. Highway 50, thence east along U.S. Highway 50 to junction U.S. Highway 95, thence north along U.S. Highway 95 to junction Nevada Highway 48, thence northwest along Nevada Highway 48 to junction Nevada Highway 34, thence north along Nevada Highway 34 to junction Nevada Highway 8A, thence northeast along Nevada Highway 8A to junction Nevada Highway 140, thence northwest along Nevada Highway 140 to junction Oregon Highway 140, thence northwest along Oregon Highway 140 to junction U.S. Highway 395, thence north along Oregon Highway 140 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 26, thence east along U.S. Highway 26 to junction Oregon Highway 7, thence northeast along Oregon Highway 7 to junction Oregon Highway 86, thence east along Oregon Highway 86 to the Oregon-Idaho State line, thence north along the Oregon-Idaho State line to the Washington-Idaho State line.

Thence north along the Washington-Idaho State line to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 10, thence southeast along U.S. Highway 10 to junction U.S. Highway 91 at Butte, Mont., thence northeast along U.S. Highway 91 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction Montana Highway 427, thence north along Montana Highway 427 to junction U.S. Highway 87, thence east along U.S. Highway 87 to junction U.S. Highway 191, thence northeast along U.S. Highway 191 to junction Montana Highway 242, thence north along Montana Highway 242 to the United States-Canadian International Boundary line, to those points in Tennessee on and bounded by a line beginning at North Carolina-Tennessee State line and extending west along U.S. Highway 64 to junction Tennessee Highway 30, thence north along Tennessee Highway 30 to junction U.S. Highway 11, thence northeast along U.S. Highway 11 to junction Tennessee Highway 95, thence northeast along Tennessee Highway 95 to junction Tennessee Highway 61, thence northeast along Tennessee Highway 61 to junction Tennessee Highway 33, thence northeast along Tennessee Highway 33 to junction U.S. Highway 25E, thence north along U.S. Highway 25E to the Tennessee-Virginia State line, thence east along the Tennessee-Virginia State line to junction U.S. Highway 23, thence south along U.S. Highway 23 to junction U.S. Highway 11W, thence southwest along U.S. Highway 11W to junction Tennessee Highway 66, thence south along Tennessee Highway 66 to junction U.S. Highway 11E, thence southwest along U.S. Highway 11E to junction U.S. Highway 441 at Knoxville, Tenn., thence southeast along U.S. Highway 441 to the Tennessee-North Carolina State line, and thence southwest along the Tennessee-North Carolina State line to point of beginning. The purpose of this filing is to eliminate the gateway of Martinsville, Va.

No. MC-61825 (Sub-No. E 771), filed March 5, 1976. Applicant: Roy STONE TRANSFER CORP., P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000-16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials*, (except in bulk), from points in California, Oregon, and Washington on and west of a line beginning at Ventura, California and extending north along California Highway 33 to junction California Highway 119, thence northeast along California Highway 119 to junction California Highway 43, thence north along California Highway 43 to junction California Highway J15, thence east along California Highway J15 to junction California Highway 99, thence northwest along California Highway 99 to junction California Highway 140, thence northeast along California Highway 140 to junction California Highway 49, thence north along California Highway 49 to junction California Highway 20, thence west along California Highway 20 to junction California Highway 20 to junction California Highway 99, thence north along California Highway 99 to junction California Highway 32, thence north along California Highway 32 to junction California Highway 36, thence northwest along California Highway 36 to junction California Highway 89, thence north along California Highway 89 to junction California Highway 299, thence northeast along California Highway 299 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Oregon Highway 31, thence northwest along Oregon Highway 31 to junction U.S. Highway 97, thence southwest along U.S. Highway 97 to junction Oregon Highway 58, thence northwest along Oregon Highway 58 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Oregon Highway 126, thence east along Oregon Highway 126 to junction U.S. Highway 97, thence north along U.S. Highway 97 to junction U.S. Highway 197.

Thence north along U.S. Highway 197 to the Oregon-Washington State line, thence east along the Oregon-Washington State line to junction Washington Highway 125, thence north along Washington Highway 125 to junction Washington Highway 124, thence west along Washington Highway 124 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction Washington Highway 21, thence north along Washington Highway 21 to junction Washington Highway 20, thence east along Washington Highway 20 to junction U.S. Highway 395, and thence north along U.S. Highway 395 to the United State-Canadian International Boundary line, to those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line and extending north along Interstate Highway 75 to junction Kentucky Highway 192, thence north along Kentucky Highway 192 to junction U.S. Highway 25, thence northwest along U.S. Highway 25 to junction Kentucky Highway 30, thence northeast along Kentucky Highway 30 to junction Kentucky Highway 15, thence north along Kentucky Highway 15 to junction Kentucky Highway 1812, thence north along Kentucky Highway 1812 to junction Kentucky Highway 191, thence north along Kentucky Highway 191 to junction Kentucky Highway 203, thence north along Kentucky Highway 203 to junction U.S. Highway 460, thence northeast along U.S. Highway 460 to junction Kentucky Highway 7, thence north along Kentucky Highway 7 to junction Kentucky Highway 1, thence north along Kentucky Highway 1 to junction Kentucky Highway 207, and thence northeast along Kentucky Highway 207 to the Kentucky-Ohio State line. The purpose of this filing is to eliminate the gateway of Martinsville, Va.

No. MC 61825 (Sub E 772), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box. 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street, NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture* between points in Delaware, on the one hand, and, on the other, points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington and points in Colorado, Montana, Nebraska, North Dakota, and Wyoming on and west of a line beginning at the Oklahoma-Kansas-Colorado State line and extending north along the Kansas-Colorado State line to Junction U.S. Highway 36, thence west along U.S. Highway 36 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction Colorado Highway 71, thence north along Colorado Highway 71 to junction Nebraska Highway 71, thence north along Nebraska Highway 71 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction Wyoming Highway 59, thence north along Wyoming Highway 59 to junction Montana Highway 59, thence north along Montana Highway 59 to junction U.S. Highway 212, thence west along U.S. Highway 212 to junction U.S. Highway 312, thence north along U.S. Highway 312 to junction U.S. Highway 10, thence northeast along U.S. Highway 10 to junction Montana Highway 16, thence northeast along Montana Highway 16 to junction Montana Highway 200, thence northeast along Montana Highway 200 to junction North Dakota Highway 200, thence east along North Dakota Highway 200 to junction U.S. Highway 85, and thence along U.S. Highway 85 to the United States-Canadian International Boundary line, restricted against the transportation of class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateways of Pulaski, Lynchburg, and Bedford, Va.

No. MC 61825 (Sub-No. E778), filed March 5, 1976. Applicant: ROY STONE

TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in New Jersey on and northwest of a line beginning at the New Jersey-New York State line and extending along U.S. Highway 202, to the New Jersey-Pennsylvania State line, and points in New York (except New York City, New York) on and southeast of a line beginning at the New Jersey-New York State line and extending northeast along U.S. Highway 209 to junction New York Highway 213, thence east along New York Highway 213 to junction New York Highway 32, thence north along New York Highway 32 to junction New York Highway 199, thence east along New York Highway 199 to junction U.S. Highway 9, thence north along U.S. Highway 9 to junction New York Highway 23B, thence east along New York Highway 23B to junction New York Highway 23, and thence east along New York Highway 23 to the New York-Massachusetts State line, on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and points in Nebraska, North Dakota, and South Dakota on and west of a line beginning at the Kansas-Nebraska State line and extending north along U.S. Highway 83 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2, thence north along Nebraska Highway 2 to junction Nebraska Highway 87, thence west along Nebraska Highway 87 to junction Nebraska Highway 71, thence southwest along Nebraska Highway 71 to junction U.S. Highway 26, thence west along U.S. Highway 26 to the Nebraska-Wyoming State line, thence north along the Nebraska-Wyoming State line to the South Dakota-Wyoming State line, thence north along the South Dakota-Wyoming State line to junction U.S. Highway 18, thence east along U.S. Highway 18 to junction South Dakota Highway 89, thence north along South Dakota Highway 89 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction North Dakota Highway 23, thence east along North Dakota Highway 23 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 256, and thence north along North Dakota Highway 256 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E779), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northwest along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania Highway 26, thence west along Pennsylvania Highway 26 to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, New York, thence east to the New York-Vermont State line, thence south along the New York-Vermont State line to the New York-Massachusetts State line, hence south along the New York-Massachusetts State line to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 23B.

Thence west along New York Highway 23B to junction U.S. Highway 9, thence south along U.S. Highway 9 to junction New York Highway 199, thence west along New York Highway 199 to junction New York Highway 32, thence south along New York Highway 32 to junction New York Highway 213, thence west along New York Highway 213 to junction U.S. Highway 209, thence southwest along U.S. Highway 209 to the New York-New Jersey State line, thence south along the New York-New Jersey State line to the Pennsylvania-New Jersey State line, thence south along the Pennsylvania-New Jersey State line to junction U.S. Highway 202, to junction U.S. Highway 422 to junction U.S. Highway 322, thence west along U.S. Highway 322 to junction U.S. Highway 15 to junction U.S. Highway 15 Business, thence south along U.S. Highway 15 Business to junction U.S. Highway 15, thence south along U.S. Highway 15 to the Pennsylvania-Maryland State line, and thence west to point of beginning, on the one hand, and, on the other, points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, and points in Colorado, Montana, and Wyoming on and west of a line beginning at the Oklahoma-Colorado State line and extending north along U.S. Highway 287 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction Colorado Highway 101, thence north along Colorado Highway 101 to junction U.S. Highway 50, thence west along U.S. Highway 50 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction U.S. Highway 40, thence west along U.S. Highway 40 to junction Colorado Highway 318, thence northwest along Colorado Highway 318 to the Colorado-Wyoming State line, thence west along the Colorado-Wyoming State line to the Utah-Wyoming State line, thence west along the Utah-Wyoming State line to junction Wyoming Highway 150, thence north along Wyoming Highway 150 to junction U.S. Highway 189, thence north along U.S. Highway 189 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 287, thence northwest along U.S. Highway 287 to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E780), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordon, 1000 Sixteenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in New York, and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northeast along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania Highway 26, thence west along Pennsylvania Highway 26 to junction

Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, New York, thence east to the New York-Vermont State line, thence north along the New York-Vermont State line to the United States-Canadian International Boundary line, thence west along the United States-Canadian International Boundary line to Lake Ontario, thence west along the shores of Lake Ontario to Rochester, N.Y.

Thence south along U.S. Highway 15 to junction New York Highway 256, thence south along New York Highway 256 to junction New York Highway 36, thence south along New York Highway 36 to junction New York Highway 70A, thence west along New York Highway 70A to junction New York Highway 70, thence west along New York Highway 70 to junction New York Highway 408, thence southwest along New York Highway 408 to junction New York Highway 16, thence south along New York Highway 16 to junction Pennsylvania Highway 646, thence southwest along Pennsylvania Highway 646 to junction Pennsylvania Highway 346, thence west along Pennsylvania Highway 346 to junction U.S. Highway 219, thence south along U.S. Highway 219 to junction U.S. Highway 6, thence southwest along U.S. Highway 6 to junction Pennsylvania Highway 66, thence southwest along along Pennsylvania Highway 66 to junction Pennsylvania Highway 68, thence southwest along Pennsylvania Highway 68 to junction Pennsylvania Highway 8, thence south along Pennsylvania Highway 8 to junction U.S. Highway 19, thence south along U.S. Highway 19 to junction U.S. Highway 30, thence west along U.S. Highway 30 to junction Pennsylvania Highway 50, thence southwest along Pennsylvania Highway 50 to junction Pennsylvania Highway 844, thence west along Pennsylvania Highway 844 to the Pennsylvania-West Virginia State line, thence south and thence east along the Pennsylvania-West Virginia State line to the Pennsylvania-Maryland State line, and thence east along the Pennsylvania-Maryland State line to point of beginning, on the one hand, and, on the other, points in California, and points in Arizona, Nevada, New Mexico, Oregon, and Washington on and southwest of a line beginning at the Texas-New Mexico State line and extending west along New Mexico Highway 83 to junction U.S. Highway 82, thence west along U.S. Highway 82 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 380, thence west along U.S. Highway 380 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 66, thence west along U.S. Highway 66 to junction U.S. Highway 666, thence north along U.S. Highway 666 to junction New Mexico Highway 264, thence west along New Mexico Highway 264 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 89 Alternate.

Thence north along U.S. Highway 89 Alternate to the Colorado River, thence southwest along the Colorado River to the Arizona-Nevada State line, thence north along the Arizona-Nevada State line to junction U.S. Highway 91, thence west along U.S. Highway 91 to junction Nevada Highway 7, thence northwest along Nevada Highway 7 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction Nevada Highway 25, thence northwest along Nevada Highway 25 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction U.S. Highway 95 Alternate, thence west along U.S. Highway 95 Alternate to junction Nevada Highway 34, thence north along Nevada Highway 34 to the Nevada-Oregon State line, thence west along the Nevada-Oregon State line to the California-Oregon State line, thence west along the California-Oregon State line to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Interstate Highway 80N, thence west along Interstate Highway 80N to junction U.S. Highway 97, thence north along U.S. Highway 97 to the Klickitat River, thence northwest along the Klickitat River to the Yakima-Lewis County line (Washington), thence north along the Yakima-Lewis County line (Washington) to the Yakima-Pierce County line (Washington), thence north along the Yakima-Pierce County line (Washington), to junction Washington Highway 410, thence northwest along Washington Highway 410 to junction Washington Highway 169, thence northwest along Washington Highway 169 to junction Interstate Highway 405, thence north along Interstate Highway 405 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Washington Highway 539, and thence north along Washington Highway 539 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E781), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture materials* (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, to points in Delaware. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E782), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials and new furniture*, (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and points in Nebraska, North Dakota, and South Dakota on and west of a line beginning at the Kansas-Nebraska State line and extending north along U.S. Highway 83 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2, thence north along Nebraska Highway 2 to junction Nebraska 87, thence west along Nebraska Highway 87 to junction Nebraska Highway 71, thence southwest along Nebraska Highway 71 to junction U.S. Highway 26, thence west along U.S. Highway 26 to the Nebraska-Wyoming State line, thence north long the Nebraska-Wyoming State line to the South Dakota-Wyoming State line, thence north along the South Dakota-Wyoming State line to junction U.S. Highway 18, thence east along U.S. Highway 18 to junction South Dakota Highway 89, thence north along South Dakota Highway 89 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction North Dakota Highway 23, thence east along North Dakota Highway 23 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 256, and

thence north along North Dakota Highway 256 to the United States-Canadian International Boundary line, to points in New Jersey on and northwest of U.S. Highway 202, and points in New York on and southeast of a line beginning at the New Jersey-New York State line and extending northeast along U.S. Highway 209 to junction New York Highway 213, thence east along New York Highway 213 to junction New York Highway 32, thence east alnog New York Highway 213 to junction New York Highway 32, thence north along New York Highway 32 to junction New York Highway 199, thence east along New York Highway 199 to junction U.S. Highway 9, thence north along U.S. Highway 9 to junction New York Highway 23B, thence east along New York Highway 23B to junction New York Highway 23, and thence east along New York Highway 23 to the New York-Massachusetts State line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E783), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials and new furniture* (except in bulk), from points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, and points in Colorado, Montana, and Wyoming on and west of a line beginning at the Oklahoma-Colorado State line and extending north along U.S. Highway 287 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction Colorado Highway 101, thence north along Colorado Highway 101 to junction U.S. Highway 50, thence west along U.S. Highway 50 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction U.S. Highway 40, thence west along U.S. Highway 40 to junction Colorado Highway 318, thence northwest along Colorado Highway 318 to the Colorado-Wyoming State line, thence west along the Colorado-Wyoming State line to the Utah-Wyoming State line, thence west along the Utah-Wyoming State line to junction Wyoming Highway 150, thence north along Wyoming Highway 150 to junction U.S. Highway 189, thence north along U.S. Highway 189 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 287, thence northwest along U.S. Highway 287 to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the United States-Canadian International Boundary line, to points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northwest along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania 26, thence west along Pennsylvania Highway 26, to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87.

Thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, N.Y., thence east to the New York-Vermont State line, thence south along the New York-Vermont State line to the New York-Massachusetts State line, thence south along the New York-Massachusetts State line to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 23B, thence west along New York Highway 23 to junction U.S. Highway 9, thence south along U.S. Highway 9 to junction New York Highway 199, thence west along New York Highway 199 to junction New York 32, thence south along New York Highway 32 to junction New York Highway 213, thence west along New York Highway 213 to junction U.S. Highway 209, thence southwest along U.S. Highway 209 to the New York-New Jersey State line, thence south along the New York-New Jersey State line to the Pennsylvania-New Jersey State line, thence south along the Pennsylvania-New Jersey State line to junction U.S. Highway 202 to junction U.S. Highway 422, to junction U.S. Highway 322, thence west along U.S. Highway 322 to junction U.S. Highway 15 to junction U.S. Highway 15 (Business Rd.), thence south along U.S. Highway 15 (Business Rd.) to junction U.S. Highway 15, thence south along U.S. Highway 15 to the Pennsylvania-Maryland State line, and thence west to point beginning. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC-61825 (Sub-No. E784), filed March 5, 1976. Applicant ROY STONE TRANSFER CORPORATION, P.O. Box 385 Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials, and new furniture* (except in bulk), from points in California and points in Arizona, Nevada, New Mexico, Oregon, and Washington on and southwest of a line beginning at the Texas-New Mexico State line and extending west along New Mexico Highway 33 to junction U.S. Highway 82, thence west along U.S. Highway 82 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 380, thence west along U.S. Highway 380 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 66, thence west along U.S. Highway 66 to junction U.S. Highway 666, thence north along U.S. Highway 666 to junction New Mexico Highway 264, thence west along New Mexico Highway 264 to junction Arizona Highway 264, thence west along Arizona Highway 264 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 89 Alternate, thence north along U.S. Highway 89 Alternate to the Colorado River, thence southwest along the Colorado River to the Arizona-Nevada State line, thence north along the Arizona-Nevada State line to junction U.S. Highway 91, thence west along U.S. Highway 91 to junction Nevada Highway 7, thence northwest along Nevada Highway 7 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction Nevada Highway 25, thence northwest along Nevada Highway 25 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction U.S. Highway 95 Alternate, thence west along U.S. Highway 95 Alternate to junction Nevada Highway 34, thence north along Nevada Highway 34 to the Nevada-Oregon State line, thence west along the Nevada-Oregon State line to the California-Oregon State line, thence west along the California-Oregon State line to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Interstate Highway 80N.

Thence west along Interstate Highway 80N to junction U.S. Highway 97, thence north along U.S. Highway 97 to the Klickitat River, thence northwest along the Klickitat River to the Yakima-Lewis County line (Washington), thence north along the Yakima-Lewis County line (Washington) to the Yakima-Pierce County line (Washington), thence north along the Yakima-Pierce County line (Washington) to junction Washington Highway 410, thence northwest along Washington Highway 410 to junction Washington Highway 169, thence northwest along Washington Highway 169 to junction Interstate Highway 405, thence

north along Interstate Highway 405 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Washington Highway 539, and thence north along Washington Highway 539 to the United States-Canadian International Boundary line, to points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northeast along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania Highway 26, thence west along Pennsylvania Highway 26 to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50.

Thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, N.Y., thence east to the New York-Vermont State line, thence north along the United States-Canadian Inter- to the United States-Canadian International Boundary line, thence west along the United States-Canadian International Boundary line, to Lake Ontario, thence west along the shores of Lake Ontario to Rochester, N.Y., thence south along U.S. Highway 15 to junction New York Highway 256, thence south along New York Highway 256 to junction New York Highway 36, thence south along New York Highway 36 to junction New York Highway 70A, thence west along New York Highway 70A to junction New York Highway 70, thence west along New York Highway 70 to junction New York Highway 408, thence southwest along New York Highway 16, thence south along New York Highway 16 to junction Pennsylvania Highway 646, thence southwest along the Pennsylvania Highway 646 to junction Pennsylvania Highway 346, thence west along Pennsylvania Highway 346 to junction U.S. Highway 219, thence south along U.S. Highway 219 to junction U.S. Highway 6, thence southwest along U.S. Highway 6 to junction Pennsylvania Highway 66, thence southwest along Pennsylvania Highway 66 to junction Pennsylvania Highway 68, thence southwest along Pennsylvania Highway 68 to junction Pennsylvania Highway 8, thence south along Pennsylvania Highway 8 to junction U.S. Highway 19, thence south along U.S. Highway 19 to junction U.S. Highway 30, thence west along U.S. Highway 30 to junction Pennsylvania Highway 50, thence southwest along Pennsylvania Highway 50 to junction Pennsylvania Highway 844, thence west along Pennsylvania Highway 844 to the Pennsylvania-West Virginia State line thence south and thence east along the Pennsylvania-West Virginia State Line to the Pennsylvania-Maryland State line, and thence east along the Pennsylvania-Maryland State line to point of beginning. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC-61825 (Sub E 813), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture Parts, Furniture materials* (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, to points in North Carolina on and east of U.S. Highway 52 and points in South Carolina on and east of a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 221 to junction South Carolina Highway 176, thence southeast along South Carolina Highway 176 to junction U.S. Highway 52, thence south along U.S. Highway 52 to junction South Carolina Highway 7, thence south along South Carolina Highway 7 to junction South Carolina Highway 171, thence south along South Carolina Highway 171 to Folly Beach, South Carolina, and thence to the Atlantic Ocean. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC-61825 (Sub SE 814), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials* (except in bulk), from points in California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Arizona, Colorado, Nebraska, and New Mexico on, north and west of a line beginning at the United States-Mexico International Boundary line near Douglas, Ariz., and extending north along U.S. Highway 666 to junction U.S. Highway 550, thence east along U.S. Highway 550 to junction New Mexico Highway 17, thence northeast along New Mexico Highway 17 to junction Colorado Highway 17, thence northeast along Colorado Highway 17 to junction Colorado Highway 140, thence east along Colorado Highway 140 to junction U.S. Highway 160, thence east along U.S. Highway 160 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction Colorado Highway 96, thence east along Colorado Highway 96 to the Colorado-Kansas State line, thence north along the Colorado-Kansas State line to the Kansas-Nebraska State line, thence east along the Kansas-Nebraska State line to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction Nebraska Highway 74, thence east along Nebraska Highway 74 to junction Nebraska Highway 14, thence north along Nebraska Highway 14 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Nebraska Highway 66, thence east along Nebraska Highway 66 to junction U.S. Highway 34, and thence east along U.S. Highway 34 to the Nebraska-Iowa State line, to points in South Carolina on and bounded by a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 25 to junction U.S. Highway 221 to hte South Carolina-U.S. Highway 221 to the Sotuh Carolina-Georgia State line, thence southeast along the South Carolina-Georgia State line to the At Ocean, thence northeast along the Atlantic Coast to Folly Beach, S.C., thence north along Carolina Highway 171 to junction South Carolina Highway 7, thence north along South Carolina Highway 7 to junction U.S. Highway 52, thence north along U.S. Highway 52 to junction U.S. Highway 176, thence northwest along U.S. Highway 176 to junction U.S. Highway 221, thence north along U.S. Highway 221 to the South Carolina-North Carolina State line, and thence west along the South Carolina-North Carolina State line to point of beginning. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC-61825 (Sub E 815), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials* (except in bulk), from points in California, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington, and Wyoming, and points in Arizona, Colorado, Nebraska, and South Dakota on, north and west of a line beginning at the United States-Mexico International Boundary line near Lukeville, Ariz., and extending north along Arizona

Highway 85 to junction Arizona Highway 86, thence east along Arizona Highway 86 to junction Indian Trail 15, thence north along Indian Trail 15 to junction Arizona Highway 93, thence north along Arizona Highway 93 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction Arizona Highway 64, thence northeast along Arizona Highway 64 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 160, thence northeast along U.S. Highway 160, to junction U.S. Highway 160 to junction U.S. Highway 550, thence north along U.S. Highway 550 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Colorado Highway 135, thence north along Colorado Highway 135 to junction Taylor Road, thence northeast along Taylor Road to junction Rainbow Lane, thence east along Rainbow Lane to junction Colorado Highway 306.

Thence east along Colorado Highway 306 to junction U.S. Highway 24, thence south along U.S. Highway 24 to junction U.S. Highway 285, thence northeast along U.S. Highway 285 to junction U.S. Highway 85, thence north along U.S. Highway 85 to the Colorado-Wyoming State line, thence east along the Colorado-Wyoming State line to the Colorado-Nebraska State line, thence east along the Colorado-Nebraska State line to junction Nebraska Highway 71, thence north along Nebraska Highway 71 to junction U.S. Highway 30, thence east along U.S. Highway 30 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2, thence east along Nebraska Highway 2 to Mullen, Nebr., thence northeast along unnumbered Highway to Valentine, Nebr., thence north along U.S. Highway 83 to the Nebraska-South Dakota State line, thence east along the Nebraska-South Dakota State line to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction South Dakota Highway 46, thence east along South Dakota Highway 46 to junction South Dakota Highway 10, thence east along South Dakota Highway 10 to the South Dakota-Iowa State line, to points in South Carolina on and west of a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 25 to junction U.S. Highway 221, and thence south along U.S. Highway 221 to the South Carolina-Georgia State line. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC-61825 (Sub E 816), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., Washington, D.C. 20036.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts,* and *Furniture Materials* (except in bulk) from points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Nebraska on, north and west of a line beginning at the Colorado-Kansas-Nebraska State line and extending east along the Kansas-Nebraska State line to junction U.S. Highway 77, thence north along U.S. Highway 77 to junction Nebraska Highway 41, thence east along Nebraska Highway 41 to junction Nebraska Highway 43, thence north along Nebraska Highway 43 to junction Nebraska Highway 2, thence east along Nebraska Highway 2 to the Nebraska-Iowa State line to points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along U.S. Highway 421 to junction U.S. Highway 321, thence southeast along U.S. Highway 321 to junction U.S. Highway 221, thence south along U.S. Highway 221 to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction U.S. Highway 52, thence north along U.S. Highway 52 to the North Carolina-Virginia State line, thence west along the North Carolina-Virginia State line to the North Carolina-Tennessee State line, and thence south along the North Carolina-Tennessee State line to point of beginning. The purpose of this filing is to eliminate the gateways of Basset, Va.

No. MC 73165 (Sub-E 124), filed April 8, 1976. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, Birmingham, Ala. 35202. Applicant's representative: William P. Parker (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

(1) *Cooling towers*, and *accessories, materials and supplies* for cooling towers, which because of size or weight require special equipment (except pipe, pipeline material, machinery, equipment and supplies incidental to and used in connection with the construction, dismantling and repair of pipe lines and commodities in bulk);

(A) from points in Arkansas to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, the District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, and Georgia.

(B) from points in Arkansas on and south of a line beginning at the Arkansas-Oklahoma State line, and extending along Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line to points in Ohio, Kentucky, Indiana, Michigan, and those points in Illinois on and east of a line beginning at Lake Michigan and extending along Interstate Highway 57, thence along Interstate Highway 57 to the Illinois-Missouri State line, and to those points in Wisconsin on and east of a line beginning at the Michigan-Wisconsin State line and extending along U.S. Highway 51, thence along U.S. Highway 51 to the Illinois-Wisconsin State line.

(C) from those points in Arkansas on and north and west of a line beginning at the Arkansas-Texas State line, and extending along U.S. Highway 67 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Interstate Highway 40, thence east along Interstate Highway 40 to the Mississippi River to points in Mississippi on and north and east of a line beginning at the Tennessee-Mississippi State line and extending along U.S. Highway 78 to junction U.S. Highway 45.

Thence along U.S. Highway 45 to junction U.S. Highway 82, thence along U.S. Highway 82 to the Alabama-Mississippi State line, to those points in Alabama on and north and east of a line beginning at the Alabama-Mississippi State line, thence along U.S. Highway 82 to junction Alabama Highway 5, thence along Alabama Highway 5 to junction U.S. Highway 80, thence along U.S. Highway 80 to junction U.S. Highway 231, thence along U.S. Highway 231 to the Alabama-Florida State line, and to those points in Florida on and north, and east of a line beginning at the Florida-Alabama State line, thence along U.S. Highway 231 to junction U.S. Highway 90, thence along U.S. Highway 90 to junction U.S. Highway 319, thence along U.S. Highway 319 to the Gulf of Mexico.

(D) from those points in Arkansas on and north of a line beginning at the Arkansas-Oklahoma State line and extending along Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line, to points in Florida, Alabama, those points in Mississippi on and east of a line beginning at the Mississippi-Tennessee State line, and extending along Interstate Highway 55, thence along Interstate Highway 55 to the Mississippi-Louisiana State line, to those points in Louisiana on and east of West Feliciana, East Baton Rouge, West Baton Rouge, Iberville, Assumption and Terrebonne Parishes, La.

(E) from points in Arkansas on and north of a line beginning at the Arkansas-Oklahoma State line and extending along Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line, to points in Tennessee and Kentucky except those points in Tennessee on and west of a line beginning at the Tennessee-Arkansas Arkansas State line and extending along U.S. Highway 51 to the Kentucky State line, and those points in Kentucky beginning at the Tennessee-Kentucky State line and extending along Western Kentucky Parkway to junction U.S. Highway 41, thence along U.S. Highway 41 to the Kentucky-Indiana State line, to those points in Indiana on and east of a line beginning at the Indiana-Kentucky State line, and extending along Indiana Highway 57 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Indiana-Ohio State line to those points in Ohio on and east of a line beginning

at the Kentucky-Ohio State line and extending along Interstate Highway 75.

Thence along Interstate Highway 75 to the Michigan-Ohio State line.

(F) from points in Arkansas on, south, and east of a line beginning at the Arkansas-Texas State line and extending along U.S. Highway 67 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Interstate Highway 40, thence along Interstate Highway 40 to the Mississippi River, to points in Washington, Idaho, Oregon, those points in Montana on and west of a line beginning at the Montana-Wyoming State line, thence along U.S. Highway 87 to junction U.S. Highway 191, thence along U.S. Highway 191 to junction Montana Highway 242, thence along Montana Highway 242 to the International Boundary between the United States and Canada.

(G) from points in Crittenden County, Ark., to points in the United States (except Arkansas, Alaska, and Hawaii).

(H) from points in Pulaski County, Ark., to points in Washington, Oregon, California, Nevada, Idaho, Arizona, Montana, Wyoming, Utah, those points in Colorado on and west of a line beginning at the New Mexico-Colorado State line and extending along Interstate Highway 25, to the Colorado-Wyoming State line.

(2) *Cooling towers, and accessories, materials and supplies,* for cooling towers, which because of size or weight require special equipment (except pipe, pipe-line materials, machinery, equipment, and supplies incidental to and used in connection with the construction, dismantling, and repair of pipe-lines and commodities in bulk).

Restriction: Restricted to 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.

(A) from those points in Texas on and east of a line beginning at the United States-Mexico boundary line and extending along Interstate Highway 35 to junction Interstate Highway 35 W, thence along Interstate Highway 35 W to the Texas-Oklahoma State line, to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, West Virginia, Ohio, Michigan, Indiana, Kentucky, Tennessee, those points in South Carolina on and north of a line beginning at the Atlantic Ocean, and extending along U.S. Highway 78, thence along U.S. Highway 78 to the South Carolina-Georgia State line to those points in Illinois on and east of a line beginning at the Illinois-Iowa State line and extending along U.S. Highway 67 to junction Illinois Highway 100, thence along Illinois Highway 100 to the Illinois-Missouri State line, to those points in Iowa on and east of a line beginning at the Illinois-Iowa State line, and extending along U.S. Highway 61, to those points in Wisconsin on and east of a line beginning at the Illinois-Wisconsin State line, and extending along U.S. Highway 51, thence along U.S. Highway 51 to the Michigan-Wisconsin State line to those points in Missouri on and east and south of a line beginning at the Missouri-Arkansas line and extending along Missouri Highway 21 to junction Missouri Highway 47, thence along Missouri Highway 47 to junction Interstate Highway 70, thence along Interstate Highway 70 to the Missouri-Illinois State line, and those points in Arkansas on and east of a line beginning at the Arkansas-Missouri State line, and extending along U.S. Highway 63, thence along U.S. Highway 63 to the Missouri-Tennessee State line.

(B) from those points in Texas on, and south and east of a line beginning at the New Mexico-Texas State line and extending along U.S. Highway 82 to junction Texas Highway 283, thence along Texas Highway 283 to the Oklahoma-Texas State line, and those points in Texas on and west of a line beginning at the International Boundary line between the United States and Mexico and extending along Interstate Highway 35 to junction Interstate Highway 35 W, thence along Interstate Highway 35 W to the Texas-Oklahoma State line, to points in Maine, New Hampshire, Vermont, Massachusetts Rhode Island,Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Tennessee, Kentucky, West Virginia, Ohio, Indiana, Michigan, to those points in Georgia on, and north, and east of a line beginning at the Alabama-Georgia State line, and extending along U.S. Highway 82 to junction U.S. Highway 23, thence along U.S. Highway 23 to the Georgia-Florida State line, to those points in Alabama on and north of a line beginning at the Georgia-Alabama State line, and extending along U.S. Highway 82, thence along Highway 82 to the Alabama-Mississippi State line, to points in Mississippi on, and north and east of a line beginning at the Tennessee-Mississippi State line and extending along U.S. Highway 78 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction U.S. Highway 82, thence along U.S. Highway 82 to the Mississippi-Alabama State line, to those points in Illinois on and east of a line beginning at the Missouri-Illinois State line and extending along U.S. Highway 67, thence along U.S. Highway 67 to the Iowa-Illinois State line, to those points in Missouri on and east of a line beginning at the Missouri-Arkansas State line and extending thence along U.S. Highway 63 to junction Missouri Highway 17, thence along Missouri Highway 17 to junction Missouri Highway 106, thence along Missouri Highway 106 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Interstate Highway 44, thence along Interstate Highway 44 to the Missouri-Illinois State line to those points in Arkansas on and east of a line beginning at the Tennessee-Arkansas State line and extending along U.S. Highway 64 to junction U.S. Highway 167, thence along U.S. Highway 167 to the Arkansas-Missouri State line, and to those points in Wisconsin on and east of a line beginning at the Illinois-Wisconsin State line and extending along U.S. Highway 51, thence along U.S. Highway 51 to the Wisconsin-Michigan State line.

(C) from points in Texas on, and north and west of a line beginning at the Texas-New Mexico State line and extending along U.S. Highway 82 to Junction Texas Highway 283, thence along Texas Highway 283 to the Texas-Oklahoma State line to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, Tennessee, Kentucky, South Carolina, Georgia, Florida, Alabama, and to those points in Mississippi on, and north and east of a line beginning at the Mississippi-Tennessee State line and extending along U.S. Highway 78 to junction Mississippi Highway 15, thence along Mississippi Highway 15 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 45, thence along U.S. Highway 45 to the Mississippi-Tennessee State line, to those points in Arkansas and Missouri on and east of a line beginning at the Tennessee-Arkansas State line and extending along Interstate Highway 55 to junction Interstate Highway 57, thence along Interstate Highway 57 to the Missouri-Illinois State line to those points in Illinois on, and south and east of a line beginning at the Illinois-Missouri State line, and extending along Interstate Highway 57 to junction Illinois Highway 13, thence along Illinois Highway 13 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction Illinois Highway 1, thence along Illinois Highway 1 to the Illinois-Indiana State line, to those points in Indiana on and south and east of a line beginning at the Indiana-Illinois State line and extending along Interstate Highway 64 to junction Indiana Highway 62, thence along Indiana Highway 62 to junction U. S. Highway 50, thence along U.S. Highway 50 to the Ohio-Indiana State line, to those points in Ohio on and east of a line beginning at the Kentucky-Ohio State line and extending along Interstate Highway 75 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Interstate Highway 270, thence along Interstate Highway 270 to junction Interstate Highway 71, thence along Interstate Highway 71 to Lake Erie.

(D) from points in Louisiana to points in Washington and Oregon.

(E) from points in Caddo and Bossier Parishes, La., to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Delaware, New Jersey, Pennsylvania, Maryland, the District of Columbia, Virginia, West Virginia, Ohio, Indiana,

Michigan, Wisconsin, Illinois, Kentucky, Tennessee, North Carolina, South Carolina, Washington, Oregon and to those points in Alabama on and north of a line beginning at the Mississippi-Alabama State line, and extending along U.S. Highway 278 to junction U.S. Highway 431, thence along the U.S. Highway 431 to junction U.S. Highway 78, thence along U.S. Highway 78 to the Georgia-Alabama State line, to those points in Georgia on and north of a line beginning at the Alabama-Georgia State line and extending along U.S. Highway 78 to junction Interstate Highway 75, thence along Interstate Highway 75 to junction U.S. Highway 23, thence along U.S. Highway 23 to junction U.S. Highway 341, thence along U.S. Highway 341 to Atlantic Ocean, to those points in Missouri on and east of a line beginning at the Missouri-Arkansas State line, thence along U.S. Highway 67 to junction U.S. Highway 60, thence along U.S. Highway 60 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Missouri Highway 72, thence along Missouri Highway 72 to junction U.S. Highway 63, thence along U.S. Highway 63 to the Missouri-Iowa State line to those points in Mississippi on and east and north of a line beginning at the Alabama-Mississippi State line and extending along U.S. Highway 78, thence along U.S. Highway 78 to the Mississippi-Tennessee State line, to those points in Arkansas on and east of a line beginning at the Tennessee-Arkansas State line, and extending along Interstate Highway 55 to junction Interstate Highway 55 to junction Arkansas Highway 140, thence along Arkansas Highway 140 to junction Arkansas Highway 135, thence along Arkansas Highway 135 to junction U.S. Highway 67, thence along U.S. Highway 67 to the Arkansas-Missouri State line, to those points in Iowa on and east of a line beginning at the Iowa-Missouri State line, and extending along U.S. Highway 63 to junction U.S. Highway 218, thence along U.S. Highway 218 to the Iowa-Minnesota State line, and to those points in Minnesota on, and north and east of a line beginning at the Iowa-Minnesota State line and extending along Interstate Highway 35 to junction Interstate Highway 94 thence along Interstate Highway 94 to the Minneapolis-North Dakota State line.

(F) from those points in Oklahoma on and south of a line beginning at the Oklahoma-Texas State line and extending along the H. E. Bailey Turnpike to junction Interstate Highway 44, thence along Interstate Highway 44 to the Oklahoma-Missouri State line, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Virginia, the District of Columbia, North Carolina, South Carolina, Georgia, Florida, to those points in New York on and east of a line beginning at the New York-New Jersey State line, and extending along Interstate Highway 87, thence along Interstate Highway 87 to the International Boundary line between United States and Canada, to those points in Pennsylvania on and east of a line beginning at the Maryland-Pennsylvania State line and extending along U.S. Highway 15 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 222, thence along U.S. Highway 222 to junction U.S. Highway 209, thence along U.S. Highway 209 to the Pennsylvania-New York State line, to those points in Maryland on and east of a line beginning at the Maryland-Virginia State line, and extending along Interstate Highway 81, thence along Interstate Highway 81 to the Maryland-Pennsylvania State line, to those points in West Virginia on and south of a line beginning at the West Virginia-Kentucky State line and extending along U.S. Highway 119, to junction U.S. Highway 60, thence along U.S. Highway 60 to junction U.S. Highway 219, thence along U.S. Highway 219 to the West Virginia-Maryland State line, to those points in Tennessee on and east of a line beginning at the Tennessee-Alabama State line and extending along U.S. Highway 31, thence along U.S. Highway 31 to the Tennessee-Kentucky State line, and to those points in Alabama on and east of a line beginning at the Alabama-Florida State line and extending along Alabama Highway 41 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 43, thence along U.S. Highway 43 to junction Alabama State Highway 69, thence along Alabama State Highway 69 to junction Interstate Highway 65, thence along Interstate Highway 65 to the Alabama-Tennessee State line.

The purpose of this filing is to eliminate the gateways of (1) Memphis, Tenn., and (2) Texashana, Texas-Arkansas, points in Arkansas, and Memphis, Tenn.

No. MC-105813 (Sub E 62), filed December 5, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski, Chicago, Illinois 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible Meats, Edible meat products, and edible meat by-products*, and *edible articles distributed by meat packinghouses*, as described in sections A and C of Appendix to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except commodities in bulk, in tank vehicles), from the site of the plant of Iowa Beef Packers, Inc., located at or near Emporia, Kans., to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along U.S. Highway 84 to junction Mississippi Highway 63, thence south along Mississippi Highway 63 to junction Mississippi 42, thence west along Mississippi Highway 42 to junction Mississippi Highway 29, thence south along Mississippi Highway 29 to junction Mississippi Highway 26, thence west along Mississippi Highway 26 to junction U.S. Highway 11, thence south along U.S. Highway 11 to junction Interstate 59, thence south along Interstate Highway 59 to the Louisiana-Mississippi State line. The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC-105813 (Sub E 63), filed December 5, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Flordia 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski, Chicago, Illinois 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible meats, edible meat products*, and *edible meat by-products*, and *edible articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, in mechanically refrigerated vehicles, from Danville, Ill., to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along Mississippi Highway 594 to junction Mississippi Highway 63, west along Mississippi Highway 63 to junction Mississippi Highway 57, thence west along Mississippi Highway 57 to junction Mississippi Highway 26, thence west along Mississippi Highway 26 to junction U.S. Highway 11, thence south along U.S. Highway 11 to junction Interstate Highway 59, thence south along Interstate Highway 59 to the Louisiana-Mississippi State line, and to those points in Texas beginning at the Gulf of Mexico and extending on and south along Texas Highway 361 to junction Texas Highway 35, thence west along Texas Highway 35 to junction U.S. Highway 181, thence south along U.S. Highway 181 to junction Texas Highway 44, thence west along Texas Highway 44 to junction U.S. Highway 59, thence west along U.S. Highway 59 to the International Boundary between the United States and Canada.

Restriction: The authority granted herein is restricted against the transportation of any such commodities in bulk, in tank vehicles.

The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC-105813 (Sub E 64), filed December 5, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936 Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski, Chicago, Ill. 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned foods*, except commodities in bulk, from Mt. Summit, Muncie and Shirley, Ind., to those points in Texas on and south of a line beginning at the Louisiana-Texas State line and extending west along Interstate Highway 10 to junction U.S. Highway 59, thence southwest along U.S. Highway 59 to the

International Boundary line between the United States and Mexico.

Restriction: The service authorized herein is restricted against the transportation of traffic from the Chicago, Ill., Commercial Zone to points in Florida.

The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC-114868 (Sub E 42) (Correction) filed August 1, 1975, published in the FEDERAL REGISTER issue of December 23, 1976, and republished, as corrected, this issue.

Applicant: NEWLON'S TRANSFER AND STORAGE, 1511 N. Nelson Street, Arlington, Va. 22201. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Wisconsin, on the one hand, and, on the other, points in Kentucky. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville.

NOTE.—The purpose of this correction is to state the correct territorial description.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1801 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART II

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

■

UNIFORM SYSTEM OF ACCOUNTS AND RECORDS

Implementation

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Implementation

On November 22, 1976 the Urban Mass Transportation Administration published proposed regulations regarding a reporting system to accumulate public mass transportation financial and operating information by uniform categories, and a uniform system of accounts and records. Section 15 of the Urban Mass Transportation Act requires the Secretary of Transportation to develop, test, and prescribe such systems by January 10, 1977.

The purpose of the proposed systems is to assist in meeting the need for information on which to base planning for public transportation services, and to make public sector investment decisions at all levels of government. After July 1, 1978, the Secretary may not make any grant under section 5 of the Urban Mass Transportation Act unless the applicant for such grant and any beneficiary are each subject to both the reporting system and the uniform system of accounts and records prescribed pursuant to section 15. Grants under section 5 are those apportioned to urbanized areas by formula and usable for either capital investments or operating expenses.

Interested persons were invited to submit written comments on the proposed regulations, and 23 such comments were received. In addition, a hearing on the proposed regulations was held on December 7, 1976 in Washington, D.C., at which 21 persons testified. Most of the comments received during the comment period were supportive of the regulations. This may have been because the development of the proposed uniform system of accounts actually took place over a period of several years, in collaboration with representatives of the transit industry, metropolitan planning organizations, and State departments of transportation. However, a number of thoughtful suggestions and criticisms were offered, and the regulations now being issued have in many ways been revised in response to such comments.

Because the number of communications received was not overwhelming, the Urban Mass Transportation Administration will make a special effort to contact correspondents individually to indicate the extent to which their comments were accommodated. The following text identifies the principal changes from the proposed regulations, and changes in policies for administering them, based on public comments which were received.

Mandatory-Voluntary Levels of Detail.—A general concern was expressed about the level of detail specified in the uniform system of accounts and records and in the reporting system described in the proposed regulations, even though an attempt had been made to stratify the level of detail by size of transit operations. This was done by describing three levels for expense reporting: Level A, more than 500 revenue vehicles (about 20 systems); Level B, between 101 and 500 revenue vehicles (about 50 systems); and Level C, 100 or less revenue vehicles (about 800 systems).

The general concern about excessive detail found expression in requests by representatives of smaller operations to reduce the number of expense objects to be used, and to reduce the number of reports. It was suggested that a more simplified system be designed for the smallest systems. At the intermediate level, exception was taken to the number of functions specified for expense reporting, as well as to objects. The largest systems in general expressed their concern by suggesting the need for flexibility in phasing in the implementation from lesser to greater levels of detail, and by advocating a waiver provision in the regulations to permit accommodation of such difficulties without penalty.

These concerns can be considered symptomatic of the dilemma and challenge presented by the relatively unique charter of section 15, which calls for the prescribed systems to assist in meeting the diverse information needs of individual public mass transportation systems, Federal, State and local governments, and the public. Transit operators require relatively detailed information, consistent with their size, for internal management purposes—comparison of their own operations over time and with other transit systems. Local, State and Federal governments, in that order, have significantly fewer requirements to accommodate their concerns. Federal agencies, furthermore, are constrained by the requirements of the Federal Reports Act of 1942 to minimize record-keeping and reporting burdens placed upon the public and affected organizations.

The final regulations now make a distinction between required and voluntary (i.e., recommended) systems, to address this general dilemma. This is a significant change. The uniform system of accounts and records and the reporting system include provisions for both mandatory and voluntary collection and reporting of data. Definitions for the required data are consistent with and summarized from those for the more extensive voluntary data. The central processing system will be designed to support the assimilation and analysis of the more detailed expense and revenue data, as well as mandatory data. Thus, if State or local governments mandate the more detailed revenue and expense data, or if transit operators elect to provide this data to further expand the capability for comparative analysis, the central processing system will accommodate these additional needs.

The net effect of this change is a substantial reduction in the level of detail which must be reported. The number of required data categories for revenues and expenses combined is reduced from 125 to approximately 29. Expense reporting in effect is an abbreviated Level C, shown in Table B–1. Furthermore, systems of 25 buses or fewer are not required to submit the Operators' Wages Subsidiary Schedule, Fringe Benefits Subsidiary Schedule, and Pension Plan Questionnaire. In total, the number of required reporting forms for all systems has been reduced by approximately one-third. With respect to balance sheet data, the data categories reported have been reduced from approximately 267 to 59. With respect to non-financial operating data, categories for accident reporting have been reduced from approximately 316 to 44.

These amendments, of course, necessitated extensive changes in the reference documents describing and explaining the systems, and identified in § 630.6 of the regulations. These documents will be distributed by UMTA to interested parties as soon as possible, probably by mid-February.

Redundancy in Reporting.—Associated with the general concern for the level of detail of reporting were some comments about possible redundancy in record-keeping and reporting resulting from the requirements of Federal agencies. Reference was made to burdens imposed on certain systems which are required to report financial data in accordance with a uniform system of accounts to the Interstate Commerce Commission (ICC), and now will have a section 15 requirement to meet. This problem is addressed in § 630.11 of the regulations, limiting UMTA's now modified requirement to one easily met using the ICC system.

Further, though not made explicit in the regulation itself, UMTA will permit transit authorities which purchase service from several providers to consolidate financial and operating data for them. And for providers with fleets of 25 vehicles or fewer, the authority may report only a "purchase of service" item to satisfy the reporting requirement. This is further explained in the reference documents.

Also mentioned was an apparent redundancy in the Federal Highway Administration's reporting requirements on sources of revenue for urban transportation modes, including transit, and the section 15 requirements of UMTA. It was suggested that the two DOT agencies coordinate their requirements to avoid the redundancy. The two agencies are conferring to this effect.

Waivers.—The regulations now include a waiver provision, § 630.7, in response to several expressions of concern for the need to provide formally a basis for flexible administration of the requirements of the regulations. In the formal comment period, the most frequent subjects of concern were the time constraints for complying with the requirements, the need to describe an acceptable method for providing passenger trip data for rail systems, and difficulty in providing the Operators' Wages Subsidiary Schedule.

It is hoped that the distinction now made in the regulations between the

mandatory and voluntary systems will mitigate the need for waivers with reference to time for compliance. With respect to the Operators' Wages Subsidiary Schedule, a waiver is granted to all operators for the first year, and systems with 25 vehicles or less have a permanent waiver. A methodology for addressing the passenger trip data problem hopefully will be described within the next few months, based on activity in progress.

Cost of Implementation.—The preamble to the proposed regulations of November 22, 1976 stated that the one-time cost of conversion to the prescribed systems would be considered either eligible capital expenditures or operating expense under the section 5 grant program. It was also stated that for agencies which might not be eligible for section 5 funds but wanted to implement the systems, section 3 funds (capital grant program) might be made available.

Several larger operators objected that their section 5 funds were fully programmed, and requested that section 3 funds be made available for this purpose without the restriction stated in the preamble.

The UMTA considers section 5 the more flexible and appropriate resource to be used in accommodating the expense of implementation, but acknowledges the circumstances described and will consider the use of section 3 funds on a case-by-case basis, for systems which would have been subject to the Level A and Level B requirements. In the final regulations, Levels A, B and C are no longer required as such. However, their implementation will be encouraged with appropriate arrangements for financial assistance, so that transit operators may develop and report information at the voluntary levels.

Administration of system.—A number of witnesses at the December 7, 1976 hearing expressed the fear of erroneous interpretations of data to be provided eventually in reports emanating from the system. It was suggested that care be taken to minimize such problems; for example, by making available "profiles" of systems taking into account such factors as topography, demographic characteristics, density of development, labor contracts, fare policies, and so forth. Undoubtedly, there will be several issues of this nature related to the administration of the system, and appropriate arrangements will be made to seek advice about them as the system evolves.

As the steward of the section 15 systems, the UMTA will make arrangements for developing and maintaining a data collection and processing system to permit acceptance and use of the mandatory and optional levels of detail described in the regulations. Manipulation of the data for purposes of analysis will be at the expense of users, except for a series of reports being designed to be of general interest to all users.

Within the Urban Mass Transportation Administration, responsibility for the administration of section 15 has been assigned to the Associate Administrator for Transportation Management and Demonstrations. Inquiries pertaining to these regulations should therefore be addressed to that office.

In consideration of the foregoing and under the authority of section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611) and the delegation of authority by the Secretary of Transportation at 49 CFR 1.51, Chapter VI of the Code of Federal Regulations is hereby amended by adding a new Part 630 as set forth below.

Effective Date: This regulation is effective January 10, 1977.

Issued on January 10, 1977.

ROBERT E. PATRICELLI,
Urban Mass Transportation Administrator.

Subpart A—General

Sec.
630.1 Purpose.
630.2 Scope.
630.3 Definitions.
630.4 Overview of the Uniform System of Accounts and Records and the Reporting System.
630.5 Commuter rail reporting requirements.
630.6 Reference documents.
630.7 Waiver.

Subpart B—Uniform System of Accounts and Records

630.10 Purpose.
630.11 General instructions.
630.12 Structure of the Uniform System of Accounts and Records.

Subpart C—Reporting System

630.20 Purpose.
630.21 Reporting requirements.
630.22 Reporting period.
630.23 Availability of reporting forms and instructions.

AUTHORITY: Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) and 49 CFR 1.51.

Subpart A—General

§ 630.1 Purpose.

The purpose of this subpart is to define the terms and procedures guiding the application of the Uniform System of Accounts and Records and the Reporting System required to be prescribed by Section 15 of the Urban Mass Transportation Act. These systems are described in the report entitled "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977.

§ 630.2 Scope.

These regulations apply to all applicants and beneficiaries of Federal financial assistance under section 5 of the UMT Act (49 U.S.C. 1604 et seq.). Applicants and beneficiaries under Section 5 must adhere to the Uniform System of Accounts and Records and participate in the Reporting System as provided hereunder. Failure to do so will result in loss of eligibility for assistance under section 5.

§ 630.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), are used in this part as so defined.

(b) For purposes of this part—

"The UMT Act" means the Urban Mass Transportation Act of 1964 as amended (49 U.S.C. 1601 et seq.).

"Administrator" means the Urban Mass Transportation Administrator or his designee.

"Applicant" means Applicant for Assistance under section 5 of the UMT Act.

"Assistance" means Federal financial assistance for the acquisition, construction or operation of public mass transportation services.

"Central Processing System" means the procedures and computer software needed to receive Section 15 reports, validate their data, maintain the data, and provide standard reports, special reports and computer data facsimiles to the system's users including governments at all levels, transit operators and the public.

"Central Processing Agency" means the organizational element in UMTA responsible for operation and maintenance of the Central Processing System.

"Commuter Rail System" means passenger transportation by railroad within, to or from an urbanized area usually typified by closer headways during weekday morning and afternoons and by the sale of commutation tickets.

"Beneficiary" means any organization operating and delivering urban transit services that receives benefits directly from assistance under Section 5 of the UMT Act.

"Metropolitan Planning Organization" means that organization designated by the Governor as being responsible, together with the state for carrying out the provisions of 23 U.S.C. 134 (Federal-Aid Highway Planning Requirements) and capable of meeting the requirements of 49 U.S.C. 1603(a) (Urban Mass Transportation planning requirements). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government.

"Mass Transportation System" or "transit system" means a system to transport people by bus, or rail, or other conveyance, either publicly or privately owned, and which provides to the public general or special service (but not including school or charter or sightseeing service) on a regular and continuing, scheduled or unscheduled, basis. Transit systems are classified according to the mode of transit service operated. A multi-mode transit system is one operating two or more of these modes, described hereafter.

(1) *Rail Rapid Transit.*—High-speed, passenger rail cars operating singly or in trains of two or more cars on fixed rails in separate rights-of-way from which all other vehicular and foot traffic is excluded. The tracks may be located in underground tunnels, on elevated structures, in open cut or at surface level. There are very few, if any, crossings of streets and roads at track level, and rail traffic has the right-of-way at such intersections. The cars are driven electri-

cally with the power being drawn from an overhead electric line or from an electrified third rail.

(2) *Streetcar.*—Lightweight passenger rail cars operating singly (or in short, usually two-car, trains) on fixed rails in right-of-way that is not separated from other traffic for much of the way. Streetcars do not necessarily have the right-of-way at at-grade crossings with other traffic. Streetcars are driven electrically with the power being drawn from an overhead electric line via a trolley or a pantograph.

(3) *Trolleybus.*—Rubber-tired passenger vehicles operating singly on city streets. These buses are driven electrically with the power being drawn from an overhead electric line via trolleys.

(4) *Motor Bus.*—Rubber-tired passenger vehicles operating singly on city streets. These buses are powered by diesel, gasoline or propane engines contained within the bus; they are, therefore, not restricted to operating on a fixed route.

(5) *Dial-A-Ride.*—Rubber-tired passenger vehicles operating on city streets, propelled by gas, gasoline or diesel engines, equipped to provide personal demand transit service, normally upon dispatch, and used exclusively for this service.

(6) *School Bus.*—Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17, used exclusively to transport school students, personnel and equipment.

(7) *Ferryboat.*—A vessel for carrying passengers and/or vehicles over a body of water. The vessels are generally steam or diesel-powered conventional ferry vessels. They may also be hovercraft, hydrofoil and other high-speed vessels.

(8) *Other.*—Other modes of transit service such as cable cars, personal rapid transit systems of varying designs, monorails, incline railways, etc., not covered in the above categories.

§ 630.4 Overview of the Uniform System of Accounts and Records and the Reporting System.

(a) *Distinction between required and voluntary systems.*—The Uniform System of Accounts and Records and the Reporting System include provisions for both mandatory and voluntary collection and reporting of data. The definitions for the required data are consistent with and summarized from those for the more extensive voluntary data. As described in Subparts B and C of this regulation, operators may elect to collect and report revenue and expense data in greater detail than that required to meet the section 15 requirement. The Central section 15 Processing System will be configured to support the assimilation and analysis of the more detailed expense and revenue data as well as mandatory data. Thus, if state or local governments mandate the more detailed revenue and expense data, or if transit operators elect to provide this data to further expand the capability for comparative analysis, the Central Processing System will accommodate these additional needs.

(b) *Relationship of system of accounts and records to reporting system.*—There is a distinction between a uniform system of accounts and records, and a system of reports generated to satisfy the requirements of various users of financial and operating information.

(1) The uniform system of accounts and records consists of (i) Various categories of accounts and records for classifying financial and operating data, (2) Precise definitions as to what data elements are to be included in these categories, and (3) Definition of practices for systematic collection and recording of such information.

(2) The reporting system consists of forms and procedures (i) For transmitting information from operators to the central processing agency designated to collect data from all operators, (ii) For editing and storing information, and (iii) For the data center to report information to various user groups. User reports may consist of basic data summaries and analytical measures or performance indicators to assist the analysis of information.

(3) The level of detail of data element categories in the system of accounts and records should not be confused with the level of detail to be reported to the central processing agency and ultimately to users. The level of detail in the system of accounts and records maintained by the reporting agencies should be dictated largely by the management needs of the reporting agency, and by the requirement to provide an audit trail from the internal accounting system to the prescribed system, if the latter is not actually adopted in practice. The level of detail to be reported to the central processing agency will normally be less than that required for internal management purposes.

§ 630.5 Commuter rail reporting requirements.

Commuter railroads shall maintain their internal books of account in the manner specified by the Interstate Commerce Commission (ICC). The commuter rail reporting requirements under section 15 are those prescribed by the Rail Services Planning Office (RSPO) under 49 CFR Part 1127 as published in the FEDERAL REGISTER on August 3, 1976.

§ 630.6 Reference documents.

(a) The Uniform System of Accounts and Records and the Reporting System required by section 15 are contained in the report entitled "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977. The report distinguishes between the mandatory collection and reporting of data required under section 15, and the voluntary collection and reporting which section 15 will accommodate. The report is presented in four volumes.

VOLUME I—GENERAL DESCRIPTION presents an overview of the systems, and an identification of the analytical potential provided by comparative data generated by the systems.

VOLUME II—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS contains the definitions for the uniform system of accounts and records.

VOLUME III—REPORTING SYSTEM FORMS AND INSTRUCTIONS—REQUIRED contains illustrative forms for each of the reports required to be submitted under section 15 and instructions for completing those forms.

VOLUME IV—REPORTING SYSTEM FORMS AND INSTRUCTIONS—VOLUNTARY contains illustrative forms and instructions for optional revenue and expense reporting. The voluntary reports in Volume IV are more detailed than their counterparts in Volume III. Operators may elect one or more of the optional reports in Volume IV in place of counterpart reports in Volume III.

(b) Volumes I, II, and III will be of use to all reporting transit systems. Volume IV will be useful to those operators who elect to comply with the more detailed revenue and expense options.

§ 630.7 Waiver.

The requirements set forth in this part may be modified or waived on a case-by-case basis upon application to the Urban Mass Transportation Administrator, if the Administrator determines that such modification or waiver is clearly necessary and is consistent with the intent of the law.

Subpart B—Uniform System of Accounts and Records

§ 630.10 Purpose.

The purpose of this Subpart is to prescribe the Uniform System of Accounts and Records under section 15 of the Urban Mass Transportation Act.

§ 630.11 General instructions.

(a) The Uniform System of Accounts and Records hereby prescribed pursuant to section 15 for each transit system affected by this regulation, except for commuter rail systems, is that described in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977, available from:

Section Fifteen, Office of Transit Management, UMD-10, Urban Mass Transportation Administration, 2100 2nd Street, SW., Washington, D.C. 20590.

(1) In addition to the prescribed accounts, temporary or supplemental accounts and subdivisions of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired. A transit property is not required to adopt the prescribed uniform system of accounts and records as its own internal system of accounts. Each entity can customize its internal books of account to meet its own internal management requirements, provided that it is able to translate its accounts to the prescribed uniform system of accounts and records. It is intended that the records shall be kept in a manner to permit ready analysis by prescribed accounts and to permit preparation of financial and operating data directly from such records at the end of the fiscal year. Any summary and/or translation to the prescribed Uni-

form System of Accounts and Records must be consistent with the following:

(i) The data have been developed using the accrual basis of accounting. Those transit systems that use cash-basis accounting, in whole or in part, in their books of account will have to make work sheet adjustments to record the data on the accrual basis.

(ii) The accounting treatment specified in the Accounting Practice Instructions in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977, has been followed.

(iii) The transit system's accounting categories (chart of accounts) have been correctly related, via a clear audit trail, to the accounting categories prescribed in this system.

(b) Commuter rail systems shall maintain their internal books of account in the manner specified by the Interstate Commerce Commission.

(c) Transit systems held subject by the Interstate Commerce Commission to the Interstate Commerce Commission's Uniform System of Accounts for Class I Common and Contract Motor Carriers of Passengers are not subject to the system of accounts and records described in this subpart. However, such transit systems are subject to the Section 15 reporting requirements specified in Subpart C.

§ 630.12 Structure of the Uniform System of Accounts and Records.

(a) In order to aid affected persons, enterprises and the public in comprehending this Uniform System of Accounts and Records, the general structure of the system is described as follows:

(1) *Two-Dimension Classification of Expenses.*—In the section 15 system, operating expenses incurred by the transit system are classified within mode according to two dimensions:

(i) The type of expenditure (object classes),

(ii) The functions or activities performed.

(2) *Expense Object Classes.*—The expense object classes are typical of most transit accounting systems. Although some operators may not identify the specific categories or use the same names, their systems usually capture the same information and can be reclassified into the Section 15 categories. The additional level of detail presented in "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System" Volume II contains definitions that should help in this reclassification. Table B–1 presents the expense object classes and functions required under Section 15. Table B–2 is a more detailed list which includes recommended expense object classes that have been developed to assist transit operators in implementing the Section 15 requirements. The object class definitions are contained in the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977.

TABLE B–1.—*Required expense object classes and functions*

Object classes	Functional categories			
	010 operations	040 maintenance	100 general administrations	Total all functions
501 Labor				
01 Operators' salaries and wages				
02 Other salaries and wages				
502 Fringe benefits				
503 Services				
504 Materials and supplies consumed				
01 Fuel and lubricants				
02 Tires and tubes				
99 Other materials and supplies				
505 Utilities				
506 Casualty and liability costs				
507 Taxes				
508 Purchased transportation service				
509 Miscellaneous expense				
510 Expense transfers				
511 Interest expense				
512 Leases and rentals				
513 Depreciation and amortization				
Total expense				

TABLE B–2

RECOMMENDED EXPENSE OBJECT CLASSES

Sec.

501. *Labor* [1]
- 01. Operators' Salaries and Wages.[2]
- 02. Other Salaries and Wages.[2]

502. *Fringe Benefits* [1]
- 01. FICA or Railroad Retirement.
- 02. Pension Plans (including long-term disability insurance).
- 03. Hospital, Medical and Surgical Plans.
- 04. Dental Plans.
- 05. Life Insurance Plans.
- 06. Short-Term Disability Insurance Plans.
- 07. Unemployment Insurance.
- 08. Workmen's Compensation Insurance or Federal Employees Liability Act Contributions.
- 09. Sick Leave.
- 10. Holiday (including all premiums paid for working on holidays).
- 11. Vacation.
- 12. Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.).
- 13. Uniform and Work Clothing Allowances.
- 14. Other Fringe Benefits.
- 15. Distribution of Fringe Benefits.

503. *Services* [1]
- 01. Management Service Fees.
- 02. Advertising Fees.
- 03. Professional and Technical Services.
- 04. Temporary Help.
- 05. Contract Maintenance Services.
- 06. Custodial Services.
- 07. Security Services.
- 99. Other Services.

504. *Materials and Supplies Consumed* [1]
- 01. Fuel and Lubricants.[2]
- 02. Tires and Tubes.[2]
- 99. Other Materials and Supplies.[2]

505. *Utilities* [1]
- 01. Propulsion Power.
- 02. Utilities Other Than Propulsion Power.

506. *Casualty and Liability Costs* [1]
- 01. Premiums for Physical Damage Insurance.
- 02. Recoveries of Physical Damage Losses.
- 03. Premiums for Public Liability and Property Damage Insurance.
- 04. Payouts for Uninsured Public Liability and Property Damage Settlements.
- 05. Provision for Uninsured Public Liability and Property Damage Settlements.
- 06. Payouts for Insured Public Liability and Property Damage Settlements.
- 07. Recoveries of Public Liability and Property Damage Settlements.
- 08. Premiums for Other Corporate Insurances.
- 09. Other Corporate Losses.
- 10. Recoveries of Other Corporate Losses.

507. *Taxes* [1]
- 01. Federal Income Tax.
- 02. State Income Tax.
- 03. Property Tax.
- 04. Vehicle Licensing and Registration Fees.
- 05. Fuel and Lubricant Taxes.
- 06. Electric Power Taxes.
- 99. Other taxes.

508. *Purchased Transportation Service* [1]

509. *Miscellaneous Expense* [1]
- 01. Dues and Subscriptions.
- 02. Travel and Meetings.
- 03. Bridge, Tunnel and Highway Tolls.
- 04. Entertainment Expense.
- 05. Charitable Donations.
- 06. Fines and Penalties.
- 07. Bad Debt Expense.
- 08. Advertising/Promotion Media.
- 99. Other Miscellaneous Expense.

510. *Expense Transfers* [1]
- 01. Function Reclassifications.
- 02. Expense Reclassifications.
- 03. Capitalization of Nonoperating Costs.

511. *Interest Expense* [1]
- 01. Interest on Long-Term Debt Obligations (net of interest capitalized).
- 02. Interest on Short-Term Debt Obligations.

512. *Leases and Rentals* [1]
- 01. Transit Way and Transit Way Structures and Equipment.
- 02. Passenger Stations.
- 03. Passenger Parking Facilities.
- 04. Passenger Revenue Vehicles.
- 05. Service Vehicles.
- 06. Operating Yards or Stations.
- 07. Engine Houses, Car Shops and Garages.
- 08. Power Generation and Distribution Facilities.
- 09. Revenue Vehicles Movement Control Facilities.
- 10. Data Processing Facilities.
- 11. Revenue Collection and Processing Facilities.
- 12. Other General Administration Facilities.

[1] Denotes required object classes.

Sec.
513. *Depreciation and Amortization* [1]
- 01. Transit Way and Transit Way Structures and Equipment.
- 02. Passenger Stations.
- 03. Passenger Parking Facilities.
- 04. Passenger Revenue Vehicles.
- 05. Service Vehicles.
- 06. Operating Yards or Stations.
- 07. Engine Houses, Car Shops and Garages.
- 08. Power Generation and Distribution Facilities.
- 09. Revenue Vehicle Movement Control Facilities.
- 10. Data Processing Facilities.
- 11. Revenue Collection and Processing Facilities.
- 12. Other General Administration Facilities.
- 13. Amortization of Intangibles.

(3) *Functional Categories.*—Most current systems classify expenditures according to organizational categories. These organizational entities may or may not conform to the functional categories. Moreover, the organizational categories vary a great deal among systems. To obtain uniformity and enhance the usefulness of the data, a standard set of functional classifications has been defined. The functional classifications reflect the complexity, needs and capabilities of various sizes of operations. Large systems need to develop specialized activities and are able to identify labor and other expenses directly with these activities. Small companies have less need to develop specialized activities. For example, in an operation with ten vehicles, one person may perform general management, operating and maintenance activities.

(i) For the above reasons, three levels of detail for functional categories were developed and are recommended:

(A) Level A—Applies to operations with more than 500 vehicles.

(B) Level B—Applies to operations with 101–500 vehicles.

(C) Level C—Applies to operations with 100 vehicles or less.

(ii) Table B–3 shows the three levels of functional classification and how they relate to one another. Function definitions are contained in the January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System." Level A is the most detailed. Level B is an aggregation of Level A, and Level C is an aggregation of Level B. The breakdown in Table B–1 is Level C. Note that it will be possible to compare all systems at the C-Level regardless of reporting level chosen. The three functions defined for Level C are required under Section 15 for all operators, i.e., 010 Operations, 040 Maintenance, and 160 General Administration. Transit systems are encouraged, however, to adopt the functional classification developed for their size of operation.

[1] Denotes required object classes.

TABLE B–3.—*Aggregation of functions for expense classification*

Level A—Detail	Level B (aggregation of A)	Level C (aggregation of A)
011 Transportation administration.		
012 Revenue vehicle movement control.	→ 010 Administration of transportation operations.	
021 Schedule of transportation operations.	→ 020 Scheduling of transporting operations.	010 [1] operations.
031 Revenue vehicle operation	→ 030 Revenue vehicle operation	
041 Maintenance administration—vehicles.		
042 Maintenance administration—facilities.	→ 040 Maintenance administration	
051 Servicing revenue vehicles	→ 050 Servicing revenue vehicles	
061 Inspection and maintenance of revenue vehicles.	→ 060 Inspection and maintenance of revenue vehicles.	
062 Accident repairs of revenue vehicles.	→ 062 Accident repairs of revenue vehicles.	
071 Vandalism repairs of revenue vehicles.	→ 070 Vandalism repairs of revenue vehicles.	
081 Servicing and fuel for service vehicles.	→ 080 Servicing and fuel for service vehicles.	
091 Inspection and maintenance of service vehicles.	→ 090 Inspection and maintenance of service vehicles.	
101 Maintenance of vehicle movement control systems.	→ 100 Maintenance of vehicle movement control systems.	
111 Maintenance of fare collection and counting equipment.	→ 110 Maintenance of fare collection and counting equipment.	
121 Maintenance of roadway and track.		
122 Maintenance of structures, tunnels, bridges, and subways.		040 [1] maintenance.
123 Maintenance of passenger stations.		
124 Maintenance of operating station buildings, grounds, and equipment.		
125 Maintenance of garage and shop buildings, grounds, and equipment.	→ 120 Maintenance of other buildings, grounds, and equipment.	
126 Maintenance of communication system.		
127 Maintenance of general administration buildings, grounds, and equipment.		
128 Accident repairs of buildings, grounds, and equipment.		
131 Vandalism repairs of buildings, grounds, and equipment.	→ 130 Vandalism repairs of buildings, grounds, and equipment.	
141 Operation and maintenance of electric power facilities.	→ 140 Operation and maintenance of electric power facilities.	
145 Preliminary transit system development.	→ 145 Preliminary transit system development.	
151 Ticketing and fare collection	→ 150 Ticketing and fare collection	
161 System security		
165 Injuries and damages		
166 Safety		
167 Personnel administration		
168 General legal services		
169 General insurance		
170 Data processing		
171 Finance and accounting	→ 160 General administration	160 [1] general administration.
172 Purchasing and stores		
173 General engineering		
174 Real estate management		
175 Office management and services.		
176 General management		
162 Customer services		
163 Promotion	→ 170 Marketing	
164 Market research		
177 Planning		
181 General function	→ 180 General function	

[1] Denotes required functional categories.

(4) *Revenue Classes.*—Table B–4 presents the revenue object classes required under Section 15. Table B–5 is a more detailed list which includes recommended revenue object classes that have been developed to assist transit operators in implementing the Section 15 requirement. The object class definitions appear in the January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

TABLE B–4

REQUIRED REVENUE OBJECT CLASSES

401. Passenger Fares for Transit Service
402. Special Transit Fares
403. School Bus Service Revenues
404. Freight Tariffs
405. Charter Service Revenues
406. Auxiliary Transportation Revenues
407. Nontransportation Revenues
408. Taxes Levied Directly by Transit System
409. Local Cash Grants and Reimbursements
410. Local Special Fare Assistance
411. State Cash Grants and Reimbursements

412. State Special Fare Assistance
413. Federal Cash Grants and Reimbursements
430. Contributed Services
440. Subsidy from Other Sectors of Operations

TABLE B–5

RECOMMENDED REVENUE OBJECT CLASSES

401. *Passenger Fares for Transit Service* [1]
0.1 Full Adult Fares.
0.2 Senior Citizen Fares.
0.3 Student Fares.
04. Child Fares.
05. Handicapped Rider Fares.
06. Parking Lot Revenue.
99. Other Primary Ride Fares.
402. *Special Transit Fares* [1]
01. Contract Fares for Postmen.
02. Contract Fares for Policemen.
03. Special Route Guarantees.
04 Other Special Contract Transit Fares—State and Local Government.
05. Other Special Contract Transit Fares—Other Sources.
07. Non-Contract Special Service Fares.
403. *School Bus Service Revenues* [1]
404. *Freight Tariffs* [1]
405. *Charter Service Revenues* [1]
406. *Auxiliary Transportation Revenues* [1]
01. Station Concessions.
02. Vehicle Concessions.
03. Advertising Services.
04. Automotive Vehicle Ferriage.
99. Other Auxiliary Transportation Revenues.
407. *Nontransportation Revenues* [1]
01. Sales of Maintenance Services.
02. Rental of Revenue Vehicles.
03. Rental of Buildings and Other Property.
04. Investment Income.
05. Parking Lot Revenue.
99. Other Nontransportation Revenues.
408. *Taxes Levied Directly by Transit System* [1]
01. Property Tax Revenue.
02. Sales Tax Revenue.
03. Income Tax Revenue.
04. Payroll Tax Revenue.
05. Utility Tax Revenue.
99. Other Tax Revenue.
409. *Local Cash Grants and Reimbursements* [1]
01. General Operating Assistance.
02. Special Demonstration Project Assistance—Local Projects.
03. Special Demonstration Project Assistance—Local Share for State Projects.
04. Special Demonstration Project Assistance—Local Share for UMTA Projects.
05. Reimbursement of Taxes Paid.
06. Reimbursement of Interest Paid.
07. Reimbursement of Transit System Maintenance Costs.
09. Reimbursement of Security Costs.
99. Other Financial Assistance.
410. *Local Special Fare Assistance* [1]
01. Handicapped Citizen Fare Assistance.
02. Senior Citizen Fare Assistance.
03. Student Fare Assistance.
99. Other Special Fare Assistance.
411. *State Cash Grants and Reimbursements* [1]
01. General Operating Assistance.
03. Special Demonstration Project Assistance—State Projects.
04. Special Demonstration Project Assistance—State Share for UMTA Projects.
05. Reimbursement of Taxes Paid.
06. Reimbursement of Interest Paid.
07. Reimbursement of Transit System Maintenance Costs.
09. Reimbursement of Security Costs.
99. Other Financial Assistance.
412. *State Special Fare Assistance* [1]
01. Handicapped Citizen Fare Assistance.
02. Senior Citizen Fare Assistance.
03. Student Fare Assistance.
99. Other Special Fare Assistance.
413. *Federal Cash Grants and Reimbursements* [1]
01. General Operating Assistance.
04. Special Demonstration Project Assistance.
99. Other Financial Assistance.
430. *Contributed Services* [1]
01. State and Local Government.
02. Contra Account for Expense.
440. *Subsidy From Other Sectors of Operations* [1]
01. Subsidy from Utility Rates.
02. Subsidy from Bridge and Tunnel Tolls.

(5) *Balance Sheet Object Classes.*—Table B–6 presents the classifications for assets, liabilities and capital accounts required under Section 15. Table B–7 is a more detailed list which includes recommended balance sheet accounts that have been developed to assist transit operators in implementing the Section 15 requirement. The definitions appear in the January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

TABLE B–6

REQUIRED BALANCE SHEET OBJECT CLASSES

Assets

101. Cash and Cash Items.
102. Receivables.
103. Materials and Supplies Inventory.
104. Other Current Assets.
105. Work in Process.
111. Tangible Transit Operating Property
03. Accumulated Depreciation.
112. Tangible Property Other Than for Transit Operations
02. Accumulated Depreciation.
121. Intangible Assets.
06. Accumulated Amortization.
131. Investments.
141. Special Funds.
151. Other Assets.

Liabilities

201. Trade Payables.
202. Accrued Payroll Liabilities.
203. Accrued Tax Liabilities.
204. Short-Term Debt.
205. Other Current Liabilities.
211. Advances Payable.
221. Long-Term Debt.
231. Estimated Liabilities.
241. Deferred Credits.

Capital

301. Public (Governmental) Entity Ownership.
302. Private Corporation Ownership.
303. Private Noncorporate Ownership.
304. Grants, Donations and Other Paid-In Capital.
305. Accumulated Earnings (Losses).

TABLE B–7

RECOMMENDED BALANCE SHEET OBJECT CLASSES

Assets

101. *Cash and Cash Items* [1]
01. Cash.
02. Working (Imprest) Funds.
03. Special Deposits, Interest.
04. Special Deposits, Dividends.
05. Special Deposits, Other.
06. Temporary Cash Investments.
102. *Receivables* [1]
01. Accounts Receivable.
02. Notes Receivable.
03. Interest and Dividends Receivable.
04. Receivables from Associated Companies.
05. Receivable Subscriptions to Capital Stock.
06. Receivables for Capital Grants.
07. Receivables for Operating Assistance.
08. Other Receivables.
09. Reserve for Uncollectible Accounts.
103. *Materials and Supplies Inventory* [1]
104. *Other Current Assets* [1]
105. *Work in Process* [1]
01. Unbilled Work for Others.
02. Capital Projects.
111. *Tangible Transit Operating Property* [1]
01. Property Cost.
02. Leased-Out Property Cost.
03. Accumulated Depreciation.[1]
112. *Tangible Property Other Than for Transit Operations* [1]
01. Property Cost.
02. Accumulated Depreciation.[1]
121. *Intangible Assets* [1]
01. Organization Costs.
02. Franchises.
03. Patents.
04. Goodwill.
05. Other Intangible Assets.
06. Accumulated Amortization.[1]
131. *Investments* [1]
01. Investments and Advances, Associated Companies.
02. Other Investments and Advances.
03 Reserve for Revaluation of Investments.
141. *Special Funds* [1]
01. Sinking Funds.
02. Capital Asset Funds.
03. Insurance Reserve Funds.
04. Pension Funds.
05. Other Special Funds.
151. *Other Assets* [1]
01. Prepayments.
02. Miscellaneous Other Assets.

Liabilities

201. *Trade Payables* [1]
0.1 Accounts Payable.
02. Payables to Associated Companies.
202. *Accrued Payroll Liabilities* [1]
203. *Accrued Tax Liabilities* [1]
204. *Short-Term Debt* [1]
01. Notes Payable.
02. Matured Equipment and Long-Term Obligations.
03. Unmatured Equipment and Long-Term Obligations, Current Portion.
04. Matured Interest Payable.
05. Accrued Interest Payable.
06. Current Pension Liabilities.
205. *Other Current Liabilities* [1]
01. Unredeemed Fares.
02. C.O.D.'s Unremitted.
03. Dividends Declared and Payable.

[1] Denotes required object classes.

04. Short-Term Construction Liabilities.
05. Miscellaneous Other Current Liabilities.

211. *Advances Payable* [1]
01. Advances Payable to Associated Companies.
02. Other Advances Payable.

221. *Long-Term Debt* [1]
01. Equipment Obligations.
02. Bonds.
03. Receivers' and Trustees' Securities.
04. Long-Term Construction Liabilities.
05. Other Long-Term Obligations.
06. Unamortized Debt Discount and Expense.
07. Unamortized Premium on Debt.
08. Reacquired and Nominally Issued Long-Term Obligations.

231. *Estimated Liabilities* [1]
01. Long-Term Pension Liabilities.
02. Uninsured Public Liability and Property Damage Losses.
03. Other Estimated Liabilities.

241. *Deferred Credits* [1]

Capital

301. *Public (Governmental) Entity Ownership* [1]

302. *Private Corporation Ownership* [1]
01. Preferred Capital Stock.
02. Common Capital Stock.
03. Premiums and Assessments on Capital Stock.
04. Discount on Capital Stock.
05. Commission and Expense on Capital Stock.
06. Capital Stock Subscribed.
07. Reacquired Securities.
08. Nominally Issued Securities.

303. *Private Noncorporate Ownership* [1]
01. Sole Proprietorship Capital.
02. Partnership Capital.

304. *Grants, Donations and Other Paid-In Capital* [1]
01. Federal Government Capital Grants.
02. State Government Capital Grants.
03. Local Government Capital Grants.
04. Nongovernmental Donations and Other Paid-In Capital.

305. *Accumulated Earnings (Losses)* [1]
01. Accumulated Earnings (Losses).
02. Dividend Appropriations.
03. Restricted Accumulated Earnings.

(6) *Accumulation Period.*—The period of accumulation of data is the operator's fiscal year. This avoids allocation inaccuracies that would occur if the operator were to be forced into a common year, i.e., calendar year, or the disruption which would be caused if all were to be required to adopt a fiscal year ending on the same date.

(7) *Operating Data Elements.*—The January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System" also defines and recommends procedures for the collection of certain operating data elements. The required operating data elements are listed in Table B–8.

(i) It should be noted here that for urbanized areas with populations over 750,000, this information will be supplemented periodically by a user survey conducted by the Metropolitan Planning Organizations (MPO's). A measure of walking accessibility to transit systems and certain demographic data will also be provided by the MPO's for all urbanized areas with 50,000 or more population.

[1] Denotes required object classes.

TABLE B–8

REQUIRED OPERATING DATA ELEMENTS

Time Periods

Facilities and Equipment
Miles of roadway or track.
Railway classifications.
Bus roadway classifications.
Revenue vehicle inventory classifications.
Number of passenger stations.

Employees
Transit operating personnel classifications.
Employee count classifications.

Maintenance Performance and Fuel Consumption
Roadcalls for mechanical failure.
Roadcalls for other reasons.
Labor hours for inspection and maintenance of revenue vehicles.
Fuel power consumption.
Number of light maintenance facilities.

Safety
Collision accident classifications.
Noncollision accident classifications.
Injury and damage classifications.

Service Supplied and Vehicle Utilization
Average and total vehicles operated.
Miles of revenue service.
Miles of total service.
Miles of charter and school bus service.
Hours of revenue service.
Hours of total service.
Hours of charter and school bus service.

Passenger Utilization
Unlinked passenger trips.
Passenger miles.
Average time per unlinked trip.

Subpart C—Reporting System

§ 630.20 Purpose.

(a) The purpose of this subpart is to prescribe the Reporting System and present general instructions for reporting the financial and nonfinancial operating data required.

(b) *Distinction between reporting system inputs and outputs.*—(1) *Reporting system inputs.*—The reporting system inputs are the data elements which are actually reported by the system operators to the central processing agency.

(2) *Reporting system outputs.*—The reporting system outputs are the reports which are generated by the data center for the various user groups. These reports may contain the values of the individual data elements reported by the operators, and/or aggregations of the data, and/or ratios or other analyses of interest to various users.

§ 630.21 Reporting requirements.

(a) The reporting requirements cover the following major segments which are based on the Uniform System of Accounts and Records.

(1) Balance sheet.
(2) Revenue report.
(3) Expense report.
(4) Nonfinancial operating data reports.
(5) Miscellaneous auxiliary questionnaires and subsidiary schedules.

(b) The reporting requirements under Section 15 consist of reporting information contained in each of the required accounts specified in Subpart B and of reporting more detailed information on sources of funding, payroll and labor related expenses.

(c) Transit operators may submit a more detailed revenue report which would include the information contained in the recommended revenue object classes listed in Subpart B, Table B–5.

(d) Transit operators may submit a more detailed expense report which would include the information contained in the recommended expense object classes and functions listed in Subpart B, Tables B–2 and B–3. Transit operators choosing this option are encouraged to use the guidelines specified in Subpart B in determining the level of functional category detail to use in the collection and reporting of expense data, i.e., Level A, B or C.

(e) Transit operators with 25 revenue vehicles or less are not required to submit the following subsidiary forms:

Operators' Wages Subsidiary Schedule
Fringe Benefits Subsidiary Schedule
Pension Plan Questionnaire

§ 630.22 Reporting period.

(a) At the end of its fiscal year, each transit operator subject to this Reporting System shall file a report that contains the reporting forms required by section 15. The transit system shall file with such report, a letter or report signed by an independent public accountant or other responsible independent entity such as a state audit agency attesting to the conformity, in all material respects, of the financial data reporting forms in such report with the prescribed Uniform System of Accounts and Records and Reporting System.

(b) A suggested form of a letter or report follows:

In connection with our regular examination of the financial statements of ..... for the year ended ....., on which we have reported separately under date of ....., we have also reviewed the reporting forms listed below and included in the ..... report for the year ended ....., required under Section 15 of the Urban Mass Transportation Act, for conformity in all material respects with the requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not make a detailed examination such as would be required to determine that each transaction has been recorded in accordance with the Uniform System of Accounts and Records.

LIST OF REPORTING FORMS BEING REPORTED UPON

Based on our review, in our opinion, the accompanying reporting forms identified above (except as noted below [1]) conform in all material respects with the accounting re-

[1] Parenthetical phrase inserted only when exceptions are to be reported.

quirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System.

(c) The letter or report shall state, additionally, which, if any, of the reporting forms set forth above do not conform to the Urban Mass Transportation Administration requirements, and shall describe the discrepancies that exist.

(d) If the system is not audited by an independent public accountant, such certification will be required from a governmental audit agency, such as a state audit agency or a municipal audit agency. However, the certification must be made by an agency that is in fact independent. The Urban Mass Transportation Administration will determine the fact of independence by considering all of the relevant circumstances.

(e) Each transit system reporting its results will file a report covering its own fiscal year. This annual report will include all applicable forms in the Reporting System. All reports are due 120 days after the close of the fiscal year.

(f) Table C–1 indicates the key dates for accumulating and reporting information, based on a transit system's fiscal year.

TABLE C–1

If fiscal year ends	Internal systems to support sec. 15, reporting system should be in place as of:	1st report due to system administrator 120 d after fiscal yearend
July 31	Aug. 1, 1977	Nov. 28, 1978
Aug. 31	Sept. 1, 1977	Dec. 28, 1978
Sept. 30	Oct. 1, 1977	Jan. 28, 1979
Oct. 31	Nov. 1, 1977	Feb. 28, 1979
Nov. 30	Dec. 1, 1977	Mar. 30, 1979
Dec. 31	Jan. 1, 1978	Apr. 30, 1979
Jan. 31	Feb. 1, 1978	May 31, 1979
Feb. 28	Mar. 1, 1978	June 28, 1979
Mar. 31	Apr. 1, 1978	July 29, 1979
Apr. 30	May 1, 1978	Aug. 28, 1979
May 31	June 1, 1978	Sept. 28, 1979
June 30	July 1, 1978	Oct. 28, 1979

(g) Financial data must be reported to the nearest dollar. All information reported on the forms must be typewritten or printed legibly.

(h) Recognizing that many transit systems might experience difficulty responding to the complete Reporting System in the first year, the initial reports will be a subset of the full Reporting System. Specifically, for financial data, the first year requirements and the full section 15 requirements are identical except that:

(1) Transit operators are not required to complete the Operators' Wages Subsiliary Schedule in the first year; and

(2) Transit operators who participate in pay-as-you-go pension plans are not required to report in the first year what the cost of a fully-funded pension plan would have been.

(i) The accounting basis to be used in developing the data for the reports is the accrual basis. Using the accrual basis, revenues will be recorded when earned, regardless of whether or not receipt of the revenue takes place in the same reporting period. Similarly, expenditures will be recorded as soon as they result in liabilities for benefits received, regardless of whether or not payment of the expenditure is made in the same reporting period.

(j) Those transit systems that use cash-basis accounting, in whole or in part, in their books of account will have to make work sheet adjustments to develop report data on the accrual basis.

§ 630.23 Availability of reporting forms.

The required forms and instructions are available from:

Section 15, Office of Transit Management, UMD–10, Urban Mass Transportation Administration, Room 6412, 2100 Second Street, SW., Washington, D.C. 20590.

Illustrative forms for each of these required reports are included in the "Uniform System of Accounts and Records and Reporting System," January 1977, Volume III—Reporting System Forms and Instructions—Required. Volume IV—Reporting System Forms and Instructions—Voluntary contains illustrative forms and instructions for the optional revenue report and expense reports. Table C–2 contains a list of the reporting forms required under Section 15. An asterisk indicates that the reporting form is not required from operators who operate twenty-five or fewer revenue vehicles.

TABLE C–2
REQUIRED REPORTING FORMS

Financial Data

- Balance Sheet Summary Schedule
- Capital Subsidiary Schedule
- Revenue Summary Schedule
- Revenue Subsidiary Schedule
- Single Mode Expenses and Functions Schedule or
- Multi-Mode Expenses and Functions Schedule
- Operators' Wages Subsidiary Schedule
- Fringe Benefits Subsidiary Schedule
- Pension Plan Questionnaire

Operating Data

- Weekday Time Period Schedule
- Transit Way Descriptions Schedule
- Revenue Vehicle Inventory Schedule
- Energy Consumption Schedule
- Transit Service Personnel Schedule
- Transit System Employee Count Schedule
- Accidents Schedule
- Transit Service Supplied Schedule
- Transit Service Consumed Schedule

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federal register

WEDNESDAY, JANUARY 19, 1977

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

■

NATIVE AMERICAN PROGRAMS

Final Regulations

Title 45—Public Welfare

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1336—NATIVE AMERICAN PROGRAMS

Final Regulations

On January 13, 1976, there was published in the FEDERAL REGISTER (41 FR 2046) a notice of proposed rulemaking for the purpose of implementing the Native American Programs Act, Title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974, Pub. L. 93-644, signed into law January 4, 1975. Title VIII authorizes financial assistance to promote economic and social self-sufficiency for Native Americans (American Indians, Native Hawaiians, and Alaskan Natives). The notice provided for the filing of comments, recommendations, or suggestions regarding the proposed Part 1336 on or before February 27, 1976. The comments in the letters received by this date were given careful consideration by the Office of Native American Programs (ONAP). Revisions to the proposed regulations are made on the basis of these comments and comments of the Department.

A. The following changes in the proposed rules are made for the reasons given:

1. It was noted that the definition of "Alaskan Native" was too restrictive. The definition is based on the definition of "Native" in the Alaska Native Claims Settlement Act (Pub. L. 92-203) and included the statement that this term "means a citizen of the United States who is a person of one fourth degree or more Alaskan Indian * * *, Eskimo, or Aleut blood." "Alaskan Native" is therefore redefined in § 1336.1(b) as "a person who is an Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives." This change is made in order to delete all references to blood quantum and United States citizenship. The language of Title VIII makes no mention of blood quantum or citizenship with respect to any segment of the target population of the Office of Native American Programs. Regulations applicable to this title should not therefore be more restrictive regarding the definition of the service population.

2. Several letters requested changes in the definition of "American Indian or Indian." The major objection to the definition in the Proposed Regulations was that it required United States citizenship. This citizenship requirement in effect excluded certain groups such as the Micmacs and Maliseets who have had, or whose ancestors have had, long-standing special relationships with either the United States government or a State government or who have had special historical ties with the land which now constitutes the United States. In many cases these historical ties and special relationships were formalized or established in treaties or agreements which guarantee to specified Indians who do not have U.S. citizenship services and consideration similar to those guaranteed to Indians who do have U.S. citizenship. In accordance with this concern, "American Indian or Indian" is redefined in § 1336.1(e) as "any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. This definition also includes Alaskan Natives."

3. It was suggested that the definition of "Federal reservation," formerly § 1336.1(j), would be more precise and closer to the legislative intent if it were replaced with the definition of "Indian reservation" found in Title VIII in section 813(2). Consistent with this recommendation, separate definitions of "Federal reservation" and "State reservation" are deleted, and a single definition of "Indian reservation" based on Title VIII's definition is added as § 1336.1(p).

4. Several letters expressed concern that open and public election of the governing body of urban Indian organizations was not specified in the regulations. In view of the fact that metropolitan areas frequently have several Indian organizations competing for the same funds and professing to represent the same constituency, it was determined essential to have an open and public election requirement for urban ONAP grantees. Such a requirement should ensure true community participation and subsequently true representation of community needs and desires. Therefore, a definition of "urban Indian center" which includes the requirement for open and public election of the governing board is added to the Regulations as § 1336.1(z). This requirement has been in effect as ONAP policy for three years. Publication in the regulations reconfirms that policy and in no way represents a change in program direction for ONAP's urban grantees. As further clarification, a definition of "open and public election" is added as § 1336.1(w).

5. It was suggested that the term "independent public acountant" be substituted for the term "independent certified public accountant" in § 1336.50(b), referring to the annual project audit. Since it is not the intention of the Office of Native American Programs to eliminate any categories of qualified auditors from consideration for providing services, this suggestion is accepted. The language of the Regulations is therefore changed to require the services of an "independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States," rather than the services of an "independent certified public accountant." In the Final Regulations, this section is numbered § 1336.50(a)(2).

6. An additional area of comment concerned the excessive paperwork generated when prior approval for budget revisions is required in instances in which this might not actually be necessary or desirable. This observation is considered valid. Accordingly, § 1336.50 is amended to include a new paragraph, (b), waiving paragraphs (b)(3) and (b)(4) of 45 CFR 74.102. This change is consistent with the action taken by programs within the Office of Human Development to waive these paragraphs; § 74.102(d) states that these paragraphs may be waived by the granting agency for those grant programs in which it determines that the requirements are not needed. Paragraph (b)(3) required that grantees request prior approval for budget revisions when the grant budget is over $100,000 and the cumulative amount of transfers among budget line items exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. Paragraph (b)(4) required prior approval for budget revisions when the grant budget is $100,000 or less, and the cumulative amount of transfers among budget line items exceeds or is expected to exceed five percent of the grant budget.

7. Section 1336.51(b)(3) requires, as part of the grantee's application for financial assistance, submission of "the qualifications of the principal staff members to be responsible for the project or program." It was proposed that this paragraph be clarified, in case the staff members have not yet been hired. Accordingly, the paragraph is amended to include the phrase, "or, if they have not been selected, the job descriptions and qualifications for the principal staff members."

8. Another comment proposed that paragraph (7) of § 1336.51(b), which required that the application for financial assistance include a description of innovative features of the project or program, be omitted unless Title VIII requires that programs be innovative. Whereas innovative projects are encouraged, they are not required. Therefore, paragraph (7) is deleted.

9. Paragraph (10) of § 1336.51(b), the requirement that the application for financial assistance include "a description of the provisions that have been made for an evaluation of the project or program," was questioned. Whereas self-evaluation is encouraged, official project evaluation is the responsibility of the funding agency as required by section 810(a) of Title VIII. Therefore, paragraph (10) is omitted.

10. It was proposed that a maximum project period of five years be established. This suggestion is accepted, consistent with the HEW administrative policy of specifying the length of the project period. Five years is considered to be an appropriate period of time, after which all projects and their results can be fairly reviewed and appraised and after which all applicants will compete for funding. (Grantees must still apply for continuation support within the project period.) This addition to the Regulations is made under § 1336.51(f).

11. Section 1336.51(h)(1) of the Proposed Regulations required that a grant application approved by the Office of Native American Programs (ONAP) be returned for approval or disapproval to the governing body of the reservation or village which submitted it. Concern was expressed that this requirement was repetitive and unnecessary, since all applications submitted to ONAP are transmitted through the governing body originally. Since ONAP will require that the governing body formally approve the application before it is initially submitted to ONAP, its resubmission to the governing body for approval at a later time would not be necessary. Section 1336.51(h)(1) is, therefore, omitted. In order to verify that the governing body approves the original application for financial assistance, § 1336.51(b)(8) is added, requiring inclusion with the application of "a resolution of approval of the application from the governing body of the Indian tribe, Alaskan Native Village, or urban Indian organization or other Native American organization."

12. Concern was expressed about the use of per capita income figures as the only basis for determining whether a grantee (which has not been involved in a major disaster) may waive the nonfederal share requirement. It was stated that the community's per capita income figure does not necessarily reflect the community's capacity to provide the nonfederal share; this figure is sometimes not an accurate indication of the financial status of the tribe or group as a whole. This observation is considered valid. Since it is the intention of the Office of Native American Programs to assure that communities which do not have economic resources to match ONAP grant funds are able to participate in its programs, an additional objective criterion for waiver of the nonfederal share is included in the regulations, as authorized by Title VIII, section 803(b). Section 1336.52(a)(2) is amended to include a provision for waiver of the nonfederal share if the grantee can document that it is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement. This new criterion is open to all grantees. The Office of Native American Programs believes that the addition of this criterion will be the best and fairest way to enable grantees for whom it would be a burden to provide the nonfederal share to waive this requirement. However, this criterion would not enable those grantees who are able to provide the nonfederal share to waive the requirement.

13. It was proposed that the conflict of interest provision in § 1336.54(c)(4) be clarified, since there has been confusion about whether this provision applies to a situation in which a tribal council or governing body member concurrently holds a position as a staff member paid in whole or in part with ONAP grant funds. The conflict of interest provision states that grantees "shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves * * *." Since tribal council and governing body members are in a position to influence the selection of grantee staff members, and since salary payment from ONAP grant funds constitutes "private gain," a sentence is added stating that the conflict of interest provision applies to such situations.

Also, in response to concern expressed about the difficulty that a community, especially a small one, may have in adequately filling certain jobs, paragraph (ii) is added to the conflict of interest section. This paragraph provides for waiver of the conflict of interest regulation in certain cases in which a community can document that it has made an unsuccessful search to find a person qualified to fill a job which requires special expertise obtained through education and/or experience. The conflict of interest provision itself covers two situations: when there is evidence of actual conflict of interest, and when there is an appearance of a conflict of interest. The waiver applies only to situations in which there is an appearance of a conflict of interest.

14. Several letters requested that the Indian preference provisions of section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act, be included in the regulations. These provisions apply to contracts, subcontracts, grants, and subgrants pursuant to any act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians. Therefore, these provisions are applicable to all contracts, subcontracts, grants, and subgrants awarded under the Native American Programs Act, except those relating to Native Hawaiians. They stipulate preference for Indians for training and employment in connection with the administration of contracts and grants and preference for Indian organizations and Indian-owned economic enterprises in the award of subcontracts and subgrants. They were inadvertently omitted from the notice of proposed rulemaking, but they are added to the final regulations in a new subpart, Subpart H, as § 1336.60(a). In addition, § 1336.60(b) provides a statement in regulatory form of ONAP's policy of giving preference to Indian organizations and Indian-owned economic enterprises in the award of ONAP contracts.

15. In addition, various minor technical changes designed to clarify the language and intent of the regulations are included in the Final Regulations.

B. Other recommendations have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons given:

1. Several letters recommended that the definition of "American Indian or Indian" in § 1336.1(e) be made more restrictive. For example, some stated that the provisions of the Native American Programs Act should apply only to Federally recognized land based tribes. This suggestion cannot be incorporated in the Regulations because Title VIII, section 803(a), clearly identifies the service population under the Act as "public and nonprofit private agencies, including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Hawaiian Natives, and Indian organizations in urban or rural nonreservation areas."

2. It was also proposed that the provisions of the Native American Programs Act should apply only to individuals (from Federally recognized tribes) with one fourth degree or more of Indian blood. This suggestion is rejected because Title VIII makes no mention of blood quantum. Regulations applicable to this Title should not be more restrictive than the Law with respect to the potential service population.

3. Two comments requested changes in the definition of "Native Hawaiian" in § 1336.1(u)—now 1336.1(t). One proposed the addition of a narrowed definition which included a blood quantum requirement. This suggestion is not accepted, since Title VIII does not specify a particular blood quantum, and to incorporate in the regulations an additional eligibility requirement not contained in the Statute might violate an expression of Congressional intent. The second comment proposed an addition to the definition in order to specify that the term includes any Native Hawaiian either or both of whose adoptive parents are not Native Hawaiians and any person, in the absence of formal proof of ancestry, who is regarded as a Native Hawaiian by, or whose father or mother is (or if deceased, was) regarded as a Native Hawaiian by a Council of Native Hawaiians authorized to review such cases. ONAP wishes to retain in its Regulations the present definition, since this definition is taken from Title VIII, section 813(3). Moreover, this definition, as stated, does include those persons requested for specification.

4. It was suggested that the due date for the annual project audit given in § 1336.50(a)(3) should be extended beyond the present four month deadline. This suggestion is not accepted, since four months is an adequate period of time. In addition, early completion of the annual audit should result in better program and financial control for the grantee.

5. Another letter questioned § 1336.54(c)(5)(i), whose purpose is to prevent nepotism. It was suggested that tribes—especially small ones—should not be restricted in the selection of employees by

regulations designed to revent nepotism. This suggestion is not accepted, since it is believed that better programs will result from open competition which assures hiring of the most qualified applicants. In addition, the anti-nepotism provision is intended to promote fairness and equal opportunity for all job applicants, as well as to avoid situations of conflict of interest. The Office of Native American Programs does provide for waiver of the anti-nepotism regulation in § 1336.54(c)(5)(ii) in cases in which a community can document that it has made an unsuccessful search to find another qualified person to fill a job requiring special expertise obtained through education and/or experience.

The Final Regulations for Part 1336, implementing the Native American Programs Act, are divided into eight basic subparts to make clear to the general public the regulatory provisions which apply to all programs funded under the Act. They are intended to assure consistency with the language and intent of Title VIII and with general Department grant operating procedures. The purpose and basis of these subparts, and of significant regulations contained in each, will be discussed in the following paragraphs.

Subpart A consists of definitions of terms used in the Regulations. The purpose of this subpart is to define terms used throughout the Regulations in a clear and uniform manner. These definitions are based on definitions and provisions in the Native American Programs Act itself, definitions and provisions in other relevant acts, established Departmental policy, and definitions commonly accepted by Native American communities.

Subpart B gives the purpose of the Native American Program. This is the purpose of the program as stated in Title VIII, section 802.

Subpart C concerns financial assistance for Native American projects. The listing under § 1336.10 of the types of eligible applicants is taken from Title VIII, section 803(a). The listing under § 1336.11 of types of projects supported is based on Title VIII and on planning documents. This listing is intended to inform the public which types of projects will receive the highest priority for funding. Section 1336.12 deals with approval of grants and gives priorities for funding based on established criteria. These criteria are taken from planning documents.

The provisions of Subpart D give information relating to training and technical assistance and are based on Title VIII, section 804, as well as on ONAP planning documents. Their purpose is to make more effective ONAP's general community programming efforts, which constitute a majority of ONAP's programs.

The provisions of Subpart E give information relating to eligibility for and scope of research, demonstration, and pilot projects. They are based on Title VIII, section 805, and on ONAP's Implementation Plan. This subpart is intended to inform the public which types of research, demonstration, and pilot projects will receive the highest priority for funding.

Subpart F concerns project evaluations. Its provisions are based on Title VIII, section 810, which requires that projects assisted by the Office of Native American Programs be evaluated and which specifies the items that are to be included in the evaluations. This subpart also points out that the extent to which grantees have met ONAP's (Interim) Evaluation Standards will be considered in deciding whether to renew or supplement financial assistance; this provision is based on and is intended to implement Title VIII, section 810(b).

Subpart G contains grants administrative procedures. § 1336.50 specifically incorporates the provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles. This regulation is included because it is the Department's belief that it is advantageous to all concerned to follow uniform administrative requirements and cost principles in order to avoid or minimize mistakes and misinterpretations of administrative provisions. Also, most grantees are already generally familiar with Part 74 requirements.

Instead of § 74.61(h), § 1336.50(a)(1)(i) through (iv), concerning grantee project audits, are added. They require an annual audit in order to help grantees assure adequate fiscal controls and integrity and to make sure that any problems in this area are uncovered and corrected in a relatively brief time.

Section 1336.51 concerns application, review, award, and amendment of grants. The listing of information required in the application for funding includes data which, in the best judgment of the Office of Native American Programs, will help this Office properly evaluate applications and select which ones to fund as well as insure that the applicant has carefully planned the prospective program. Additional provisions in this section relate to eligibility, fiscal capability of applicants, disposition of applications, amendments, grant awards, effective date of approved projects, and submission of plans to State and local officials. These provisions are included in order to insure that prospective grantees are aware of ONAP policy in these areas and of the necessity of complying with it. They are based on the Department of Health, Education, and Welfare Grants Administrative Manual, 45 CFR Part 74, and general DHEW and ONAP requirements.

Section 1336.52 details cost sharing, matching, and payments provisions. Title VIII, section 803(b), stipulates that financial assistance shall not exceed 80 percent of the approved costs of the assisted project except when a larger Federal share is required in furtherance of the purpose of the title and when regulations establishing objective criteria for providing a larger Federal share are met. In order to implement this section, § 1336.52(a)(2) establishes three objective criteria for waiver of the nonfederal share and provides detailed explanations of how grantees who meet any one of these criteria may apply for a waiver of the nonfederal share. The criteria are: The community has a per capita income of less than $1,500 per year, has been involved in a major disaster, or can document its inability to mobilize local, State, or private resources to satisfy the nonfederal share requirement. It is the best judgment of the Office of Native American Programs that these particular criteria provide the most equitable and impartial way for communities which do not have economic resources to match ONAP grant funds to participate in its programs.

The $1,500 per capita income figure is based on upward adjustment, in line with the increase in the Consumer Price Index, of the Office of Economic Opportunity and Department of Labor poverty guideline figure of $750, which was based on per capita incomes in the 1960 Census. In § 1336.52(a)(2)(iii), ONAP's Regulations state that this $1,500 figure shall be adjusted annually by multiplying it by the percentage change in the Consumer Price Index.

The provisions of § 1336.53 and §§ 1336.56 through 1336.58 incorporate by reference parts of Title 45 of the Code of Federal Regulations and certain chapters of the Department of Health, Education, and Welfare Grants Administration Manual. Departmental policy requires that grants made under this Act be subject to them. Therefore, these sections are added in order to give public notice to grantees that these sections apply.

Section 1336.54 also incorporates by reference provisions from Title 45 and from the Grants Administration Manual as well as provisions based on requirements in Title VIII and current policy of the Office of Native American Programs. The purpose of § 1336.54(b), "Maintenance of effort," is to implement Title VIII, section 803(c), and to emphasize to grantees that activities supported by ONAP funding may not be used to replace comparable activities provided without Federal assistance. The requirements for personnel policies listed under § 1336.54(c)(1) and (2) are included because ONAP wishes to assure fair treatment for employees paid with its grant funds. It is the best judgment of this Office that these particular requirements will help to accomplish this purpose.

The conflict of interest provisions of § 1336.54(c)(4) are intended to help assure that Federal money is used for the public good, rather than for private gain or the appearance of private gain. The nepotism provisions of § 1336.54(c)(5) are intended to assure that individuals may not use the power of their positions in order to secure favored treatment for their relatives. It is the best judgment of the Office of Native American Programs that these particular provisions will best achieve these goals.

The purpose of § 1336.59, "Grant closeout, suspension, and termination," is to implement section 809 of Title VIII. The provisions of this section incorporate by reference regulations im-

plementing section 519 of the Headstart-Follow Through Act, which is Title V of Pub. L. 93-644. They were chosen because of the administrative desirability of having programs authorized by Pub. L. 93-644 handle appeals, suspension, and termination in a uniform and consistent manner.

The purpose and basis for Subpart H, "Indian Preference Provisions," are discussed earlier in this preamble.

Chapter XIII of Title 45 of the Code of Federal Regulations is amended by adding Part 1336 as follows:

Subpart A—Definitions

Sec.
1336.1 Definitions.

Subpart B—Purpose of the Native American Program

1336.5 Program purpose.

Subpart C—Financial Assistance for Native American Projects

1336.10 Eligibility.
1336.11 Types of projects supported.
1336.12 Approval of grants.

Subpart D—Training and Technical Assistance

1336.20 Eligibility.
1336.21 Types of training and technical assistance.

Subpart E—Research, Demonstration, and Pilot Projects

1336.30 Eligibility.
1336.31 Scope of research, demonstration, and pilot projects.

Subpart F—Project Evaluations

1336.40 Evaluation.

Subpart G—Grants Administrative Provisions

1336.50 General.
1336.51 Appplication, review, award, and amendment of grants.
1336.52 Cost sharing, matching, and payments.
1336.53 Public policy requirements.
1336.54 Financial and administrative requirements.
1336.55 Reporting requirements.
1336.56 Grantee procurements.
1336.57 Property requirements.
1336.58 Allowability of costs.
1336.59 Grant closeout, suspension, and termination.

Subpart H—Indian Preference Provisions

1336.60 Indian preference.

AUTHORITY: 88 Stat. 2324 (42 U.S.C. 2991).

Subpart A—Definitions

§ 1336.1 Definitions.

For the purposes of this part, unless the context otherwise requires:

(a) "Act" means the Native American Programs Act of 1974, Title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Pub. L. 93-644), which amends the Economic Opportunity Act of 1964.

(b) "Alaskan Native" means a person who is an Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

(c) "Alaskan Native Regional Corporation" means an Alaskan Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971).

(d) "Alaskan Native Village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971), or which meets the requirements of that Act, and which the Secretary of the Interior determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary of the Interior, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

(e) "American Indian or Indian" means any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. This definition also includes Alaskan Natives.

(f) "Budget period" means the interval of time, usually 12 months, for which funds are awarded.

(g) "Community" or "Service area" means an Indian reservation, neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to provide services to a designated constituency pursuant to this part.

(h) "Economic and social self-sufficiency" means the capacity of Native Americans to define and achieve their own economic and social goals.

(i) "Economic development" means the process involving the achievement of specific objectives, usually through the implementation of appropriate programs and projects, which results in long-term improvements in Native American economic self-sufficiency.

(j) "Financial assistance" means assistance advanced by the Office of Native American Programs by grant, agreement, or contract, but does not include the procurement of plant or equipment, or goods or services.

(k) "Governing body of an Indian tribe or Alaskan Native village" means those duly elected or appointed representatives who have the authority to provide services to, and enter into contracts, agreements and grants on behalf of, their constituency.

(l) "Grants Administration Manual" (hereinafter referred to as "the GAM") means the Department of Health, Education, and Welfare staff manual which sets forth policies for the administration of grants by agencies of the Department. The manual is available to the public by purchase on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office. In addition, it is available for public inspection and copying in the Department's central and regional office information centers pursuant to the Department's public information regulation (45 CFR Part 5).

(m) "Hawaiian homestead" means that land which was set aside for the particular and exclusive use of Native Hawaiians by the Hawaiian Homes Commission Act (42 Stat. 108, July 9, 1921).

(n) "Human development services" means the full range of services necessary for the development of human potential and well-being, including social services, training, and education.

(o) "Indian organization" means a public or private nonprofit agency whose principal purpose is promoting the economic or social self-sufficiency of Indians in urban or rural non-reservation areas, the majority of whose governing board and membership is Indian.

(p) "Indian reservation" means the reservation of any federally or State recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community or non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands or lands subject to a restriction against alienation imposed by the United States or a State.

(q) "Indian tribe" means a distinct political community of Indians which exercises powers of self-government.

(r) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, earthquake, drought, fire, accident, or other catastrophe which is of such severity and magnitude as to directly affect the capability of the grantee, providing services to the damaged community, to continue the program unless the Federal share of the approved costs is increased above 80 percent.

(s) "Native American" means American Indians, Native Hawaiians, and Alaskan Natives, as defined in this subpart.

(t) "Native Hawaiian" means any individual, any of whose ancestors were, prior to 1778, natives of the area which consists of the Hawaiian Islands.

(u) "OHD" means the Office of Human Development within the Department of Health, Education, and Welfare.

(v) "ONAP" means the Office of Native American Programs within the Office of Human Development.

(w) "Open and public election" means an election conducted in accordance with the election procedures as set forth in the organization's constitution and/or by-laws, providing that such procedures ensure wide community participation as well as participation from all members of the community who wish to participate

in the elective process. There can be no fee or payment required for participation. This includes the payment of membership dues as a prerequisite for voting.

(x) "Responsible HEW official" means the official of the Department of Health, Education, and Welfare authorized to grant the financial assistance in question, or his designee.

(y) "Secretary" means the Secretary of Health, Education, and Welfare or his designee.

(z) "Urban Indian center" means a multi-purpose nonprofit private agency which provides outreach and referral services as well as a variety of social services to an urban Indian community, and whose governing body is comprised of representatives, a majority of whom are Indian, who have been duly elected by means of an open and public election, and who have the authority to provide services to, and enter into contracts, agreements, and grants on behalf of the urban Indian constituency.

Subpart B—Purpose of the Native American Program

§ 1336.5 Program purpose.

The purpose of this part is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Financial Assistance for Native American Projects

§ 1336.10 Eligibility.

Financial assistance under this subpart may be made to public and private nonprofit agencies, including but not limited to, governing bodies of Indian tribes on Federal and States reservations, Alaskan Native Villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.11 Types of projects supported.

Financial assistance will be provided to those applicants whose proposed program goals and objectives are to promote the economic and social self-sufficiency of Native Americans. Financial assistance under this subpart will include, but is not limited to, projects which:

(a) Support community economic development;

(b) Support locally determined human service priorities which would not otherwise be provided;

(c) Support the operation of urban Indian centers for Native Americans living off reservations; and

(d) Strengthen the administrative capacities of governing bodies of Native American tribes, groups, and organizations, particularly with regard to planning and management.

§ 1336.12 Approval of grants.

In approving proposals for financial assistance under this subpart consideration will be given to the extent to which proposals focus on priorities consistent with the following ONAP long range goals:

(a) To develop the capacity of Native American governing bodies and organizations to use and focus on planning as the basic method to improve resource allocations and effectiveness of services in Native American communities;

(b) To achieve the development of the necessary social and economic infrastructure in Native American communities to increase self-sufficiency; and

(c) To eliminate, through Native American institutions, the most critical gaps in the range of human development services necessary for self-sufficiency.

Subpart D—Training and Technical Assistance

§ 1336.20 Eligibility.

(a) Contracts for technical assistance to aid in developing, conducting, and administering projects under this part may be made to public and private agencies.

(b) Short-term in-service training for specialized or other personnel may be provided by contract to agencies receiving financial assistance under this part.

§ 1336.21 Types of training and technical assistance.

(a) Contracts for training and technical assistance will be awarded for the purposes of providing management assistance and program assistance.

(1) Contracts to provide management assistance will have as their overall objective strengthening the capabilities of Native Americans to exercise self-government. Such capacity-building efforts will include assistance in planning, management, and organizational development.

(2) Contracts to provide program assistance will be of a general support nature and will include, but are not limited to, assistance in program evaluation, fiscal and administrative management, and resource mobilization.

(b) Management assistance and program assistance may include short-term in-service training for employees of grantees and members of Indian governing bodies, such as tribal council members and Native American organization board members.

Subpart E—Research, Demonstration, and Pilot Projects

§ 1336.30 Eligibility.

Financial assistance under this subpart may be made to public or private nonprofit agencies including, but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.31 Scope of research, demonstration, and pilot projects.

(a) Financial assistance will be provided for research, demonstration, or pilot projects which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise furthering the purposes of this part. This may include: (a) Research activities designed to generate demographic and program impact data and to identify and resolve problems which hinder the attainment of social and economic self-sufficiency by Native Americans; and (b) pilot or demonstration efforts designed to test innovative methods to meet and solve problems related to the purposes of this part and to encourage the delivery of human development services to Native Americans.

Subpart F—Project Evaluations

§ 1336.40 Evaluation.

(a) The Secretary shall provide, directly or through grants or contracts, for the evaluation of projects assisted under this part. Such evaluations shall describe and measure the impact of such projects and their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such projects.

(b) In carrying out evaluations of projects supported under this part, the specific views of persons participating in and served by such projects will be solicited, where feasible. All studies, evaluations, proposals, and data produced or developed with assistance under this part shall become the property of the United States.

(c) Interim standards for the evaluation of program and project effectiveness in achieving the objectives of this part were published on July 2, 1975, in the FEDERAL REGISTER (40 FR 27961). According to Section 810(b) of the Act, the extent to which these standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance under this part. All grantees shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards. When final standards for the evaluation of program and project effectiveness are published in the FEDERAL REGISTER, the extent to which these final standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance. All grantees shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards.

Subpart G—Grants Administrative Provisions

§ 1336.50 General.

(a) With the exception of § 74.61(h), the provisions of Part 74 of this title quirements and costs principles, shall apply to all grants awarded under this establishing uniform administrative repart. The following provisions shall apply in lieu of § 74.61(h):

(1) *Audit requirements*—(i) *General.* An annual project audit shall be made by an independent auditor to determine whether the financial statements fairly

present the financial position of the OHD grant; whether the grantee is complying with the terms and conditions of the grant, including applicable laws, regulations, and directives; and whether appropriate financial and administrative procedures and controls have been installed and are operating effectively.

(ii) *Audit coverage.* The audit shall cover the grantee's prior budget period, unless the responsible HEW official has approved in writing a different audit period.

(iii) *Submission of report.* The auditor shall submit its audit to the grantee within four months after the end of the budget period. The grantee shall transmit seven (7) copies of the report to the appropriate Regional Audit Director and two (2) copies to the responsible HEW official. OHD grant funds may not be used to pay for more than one audit annually, except in instances when the responsible HEW official requests in writing additional audits.

(iv) *Delegate agencies.* The grantee shall include delegate agency audits as part of its annual audit or shall provide for separate independent audits for its delegate agencies.

(2) *Independent auditor.* The annual project audit shall be conducted by individuals who are sufficiently independent of those persons who authorize the expenditure of grant funds in order that unbiased opinions, conclusions, or judgments may be obtained. Generally, an independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, will be retained. If the grantee is a State or local government agency, or if its accounting records are maintained by a local government or public agency, the auditing official or official governmental auditing agency which customarily conducts the agency's audits may be substituted for an independent auditor.

(b) In accordance with the option provided to granting agencies in § 74.102 (d), the requirements contained in paragraphs (b)(3) and (b)(4) of § 74.102 are waived.

§ 1336.51 Application, review, award, and amendment of grants.

(a) *Eligibility.* In addition to the eligibility criteria set forth in §§ 1336.10, 1336.20, and 1336.30, the provisions of Chapter 1-00, Eligibility for Grants, of the GAM shall apply to all grants under this part.

(b) *Application.* Any applicant eligible for financial assistance under this part shall submit an application in accordance with the forms and instructions prescribed herein or otherwise provided. The application shall contain at least the following information:

(1) A detailed budget;

(2) A budget justification which justifies the proposed program as well as clearly relates the proposed program to the acomplishment of long range goals for increasing economic and social self-sufficiency;

(3) The qualifications of the principal staff members to be responsible for the project or program, or, if they have not been selected, the job descriptions and qualifications for the principal staff members;

(4) A description of the long-range goals of the proposed project or program, as well as the specific annual goals and the methods to be used in implementing these goals;

(5) A description of the actual results obtained from previously funded projects or programs and a brief comparison with the results originally expected;

(6) A statement of compliance with the maintenance of effort provisions of § 1336.54(b);

(7) A description of the total Federal and nonfederal resources anticipated to be available for the proposed project or program. This description shall identify the relationship, if any, between the proposed project or program and other Federal, State, or local programs; and

(8) A resolution of approval of the application from the governing body of the Indian tribe, Alaskan Native village, or urban Indian organization or other Native American organization.

(c) *Fiscal capability of applicants.* In determining whether to provide financial assistance under this part, the responsible HEW official will consider the extent to which the applicant is fiscally capable of administering an ONAP project in accordance with the standards set forth in Subpart H of 45 CFR Part 74 with the exception of § 74.61(h). In making this determination, the responsible HEW official may require the applicant to submit, with its application, an accounting certification prepared by an independent auditor (as defined in § 1336.50(a)(2)). The certification shall state that the prospective grantee and its delegate agencies have established an adequate accounting system with appropriate internal controls to safeguard assets, check the accuracy and reliability of their accounting data, promote operating efficiency, and encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by OHD.

(d) *Disposition of applications*—(1) *General.* On the basis of a review of an application for financial assistance under this part, the responsible HEW official will approve the application in whole or in part for such amount of funds and subject to such conditions as may be deemed necessary or desirable for the completion of the approved project; disapprove the application; or defer action on the application for such reasons as incompleteness of application or unavailability of funds.

(2) *Reconsideration.* Any deferral or disapproval of an application shall not preclude its resubmission by the applicant or reconsideration by the responsible HEW official.

(3) *Notification of disposition.* The responsible HEW official will notify the applicant in writing of the disposition of its application.

(4) *"Notice of Grant Awarded."* A signed "Notice of Grant Awarded" will be issued to notify the applicant of an approved project application.

(e) *Amendments.* Requests for an amendment to the work plan or budget of a funded project shall be submitted in the same manner and on the same forms as the original application. Only those pages of the required forms relating to the requested changes shall be submitted. A revised "Notice of Grant Awarded" will be issued to notify the applicant of any approved amendments.

(f) *Grant awards.* The responsible HEW official will award a grant for financial assistance to those applicants whose approved projects will best promote the purpose of the Act and this part. All grant awards shall be in writing, and shall set forth the amount of funds awarded, the purposes for which funds are awarded, and the budget period for which support is given. The initial award shall also specify the project period for which support is contemplated, provided the activity is satisfactorily carried out and Federal funds are available. However, in no instance shall the project period exceed five years. Grantees applying for continuation support within the project period shall make separate applications in accordance with instructions which will be provided. At the end of the project period, grantees may apply for an extension of the project period. Such application for an extension shall be on the same forms as a new application and shall be subjected to the same review and analysis as a new application and shall compete with other applications for support.

(g) *Effective date of approved project.* Federal financial assistance is available only for those obligations which are incurred subsequent to the effective date of an approved project. The effective date of the project will be set forth in the "Notice of Grant Awarded."

(h) *Submission of plans to State and local officials.* (1) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a State, other than on an Indian reservation or Alaskan Native village or Hawaiian Homestead, until the responsible HEW official has notified the chief executive officer of the State of his decision to provide that assistance.

(2) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a city, county, or other major political subdivision of a State, other than on an Indian reservation, Alaskan Native village, or Hawaiian Homestead, until the responsible HEW official has notified the local governing officials of his decision to provide that assistance.

(3) The provisions of Chapter 1-140, Project Notification and Review System, of the GAM shall apply to all grants awarded under this part.

§ 1336.52 Cost sharing, matching, and payments.

(a) *Matching requirements.* (1) Federal financial assistance shall not exceed 80 percent of the approved cost of the assisted project except as provided in § 1336.52(a)(2). The nonfederal share may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) Increase in Federal financial participation.

(i) Eligibility and application. (A) A grantee is eligible to apply in writing to the responsible HEW official to have the Federal share increased above 80 percent if that grantee is in a community which meets at least one of the following three conditions: (*1*) The community has a per capita income of less than $1500 per year based on data from the 1970 U.S. Census of Population or any more recent reliable source of annual per capita income data; (*2*) the community has been involved in a major disaster; (*3*) the community can document its inability to mobilize local, State, or private resources to satisfy the nonfederal share requirement.

(B) In those cases where either (A) (*1*) or (*2*) applies, the grantee's application to have the Federal share increased above 80 percent shall provide: (*1*) The annual per capita income of the community and the basis on which it was determined, or a statement of the belief that the community has been involved in a major disaster, and an explanation of the nature and extent of the major disaster; (*2*) a statement that the level of the annual per capita income of the community, or the major disaster, does not allow the grantee to meet the 20 percent nonfederal share; (*3*) a statement of the amount of the nonfederal share the grantee is able to provide; and (*4*) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful.

(C) In those cases where (A)(*3*) applies, the grantee's application to have the Federal share increased above 80 percent shall provide: (*1*) A statement that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement; (*2*) a statement of the amount of the nonfederal share the grantee is able to provide; (*3*) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful; (*4*) copies of file documents demonstrating attempts to generate revenue from sources such as foundations, churches, and other private organizations; and (*5*) to the extent they are available, records of in-kind contributions, such as furniture, equipment, supplies, and volunteer help to the program.

(D) An application based upon the annual per capita income of the community, or upon the inability of the community to mobilize local, State, or private resources to satisfy the nonfederal share requirement, shall be submitted at the same time as the application for funding or refunding and shall be with respect to the same budget period as the application. Approval shall be only for such budget period.

(E) An application based upon the involvement of the community in a major disaster shall be submitted within a reasonable time after the major disaster and may be for the remainder of the current budget period and all or part of any subsequent budget period.

(ii) Decision. (A) The responsible HEW official, on the basis of the written application and any evidence in support of the application that he may require shall approve financial assistance in excess of 80 percent if it is determined that the annual per capita income of the community is less than $1,500, that the community has been involved in a major disaster, or that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement, and that such increase is required to enable the grantee to carry on the program.

(B) The decision of the responsible HEW official shall be in writing and shall include a statement of the facts and reasons upon which it is based. Copies of the decision shall be furnished to the applicant and the Director, Office of Native American Programs.

(iii) The per capita income limitation enumerated in paragraph (a)(2)(i)(A)(*1*) of this section shall be adjusted annually by multiplying the dollar limitation by the percentage change in the Consumer Price Index.

(b) *Payments.* Grant funds awarded under this part will be made in installments, either by check or by letter of credit.

(c) *Limitation of costs.* The amount of the award shall be set forth in the grant award document ("Notice of Grant Awarded"). The total cost to the Government will not exceed the amount set forth in the grant award document or any modification thereof approved by the responsible HEW official which meets the requirements of applicable statutes and regulations. The Government will not be obligated to reimburse the grantee for costs incurred in excess of such amount unless and until the responsible HEW official has notified the grantee in writing that such amount has been increased and specified such increased amount in a revised grant award document. Such revised amount shall thereupon constitute the maximum cost to the Government for the performance of the program or project.

§ 1336.53 Public policy requirements.

(a) *Protection of human subjects.* The provisions of Part 46, Protection of Human Subjects, of this title are applicable to all grants awarded under this part.

(b) *Nondiscrimination.* The provisions of Part 80, Nondiscrimination Under Programs Receiving Federal Assistance, and Part 81, Practice and Procedures for Hearings under Part 80, of this title are applicable to all grants awarded under this part.

§ 1336.54 Financial and administrative requirements.

(a) *Use of consultants.* The provisions of Chapter 1–45, Use of Consultants, of the GAM shall apply to all grants awarded under this part.

(b) *Maintenance of effort.* Applications for grants awarded under this part shall include a written assurance that the activities provided under the program will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

(c) *Personnel administration*—(1) *Personnel policies and procedures.* Grantees shall adopt personnel policies and procedures which shall include at least the following: Staff qualifications; recruitment and selection; classification of positions and basis for determination of pay; employee benefits, including leave, holidays, overtime, and fringe benefits; expenses, including travel and per diem; training, career development, and performance evaluation; employee-management relations, including grievance, termination of employment, and other adverse actions; and employee conduct including outside employment, acceptance of gifts and gratuities.

(2) *Documentation of personnel policies.* The personnel policies and procedures required by paragraph (c)(1) of this section shall be documented in writing and shall be issued to, or made available to, all grantee employees.

(3) *Political activities.* The provisions of § 70.6 of this title shall apply to all grants awarded under this part.

(4) *Conflict of interest.* (i) Grantees shall establish or adopt rules to assure that employees or individuals participating in a program or project funded under this part shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves, or others, particularly those with whom they have family, business, or other ties. This includes, but is not limited to, situations in which a tribal council or governing body member concurrently holds a position as a staff member paid in whole or in part with ONAP grant funds.

(ii) The responsible HEW official may waive the requirement of paragraph (c)(4)(i) of this section when there is the appearance of conflict of interest, but a grantee or delegate agency cannot otherwise adequately staff a position. Such grantee or delegate agency shall demonstrate in writing that no other individual within its community or service area is qualified and/or available for employment.

(5) *Nepotism.* (i) No grantee or delegate agency shall hire, or permit the hiring of, any individual in a position funded in whole or in part under this part if a member of that individual's immediate family is employed by the grantee in an administrative capacity or is a member of the governing board. In addition, no person may serve on a governing board if a member of that individual's immediate family is concurrently serving in an administrative capacity in

a position paid in whole or in part with ONAP grant funds. For the purpose of this part, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or other legal dependent; the term "administrative capacity" means a position having responsibilities relating to the selection, hiring, or supervising of employees.

(ii) The responsible HEW official may waive the requirement of paragraph (c)(5)(i) of this section when a grantee or delegate agency cannot adequately staff the positions without hiring more than one person from the same immediate family. Such grantees or delegate agencies shall demonstrate in writing that no other individuals within its community or service area are qualified and/or available for employment.

(6) *Labor standards.* All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting or decorating, of buildings or other facilities in connection with projects assisted under this part shall be paid wages at rates no less than those prevailing on similiar construction in the locality, as determined by the Secrtary of Labor in accordance with the Davis-Bacon Act, as amended.

(d) *Direction of research effort.* The provisions of Chapter 2-400, Review and Direction of Research Effort Under Research Grants, of the GAM shall apply to all research grants awarded under Subpart E of this part.

(e) *Delegation of program operations.* A delegation of program operations to a delegate agency shall require specific prior approval by the responsible HEW official. Such delegation shall be formalized by written agreement and shall be on file in the office of the grantee. The agreement shall specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. A budget for each delegate agency shall be submitted as part of the grantee's application.

§ 1336.55 Reporting requirements.

The grantee shall submit reports in such form and containing such information as prescribed by the Secretary and shall keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

§ 1336.56 Grantee procurements.

The provisions of Chapter 1-46, Use of Small Businesses and Minority-Owned Businesses, of the GAM shall apply to all grants awarded under this part.

§ 1336.57 Property requirements.

(a) The provisions of Part 6, Inventions and Patents (General), of this title shall apply to all grants awarded under this part.

(b) The provisions of Part 8, Inventions Resulting from Research Grants, Fellowship Awards and Contracts for Research, of this title shall apply to all grants and contracts awarded under Subpart E of this part.

§ 1336.58 Allowability of costs.

(a) The following chapters of the GAM shall apply to all grants awarded under this part.

(1) Chapter 1-44, Alteration and Renovation of Facilities with DHEW Grant Funds Appropriated for Other Than Construction;

(2) Chapter 6-10, Charges for Leased Facilities and Equipment;

(3) Chapter 6-60, Charges for Facilities Purchased or Constructed by State and Local Governments;

(4) Chapter 6-100, Establishment of Indirect Cost Rates;

(5) Chapter 6-110, Use of Special Indirect Cost Rates;

(6) Chapter 6-120, Treatment of Costs of Services Provided by Affiliated Organizations;

(7) Chapter 6-150, Reimbursement of Indirect Costs; and

(8) Chapter 6-160, Reimbursement of Indirect Costs on Training Grants.

(b) The provisions of Part 75, Informal Grant Appeals Procedures (indirect costs), of this title shall apply to all grants awarded under this part.

(c) Grantees may appeal the following adverse decisions by the responsible HEW official in accordance with Part 16, Department Grants Appeals Process, of this title:

(1) A determination that an expenditure not allowable under the grant has been charged to the grant, or that the grantee has otherwise failed to discharge its obligation for grant funds;

(2) A disapproval of a grantee's written request for permission to incur an expenditure during the term of the grant; and

(3) A determination that a grant is void; and

(4) Determinations with respect to indirect costs and certain other rates as specified in § 16.5(a)(5) of this title.

§ 1336.59 Grant closeout, suspension, and termination.

Appeals, notice and hearing. Grantees that have been suspended or terminated, or whose applications for refunding have been denied, may appeal such decisions in accordance with the provisions of Part 1303, Subparts A, C, and D, of this title except that for purposes of this part:

(a) The authority "88 Stat. 2304, (42 U.S.C. 2928h)" is eliminated and "88 Stat. 2324, (45 U.S.C. 2991h)" is substituted therefor;

(b) The citation "Section 519 of the Headstart-Follow Through Act" is eliminated and "Section 809 of the Native American Programs Act" is substituted therefor;

(c) The reference to "* * * appeals by current and prospective delegate agencies from specified adverse action by grantees * * *" in § 1303.1-1 is inapplicable;

(d) The term "OCD" is eliminated and the term "ONAP" is substituted therefor;

(e) The term "Director" means the Director of the Office of Native American Programs;

(f) The term "Headstart Program" is eliminated and the term "Native American Program" is substituted therefor;

(g) The terms "current delegate agency", "prospective delegate agency", "program account", and "substantial rejection" are eliminated;

(h) The term "Headstart-Follow Through Act" is eliminated and the term "Native American Programs Act" shall be substituted therefor;

(i) The phrase "in accordance with Part 1302 of this Chapter" in §§ 1303.3-1 and 1303.4-1 is eliminated; and

(j) The term "grantee" means the recipient of financial assistance from ONAP under the Act and this part.

Subpart H—Indian Preference Provisions

§ 1336.60 Indian preference.

(a) As provided in section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act, any contract, subcontract, grant, or subgrant pursuant to the Native American Programs Act of 1974 which is for the benefit of Indians shall require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

(b) Preference in the award of contracts for the benefit of Indians shall be given by ONAP to Indian organizations and to Indian-owned economic enterprises.

NOTE.—It is hereby certified that this proposal has been screened pursuant to Executive Order No. 11821 and does not require an Inflation Impact Evaluation.

Effective date. These regulations for the Native American Programs Act, Title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974, Pub. L. 93-644, represent, in the main, current ONAP operating policy. Therefore, they will be effective on January 19, 1977, except that current grantees will have 90 days to comply with the conflict of interest and nepotism provisions.

(Catalogue of Federal Domestic Assistance—13.612—Native American Programs.)

Dated: December 22, 1976.

STANLEY B. THOMAS, Jr.,
Assistant Secretary for Human Development.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary.

[FR Doc.77-1691 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

NONCOMMERCIAL EDUCATIONAL FACILITIES PROGRAM

1976 Communications Act Amendments

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 153]

NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES PROGRAM

Communications Act of 1934; Proposed Implementation of 1976 Amendments

Pursuant to the authority contained in Part IV of Title III of the Communications Act of 1934, as amended, 47 U.S.C. 390 et seq., the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 153 of Title 45 of the Code of Federal Regulations (1) to implement revisions of the statute enacted by the Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976 (Pub. L. 94-309) and (2) to make other changes in the program regulation. The provisions of Section 392 A of the statute, as enacted by Section 8 of the 1976 Act, authorizing telecommunications demonstration grants are being implemented through regulation in Part 63 of Title 45 of the Code of Federal Regulations. A separate Notice of Proposed Rulemaking pertaining to these grants is being published in the FEDERAL REGISTER.

The preponderance of provisions in this proposed regulation is unchanged from the existing regulation. The whole regulation has been published in proposed form so that the proposed regulation will be more understandable to the public and to permit comments on all aspects of the program regulation.

1. *Program Purpose.* The Educational Broadcasting Facilities Program assists, through matching grants, in the development of public broadcast facilities for noncommercial educational radio and television broadcasting stations capable of serving local, State, and national needs. Grants are made on a competitive basis to eligible applicants for the acquisition of transmission and other authorized apparatus necessary for initial activation and/or the upgrading of existing noncommercial broadcast stations serving the educational, cultural, and informational needs of citizens. Authorized funds may not be used for land acquisition, the construction or repair of structures housing apparatus, or for broadcast station operation. The Federal Government maintains a 10-year interest in the continued noncommercial use of facilities funded under this program.

2. *1976 Amendments.* The 1976 amendments to the Communications Act of 1934 made the following changes affecting the Educational Broadcasting Facilities Program:

(a) An expansion of the eligible applicant categories to include private, nonprofit colleges, or universities and other educational or cultural institutions affiliated with an eligible college or university. This change is reflected in §§ 153.3(b) and 153.4 of the proposed regulation;

(b) A revision of the grant criteria to recognize and reflect the disparity in the development of public radio and television station facilities. This change is reflected in Appendix B of the proposed regulation;

(c) A redefinition of the term "construction" as used to identify eligible facilities for which grant funds may be used to include particular "reception" apparatus necessary for television or radio broadcasting. This change is reflected in § 153.3(b) of the proposed regulation; and

(d) Provision for grants without a matching requirement to prior grantees under the statute where necessary to acquire logging recorders to comply with Section 399(b)(1) of the Communications Act of 1934, as amended. This change is reflected in § 153.23 of the proposed regulation.

3. *Other Proposed Changes.* Other changes, not required by the amendments, have been included in the proposed regulation. For example, the several references to "transmission apparatus" have been revised to read "eligible apparatus" or "transmission and reception apparatus;" in other sections, the wording has been revised for purposes of clarification.

Provisions in existing §§ 153.13(a) and 153.22(d) providing for a petition for reconsideration of an application which has been denied approval for funding and therefore deferred for consideration until the next fiscal year have been deleted. Whether an eligible application is granted or deferred is based upon the collective evaluations of outside field readers, outside expert advisors, ratings of program officers, and a consensus of the Educational Broadcasting Facilities Program staff. This involves a competitive decision which may not lend itself to a petition for reconsideration. On the other hand, the petition for reconsideration is retained for decisions on acceptance for filing.

Other proposed changes include modifications to the evaluation criteria in § 153.12, including the addition of a criterion on performance under any prior grant, changes in the list of eligible equipment items in Appendix A, and clarification of the non-Federal matching requirement in § 153.14(b).

4. *Proposed Incorporation of Electronic Industries Association Standards.* Appendix A-II proposes to continue in effect the following standards and specifications of the Electronic Industries Association:

(a) Electronic Industries Association Standard RS-222-B (December, 1972), "Structural Standards for Steel Antenna Towers and Supporting Structures;"

(b) Electronic Industries Association Standard RS-170 (November, 1970), "Electrical Performance Standards—Monochrome Television Studio Facilities;" and

(c) Electronic Industries Association Standard RS-240 (April 1961), "Electrical Performance Standards for Television Broadcast Transmitters."

These provisions were approved for incorporation by reference by the Director of the Federal Register March 7, 1975 and were incorporated by reference in the program regulation published March 10, 1975 (40 F.R. 11240).

In addition to these standards previously incorporated by reference, Appendix A-II proposes to incorporate:

(a) Electronic Industries Association Standard RS-411 (August 1973), "Electrical and Mechanical Characteristics of Antennas for Satellite Earth Stations"; and

(b) Electronic Industries Association Standard RS-195A (November 1966), "Electrical and Mechanical Characteristics for Microwave Relay System Antennas and Passive Reflectors."

All of these standards would serve as benchmarks for determining the extent to which the various items of transmission apparatus proposed for a project are necessary to, and capable of, achieving the objectives of the project, a criterion for evaluation of applications set forth in proposed § 153.12(b)(6).

The materials proposed for incorporation, which are published by the Electronic Industries Association, an association of the manufacturers of electronic equipment, are widely recognized and utilized within the electronics industry as the appropriate standards and specifications for electronic equipment.

Copies of these standards may be obtained from the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street, N.W., Washington, D.C. 20006.

5. *Advance Comments on Restricting Commercial Use of Programs.* The public is invited to provide comments and suggestions not only on the specific provisions contained in the proposed regulation, but also on the issue of what regulation is needed, if any, on the question of the use for other than noncommercial educational broadcasting purposes of programming developed with Federally funded equipment.

The Communications Act of 1934, as amended, and the program regulation provide that further facilities assisted under the program must be used only for noncommercial educational purposes. However, neither the statute nor the existing regulation clarifies the scope of this limitation, with specific regard to secondary use of programming produced with funded facilities. The proposed regulation also does not squarely address this issue. Given the large implications and sensitivity of this area, guidance is sought from the public at this time as to whether regulation is needed and, if so what it should be. Based on this guidance, the Office of Education will consider whether a subsequent proposed regulation should be issued relating to this problem.

Examples of issues which are being raised by grantees include whether program-funded equipment may be used to make a training video-tape recording at the standard charge rate for a commercial organization; whether tapes of local programming developed with program-

funded equipment may be made available for delayed commercial broadcast in return for an underwriting by the commercial station of the production costs; and whether tapes of local programming, e.g. (athletic events) developed with program-funded equipment may be provided to a nonprofit organization, e.g. ("booster club") to be used in conjunction with the promotional activities of the latter organization.

The primary issue appears to relate to secondary, delayed broadcast or closed circuit uses by commercial operations of programming initially developed for a noncommercial broadcast use with Federally funded equipment.

Public comments and suggestions are invited on the following and any other pertinent issues:

(a) Should limits on these uses be set forth in the regulation?

(b) If so, should the primary or initial use of the programming developed with funded facilities be distinguished from a secondary or delayed use of the program? If so, how should these uses be distinguished?

(c) With respect to any regulation concerning commercial use of programs developed with funded equipment, how should "commercial use" be defined?

(d) If explicit limits are established in the regulation, what sanctions, if any, should be established to govern violations? How should the sanctions, if any, be enforced?

6. *Public Input.* Discussions relative to the proposed changes in these regulations have been conducted with officials in the public broadcasting systems, eligible applicants, and constituent agencies interested in the development of telecommunications facilities for the distribution of health, education, and other public or social service information.

Interested persons are invited to submit written comments on the proposed regulation and on the issues raised under paragraph 5 above to Dr. John L. Cameron, Chief, Educational Broadcasting Facilities Program, Division of Educational Technology, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 3122A, ROB No. 3), Washington, D.C. 20202.

All comments must be received on or before March 7, 1977. These comments will be available for public inspection in the above office between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week.

Due to timing constraints to implement the statutory changes, no public hearings are planned on this proposed regulation. However, one or more public hearings may be scheduled prior to the submission of a subsequent regulation on the issues raised under paragraph 5 above once written comments are received.

The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance No. 13.413, Educational Broadcasting Facilities (Public Broadcasting))

Dated: January 11, 1977.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

PART 153—EDUCATIONAL BROADCASTING FACILITIES PROGRAM

Subpart A—General

Subpart B—Eligibility and Applications

Subpart C—Federal Financial Participation and Conditions of Federal Grant

Subpart D—Accountability for Federal Funds

Subpart E—Audio Logging Recorders

AUTHORITY: Pub. L. 87-447, 76 Stat. 64-67, as amended (47 U.S.C. 390-395, 397-399), unless otherwise noted.

Subpart A—General

§ 153.1 Scope.

This part governs the provision of grants by the Commissioner under authority delegated by the Secretary for the construction of educational broadcasting facilities for noncommercial purposes pursuant to the provisions of Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. 390-395; 397-399).

(47 U.S.C. 394)

§ 153.2 Other pertinent rules and regulations.

(a) Assistance provided under this part shall be subject to applicable provisions contained in Subchapter A of this Chapter (General Provisions for Office of Education programs relating to fiscal, administrative, and other matters), except to the extent that such provisions are inconsistent with, or expressly made inapplicable by, the provisions in this part.

(b) Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcasting stations are contained in the rules and regulations of the Federal Communications Commission, 47 CFR Part 1 (Practice and Procedure); Part 2 (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations); Part 17 (Construction, Marking, and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distributional Services).

(47 U.S.C. 394)

§ 153.3 Definitions.

(a) Applicable definitions set forth in § 100.1 of this chapter shall apply to the regulations of this part, except that definitions of "equipment" and "project" set forth in § 100.1 of this chapter shall not be applicable to this part.

(b) The following terms shall have the following meanings when used in this part:

Notwithstanding the definition of "Acquisition" set forth in § 100.1 of this chapter, "Acquisition" means the assumption of ownership of apparatus eligible for funding under this part (including the receipt of gifts) and necessary delivery.

"Act" means Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. 390-395, 397-399).

"Affiliated" means that the educational or cultural institution is:

(1) (i) Contractually associated, for educational purposes, with an eligible college or university; or

(ii) A legally incorporated consortium made up in whole or in part of eligible colleges or universities.

(2) Qualified to be a licensee of a noncommercial educational broadcasting station.

(Senate Report No. 94-813, Committee Amendment pg. 8)

"Broadcasting" means the dissemination of standard AM, FM, or TV electronic energy through the atmosphere intended primarily for reception by the general public.

"Closed circuit" means a system for the distribution of electronic signals by a means other than broadcasting.

"College" and "university" mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; (2) is legally authorized within such State to provide a program of education beyond the secondary level; (3) provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable for full credit toward such a degree;

and (4) is accredited by a nationally recognized accrediting agency or association; or, if not so accredited; (i) is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or (ii) is an institution whose credits are accepted, on transfer, by not less than three accredited institutions, on the same basis as if transferred from an accredited institution.

"Construction" means the planning for, acquisition, and installation of transmission and reception apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, video recording equipment, non-video recording equipment, radio subcarrier receivers, and satellite transceivers) necessary for television broadcasting or radio broadcasting, as the case may be, including apparatus which must be used primarily for open broadcast purposes, but which may incidentally be used for producing and/or transmitting closed circuit television or radio programs for public or private nonprofit agencies. However, the term does not include the construction or repair of structures to house this apparatus.

"Corporation" means the Corporation for Public Broadcasting established pursuant to Subpart B of the Act (47 U.S.C. 396).

"Educational broadcasting" means broadcasting of educational, community service, and cultural programs of benefit to the area or community served by such broadcasting.

"Facilities" means transmission and reception apparatus as defined in this section.

"Fair-market value" means the price determined by a seller who is willing to sell, and a buyer who is willing to buy, where both parties are freely negotiating in good faith. Criteria used to establish fair-market value include: (1) The price at which a like item (model, age, and condition) has changed hands; (2) in the case of a donation, the donor's purchase price or cost of manufacture, less reasonable allowance for depreciation due to use and age; (3) the catalog or other established price of a new item of the same type, less reasonable allowance for depreciation due to use and age; or (4) appraisal, satisfactory to the United States, made by one or more qualified impartial appraisers.

"FCC" means the Federal Communications Commission.

"Installation" means assembling, affixing, and taking any other steps necessary or required in order to make ready for use transmission and reception apparatus included in the project.

"Interconnection" means the use of microwave equipment, boosters, translators, repeaters, communication space satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to noncommercial educational broadcasting stations.

"Owned by the applicant" as applied to transmission and reception apparatus means that the applicant's interest in such eligible apparatus is, at least, the primary, equitable, or beneficial interest, including the obligation to own.

"Planning" means such engineering, legal, and other activities as are provided for in Appendix A to this part, but does not include the preparation of statewide or regional plans, the conduct of surveys, or the preparation and conduct of proceedings or contests before the FCC beyond the preparation, filing, and routine prosecution normally required for uncontested applications.

"Project" means the planning, acquisition, and installation of only those items of eligible apparatus, in accordance with the provisions of Appendix A to this part, related to one noncommercial educational broadcasting station which the Commissioner determines to be eligible for Federal financial assistance pursuant to provisions of this part. Where an applicant may more cost efficiently operate two or more television or radio stations which are interconnected or are served by a common staff, the project may relate to more than one television station or to more than one radio station. The project may not relate to a combination of radio and television stations.

"Reception apparatus" means control room and studio monitors, radio subcarrier receivers for stations with FCC approved Subsidiary Communications Authority (SCA), and satellite transceivers necessary for television or radio broadcasting.

"Regional plan" means an organized design for the dispersion of noncommercial educational broadcasting facilities within a geographical area not otherwise spteifically defined by either State boundaries or by the broadcast contours of an individual noncommercial educational broadcast station.

"Reserved channel" means a channel reserved by the FCC for the exclusive use of a noncommercial educational broadcast station.

"Service area" means:

(1) In the case of television, that area included within the station's predicted Grade B contour.

(2) In the cast of AM radio broadcasting, that area included within the station's predicted 500 microvolt contour, and

(3) In the case of FM radio broadcasting, that area included within the station's predicted 1 millivolt contour.

"Situated in any State" means, with respect to a noncommercial educational broadcast station and all transmission and reception apparatus resulting from a project associated with such station, situated (irrespective of physical location) in the State in which the channel occupied or applied for is assigned by the FCC, unless the Commissioner, in light of all the pertinent facts and circumstances of a particular case, specifically determines otherwise.

"State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State educational television agency" and "State educational radio agency" mean, with respect to television broadcasting and radio broadcasting, respectively:

(1) A board or commission established by State law for the purpose of promoting such broadcasting within a State;

(2) A board or commission appointed by the Governor of a State for such purpose if such appointment is not inconsistent with State law; or

(3) A State officer or agency responsible for the supervision of public elementary or secondary education or public higher education within the State which has been designated by the Governor to assume responsibility for the promotion of such broadcasting. In the case of the District of Columbia, the term "Governor" as used in this paragraph means the Mayor of the District of Columbia, and, in the case of the Trust Territory of the Pacific Islands, means the High Commissioner.

"Transmission apparatus" means telecommunications apparatus which is necessary for noncommercial educational broadcasting in accordance with provisions of Appendix A to this part.

(47 U.S.C. 392, 394, 397; 20 U.S.C. 1221)

Subpart B—Eligibility and Applications

§ 153.4 Eligible applicants.

(a) Applications for Federal financial assistance under this part for an educational television project may be submitted by:

(1) An agency or officer responsible for the supervision of public elementary or secondary education or public higher education within a State, or within a political subdivision thereof;

(2) A State educational television agency;

(3) A public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational television broadcasting and is eligible to receive a license from the FCC for a noncommercial educational television broadcasting station pursuant to the rules and regulations of the FCC in effect on April 12, 1962; or

(5) A municipality which already owns and operates a facility used only for noncommercial educational broadcasting or which will own and operate the facility, for which assistance is requested, only for noncommercial educational broadcasting.

(b) Applications for Federal financial assistance under this part for an educational radio project may be submitted by:

(1) An agency or officer responsible for the supervision of public elementary or

secondary education or public higher education within a State, or within a political subdivision thereof;

(2) A State educational radio agency;

(3) A public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational radio broadcasting and is eligible to receive a license from the FCC, or meets the requirements of paragraph (a)(4) of this section and is organized primarily to engage in or encourage such radio broadcasting and is eligible for such a license for such a radio station; or

(5) A municipality which already owns and operates a facility used only for noncommercial educational broadcasting or which will own and operate the facility, for which assistance is requested, only for noncommercial educational broadcasting.

(47 U.S.C. 392(a)(1), 394, 397.)

§ 153.3 Application for financial assistance.

(a) (1) An applicant eligible for grant assistance under this part must file an application in triplicate with the Commissioner as provided in § 100a.15 of this chapter.

(2) To reactivate any deferred application accepted for filing in a previous fiscal year, the applicant must, on or before such cutoff date as may be provided by the Commissioner pursuant to § 100a.15 of this title, submit a statement indicating that it wishes the application to be reconsidered, and amend its application.

(3) Any application or amendment thereto shall contain (i) a current project summary, (ii) information required under paragraph (c) of this section, and (iii) such other information relating to noncommercial broadcasting activities as may be deemed necessary by the Commissioner pursuant to §§ 100a.15; 100a.16, except paragraph (b) thereof; 100a.17; 100a.18; and 100a.19 of this chapter.

(4) On proposed projects for which an assessment of environmental impact is required under § 100a.185, applications submitted under Subpart A of the Act must include a copy of the environmental impact statement which is provided to the FCC as required of all broadcast applications for construction permits (§ 1.1311 of the FCC Rules and Regulations); and

(5) The applicant may submit amendments or additional information relevant to its application.

(b) Radio and television applications must be submitted separately.

(47 U.S.C. 394.)

(c) Except as provided in § 153.23 for audio logging recorder applications, no project will be approved unless the applicant has provided in the application information to establish, to the Commissioner's satisfaction, that:

(1) (i) The applicant meets the requirements of eligibility set forth in § 153.4;

(ii) The applicant's organic or corporate powers include the authority to construct and operate noncommercial educational broadcast facilities, and to receive Federal funds for such construction.

(2) In the case of a nonprofit foundation, corporation, or association eligible under § 153.4 (a)(4) or (b)(4), the applicant is so organized as to be reasonably representative of the educational, cultural, and civic groups in the community to be served, and free from such control by a single private entity (either through membership on its board of directors, source of funds, or otherwise) as would prevent or restrict it from serving overall community needs or interests;

(3) The transmission and reception apparatus to be acquired and installed under the project will be owned by the applicant;

(4) The operation of the noncommercial educational broadcast facilities will be under the control of the applicant or an agency or institution qualified under § 153.4 to be an applicant during the 10 year period of Federal interest;

(5) Sufficient funds will be available when needed:

(i) To meet the non-Federal share of the cost of the project;

(ii) To acquire all land and to construct and install all facilities, structures, and equipment, in addition to the eligible apparatus included in the project, necessary to place the proposed noncommercial educational broadcast facilities in operation; and

(iii) To operate and maintain the noncommercial educational broadcast facilities at a level which will provide adequate program services to the community on a scale consistent with the intent of the Act and the proposed project;

(6) All non-Federal financial sources available for the project have been taken into account, and the non-Federal share stated by the applicant as being available for use in the project is the maximum contribution available from such sources;

(7) The applicant holds appropriate title or lease to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, and remove such apparatus, sufficient to assure continuity of operation of the station for a period of 10 years following completion of the project;

(8) The eligible apparatus to be acquired and installed under the project will be used primarily for educational broadcasting purposes and only incidentally for educational purposes by means of closed circuit;

(9) There has been comprehensive planning for educational broadcasting facilities and services in the area the applicant proposes to serve, and the applicant has participated in such planning; and

(10) The applicant will make the most efficient use of the frequency assigned to him by the FCC.

(47 U.S.C. 392 (a), (d), and (e), 394.)

§ 153.6 FCC authorization.

(a) Any FCC authorization or authorizations required for the project and for the operation of the station with which the project is to be associated must be in the name of the applicant.

(b) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(c) For any project requiring a new authorization or authorizations from the FCC, the applicant must file with the Commissioner a copy of each FCC application and any amendments thereto.

(d) If the applicant fails to file a required FCC application or applications by any closing date established pursuant to § 100a.15 of this chapter, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Commissioner may return the application for Federal financial assistance to the applicant.

(47 U.S.C. 392(a), 394, 395.)

§ 153.7 Service to applications.

(a) Each applicant shall promptly serve a copy of his application, and each amendment thereto, for Federal financial assistance under this part upon each of the following:

(1) The Secretary, Federal Communications Commission, Washington, D.C. 20554; and

(2) The State educational television or radio agency, if any, in the State in which the channel associated with the project is assigned by the FCC, or, if the channel in question is assigned jointly to communities in different States, upon the State educational television or radio agency, if any, in each of such States.

(b) Each applicant must also give written notice of the filing of the application to the State educational television/radio agency, if any, in any State, any part of which is within the service area of the proposed broadcast station.

(47 U.S.C. 392(c), 394.)

§ 153.8 Acceptance of applications.

(a) Applications tendered for filing with the Commissioner will be given a preliminary examination. Those found to be complete and in accordance with the provisions of this part will be accepted for filing. Applications which are not complete or which are determined to be not in accordance with the provisions of this part will not be accepted for filing and will be returned to the applicant: *Provided*, That within 30 days of such return, the applicant may file with the Commissioner a petition pursuant to § 153.22. Acceptance of an application for filing will not preclude subsequent return or disapproval of the application if it is found to be not in accordance with the provisions of this part, or if the ap-

plicant fails to file any additional information or documents requested by the Commissioner.

(b) Applications proposing projects which require new authorization or authorizations from the FCC will not be accepted for filing by the Commissioner until after the FCC has accepted for filing the necessary application or applications to the FCC for such authorization or authorizations.

(c) The acceptance of applications for filing, as provided in paragraph (a), is a procedure designed for making preliminary determinations of eligibility and for providing an opportunity for public comment on applications, as described in § 153.9. Acceptance of an application for filing does not assure that application of being funded; it merely qualifies that application to compete for funding with other applications accepted for filing.

(47 U.S.C. 392(a), 394, 396.)

§ 153.9 Comments on applications.

(a) The Commissioner will publish notice in the FEDERAL REGISTER of the acceptance for filing of each application and of the receipt of each amendment which substantially changes the proposed project.

(b) Within 30 calendar days from the date on which notice is published in the FEDERAL REGISTER of the acceptance for filing of an application or an amendment to an application any State educational television and/or radio agency and any other interested person may file comments with the Commissioner supporting or opposing the application or amendment, setting forth the grounds for support or opposition, accompanied by a certification that a copy of the comments has been mailed to the applicant.

(c) Within 15 calendar days from the last day for filing such comments, the applicant may file a reply to any comments opposing its application or an amendment thereof.

(d) The time periods referred to in paragraphs (b) and (c) of this section may be extended by the Commissioner if good cause is shown.

(47 U.S.C. 394.)

§ 153.10 Processing of applications.

With respect to applications accepted for filing pursuant to § 153.8, the Commissioner may at any time establish limitations on the maximum amount of Federal grants which may be approved for projects situated in each of the several States in order to comply with the limitation in the Act on grants for any State to 8½ per centum of the appropriation for any fiscal year or if in the Commissioner's judgment such an action would assist in promoting equitable distribution of such Federal grants throughout the several States.

(47 U.S.C. 392 (b) and (d), 394.)

§ 153.11 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act and this part, the Commissioner may consult with:

(a) The FCC with respect to functions which are of interest to or affect functions of the FCC;

(b) The Corporation for Public Broadcasting with respect to functions which are of interest to or affect the functions of the Corporation; and

(c) Other agencies, organizations, and institutions administering programs which may be coordinated effectively with Federal assistance provided under this part.

(47 U.S.C. 394, 395.)

§ 153.12 Criteria for evaluation of applications.

(a) The Commissioner may set aside a portion of funds appropriated to carry out this part for projects to acquire audio logging recorders under § 153.23. Applications which request assistance only to acquire and install an audio logging recorder will be governed by § 153.23 and will not be subject to criteria in this section.

(b) In order to achieve the objectives of § 392(d) of the Act, the Commissioner, in determining whether to approve an application for a Federal grant in whole or in part and the amount of such grant, or whether to defer action on such an application, will consider, in addition to criteria set forth in § 100a.26(b) of this chapter, excepting paragraphs (3), (6), and (8) of § 100a.26(b) of this chapter, the following factors:

(1) Specific program priorities set forth in Appendix B to this part;

(2) The extent to which the applicant has assessed specific educational, informational, and cultural needs of the local community, State, or Nation for public broadcasting service, as well as the need, where applicable, for local outlets to provide first or supplemental service, extend existing service, or strengthen production and reproduction capability;

(3) The extent to which station objectives and the proposed project respond to meeting the needs described under subparagraph (2);

(4) The extent to which provision has been made for community participation by the service agencies, educational and cultural institutions, and organizations within the service area of the station, and the extent to which intended audiences are using or will use broadcast services;

(5) Equitable geographical distribution of funds throughout the States;

(6) The extent to which the various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and are making the most efficient use of the frequency assignment;

(7) The cost-effectiveness of Federal funds in relationship to objectives of the project, and the extent to which non-Federal funds will be used to meet the total cost of the project;

(8) The standards by which the noncommercial educational broadcasting station will operate, including the number of hours of broadcast proposed, the size of the professional staff to be employed, and the adequacy of facilities, power, and program service;

(9) The adequacy and continuity of financial resources for long-term operational support, which assure the station's continual service to the communities within the coverage area; and the availability of necessary funds for capital expenditures;

(10) The provisions of any relevant statewide or regional noncommercial educational broadcast plans;

(11) The recommendations, if any, of the State educational television or radio agency; and

(12) Past performance by the applicant in carrying out any prior grants to it under this part in accordance with the applicable terms and conditions, *provided* That if the Commissioner decides to deny an application based upon this criterion, the Commissioner will do so only after providing the applicant with notice and an opportunity to rebut the basis for the decision.

(c) Applications under this part will not be approved by the Commissioner if they request funding to:

(1) Establish or improve a station with very low transmission power, except where the project is to convert a low transmission power station to a high transmission power station, or where low transmission power can be justified in terms of meeting the project's purposes;

(2) Provide program services which are limited in nature, scope, and hours of broadcast; or

(3) Acquire transmission or reception apparatus which is to be used primarily for student training purposes.

(47 U.S.C. 392 (a), (c), (d), and (e); 394 397(2).)

§ 153.13 Action on applications.

(a) After consideration of the application accepted for filing under § 153.8, any comments and replies filed by interested parties, and any other relevant information, the Commissioner will take one of the following actions provided for in § 100a.27(a) of this chapter: select the application for funding; return the application to the applicant; or defer the application for reconsideration pursuant to § 153.5, provided that when the Commissioner returns or defers the application, the Commissioner will notify the applicant of the grounds and reasons therefor.

(b) Upon the Commissioner's approval or deferral, in whole or in part, of an application, the Commissioner will, in accordance with the provisions of § 100a.27 (c) of this chapter, inform:

(1) The applicant,

(2) Each State educational television or radio agency, if any, in any State, any part of which lies within the service area of the applicant's broadcast station,

(3) The FCC, and

(4) The Corporation.

(c) If the Commissioner awards a grant, the grant award document shall include grant terms and conditions set forth in Appendix A to Subchapter A of this Chapter, excepting terms and conditions 2, 3(b) and (c), 5(e), 10, 11, 14,

20(a), 23, and 24 of this Appendix, and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program supported under this part.

(47 U.S.C. 392(c), 394.)

Subpart C—Federal Financial Participation and Conditions of Federal Grant

§ 153.14 Amount of Federal grant.

(a) In accordance with §§ 100a.50 and 100a.51 of this chapter, and subject to the provisions of paragraphs (b) and (c) of this section, the Federal grant award shall be an amount determined by the Commissioner and set forth in the grant award document, which, except as provided in § 153.23, shall not exceed 75 percent of the amount determined to be the estimated, total, reasonable, and necessary cost of the project. This cost shall include the following:

(1) The purchase price of transmission and reception apparatus (or fair market value of donated eligible apparatus) to be acquired in the project (in accordance with the provisions of Appendix A to this part); and

(2) Other costs related to the planning, acquisition, and installation of transmission and reception appartus in the project (in accordance with provisions of Appendix A to this part).

(b) No part of the grantee's matching share of the eligible project costs may be met with Federal funds (including funds supplied by the Corporation for Public Broadcasting), except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(c) Project costs shall not include the value of:

(1) Eligible apparatus owned by the applicant prior to the effective date of acceptance by the Commissioner for filing of the application, and services related thereto. The effective date of acceptance for filing shall be specified in the FEDERAL REGISTER notice provided for under § 153.9(a) and shall be no earlier than the date on which the application was first received by the Commissioner in substantially approvable form;

(2) Transmission and reception to the extent acquired or installed by donation from the United States or with Federal funds provided from sources other than under this part; and

(3) Transmission and reception apparatus previously acquired or installed by a person other than the applicant by donation from the United States, or with Federal funds pursuant to this part or any other provisions of law.

(d) If the actual costs incurred in completing the project are less than the estimated costs which constituted the basis for the Commissioner's determination of the amount of the Federal grant award, the amount of the final grant shall be that amount of the actual total project cost remaining after deducting the amount of local matching funds used as a basis for the grant award time of project approval (including the fair-market value of gifts, if any) provided that in no case shall the final Federal grant exceed the Federal grant award.

(e) Notwithstanding § 100a.51 of this chapter, grant awards under this part will not be revised by the Commissioner if the effect of the revision is to increase the amount of the grant award.

(47 U.S.C. 392(e), 394; 20 U.S.C. 1221c(b)(1), 1221c(b)(3))

§ 153.15 Payment of Federal grant.

(a) No payments under any award will be made unless and until the recipient complies with all relevant requirements imposed by this part, and until confirmation has been received from the FCC that any necessary existing authorization is current and valid and any necessary new authorization has been granted and such grant has become final.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, and notwithstanding §§ 100a.60–100a.64 of this chapter, payment will be made to the grantee in such installments consistent with construction progress, as the Commissioner may determine. The Commissioner may require as a precondition to any such payments such site visits by representatives of the Department as he may deem appropriate to determine construction progress.

(47 U.S.C. 392(e), 394)

§ 153.16 Conditions of Federal grant.

(a)(1) Federal grants under this part shall not be subject to §§ 100a.156, 100a.159, 100a.161, 100a.172, 100a.173, 100a.260, 100a.270, and 100a.276 of this chapter.

(2) As applied to grants under this part, the terms "construction" and "facilities" used in Subpart K of Part 100a of this chapter shall have the applicable definitions set forth in §153.3.

(3) As applied to grants under this part, "program income", as the term is used in Subpart M of Part 100a, of this chapter, shall not include income to the grantee generated by its television or radio programming.

(b) Each Federal grant under this part shall be subject to the conditions that the grantee shall:

(1) Continue to meet the requirements set forth in § 153.5(c);

(2) Use the Federal grant funds for the purposes for which the Federal grant was made and for the item of apparatus and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Commissioner;

(3) Promptly complete the project and place the noncommercial educational broadcast facilities into operation;

(4) Maintain, during construction of the project and for 10 years after completion of the project, protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to transmission and reception apparatus acquired and installed under the project;

(5) Permit inspections by the Commissioner or a duly authorized representative of the Commissioner of the transmission and reception apparatus acquired with Federal financial assistance at the time of completion of the project and at any other reasonable time within 10 years after completion of the project.

(47 U.S.C. 392(d)(1), 392(f), 394)

Subpart D—Accountability for Federal Funds

§ 153.17 Retention of property records.

(a) Each grantee shall keep intact and accessible fiscal records in accordance with the provisions of § 100a.477 of this chapter, provided that final dispositon of nonexpendable personal property purchased under this part for purposes of § 100a.477(b)(2) of this chapter shall be deemed to have occurred 10 years after completion of the project.

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

(47 U.S.C. 392(f), 393, 394, 20 U.S.C. 1232c(a))

§ 153.18 Final certification.

Upon completion of the project, the grantee shall:

(a) Certify that the noncommercial educational broadcasting station has, where required, FCC authorization to broadcast following acquisition and installation of project equipment; and

(f) Certify that the acquisition and installation of the project equipment has been completed in accordance with the project as approved by the Commissioner.

(47 U.S.C. 392(f), 394, 20 U.S.C. 1232c(b)(3); 20 U.S.C. 1221e(b)(1))

§ 153.19 Annual status reports.

In addition to reports which may be required to be filed under § 100a.406 and § 100a.433 of this chapter, the grantee must file with the Commissioner during the 10-year period commencing with the date of completion of a project, an annual status on or before each April 1 following completion of the project, certifying that:

(a) The grantee continues to be an eligible agency, officer, institution, foundation, corporation, association, or municipality described in § 153.4;

(b) There has been no change in ownership or use of the project apparatus during the reporting period, or describing any change during such period;

(c) Project apparatus, owned by the grantee as of that date, is being used for noncommercial educational broadcasting purposes; and

(d) The requirements of § 153.16(b)(4) continue to be met.

(47 U.S.C. 392(f), 394)

§ 153.20 Termination.

In addition to grounds for termination for cause specified in § 100a.495(a) of this chapter, the following circumstances shall constitute grounds for termination under § 100a.495 of this chapter:

(a) Final action by the FCC revoking a construction permit required for a project, denying an application for extension or a required modification of the construction permit, denying an application for a construction permit to replace the required construction permit, or denying an application for a license to cover the construction permit; or

(b) Forfeiture of a construction permit required for a project for which a grant has been approved.

(47 U.S.C. 394; 20 U.S.C. 1221c(b)(1))

§ 153.21 Change in eligibility or use.

(a) Notwithstanding §§ 100a.215 (b), (c), and (d) and 100a.216 of this chapter, if assistance under this part is terminated pursuant to § 153.20 or if within 10 years after completion of any project with respect to which a Federal grant has been made pursuant to this part:

(1) The grantee ceases to be an agency, officer, institution, foundation, corporation, association, or municipality described in § 153.4 as being eligible to receive a Federal grant; or

(2) Any of the eligible apparatus included in the project ceases to be used primarily for noncommercial educational broadcasting, either permanently or for an indefinite period of time, or such apparatus is used or disposed of for other than noncommercial educational broadcasting (other than as a trade-in for acquisition of other eligible apparatus), then the grantee shall (except as provided in paragraph (b of this section) pay to the United States the amount bearing the same ratio to the then fair-market value of such apparatus, as the amount of the Federal participation bore to the cost of acquisition or installation of such apparatus.

(b) Where a grantee proposes to cease using any of the eligible apparatus included in the project primarily for noncommercial educational broadcasting (as set forth in paragraph (a)(2) of this section), that grantee may file a petition with the Commissioner requesting release from the obligation to make repayment to the United States, and setting forth with particularity the grounds and reasons for the request. These petitions will be granted by the Commissioner only for good cause, and only if the proposed cessation of use for noncommercial educational broadcasting has not already taken place, unless the petitioner demonstrates to the satisfaction of the Commissioner that the cessation was due to causes not under the control of the petitioner. If the Commissioner denies the petition, the grantee may within 30 calendar days from the date of receipt of notice of the denial, file a petition for reconsideration pursuant to § 153.22.

(c) In any case where the Commissioner has reason to believe that any change in eligibility or use of transmission and reception apparatus (as described in paragraph (a) of this section), has already taken place, the grantee will be notified promptly of the grounds and reasons that repayment to the United States is required. The grantee may, within 30 calendar days from the date of receipt of this notification, file with the Commissioner a petition for reconsideration pursuant to § 153.22.

(d) If the Commissioner determines that the grantee is obligated to make a repayment to the United States, the Commissioner will seek to reach agreement as to the amount and method of repayment. If an agreement cannot be reached, the Commissioner will cause an action to be brought in the U.S. District Court for the district in which the noncommercial educational broadcasting facilities are situated to determine the amount of the repayment, and will take the necessary action to secure repayment.

(47 U.S.C. 392(f), 394)

§ 153.22 Petition for reconsideration.

(a) A petition for reconsideration as provided in §§ 153.8 and 153.21 must be filed with the Commissioner within 30 calendar days, must state with particularity in what respect the Commissioner's action is claimed to be unjust, unwarranted, or erroneous, must specifically indicate the relief sought, and must be accompanied by a written statement on the question presented. The petition for reconsideration may be accompanied by a request for a hearing, in which event the petitioner must state with particularity the grounds and reasons for a hearing. If the Commissioner designates the matter for hearing, the Commissioner will specify the questions in issue, designate the hearing officer, and specify the procedures and rules relating to the conduct of the hearing. If the Commissioner does not find that sufficient grounds and reasons exist for granting the relief sought or for providing a requested hearing, the Commissioner will notify the petitioner, giving reasons for the refusal.

(b) In the event of a hearing the hearing officer shall make a written report to the Commissioner based upon the hearing and containing a recommended decision on the issues. A copy of the report shall be mailed to the petitioner, and the petitioner shall have 15 calendar days from the date of receipt (or such additional time as may be given for good cause) to file with the Commissioner a written statement setting forth with particularity alleged errors in the report and discussing any policy and legal issues presented.

(c) If no written statement is made by the petitioner or by a State educational television or radio agency on the report of the hearing officer and if the Commissioner does not decide to review it, the Commissioner shall review the administrative decision without further proceedings. If a written statement is made on the report of the hearing officer or if the Commissioner decides to review it, the Commissioner shall review the record of the proceedings and issue a decision based on it, setting forth the grounds and reasons.

(d) The Commissioner will notify each State education television or radio agency, if any, in any State, any part of which lies within the service area of the petitioner's broadcasting station, of the filing of a petition for reconsideration under this section and each agency will be given an opportunity to comment upon the petition.

(e) Interested persons other than a State educational television or radio agency referred to in paragraph (d) of this section may comment in writing upon any petition for reconsideration filed under this section and for good cause shown, and may be given an opportunity to participate in a hearing held pursuant to this section to an extent the Commissioner determines appropriate.

(47 U.S.C. 394)

Subpart E—Audio Logging Recorders

§ 153.23 Audio logging recorders.

(a) The Commissioner may make a grant to any licensee of a noncommercial educational broadcast station to acquire no more than one audio logging recorder per station to permit the licensee to comply with Section 399(b) of the Act.

(b)(1) An applicant may receive up to the full amount of the cost of acquiring and installing each audio logging recorder if the applicant:

(i) Previously received financial assistance under Part IV of Title III of the Communications Act of 1934, as amended, and

(ii) Establishes, to the Commissioner's satisfaction, that:

(A) applicant has no funds from non-Federal sources available to apply toward the costs of acquiring and installing the audio logging recorder; and

(B) An audio logging recorder is not already available to the applicant and is needed to comply with Section 399(b) of the Act.

(2) If the applicant does not meet the requirements in subparagraph (1), it may receive assistance to acquire and install an audio logging recorder subject to the non-Federal matching requirements in § 153.14.

(c) An application which requests assistance only for one or more audio logging recorders must meet the requirements in § 153.5 (a) and (c) (1), (2), (3), and (4) and if it seeks assistance beyond the Federal 75% matching share in § 153.14, must:

(1) Provide information meeting the requirements in paragraph (b) (1) of this Section; and

(2) Be a separate application from any other application for a facilities grant under this part.

(d) If funds are not adequate to fund all eligible applications which seek assistance for audio logging recorders, such application swill be competitively evaluated on the basis of the applicant's financial need for Federal assistance and

its need for the audio logging recorder to comply with Section 399(b) of the Act. The evalution criteria in § 153.12 and the priorities in Appendix B will not apply to these applications.

(e) Audio logging recorders acquired under this section must meet all applicable Standards in Appendix A.

(47 U.S.C. 392, 394, 397(2) 399 (b))

APPENDIX A—EDUCATIONAL RADIO AND TELEVISION TRANSMISSION APPARATUS AND RELATED COSTS LIST AND MINIMUM EQUIPMENT PERFORMANCE STANDARDS

This appendix sets forth requirements and standards related to eligible and ineligible costs list for assistance under this part, including:

(a) List of transmission and receiving apparatus and related costs, including installation, considered to be eligible for grant participation and a list of items and costs which are specifically ineligible for grant participation. In general, only items of the transmission systems from the lens of the camera or the housing of the microphone to the radiating element of the antenna are eligible. Neither list is intended to be all-inclusive. It is recognized that both technological changes and/or specific circumstances related to individual applications may warrant amendments to the lists or consideration of specific justification for the eligibility and inclusion of unlisted items in certain projects; and

(b) Standards for determining acceptable minimum performance requirements which will meet the capability of achievement criterion contained in § 153.12(b)(6). Information included in this Appendix is applicable to both radio and television projects.

I. ELIGIBLE AND INELIGIBLE PROJECT COSTS

(A) *Transmission Appraratus Eligible for Federal Matching Grants.*

(1) *Antenna systems:*

(a) Tower (guyed or self-supporting) and tower construction including test borings;

(b) Antenna and erection;

(c) Transmission line system or waveguides;

(d) Tower painting and lighting, including lighting controls (new installations only);

(e) Tower footings, guy anchors, and guy wires;

(f) Gas pressure equipment for transmission line; and

(g) De-icing equipment and controls.

(2) *Transmitter;*

(a) Transmitter, including modulator, power supply, one set of spare tubes, and subcarrier generators;

(b) Diplexers, filters, etc., as required;

(c) Crystals, including one set of spares;

(d) Dummy load and wattmeter to measure transmitter power output;

(e) Transmitter and operational console, picture and calibrated wave form monitors, where necessary;

(f) Frequency and modulation monitoring apparatus in compliance with FCC requirements;

(g) Input items required, including stabilizing amplifier;

(h) Mounting racks;

(i) Cables and hardware for installation; and

(j) Test equipment required by good engineering practice.

(3) *Translators:*

(a) Apparatus of the type listed under "Antenna system" and "Transmitter" necessary for the operation of translators; and

(b) Special receiver required for supplying programs to the translator.

(4) *Microwave apparatus (studio-transmitter links, interconnecting microwave relays, and mobile microwave units):*

(a) Transmitter, complete;

(b) Receiver, complete;

(c) Waveguide or transmission line;

(d) Control apparatus as required;

(e) Antennas and protective domes;

(f) Antenna supports and mountings;

(g) Reflectors;

(h) Waveguide switches;

(i) Ferrite isolator and circulator;

(j) Sound diplexing apparatus;

(k) Mounting racks; and

(l) Auxiliary radio communications apparatus to install, maintain, and operate the total broadcast facility.

(5) *Recording and receiving apparatus:*

(a) Broadcast quality video and audio tape recorders and playback machines including video cassette and audio cartridge machines;

(b) Time base correctors;

(c) Time code generator, reader, synchronizer assemblies;

(d) Recorders using other techniques if capable of maintaining standards of good engineering practice;

(e) Related monitoring apparatus, including calibrated oscilloscopes;

(f) Accessories required, including electronic editors and spare recording heads as required by good engineering practice;

(g) Logging recorders; and

(h) FM subcarrier receivers.

(6) *Studio production equipment (including that intended for remote or mobile program origination):*

(a) Cameras, with control units, picture monitors, and wave form monitors;

(b) Telecine systems;

(c) Camera lenses, zoom lenses;

(d) Camera pedestals, tripods, friction heads, and cradles (professional models);

(e) Camera cables, plugs, and connectors;

(f) Sync generator, including a spare and switchover mechanism;

(g) Video switcher and console, picture, and calibrated wave form monitors, and electronic effects generator;

(h) Calibrated wave form monitor and picture monitor with provision to display pulse cross for checking sync pulses;

(i) Utility monitors;

(j) Power supplies, regulated;

(k) Broadcast-type control consoles, amplifiers, VU meter, etc.;

(l) Microphones, low impedance, high quality;

(m) Microphone booms;

(n) Broadcast quality turntables with accessories required;

(o) Broadcast quality audio tape recorders with accessories required;

(p) Equipment racks, patch panels, plugs, cords, loudspeakers; and

(q) Test equipment required by good engineering practice.

(7) *Satellite equipment:*

(a) Transceivers;

(b) Transmitter;

(c) Parabolic antenna and hardware; and

(d) Amplifiers, demodulators, and related apparatus.

(8) *Other interconnection equipment:*

Interconnection equipment is eligible to the extent reasonable and necessary, as determined by the Commissioner, for the reception and utilization of program material made available via interconnection systems.

(9) *Other apparatus.*

Automation apparatus, character generators, quadrophonic equipment, sound improvement systems, spare or back up systems or equipment may be included when the necessity for this apparatus in the proposed system can be specifically justified and is consistent with standards of good broadcast engineering practice.

(47 U.S.C. 392(a) and (d), 394)

(B) *Installation Costs Eligible for Federal Matching Grants.*

Labor and materials necessary for the initial installation of project apparatus, including direct supervision but not including indirect or overhead costs.

(47 U.S.C. 392(a) and (d), 394)

(C) *Planning Costs Eligible for Federal Matching Grants.*

Engineering, legal, and other activities which are performed by appropriately licensed employees or consultants and which are directly related to the planning of the project, the preparation and filing of appropriate applications to HEW and FCC, and the installation of apparatus; but not including indirect or overhead costs. Approvability of such items is subject to final determination by the Commissioner. Such services may include:

(1) Project planning;

(2) Equipment planning;

(3) Engineering planning;

(4) Hardware and engineering aspects of preparing and filing the HEW application for grant and related FCC applications for construction permits;

(5) Preparation of specifications;

(6) Evaluation of bids;

(7) Supervision of installation;

(8) Inspection upon completion;

(9) Proof of performance;

(10) Legal services, to the extent reasonably required for the preparation, filing, and routine prosecution of uncontested applications; and

(11) Other services related to site location and planning, frequency or channel search, and feasibility or structural studies conducted prior to the filing of an application.

(47 U.S.C. 392 (a) and (d), 394)

(D) *Items Ineligible for Federal Matching Grants.*

(1) Land and land improvements for studio and/or transmitter building, tower, and the like;

(2) Structures, including any reinforcement or modification to house or support any transmission apparatus or any other radio or television equipment or facilities, including structural analysis studies;

(3) Maintenance equipment such as hand and power tools and maintenance services;

(4) Vehicles, including those in which mobile equipment is mounted or carried;

(5) Broadcast receiving equipment (except as required for station personnel to monitor transmitted programs or for rebroadcast purposes, SCA subcarrier receivers, or satellite transceivers);

(6) Manual film or tape editing equipment;

(7) Studio lighting and control equipment;

(8) Air conditioning for control or equipment rooms, studios, transmitter, and mobile units, except that the cost to provide ventilation of project apparatus as is required by good engineering practice is an eligible installation cost;

(9) Reels (film or tape);

(10) Office intercom equipment;

(11) Primary power supply, regulators, and associated equipment;

(12) Furniture, fixtures, studio clocks, and the like;

(13 Office equipment, printing and duplicating supplies;

(14) Scenery and props;

(15) Production devices such as prompting systems, background screen projection systems, wind generators, and the like;

(16) Storage cabinets;

(17) Cleaning equipment;

(18) Film;
(19) Recording tape;
(20) Art supplies and equipment;
(21) 16mm cameras, sound synchronization systems, and film processors;
(22) Expendable items, including tubes normally considered spares except for the transmitters; and
(23) Staff time necessary for planning and preparation of applications, except as permitted under Section I(C) of this Appendix.

(47 U.S.C. 392(a) and (d), 394)

II. STANDARDS FOR PROJECT APPARATUS

Project apparatus must comply with the specifications and performance requirements contained in the FCC's rules and regulations cited in § 153.2. The FCC requirements primarily relate to transmitters, translators, and antenna systems. The following performance standards, which are in addition to FCC requirements, shall serve as benchmarks for determining minimum system capacities for purposes of § 153.12(b)(6). Electronic Industries Association (EIA) standards specified in the following paragraphs of this Appendix are hereby incorporated in this part by reference, as approved by the Director of the FEDERAL REGISTER. Copies of these standards may be obtained from the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street, NW, Washington, D.C. 20006.

(A) *Broadcast Transmitting Apparatus (Antenna System, Transmitter System, and Related Items).*

(1) In addition to current pertinent FCC requirements, EIA Standard RS-222-B (December 1972) "Structural Standards for Steel Antenna Towers and Supporting Structures," established by the EIA should apply to the tower and antenna system of broadcast stations. EIA Standard RS-411 (August 1973), "Electrical and Mechanical Characteristics of Antennas for Satellite Earth Stations," should apply to earth station antennas with high geothermal for satellite communications. EIA Standard RS-195-A (November 1966), "Electrical and Mechanical Characteristics for Microwave Relay System Antennas and Passive Reflectors", should apply to microwave relay systems operating above 890 Mc.

(2) Where an antenna system is to be added to an existing tower, a structural analysis should be performed to assure that the added facility will not overload the tower.

(3) Selection of transmission lines or waveguide should be dictated by good engineering practice in keeping with high efficiency and minimal attenuation.

(4) Selection of transmitter and the component visual and aural transmitters should be dictated by the good engineering practice specified in EIA Standard RS-240 (April, 1961), "Electrical Performance Standards for Television Broadcast Transmitters."

(B) *Studio Equipment.*

(1) Studio equipment and mobile equipment should comply with specifications contained in EIA Standard RS-170 (November 1957) "Electrical Performance Standards—Monochrome Television Studio Facilities," to the extent those specifications are applicable to color equipment.

(c) Special Purchase Equipment.

Audio logging recorders and FM subcarrier channel receivers should comply with the following minimum performance standards:

(1) A program logging recorder should be a four-track program tape recorder designed for continuous, long duration audio recording which records and plays in both directions to equal performance specifications. Adjustable level and equalization for each head, bias and calibration adjustments; signal to noise ratio minimum 43dB, one percent maximum wow and flutter, frequency response is within 3dB from 200 to 2700 Hz. Total unattended time—204 hours 48 minutes at $1\frac{5}{32}$ i.p.s. using triple play tape; 307 hours 12 minutes at $\frac{5}{16}$ i.p.s. using triple play tape. Straight-line threading, automatic tape lifters, interlocked controls, editing and cueing components, remote control, solenoid actuated capstan control, solenoid actuated brakes, automatic reversing; tape counter, playback timing accuracy within one percent at all speeds. Standard $10\frac{1}{2}$ inch NAB reels and hubs, or EIA 7-inch plastic reels; tape $\frac{1}{4}$ inch wide, $\frac{1}{2}$ mil to $1\frac{1}{2}$ mil thick, with tape speeds of $1\frac{5}{16}$, $1\frac{5}{32}$, and $\frac{5}{16}$ i.p.s.

(2) An FM/SCA subcarrier channel receiver should be a crystal controlled, self-contained receiver factory tuned to a specific frequency in the 88-108 MHz range, AC or DC powered. It should have a combined on/off power switch and volume control; main/SCA program select switch; headphone jack, telescopic whip antenna, $34\frac{1}{2}$ inch fully extended; screw terminals on rear for optional external 75 ohm antenna for "fringe areas" or a master antenna; front mounted permanent magnet high efficiency dynamic speaker with an all solid state design, wide dynamic range RF amplifier; an audio output of 1.0 watt rms with less than 1.5 percent total harmonic distortion; frequency response balanced for voice and music; sensitivity for SCA channel: 3.5 uV for 30 dB quieting, for Main channel: 1.0 uV for 30 dB quieting; crosstalk: main to subchannel at least 45 dB below a 400 Hz reference tone; hum and noise 50 dB or greater below full modulation of subcarrier; auxiliary audio output (with phone jack) with level at 100 millivolts, rms at 400 Hz; and power cord.

APPENDIX B—PROJECT PRIORITIES

I. Assignment of priorities to applications. Applications which have been filed in accordance with § 153.5 and accepted by the Commissioner under procedures established in § 153.8 will be assigned one or more of the following priorities. If an application consists of components which fall into more than one priority category, the applicant must be prepared to accept, for the entire project, a grant award for whatever portion, if any, the Commissioner determines can be accommodated within the funding limitations of a fiscal year. With regard to projects funded in part, components not funded must be resubmitted as new applications in accordance with § 153.5 and accepted for filing as provided in § 153.8.

Proportions of the available funds to be warded in various priority categories will be determined by the Commissioner to achieve a fair distribution of funds over the improved quality of services to the public as measured against the funding criteria and with the pattern of needs reflected in applications under consideration for a given fiscal year. As the percentage of the U.S. population brought within the coverage range of at least one noncommercial broadcast station is enlarged, it is expected that the implementation of these priorities will result in the expenditure of an increasing share of appropriated funds to extending the facilities of existing stations to provide for essential initial and basic capabilities required to (1) serve fully their local communities; (2) develop a national system of effective noncommercial stations; and (3) provide for production capability justified by national, regional, statewide, and local programming commitments.

As used in this Appendix, the terms "public radio station" or "public television station" refer to noncommercial educational broadcasting stations other than those subject to disapproval under the terms of § 153.12(c).

II. *Project Priorities for Television. Priority.*

A. Projects to provide stations with their first state-of-the-art production and/or reproduction capability. This refers to color capability of a videotape recorder, film chains, studio color cameras, switchers, and related apparatus where this need can be justified by proven production and/or reproduction requirements to meet identified community needs.

B. Projects to provide local stations with state-of-the-art broadcast apparatus which, while used primarily for educational broadcasting, will be used also for the production and distribution of programs designed for non-broadcast educational uses which are in conjunction with but incidental to the station's broadcast service. Such a project will enable the station's facilities to be adapted to serve the greatest number of persons, to serve them in as many areas of the total station's service area as possible, and to broaden the educational uses of those facilities.

C. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend station coverage where the in-State population to be served increases substantially, or which are necessary to provide improved signal (including transmission colorization) for larger population groupings, and provide comparability with commercial station coverage.

D. Projects to acquire apparatus for the interconnection of stations in a State network (or a particular geographical region across State lines) where applicant ownership of interconnection facilities can be fully justified as advantageous in comparison with leasing of interconnection services. Such apparatus may include satellite transceivers and related earth station equipment.

Priority II. A. Projects to establish new public television stations in areas currently without such a station with appropriate local or State license, to serve populations of 500,000 or more. Proposals to establish the first public television station in a State.

B. Projects to establish new public television stations in areas currently without such a station under appropriate local or State license, to serve populations between 250,000 and 500,000.

C. Projects to provide production capability for stations providing program services beyond their local requirements for distribution over national, regional, and statewide interconnection. (To qualify in this category, a project justification must be verified by production commitment from recognized national, regional, or State network program clients supporting such a production need the applicant must demonstrate the inability of presently owned apparatus to meet production requirements, and the appartus requested may not exceed the reasonable requirements of the verified production commitments.)

D. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend or improve station coverage where the increase in population does not justify inclusion in Category IC.

Priority III. A. Projects to establish new public television stations in areas currently without such a station under appropriate local or State license where population to be served is less than 250,000.

B. Projects to augment production and reproduction capabilities of local stations beyond the basic or initial capability. These proposals will require documentation of local live production requirements in excess of existing capability.

Priority IV. A. Projects to establish second (or more) public television stations in areas

already served by such a station under appropriate local or State license.

B. Projects to equip auxiliary studios at other than the main studio.

(47 U.S.C. 392(d), 394; 45 CFR 153.12)

III. *Project Priorities for Radio. Priority I.* A. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing commercial stations, or the expansion of existing low power stations) to serve populations of 500,000 or more. Projects to establish the first public radio station in a State.

B. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing stations, or the expansion of existing low power stations) to serve populations between 250,000 and 500,000.

C. Projects to provide public radio stations with first state-of-the-art production capability, where this need can be justified by proven production requirements to meet identified community needs. This refers to the provision of sterio and SCA capability for FM facilities and up-dating of AM facilities, the provision of tape recorders, SCA side band generator, modulator and receivers, audio consoles, turntables, microphones, logging recorders, remote amplifiers, and other related apparatus.

D. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend area coverage of an existing public radio station where the in-State population to be served increases substantially, or which are necessary to provide improved signal (including the improved audio capability, by the addition of SCA, or stereo) for larger population groupings and provide comparability with commercial station coverage.

Priority II. A. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing commercial stations, or the expansion of existing low power stations) to serve populations of less than 250,000.

B. Projects to establish, in major population centers where one or more public radio stations already provide service, full service public radio stations which will provide a broadened program service designed for special interest, minority, and educational uses.

C. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend or improve station coverage where the increase in population served does not justify inclusion in Category ID.

D. Projects to augment production and reproduction capabilities of local stations beyond the basic or initial capability. Such proposals will require documentation of local live production requirements in excess of existing capability.

Priority III. A. Projects to provide production capability for stations providing program services beyond their local requirements for distribution over national, regional, and statewide interconnection. (To qualify in this category, a project justification must be verified by production commitment from recognized national, regional, or State network program clients supporting such production need; the applicant must demonstrate the inability of presently owned apparatus to meet production requirements; and the apparatus requested may not exceed the reasonable requirements of the verified production commitments.)

B. Projects to equip studios auxiliary to the main studio.

C. Projects to acquire apparatus for the interconnection of public radio stations in a State network (or a particular geographical region across State lines) where applicant ownership of interconnection facilities can be fully justified as advantageous in comparison with leasing of interconnection services.

(47 U.S.C. 392(d), 394; 45 CFR 153.12)

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federal register

WEDNESDAY, JANUARY 19, 1977

PART V

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. CI; February 23, 1977

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. CI; February 23, 1977

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343) and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of Bids.* Sealed bids will be received by the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, either in person or by mail, for the oil and gas lease sale on tracts described in paragraph 12 herein, and located in the Outer Continental Shelf adjacent to the State of Alaska. Bids sent by mail should be addressed to P.O. Box 1159, Anchorage, Alaska 99510, and will be received until 9:30 a.m., a.s.t., February 23, 1977. Bids delivered in person to the Manager will be received at his office at 800 A Street, Anchorage, Alaska, until 4:00 p.m., a.s.t., February 22, 1977, or at the Grand Ballroom, Anchorage Westward Hotel, 3rd and E Streets, Anchorage, Alaska 99501, between the hours of 8:00 a.m., a.s.t., and 9:30 a.m., a.s.t., February 23, 1977. Bids received by the Manager later than the times and dates specified above will be returned to the bidders unopened. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., a.s.t., February 23, 1977. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in the FEDERAL REGISTER, 41 FR 43747, October 4, 1976.

3. *Rent, Royalty and Bonus.* Bids submitted on all tracts to be offered at this sale must be on a cash bonus bid basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental or minimum royalty of $8.00 per hectare[1] or fraction thereof.

4. *Method of Bidding.* A separate bid in a sealed envelope must be submitted for each tract and be labeled "Sealed Bid for Oil and Gas Lease (insert number of tract); not to be opened until 10:00 a.m., a.s.t., February 23, 1977." A suggested bid format appears in paragraph 16. Bidders are advised that tract numbers are assigned solely for administrative purposes during this sale and are not the same as block numbers found on OCS Official Protraction Diagrams. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash, or by cashier's check, bank draft, certified check, or money order, payable to the order of the Bureau of Land Management. No bid for less than a full tract described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in a percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR 3302. The form for this statement appears in paragraph 16. Other documents required of bidders are listed under 43 CFR 3302.4. Bidders are warned against violation of 18 USC 1860, prohibiting unlawful combination or intimidation of bidders.

5. *Equal Opportunity.* Each bidder must have submitted by 9:30 a.m., a.s.t., February 23, 1977, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140–8 (November 1973), and the Affirmative Action Representation Form, Form 1140–7 (December 1971).

6. *Bid Opening.* Bids will be opened on February 23, 1977, beginning at 10:00 a.m., a.s.t., in the Grand Ballroom, Anchorage Westward Hotel, at the address stated in paragraph 2. The opening of bids is for the sole purpose of publicly announcing and recording bids received; no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight February 23, 1977, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payments.* Any cash, checks, drafts or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tracts from this sale prior to the issuance of a written acceptance of a bid for that tract.

9. *Acceptance or Rejection of Bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(A) The bidder has complied with all requirements of this notice and applicable regulations;

(B) His bid is the highest valid cash bonus bid; and

(C) The amount of the bid has been determined to be adequate by the United States.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $62.00 or more per hectare.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the United States will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

11. *Protraction Diagrams.* The tracts offered for lease described in paragraph 12, may be located on the following Outer Continental Shelf Official Protraction Diagrams which may be purchased for $2.00 each from the Manager, Alaska Outer Continental Shelf Office at the address stated in paragraph 2:

(1) NO 5–1	Iliamna.
(2) NO 5–2	Seldovia.
(3) NO 5–3	Mt. Katmai.
(4) NO 5–4	Afognak.

12. *Tract Descriptions.* The tracts offered for bid are as follows:

NOTE.—There are gaps in the sequence of the numbers of the tracts listed. Some of the tracts identified in the final environmental impact statement are not included in this notice.

[1] One Hectare equals 2.471 acres.

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-1	144	All	2304.00
CI-2	187	All	2304.00
CI-3	188	All	2304.00
CI-4	230	All	2304.00
CI-5	231	All	2304.00
CI-6	268	All	2304.00
CI-7	269	All	2304.00
CI-8	274	All	2304.00
CI-9	275	All	2304.00
CI-10	312	All	2304.00
CI-11	313	All	2304.00
CI-12	314	All	2304.00
CI-13	315	All	2304.00
CI-14	318	All	2304.00
CI-15	319	All	2304.00
CI-16	354	All	2304.00
CI-17	355	All	2304.00
CI-18	356	All	2304.00
CI-19	357	All	2304.00
CI-20	358	All	2304.00
CI-21	359	All	2304.00
CI-22	362	All	2304.00
CI-23	363	All	2304.00
CI-24	397	All	2304,00
CI-25	398	All	2304.00
CI-26	399	All	2304.00
CI-27	400	All	2304.00
CI-28	401	All	2304.00
CI-29	402	All	2304.00
CI-30	403	All	2304.00
CI-33	441	All	2304.00
CI-34	442	All	2304.00
CI-35	443	All	2304.00
CI-36	444	All	2304.00
CI-37	445	All	2304.00
CI-38	446	All	2304.00
CI-39	447	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2 (Cont'd)
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-42	485	All	2304.00
CI-43	486	All	2304.00
CI-44	487	All	2304.00
CI-45	488	All	2304.00
CI-46	489	All	2304.00
CI-47	490	All	2304.00
CI-48	491	All	2304.00
CI-51	529	All	2304.00
CI-52	530	All	2304.00
CI-53	531	All	2304.00
CI-54	532	All	2304.00
CI-55	533	All	2304.00
CI-56	534	All	2304.00
CI-57	535	All	2304.00
CI-60	573	All	2304.00
CI-61	574	All	2304.00
CI-62	575	All	2304.00
CI-63	576	All	2304.00
CI-64	577	All	2304.00
CI-65	578	All	2304.00
CI-66	579	All	2304.00
CI-69	617	All	2304.00
CI-70	618	All	2304.00
CI-71	619	All	2304.00
CI-72	620	All	2304.00
CI-73	621	All	2304.00
CI-74	622	All	2304.00
CI-75	623	All	2304.00
CI-78	661	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2 (Cont'd)
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-79	662	All	2304.00
CI-80	663	All	2304.00
CI-81	664	All	2304.00
CI-82	665	All	2304.00
CI-83	666	All	2304.00
CI-84	667	All	2304.00
CI-87	705	All	2304.00
CI-88	706	All	2304.00
CI-89	707	All	2304.00
CI-90	708	All	2304.00
CI-91	709	All	2304.00
CI-92	710	All	2304.00
CI-93	711	All	2304.00
CI-100	753	All	2304.00
CI-101	754	All	2304.00
CI-102	755	All	2304.00
CI-108	797	All	2304.00
CI-109	798	All	2304.00
CI-110	799	All	2304.00
CI-114	841	All	2304.00
CI-115	842	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2 (Cont'd)
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-120	885	All	2304.00
CI-121	886	All	2304.00
CI-122	925	All	2304.00
CI-123	926	All	2304.00
CI-124	927	All	2304.00
CI-125	928	All	2304.00
CI-126	929	All	2304.00
CI-127	969	All	2304.00
CI-128	970	All	2304.00
CI-129	971	All	2304.00
CI-130	972	All	2304.00
CI-131	1013	All	2304.00
CI-132	1014	All	2304.00
CI-133	1015	All	2304.00
CI-134	1016	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, ILIAMNA NO 5-1
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-135	484	All	2304.00
CI-136	528	All	2304.00
CI-137	571	All	2304.00
CI-138	572	All	2304.00
CI-139	615	All	2304.00
CI-140	616	All	2304.00
CI-141	659	All	2304.00
CI-142	660	All	2304.00
CI-143	703	All	2304.00
CI-144	704	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, MT. KATMAI NO 5-3
(Approved July 3, 1975)

Tract No.	Block	Description	Hectares
CI-145	132	All	2304.00

13. *Lease Terms and Stipulations.* Leases issued as a result of this sale will be on Form 3300-1 (December 1976) available from the Manager, Alaska Outer Continental Shelf Office, at the address stated in paragraph 2. Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale:

STIPULATION NO. 1

If the Supervisor, having reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease including, but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct geophysical surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such geophysical surveys shall be examined by the Supervisor to determine if anomalies are present which suggest the existence of a cultural resource that may be adversely affected by any lease operation.

If such anomalies exist the lessee shall: (1) locate the site of such operation so as not to adversely affect the anomaly identified; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine archaeological surveyor using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the anomaly identified or that the potential cultural resource suggested by the occurrence of the anomaly does not exist.

A report of the investigation prepared by the marine archaeological surveyor shall be submitted to the Supervisor for his review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its disposition.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its disposition.

STIPULATION NO. 2

If the Supervisor, having reason to believe that an area of special biological significance may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development of lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct block wide or site specific surveys, as approved by the Supervisor, to determine if the block or site contains special biological communities that may be adversely affected by any lease operation. If such surveys indicate the existence of such communities, the lessee shall: (1) establish, to the satisfaction of the Supervisor, that such operation will not have a significant adverse effect on the community identified; or (2) modify his operating procedure to minimize the impact of the operation on the biological community. Such modification could include relocation of the drilling site.

All data obtained in the course of any biological surveys conducted pursuant to the provisions hereof shall be submitted in a report to the Supervisor prior to or with any application by the lessee for drilling or other activity with a copy to the Manager, Alaska OCS Office. Should the Supervisor determine that the existence of a biological resource which may be adversely affected by such operation exists, the lessee shall take no action that may result in any adverse effect on such resource until the Supervisor has given the lessee directions with respect to the resource.

The lessee agrees that, if any communities of special biological significance should be discovered during the conduct of any operations on the leased area, he shall report such findings to the Supervisor, and make every reasonable effort to preserve and protect the resource from damage until the Supervisor has given the lessee directions with respect to the resource.

STIPULATION NO. 3

To assist coastal communities in planning for the impact of activities during exploration under this lease, the lessee shall submit, for review and comment, to the Governor of the State of Alaska and to local jurisdictions that will be directly affected by those activities a "Notice of Support Activity for the Exploration Program" (called hereafter in this stipulation "Notice"). When the lessee has doubts as to which local jurisdictions shall be informed, he will be guided by the advice of the Supervisor. The lessee shall not be required to include privileged information in the Notice. A lessee shall have discretion whether to submit a separate Notice in connection with each Exploration Plan submitted under 30 CFR 250.34 on a lease or to submit a Notice in connection with two or more Plans on one or more leases. The Notice shall not be subject to approval or disapproval by the Supervisor.

A copy of the Notice shall be submitted to the Supervisor simultaneously with, or prior to, the Exploration Plan with a certification that it has been submitted to the Governor of the State of Alaska and to the local jurisdictions that will be directly affected by activities under the Plan. If the lessee shall submit a Notice in connection with two or more Exploration Plans, he shall not be required to submit additional copies of the Notice, but may instead refer to that previous submission. Before the Supervisor approves or disapproves the Exploration Plan, he shall allow at least 30 days from the date of receipt of the certification for the Governor and local jurisdictions to submit comments on the Notice to him as well as to the lessee. Subsequent to the submission of the certification, significant changes in estimated support activities will be forwarded by the lessee, as an amendment to the Notice, to the Supervisor, the Governor, and to the local jurisdictions that will be directly affected by the program.

OCS OFFICIAL PROTRACTION DIAGRAM, AFOGNAK NO 5-4
(Approved July 3, 1975)

Tract No.	Block	Description	Hectares
CI-146	1	All	2304.00
CI-147	2	All	2304.00
CI-148	3	All	2304.00
CI-149	4	All	2304.00
CI-150	45	All	2304.00
CI-151	46	All	2304.00
CI-152	89	All	2304.00

The Notice shall include with respect to the lessee and his contractors:

(1) A description of the facilities, including site and size, that may be constructed, leased, rented or otherwise procured in affected areas;

(2) The location and amount of acreage required within the State for facilities, including the need for storage of various supplies;

(3) An estimate of the frequency of boat and aircraft departures and arrivals; on a monthly basis, and the onshore location of terminals;

(4) The approximate number of persons who are expected to be engaged in onshore support activities and transportation, the approximate number of local personnel who are expected to be employed for or in support of the exploration program, and the approximate total number of persons who are expected to be employed for the exploration program;

(5) Estimates of the approximate addition to the population of the local jurisdiction because of the exploration program and the approximate number of persons needing housing and other facilities;

(6) An estimate of any significant quantity of major supplies and equipment to be procured within the State; and

(7) The onshore addresses of the lessee's operation offices and of the contractors' offices involved with the exploratory operation.

STIPULATION NO. 4

Barging of production will be permitted only in case of emergency or under special circumstances as determined by the Supervisor. Continuous barging will not be permitted. The U.S. reserves the right to determine the method of transportation of production.

STIPULATION NO. 5

Each pipeline right-of-way application will be reviewed on a case-by-case basis by the Manager, Alaska OCS Office. All pipelines shall be designed, installed, and maintained to minimize environmental impacts and to be compatible with trawling operations and other uses. All pipelines installed in water depths less than than 200 feet (61 meters) shall be buried. Alternate methods of pipeline installation may be approved where unusual conditions dictate such an alternate choice.

STIPULATION NO. 6

To reduce the impacts of human disturbance (i.e., aircraft and vessel traffic) at major seabird colonies and marine mammal rookeries, boats will be routed to stay at least ½-mile from all colonies and rookeries during May 1 to September 15. In addition, during this period, fixed-wing and rotary aircraft must maintain a ½-mile horizontal and 2,500 foot vertical distance from seabird colonies and marine mammal rookeries. The list and geographic locations of major seabird colonies and marine mammal rookeries will be available from the Manager, Alaska OCS Office. The location of any major colonies are rookeries discovered in the future will be submitted to the Manager, Alaska OCS Office, for addition to the present list. Human safety will at all times take precedence over the provisions of this stipulation.

14. *Information for Lessees.* Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Department of the Army permits are required for construction of any structures in or over any navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) and for artificial islands and fixed structures located on the Outer Continental Shelf in accordance with Section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333(f)). Permit applications and inquiries should be directed to the District Engineer, Anchorage District, U.S. Army Corps of Engineers.

Scare techniques will be used to protect bird resources during significant oil pollution incidents. A description of the scare techniques and devices shall be included in the operators oil spill contingency plan required by OCS Order No. 7.

Any use of explosives shall require prior approval by the Supervisor.

Tracts CI-100, CI-108 through CI-110, CI-114, CI-115, CI-120 through CI-134, and CI-145 through CI-152, are designated as areas of special biological significance. The effect of exploratory drilling on aquatic biota in such areas will be monitored. Based upon findings of moni-

toring operations, alternative disposal methods of drilling muds and formation waters may be required pursuant to OCS Order No. 7.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult the Department of Transportation for regulations applicable to offshore pipelines under its jurisdiction.

15. *OCS Orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Alaska OCS Orders, issued effective March 1, 1976, and any other applicable OCS Order, as it becomes effective. Proposed OCS Operating Order No. 15 will be revised to provide for notification to local jurisdictions of the availability of "Notice of Support Activity for Field Development" for review and comment.

16. *Suggested Bid Form.* It is suggested that bidders submit their bids to the Manager, Alaska Outer Continental Shelf Office in the following form:

OIL AND GAS BID

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.	Total amount bid	Amount per hectare	Amount of cash bonus submitted with bid

Proportionate Interest of Company(s) Submitting Bid

Qualification File No. YK_____%

_____
Company

_____
Address

_____
Signature
(Please type signer's name under signature)

17. *Required Joint Bidder's Statement.* In the case of joint bids, each joint bidder must execute the following statement before a notary public and submit it with his bid.

Joint Bidder's Statement

I hereby certify that_____
(entity submitting bid)
is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

_____
Signature
(Please type signer's name under signature)

Sworn to and subscribed before me this _____ day of _____ 19___.

_____
_____
Notary Public
State of_____
(County) of_____

CURT BERKLUND,
Director,
Bureau of Land Management.

Approved: January 13, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-1632 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART VI

FEDERAL ELECTION COMMISSION

■

PROPOSED SUNSHINE ACT REGULATIONS

PRIVACY ACT OF 1974

ADVISORY OPINION REQUESTS

Systems of Records

FEDERAL ELECTION COMMISSION

[11 CFR Parts 2 and 3]

[Notice 1977–5]

SUNSHINE ACT REGULATIONS.

Notice of Proposed Rulemaking

Pursuant to Pub. L. 94–409 as enacted in 5 U.S.C. 552b, the "Government in the Sunshine Act," the Federal Election Commission publishes for public comment its proposed regulations implementing 5 U.S.C. 552b, as required by 2 U.S.C. 552b(g).

Written comments on these regulations should be sent to: Regulation Section, Office of the General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463. Comments should be submitted on or before February 18, 1977.

VERNON W. THOMSON,
Chairman for the
Federal Election Commission.

JANUARY 13, 1977.

It is proposed to add 11 CFR Parts 2 and 3 as follows:

PART 2—SCOPE AND DEFINITIONS

Sec.
2.1 Scope.
2.2 Commission.
2.3 Commissioner or member.
2.4 Person.
2.5 Meeting.

AUTHORITY: Sec. 3(a), Pub. L. 94–409.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. § 552b(g) which was added by section 3(a) of Pub. L. 94–409, the Government in the Sunshine Act and specifically implement subsections (b) through (f) of that Act.

§ 2.2 Commission.

"Commission" means the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463.

§ 2.3 Commissioner or member.

"Commissioner" or "member" means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437(a) and § 101(e) of Pub. L. 94–283 and shall also include ex-officio non-voting Commissioners or members, the Secretary of the Senate and the Clerk of the House, but does not include a proxy or other designated representative of a Commissioner.

§ 2.4 Person.

"Person" includes an individual, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

§ 2.5 Meeting.

"Meeting" means the deliberation, including those conducted through conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, of at least four voting members of the Commission in collegii where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under §§ 3.2 and 3.3 of this chapter.

PART 3—MEETINGS

Sec.
3.1 General rules.
3.2 Exempted meetings.
3.3 Procedure for closing meetings.
3.4 Transcripts, recordings and minutes.
3.5 Announcement of meetings and schedule changes.
3.6 Annual report.

AUTHORITY: Sec. 3(a), Pub. L. 94–409.

§ 3.1 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this part.

(b) Except as provided in § 3.2, every portion of every Commission meeting shall be open to public observation.

§ 3.2 Exempted meetings.

(a) (1) As required by 2 U.S.C. 437g (a)(3)(B), all Commission meetings, or parts of meetings, pertaining to the notification or investigation of a complaint that the Act has been violated, shall be closed to the public, and the requirements of §§ 3.4 and 3.5 shall not apply.

(2) For the purposes of this section, "notification or investigation of a complaint" means, *inter alia*, determinations pursuant to 2 U.S.C. 427g(a), the issuance of supoenas, discussion of civil actions or proceedings, formal agency adjudication pursuant to § 5 of the Administrative Procedure Act, discussion of referrals to the Department of Justice, or any other matter related to the Commission's enforcement activity.

(b) The requirement of open meetings shall not apply where the Commission finds, pursuant to § 3.3, that an open meeting is more likely than not to result in the disclosure of:

(1) Matters that relate solely to the sions, rules and practices, except Commission's internal personnel decisions, rules and practices, except that exemption does not extend to Commission discussions regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(3) Information of a personal nature where discolsure would constitute a clearly unwarranted invasion of personal privacy;

(4) Financial information obtained from any person and which is privileged or confidential;

(5) Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

§ 3.3 Procedure for closing meetings.

(a) No meeting or portion of a meeting may be closed pursuant to § 3.2 to public observation unless a majority of the Commissioners (not including the ex-officio non-voting Commissioners) vote to take such action.

(b) A Commission vote to close a meeting shall be taken upon the motion of any member, other than the ex-officio non-voting members. A single vote may be taken with respect to a series of meetings, all or a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(c) Although no meeting need be held to consider closing a meeting each vote taken pursuant to subsection (b) shall be recorded by the Secretary to the Commission. No proxies, written or otherwise, shall be counted.

(d) (1) If the Commission votes to close a meeting, or any portion or portions thereof, to the public, then within 24 hours it shall make publicly available a written statement with respect to such vote. The written statement shall contain:

(i) A citation to the section of these regulations pursuant to which the meeting was closed to public observation together with an explanation as to why the specific discussion comes within the cited exemption;

(ii) The vote of each Commissioner on the motion to close the meeting;

(iii) A list of the names of all persons, other than Commissioners or Commission staff, expected to attend the closed meeting and their affiliations. For purposes of this paragraph (d)(iii) of this section affiliation means title or position, and employer and, in the case of a representative, the name of the person represented, and

(iv) Shall be signed by the Commissioner who presided at the meeting where the vote to close the meeting was taken.

(2) The original copy of the statement shall be maintained in the Commission's Public Records Office.

(e) Each time that the Commission votes, pursuant to paragraph (b) of this section, to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may properly be closed to public observation. The certification shall state each relevant exemptive provision. The original copy of such certification shall be attached to, and preserved with, the statement required by paragraph (d) of this section.

§ 3.4 Transcripts, recordings and minutes.

(a) The Secretary to the Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting,

or portion of a meeting, closed to public observation. An electronic recording of a meeting shall be coded, or other records shall be kept, in a manner adequate to identify each speaker.

(b) In the case of a meeting, or portion of a meeting, closed to public observation because it concerns matters set out in paragraph (a) of § 3.2, the Commission may, in lieu of a complete transcript or electronic recording, maintain a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed at the meeting on any item by any person attending and shall reflect the vote of each member on any document considered in connection with any action taken at the meeting.

(c) The Commission shall, within a reasonable time not to exceed 30 days, place on file in the Public Records Office of the Commission, a copy of the transcript, recording, or minutes, as appropriate, which reflects matters discussed, or information developed, at the meeting which were not within the scope of the exemption provision of § 3.2 pursuant to which the meeting was closed.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of meeting, closed to the public, shall be maintained by the Secretary to the Commission in the confidential files of the Commission, for a period of two years subsequent to such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or portion of the meeting was held, whichever occurs later.

§ 3.5 Announcement of meetings and schedule changes.

(a) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the FEDERAL REGISTER at least seven days prior to the day on which the meeting is to be called to order. Such announcement must contain:

(1) The date of the meeting;

(2) The place of the meeting;

(3) The subject matter of the meeting;

(4) Whether the meeting is to be open or closed to the public; and

(5) The name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication required by paragraph (a) of this section, shall be made in the case of every meeting to be held by the Commission unless a majority of the Commissioners decide by recorded vote that the situation requires that a particular meeting be called at an earlier date, in which case the Commission shall make, at the earliest practicable time, the public announcement required by paragraph (a) of this section and a concurrent submission to the FEDERAL REGISTER.

(c) The time or place of a meeting may be changed following the public announcement required by paragraphs (a) and (b) of this section, only if the Commission publicly announces such change at the earliest practicable time.

(d) The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraphs (a) and (b) of this section only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and

(2) The Commission publicly announces, and concurrently submits for publication in the FEDERAL REGISTER, the change and the vote of each member upon such change at the earliest practicable time.

§ 3.6 Annual report.

The Commission shall report annually to Congress regarding its compliance with such requirements including:

(1) A tabulation of the total number of Commission meetings open to the public

(2) The total number of such meetings closed to the public

(3) The reasons for closing such meetings

(4) A description of any litigation brought against the Commission under the Act, including any costs assessed against the Commisssion in such litigation (whether or not paid by the Commission).

[FR Doc.77-1686 Filed 1-18-77;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1977-2]

PRIVACY ACT OF 1974

Proposed New Notice of System of Records

On December 14, 1976 (41 FR 54719), the Federal Election Commission published in Notice 1976-68, FEC 8 which was to be effective 30 days after publication provided the request for a waiver of the new system notice was granted by the Office of Management and Budget or unless the Commission published a notice to the contrary. The Office of Management and Budget granted such a waiver on December 29, 1976.

THOMAS E. HARRIS,
Vice Chairman for the Federal Election Commission.

JANUARY 13, 1977.

[FR Doc. 77-1683 Filed 1-18-77;8:45 am]

[Notice 1977-4, AOR 1976-116 and AOR 1977-1]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437*f*(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Requests 1976-116 and 1977-1 have been made public at the Commission. Copies of AOR 1976-116 and AOR 1977-1 were made available on January 11, 1977. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-116: May the campaign committee of a Member of Congress expend funds to finance the writing of a book and screenplay about the life of a Member?—Requested by Representative Mario Biaggi, U.S. House of Representatives, Washington, D.C.

AOR 1977-1: Whether an automobile purchased by the principal campaign committee of a Member of Congress to provide campaign-related transportation may be used by the Member or his staff for official duties with expenses for such use being paid by the committee.—Requested by P. Robert Matthews on behalf of the Lent for Congress Committee, Baldwin, New York.

VERNON W. THOMSON,
Chairman for the Federal Election Commission.

JANUARY 13, 1977.

[FR Doc.77-1685 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART VII

FEDERAL ENERGY ADMINISTRATION

■

STANDARDS OF CONDUCT

Additional Requirements Concerning Reporting of Employee Financial Interests

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 203—STANDARDS OF CONDUCT

Additional Requirements Concerning Reporting of Employee Financial Interests

On April 2, 1976, a proposal to amend 10 CFR 203 (Standards of Conduct Regulations) was published in the FEDERAL REGISTER (41 FR 14261). The amendments were issued pursuant to section 522 of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, to implement the reporting requirements contained therein with respect to financial interests of FEA personnel performing functions and duties under the EPCA.

The final regulations hereby promulgated, which embrace several modifications of the proposed regulations discussed below, require that any employee of FEA not specifically listed as exempt in Appendix E annually file a "Statement of Known Financial Interests" (published here as Appendix F) beginning on February 1, 1977. These statements are subject to examination and are available to the public for copying upon request. Nonexempt employees must list any known financial interest in: (1) any person engaged in the business of exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at retail level) coal, natural gas, or petroleum products; and (2) property from which coal, natural gas, or crude oil is commercially produced, held by the officer or employee during the preceding calendar year. The regulations define the terms "known financial interest" and "policymaking position" and establish methods by which the filing requirement will be monitored and enforced, including appropriate provision for the filing of the statements and their review by the Administrator of FEA. Furthermore, the regulations provide for the annual review of the list of exempted positions along with a method by which an employee may immediately appeal the requirement that he file the "Statement of Known Financial Interests".

All comments received by FEA pertaining to its proposed regulations were given full and careful consideration. One comment pointed out that in amending § 203.27 of the Standards of Conduct Regulations the existing subsection (c), enumerating specific types of remedial action available to the Administrator in his review of statements of financial interest, was deleted. The deletion of this subsection was the inadvertent result of proposed renumbering, and the final regulations published here reflect its reincorporation.

With respect to the list of exempted positions in Appendix E, the General Accounting Office suggested that a general exemption of all positions below the GS-13 level in FEA's non-regulatory offices was deficient in its failure to reflect an affirmative decision that each position exempted was non-regulatory and non-policymaking in nature. Hence, FEA has defined the term "policymaking position" in § 203.26a(b) and, after canvassing the appropriate FEA offices for a reassessment of the exempted positions contained in the proposed regulations, has revised the list of exempted positions contained in Appendix E in accordance with this definition. Thus, while all FEA personnel in positions classified as GS-13 and above continued to be covered by the reporting requirement, a number of other positions not required to report under the proposed regulations are now covered.

The criteria establishing which mutual funds or investment clubs must be reported under § 203.26a(b) have been clarified. A mutual fund or investment club specializing in or maintaining 20% or more of its assets in energy businesses or properties will be considered to have substantial energy holdings and must be reported.

Technical changes in the proposed amendments were made which have no substantive effect on the content of the regulations. The proposed amendments omitted reference to the "Statement of Known Financial Interests" in § 203.6 (c) (2) for review by the Regional Counsel. The regulations as published correct this technical error.

Appendix E has been amended to reflect organizational changes in FEA. The Office of Policy and Analysis has been eliminated and in its place the Office of Policy and Program Evaluation and the Office of Energy Information and Analysis were created. A new Office of Strategic Petroleum Reserve has been established and the title of the Office of Management and Administration has been shortened to the Office of Management.

It was also felt that additional clarity was needed in the "Statement of Known Financial Interests" form required to be filed for public disclosure by the covered FEA officers and employees. Amendments have, therefore, been made to the form and its accompanying instruction sheet (Appendix F of the final regulations). These revisions in no way change the substantive reporting requirements of FEA officers and employees. They are intended merely to clarify for the employee the types of financial interests in energy businesses and energy properties which must be reported and reflect alterations made to the proposed regulations, as incorporated in the final regulations published below.

Finally, minor grammatical, punctuation, and organizational changes were made to the regulations for clarity and to align them with the substantive changes enumerated above and to correct obvious clerical errors in the proposed regulations. No substantive changes were made other than those listed above.

(Federal Energy Administration Act of 1974, Pub. L. 93-275, E.O. 11790, 39 FR 23185; Energy Policy and Conservation Act, Pub. L. 94-163; E.O. 11222, 30 FR 6469, 3 CFR, 1964-1965 Comp., 306; 5 CFR 735.104.)

In consideration of the foregoing, Part 203 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., January 14, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. The table of contents of Part 203 is amended by adding the titles of the following new section and appendixes in the appropriate order:

Sec.

* * * * *

203.26a Additional reporting requirements concerning financial interests: Statement of Known Financial Interests.

* * * * *

Appendix E
Appendix F

2. Section 203.1 is amended by revising paragraph (b) and inserting after the fourth sentence of paragraph (c) new language to read as follows:

§ 203.1 Purpose and Scope.

* * * * *

(b) This part is intended to foster the foregoing concepts. It is issued in compliance with the requirements of Executive Order 11222 of May 8, 1965, and is based upon the provisions of that order, the regulations of the Civil Service Commission issued thereunder (part 735 of 5 CFR, Chapter I), the requirements of section 522 of the Energy Policy and Conservation Act (Pub. L. 94-163), and the other statutes cited elsewhere in this part.

(c) * * *

Additionally this part implements section 522 of the Energy Policy and Conservation Act. * * *

3. Section 203.3 is amended by revising the introductory clause thereof to read as follows:

§ 203.3 Definitions.

Except as otherwise provided in § 203.26a of this part—

* * * * *

4. Section 203.6 is amended by revising paragraph (b)(3) and paragraph (c)(2) thereof to read, respectively, as follows:

§ 203.6 Interpretation and advisory service; counseling.

* * * * *

(b) * * *

* * * * *

(3) Receive information on and resolve or forward to the Administrator of FEA for consideration conflicts or apparent conflicts which appear in the Statements of Employment and Financial Interests and the Statements of Known Financial Interests submitted under this part, which are not resolved at a lower level.

(c) * * *

* * * * *

(2) Receive information on and attempt to resolve, or refer to the Counselor for FEA, conflicts of interest or appearances of conflicts of interest in

Statements of Employment and Financial Interests and Statements of Known Financial Interests submitted by employees and special Government employees to whom they are required to give advice and guidance, which are not resolved at lower levels.

* * * * *

5. Section 203.8 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 203.8 Conflicts of Interest.

* * * * *

(c) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in Chapter 11 of the Criminal Code, 18 U.S.C. 201–224, and section 522 of the Energy Policy and Conservation Act (Pub. L. 94–163).

* * *

§ 203.25 [Amended]

6. Section 203.25(e) is amended by deleting "June 30" and inserting in lieu thereof "December 31."

7. A new section 203.26a is added, to read as follows:

§ 203.26a Additional reporting requirements concerning financial interests: Statement of Known Financial Interests.

(a) This section applies to all covered employees, as defined in paragraph (b) of this section. This section imposes certain reporting requirements, as required by section 522 of the Energy Policy and Conservation Act, on all officers and employees of the FEA performing functions or duties pursuant to the Energy Policy and Conservation Act (including any function or duty delegated by the President pursuant to Executive Order) except those officers and employees who occupy positions which the Administrator determines are of a non-regulatory and non-policymaking nature. Appendix E of this part sets forth those positions which the Administrator has determined, by applying thereto the included definition of "policymaking positions", to involve the performance of duties or functions under the Energy Policy and Conservation Act, but which are of a non-regulatory and non-policymaking nature, and exempt from the requirements of this section. All officers and employees holding positions within FEA not listed as exempt in Appendix E, at any time during the applicable calendar year, are considered covered employees and are subject to the requirements of this section.

(b) For purposes of this section:

"Officer or employee" means an officer or employee of FEA and includes a special Government employee as defined in § 203.3(d) of this part.

"Policymaking position" means a position in which the incumbent has the authority, whether intermediate or final, exercisable either alone or with others, to supervise, guide, change, or otherwise affect the direction of any program of FEA specifically authorized or extended by EPCA. A position in which the incumbent makes only those administrative decisions which are necessary for the implementation of FEA policy developed pursuant to FEA programs, specifically authorized or extended by EPCA, is not considered a "policymaking position".

"Covered employee" means an officer or employee holding a position with FEA at any time during the applicable calendar year which is not listed as exempt in Appendix E of this part.

"Person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

"Engaged in energy business" means the active conduct of one or more of the businesses of commercially exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at the retail level) coal, natural gas, or petroleum products. A parent business, including a holding company, shall be considered to be engaged in energy business for purposes of this section if one or more of its subsidiaries actively conducts one or more of the businesses enumerated in the preceding sentence. A mutual fund or investment club shall be considered to be engaged in energy business for purposes of this section if a substantial portion of its investments are in one or more of the businesses enumerated in this section. Mutual funds or investment clubs specializing in or maintaining 20% or more of their assets in energy businesses or properties are considered to have substantial energy holdings and must be reported.

"Energy property" means lands, including submerged lands, or any mineral rights thereto, from which coal, natural gas, or crude oil is commercially produced. A financial interest in a company which holds real property or interests in real property from which coal, natural gas, or crude oil is commercially produced shall be considered an interest in energy property.

"Petroleum products" means crude oil, residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

"Known financial interest" means any pecuniary interest of an officer or employee, of which such officer or employee has knowledge or of which he can reasonably be expected to have knowledge: (1) in any person engaged in energy business or (2) in energy property. Such interest includes the right to occupy or use energy property, or to take any benefits therefrom based upon a lease or rental agreement, and includes any oral or written contract by the officer or employee or his agent with a person who has such right, which contract results in or is expected to result in benefit to the officer or employee, which benefit is or would be derived from such person's right. With respect to officers or employees who are beneficiaries of blind trusts, only pecuniary interests that are initially committed to the blind trust, not any interests thereafter acquired, shall be deemed to be known financial interests.

"Blind trust" means a trust instrument whereby: (1) The officer or employee requires the trustee to sell, exchange, or otherwise dispose of any pecuniary interest initially committed to the trust in any person engaged in energy business or in energy property; and

(2) The officer or employee has no knowledge or control over future financial interests acquired by the trustee.

(c) Beginning on February 1, 1977, a Statement of Known Financial Interests (Appendix F to this part) shall be filed annually with the supervisor to whom the employee reports by each covered employee. The term "covered employee" is defined in paragraph (b) of this section. Such statement shall set forth each known financial interest, as defined in paragraph (b) of this section, held by such employee during the part of the preceding calendar year that the employee held a position not listed as exempt in Appendix E. If a covered employee has held no known financial interest, as defined in paragraph (b) of this section, during the preceding calendar year, he shall file with the supervisor to whom he reports a Statement of Known Financial Interests marked to indicate that no such interest was held during such period.

(d) The FEA supervisor to whom a covered employee reports shall obtain the Statement of Known Financial Interests from him and forward such statement together with the employee's Statement of Employment and Financial Interests, if required by §§ 203.25 or 203.26, to the Office of Executive Programs for transmittal to the Counselor or his designee for review, or in the case of a regional employee, to the Regional Counselor for his review.

(e) A covered employee, if he believes that the position he holds should be listed as exempt in Appendix E because his position:

(1) Does not involve performance of functions or duties under the Energy Policy and Conservation Act; or

(2) Does involve performance of such functions, but is of a non-regulatory and non-policymaking nature, may file a written request for reconsideration of the classification of his position with the Counselor or designee. The Counselor or designee shall consider such request within a reasonable time and, after approval by the Administrator, shall inform the employee of his conclusion in writing. The counselor or designee on his own initiative, or in response to requests for reconsideration, may from time to time with the approval of the Administrator amend Appendix E to add or delete positions from such Appendix or change the filing requirement for any position listed therein. Any such amendments shall immediately be made available to the affected employees or to appropriate office heads for transmission to affected employees, and to the Regional Counselors. Such amendments shall be available for public examination

and copying in the Office of Executive Programs and in the Office of the Regional Counselor.

(f) The counselor or designee will annually review positions within FEA to determine if revisions to Appendix E are appropriate. Any amendments to Appendix E shall be published annually, following completion of such review, as a notice in the FEDERAL REGISTER.

(g) Statements of Known Financial Interests shall be available for public examination and copying upon request in the Office of Executive Programs or, in the case of regional employees, in the office of the appropriate Regional Counselor.

(h) Statements of Known Financial Interests are required of officers and employees in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law, order or regulation. The submission of such statement by an officer or employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order or regulation.

(i) The Office of Executive Programs shall be responsible for the collection and retention of the statements of officers and employees of the National Office. Regional Counselors shall collect and retain the statements of regional employees.

8. Section 203.27 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (d) to read as follows:

§ 203.27 Reviewing statements of financial interests.

(a) The counselor or his designee in cooperation with the employee's supervisor shall review the statements required by §§ 203.25, 203.26, and 203.26a to determine whether there exists a conflict, appearance of conflict or potential conflict, between the interests of the officer or employee or Special Government employee concerned and the performance of his service for the Government. In addition, the Counselor or designee shall review the Confidential Statements and the Statements of Known Financial Interests of regional employees: when there exists an appearance of conflict or a potential conflict of interest; when a suspected violation by a regional employee is reported; or when a Confidential Statement or Statement of Known Financial Interests or recommendation for remedial action is referred to him by a Regional Counselor for review. If the Counselor or designee determines that such a conflict or appearance of conflict exists, he shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statement to the Administrator of FEA with his recommendation for such action. The Administrator, after consideration of the employee's explanation and such investigation as he deems appropriate, shall direct appropriate remedial action if he deems it necessary.

(b) The Regional Counselor shall review the statements of regional employees required by §§ 203.25, 203.26 and 203.26a to determine whether there exists a conflict, appearance of conflict or potential conflict between the interests of the officer or employee or Special Government employee concerned and the performance of his service for the Government. If the Regional Counselor determines that such a conflict or appearance of conflict exists, he shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statements to the Counselor or his designee with his recommendation for such action.

* * * * *

(d) If in reviewing the statements required by §§ 203.25, 203.26 and 203.26a, the Counselor or his designee or the Regional Counselor determines that known financial interests as defined in section 203.26a were incorrectly excluded from the statement required by § 203.26a, he shall inform the officer or employee or Special Government employee filing the statement of the need to amend the statement to include such interests. If such reviewer determines that interests reported pursuant to § 203.26a were unnecessarily included because they do not constitute known financial interests as defined in § 203.26a, the reviewer shall inform the employee that he may submit an amended statement from which such interests are deleted. The Counselor or his designee or the Regional Counselor shall provide advice to employees, prior to the filing of statements required by section 203.26a, concerning what interests constitute known financial interests as defined by that section.

APPENDIX E

1. The Administrator has determined that officers and employees as defined in § 203.26a (b) holding positions classified as GS–13 and above must file a Statement of Known Financial Interests. All officers and employees whose positions are classified as GS–12 and below must also file a Statement of Known Financial Interests unless their position is listed or referred to as exempt in section 1(a) or 1(b) of this Appendix E.

(a) NATIONAL HEADQUARTERS

Office of Administrator. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Public information specialist	1081	7
Information clerk (typing)	303	5
Administrative technician	301	7

Office of General Counsel. Officers and employees in the occupational codes listed in section 2 of this Appendix are exempted.

Office of Management. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Accountant	510	11, 9
Accounting technician	525	9, 5
Accounts maintenance clerk	530	6
Budget analyst	599	9, 5
Communications relay operator	392	6
Contract specialist	1102	12, 11, 9
Employee development specialist	233	12, 9
Employee relations and development specialist	201	11
Employee relations assistant	203	6
Employee relations specialist	230	7
Equal opportunity specialist	160	11, 9
Labor management relations specialist	230	9
Management analyst	343	11
Operating accountant	510	9
Payroll clerk	544	6, 5
Payroll supervisor	544	9
Payroll technician	544	7, 6
Personnel assistant	203	6
Personnel assistant (typing)	203	6
Personnel management specialist	201	12, 11
Personnel security specialist	80	12, 11, 9
Position classification specialist	221	11
Printing specialist	1045	11
Procurement agent	1102	9
Procurement assistant	1106	7
Purchasing agent	1105	9
Staffing assistant (typing)	203	6
Staffing clerk (typing)	203	5
Supervisory fiscal accounting specialist	501	9
Supervisory pay and financial assistant	503	9
Supervisory personnel staffing specialist	212	9
Supervisory voucher examiner	540	8
Supply management officer	2003	11
Transportation specialist	2101	11, 9
Visual information specialist (printed material)	1084	11
Voucher examiner	540	6, 5, 4
Wage grade:		
Writer-editor	1082	9
Administrative aide (steno)	303	5
Administrative clerk (typing)	303	5
Administrative funds specialist	303	11
Administrative services assistant	301	9
Administrative technician	301	7
Communications assistant	301	7
Correspondence analyst	301	6
Data processing clerk (typing)	301	5
Distribution clerk	303	4
Executive assistant	301	11, 9
Freedom of information specialist	301	9
Information access specialist	301	11
Mail analyst	301	6
Mail and messenger services supervisor	305	7
Security clerk	303	5
Space management specialist	301	7
Supervisor freedom of information specialist	301	11
Supervisor management information specialist	301	9

Office of Energy Information and Analysis. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Project manager	301	12
Price stabilization analyst	301	12

Office of Energy Resource Development. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted providing they are not engaged in implementing the Energy Supply and Environmental Coordination Act of 1974 relating to the conversion of fuel burning installations to coal. All officers and employees engaged in implementing the Energy Supply and Environmental Coordination Act of 1974 relating to the conversion of fuel burning installations to coal must file unless listed in the occupational codes in section 2

Title	Series	Grade
Writer-editor	1082	11
Coal utilization program assistant	301	7
Program assistant regional coordinator	301	11
Program assistant (financial plan)	301	5
Program specialist	301	11
Research assistant	301	9, 7, 5
Research assistant (steno)	301	7
Utility projects program assistant	301	7
Utility projects regional coordinator	301	7

Office of Strategic Petroleum Reserves. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted providing they are not engaged in implementing Title I Part B of the Energy Policy and Conservation Act relating to strategic petroleum reserves. All officers and employees engaged in implementing Title I Part B of the Energy Policy and Conservation Act relating to strategic petroleum reserves must file unless listed in the occupational codes in section 2.

Title	Series	Grade
Program analyst	345	12, 11, 9
Operations research analyst	1515	12, 11
Economist	110	12, 9
Chemist	1320	11
Geologist	1350	11
Civil engineer	810	12
Petroleum engineer	881	12
Mechanical engineer	830	11
Research assistant	301	7
Policy analyst	301	12, 11
Administrative services technician	301	7
Regulatory specialist	301	11
Environmental specialist	301	12, 7
Environmental program specialist	301	9

Office of Communications and Public Affairs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Public information assistant	1081	9, 7, 5
Public information specialist	1081	9, 7, 5
Radio production specialist	1071	9, 7, 5
Regional liaison specialist	1001	11
Visual information assistant	1001	5
Visual information specialist	1084	9, 7, 5
Radio production assistant	1071	7
Writer-editor	1082	9, 7, 5
Confidential assistant (secretary) to the Director	301	9
Correspondence analyst	301	7
Public information assistant	301	5

Office of Congressional Affairs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Congressional affairs specialist	301	11, 9
Congressional liaison specialist	301	9
Staff assistant to the special assistant	301	8
Legislative specialist	301	9

Office of Policy and Program Evaluation. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Program analyst	345	12
Administrative services specialist	301	11
Research analyst	301	12
Research writer	301	11

Office of Conservation and Environment. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted providing they are not engaged in implementing Title III Part B of the Energy Policy and Conservation Act relating to appliance efficiency labeling. All officers and employees engaged in implementing Title III Part B of the Energy Policy and Conservation Act relating to appliance efficiency labeling must file unless listed in the occupational codes in section 2.

Title	Series	Grade
Budget and fiscal specialist	501	9
Public information specialist	1081	7
Technical information specialist (general)	1412	12
Wage grade:		
Administrative services assistant	201	9
Confidential assistant (secretary) to the assistant administrator	301	11
Program assistant (typing)	301	8
Research assistant	301	7
Clerk (DMT)	301	5

Office of International Energy Affairs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Security assistant	301	8
Wage board		

Office of Regulatory Programs. Officers and employees in the occupational codes listed in section 2 of this Appendix are exempted.

Office of Private Grievances and Redress. Officers and employees in the occupational codes listed in section 2 of this Appendix are exempted.

Office of Intergovernmental Relations & Special Programs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Program assistant	301	9

(b) *Regional Offices.*—Officers and employees in the Regional divisions that are designated Management are exempt when in positions having the following titles and grades or when in the occupational codes listed in section 2 of this Appendix.

Title	Series	Grade
Accounting technician	525	6, 4
Accounts maintenance clerk	520	5
Administrative services specialist	301	11
Budget and accounting officer	504	12, 11
Budget and accounting technician	501	6
Budget and accounting analyst	504	9, 11
Clerk (teletyping)	301	4
Communications clerk/operator	392	3
Communications technician	392	5
Employee development specialist	235	7, 5
Employee relations and development specialist	201	7
Equal employment opportunity specialist	160	12
Equal opportunity specialist	160	9
Fiscal accounting clerk	501	6
Fiscal and budget assistant	501	8
General clerk	301	4
Management analyst	343	11, 12
Management information analyst	391	12
Operating accountant	510	11
Payroll and accounting technician	501	5
Personnel assistant	203	7, 6
Personnel classification specialist	211	7
Personnel clerk	203	4
Personnel management specialist	201	12, 11, 9
Personnel officer	201	13
Personnel staffing specialist	212	9, 7
Program training specialist	1701	12
Purchasing agent	1105	6, 5, 4
Report clerk	301	5
Special assistant	301	13
Stenographic and typing unit supervisor	313	5
Supervisory support services specialist	301	9
Support services manager	301	11
Support services specialist	301	9
Support services technician	301	5
Voucher examiner	540	5, 4
Wage board: Word processing supervisor	301	6

Officers and employees employed in other Regional divisions must file except for those in the occupational codes listed in section 2 of this Appendix.

2. The exempt occupational codes referred to in section 1 of this Appendix are listed below. An officer or employee may determine his occupational code by referring to Standard Form 50, Notification of Personnel Act. or by asking the Personnel representative in his administrative office.

(1) 119;
(2) 199;
(3) 1020;
(4) 1087;
(5) 1531;
(6) 2005;
(7) 302; 304; 305; 309; 312; 316; 318; 319; 322; 324; 330; 332; 334; 335; 341; 342; 344; 346; 350; 354; 355; 356; 357; 359; 362; 382; 388; 389; 390; 391; 393; 394; and
(8) Those in 301 with the following job titles:

Correspondence Information Coordinator.
Correspondence Management Specialist.
Supervisory Correspondence Control Clerk.
Administrative Fiscal Service Assistant (Typing).
Clerk (Typing).
Clerk.
Administrative Assistant.
Clerical Assistant.
Clerk (Stenography).
Work Processing Assistant (Editorial).
Chief, Correspondence Unit.
Staff Technician (Stenography).
Information Clerk.
Staff Assistant to the Administrator.
Advisory Committee Management Officer.
Document Control Clerk.
Correspondence Management Technician.
Staff Assistant to the Deputy Administrator.
Staff Assistant (Stenography).
Advisory Committee Program Specialist.
Confidential Assistant (Secretary) to the General Counsel.
Office Services Assistant.
Clerical Assistant (Typing).
Clerical Assistant (Stenography).
Management Information Assistant.
Information Assistant.
Administrative Clerk.
Administrative Aide (Typing).
Project Assistant.
Program Assistant.
Correspondence Control Clerk (Typing).
Supervisory Correspondence Management Specialist.
Staff Assistant.

APPENDIX F

STATEMENT OF KNOWN FINANCIAL INTERESTS

1. _____
Name (Last, first, initial)

2. _____
Title of covered position(s) held during preceding calendar year

3.

Period(s) of service in covered position(s)

4.

Office/division

5.

Occupational code

6.

GS level

PART I. KNOWN FINANCIAL INTERESTS IN ENERGY BUSINESSES

List all known financial interests in energy businesses are defined in the attached instruction sheet. List interests (a) which you held during the preceding calendar year of come, or other arrangement as a result of a current or prior employment or business or professional association; or (b) which you hold through the ownership of stock, stock options, bonds, securities, or other arrangements, including trusts. Include all interests held during the preceding calendar year or portion thereof with respect to which you are required to report. If as of the reporting date an interest is no longer held, so indicate. If no such interest has been held during the preceding calendar year, write None.

Name and kind of business
Address

Nature of known financial interest

PART II. KNOWN FINANCIAL INTERESTS IN ENERGY PROPERTIES:

List all known financial interests in energy properties as defined in the attached instruction sheet. List interests which you held through direct ownership, or through a company or other organization, or through rights held by leasehold, rental, or contract. Include all interests held during the preceding calendar year or portion thereof with respect to which you are required to report. If as of the reporting date an interest is no longer held, so indicate. If no such interest has been held during the preceding calendar year, write NONE.

Nature of interest	Address/location of property

PART III.

The information furnished in this statement is not confidential and is subject to examination and available to the public upon request.

Any officer or employee who is subject to the reporting requirement of section 522 of the Energy Policy and Conservation Act, and who knowingly violates its requirements shall be fined not more than $2,500 or imprisoned not more than one year, or both.

I am aware of the provisions of the law and regulations which require the filing of this statement.

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

Date Signature

STATEMENT OF KNOWN FINANCIAL INTERESTS

For use by an officer or employee as required by subsection (a) of section 522 of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, prescribing the annual reporting requirements of known financial interests in specific energy businesses and energy properties.

GENERAL REQUIREMENTS

The information to be furnished in this statement is required by law to be subject to examination and to be available for copying by the public upon request to the FEA.

Any officer or employee, including a Special Government employee, of FEA performing any function or duty under the EPCA who occupies at any time during the preceding calendar year a position not listed as an exempted position in Appendix E to part 203 of the FEA regulations must file this statement. The statement is to be filed annually.

Disclosure is required of all known financial interests. Known financial interests are pecuniary interests of which the officer or employee has knowledge, or of which he can reasonably be expected to have knowledge, in specific energy businesses or energy properties. The types of energy businesses and energy properties covered by this disclosure requirement are described below.

In cases involving interests in energy businesses or energy properties held in a blind trust, as defined in § 203.26a of part 203 of the FEA regulations, only those interests initially committed to the trust in any person engaged in energy business or in energy property need be reported.

An officer or employee must report all interests in an energy business or energy property held during the preceding calendar year or, if he held a position exempted by Appendix E during part of the year, interests held during such part of the year as his position was not listed in the exempted categories in Appendix E to part 203.

The interest, if any, of a spouse, minor child, or other members of the immediate household need not be reported in this statement.

A knowing violation of this reporting requirement shall be punishable by a fine of not more than $2,500 or imprisonment for not more than one year, or both.

The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

KNOWN FINANCIAL INTERESTS IN ENERGY BUSINESSES

(1) Known financial interests in energy businesses are interests in any natural persons, corporations, partnerships, associations, consortiums, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business who directly or through other persons subject to their control does business in any part of the United States and which is engaged in the active conduct of one or more of the businesses of exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at the retail level) coal, natural gas, or petroleum products.

(2) A parent company, including a holding company, which has one or more subsidiaries which are actively engaged in one or more of the energy businesses enumerated in clause (1) above must also be reported.

(3) Diversified mutual funds need not be reported. A mutual fund or investment club which has a substantial portion of its investment in one or more of the energy businesses or properties enumerated above must, however, be reported. A mutual fund or investment club specializing in or maintaining 20 percent or more of its assets in energy businesses or properties is considered to have substantial energy holdings.

KNOWN FINANCIAL INTERESTS IN ENERGY PROPERTIES

(1) Known financial interests in energy properties are interests in lands, including submerged lands, or any mineral rights thereto from which coal, natural gas, or crude oil is commercially produced.

(2) Interests in investment companies maintaining holding in the energy properties enumerated above must also be reported.

(3) A financial interest in energy properties includes the right to occupy or use energy property, or to take any benefits therefrom based upon a lease or rental agreement, and includes any oral or written contract by the officer or employee or his agent with a person who has such rights, which contract results in or is expected to result in benefit to the officer or employee, which benefit is or would be derived from such person's right.

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federal register

WEDNESDAY, JANUARY 19, 1977

PART VIII

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

CIVIL SERVICE COMMISSION

■

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Introduction

The problems addressed by the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51734 et seq., Nov. 23, 1976) are numerous and important, and some of them are complex. The history of the development of those guidelines is set forth in the introduction to them (41 FR 51734–35). The experience of the Department of Labor in administering its earlier Testing and Selection Order (41 CFR Part 60–3) has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to compliance officers and other Federal personnel who have enforcement responsibilities.

The three Federal agencies issuing the guidelines—the Departments of Justice and Labor and the Civil Service Commission—seeking to benefit from the experience of the Department of Labor, and recognizing that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines, have decided to issue the following Questions and Answers. The material included is intended to interpret and clarify the provisions of the guidelines. The questions selected are commonly asked questions in the field and those suggested by the guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the guidelines.

The three agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the guidelines. Users and other interested persons are invited to submit additional commonly recurring questions they believe warrant answers, and any comments on the questions and answers set forth below to the appropriate issuing agency.

HAROLD R. TYLER, JR.,
Deputy Attorney General.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, Office of Federal Contract Compliance Programs.

JAMES C. SPRY,
Executive Assistant to the Commissioners, United States Civil Service Commission.

JANUARY 17, 1977.

1. Q. What is the purpose of the Guidelines?

A. The Guidelines are designed to aid in the achievement of our Nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin, by providing a set of principles governing use of employment selection procedures that is consistent with applicable legal and psychological standards, is workable, and which the adopting agencies will apply in the discharge of their respective responsibilities. The Guidelines deal only with this one aspect of the overall equal employment opportunity question and do not purport to provide guidance for anything other than use of selection procedures.

2. Q. What is the basic principle of the guidelines?

A. Selection procedures which have an adverse impact on members of a racial, sex or ethnic group and thus operate to exclude them disproportionately are unlawfully discriminatory unless the user validates the procedure in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See § 3.[1] The basis for this principle was adopted by the Supreme Court unanimously in *Griggs* v. *Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972.

3. Q. What is adverse impact, and how is it measured?

A. Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision) which works to the disadvantage of members of a racial, sex or ethnic group. § 4b. Rate of selection for each group is determined by dividing the number of applicants selected from that group by the total number of applicants from that group and by comparing the results with the result derived in the same way for the group with the highest selection rate. For example, a user may have had over a six month period 120 applicants, 80 white, and 40 black; of whom 60 were hired, 48 whites, and 12 blacks. The selection rate for white applicants was thus 48/80=60%; while that for black applicants was 12/40=30%. In this example, the selection process adversely affected the employment opportunities of blacks because their selection rate (30%) was only one half that of whites (60%).

4. Q. What is a substantially different rate of selection?

A. The Guidelines adopt a 4/5 (80%) Rule of thumb for guidance and operational use. See § 4b. If the selection rate for a group is within 4/5 or 80% of the rate for the group with the highest rate, the enforcement agency will generally not consider adverse impact to exist. In the prior example, the selection rate for blacks was 30%, while that for whites was 60%; so that the black selection rate was 1/2 or 50% of the highest group and there was adverse impact. If, on the other hand, there were 120 applicants, of which 80 were white and 40 black, and the user had selected 42 whites and 18 blacks, the selection rate for blacks would be 18/40 or 45%, while that for whites would be 42/80 or 52.5%. Because the selection rate for blacks as compared to that for whites is 45/52.5 or 85.4% (i.e., more than 80% (or 4/5)), the difference in impact would not be regarded as substantial in the absence of additional information.

5. Q. Does the 4/5 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 4/5 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 4/5 rule merely establishes a numerical basis for drawing initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (§ 4b) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. In the absence of differences which are large enough to meet the 4/5ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

Two examples will be illustrative. If, for the sake of illustration we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Spanish-surnamed persons but only 4% of all Anglo persons, the "selection rate" for that selection procedure is 90% for Spanish-surnamed Americans and 96% for Anglos. Therefore, the 4/5 rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the sample is large enough to be statistically significant, and the difference (Spanish-surnamed Americans are 2½ times as likely to be disqualified as Anglos) is large enough to be practically significant. Thus, the enforcement agencies would consider use of arrest record alone as having an adverse impact. See *Gregory* v. *Litton Industries*, 472 F.2d 631 (9th Cir., 1972).

Similarly, a difference of more than 20% in rates may not provide a basis for finding adverse impact if the numbers are very small. For example, if the employer selected three men and one woman from an applicant pool of 20 men and 10 women, the 4/5 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66⅔% is less than 80%), yet the num-

[1] Section references throughout these questions and answers are to the Sections of the Federal Executive Agency Guidelines on Employee Selection Procedures (herein referred to as "Guidelines") that were published by the Department of Labor, Department of Justice and the U.S. Civil Service Commission on November 23, 1976, at 41 FR 51734 et seq. In the Department of Labor issuance, the section references are preceded by an additional reference to "§ 60–3" (thus, the reference here to § 3 refers to § 60–3.3 in the Labor Department's issuance).

bers are so small that a difference in one person hired would show an adverse impact the other way. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information.

6. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job category. If there is no adverse impact from the selection process, there is no obligation under the Guidelines to validate the selection procedures used for that job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedures should be analysed. For any selection procedure in the process having an adverse impact which the user continues to use, the user is expected to have evidence of validity satisfying the guidelines. § 4b and § 5c.

7. Q. If adverse impact is determined initially on the basis of the overall selection process, does this allow discrimination in one selection procedure to be balanced by another discriminatory procedure?

A. No. As shown above (see answer to Question 5), discrimination and adverse impact have different meanings; and these Guidelines do not permit any kind of discrimination. There are, moreover, many methods of determining proficiency. In some cases, proficiency may be best demonstrated by a written examination, while for others a review of experience or an interview, or a combination of all three may be best. Many employers and other users are utilizing alternative or combinations of approaches. Where the overall selection process of a user results in equal employment opportunities for members of racial, sex or ethnic groups for a job, the Guidelines reflect the position that it would be inappropriate for the federal enforcement agencies to expend their limited enforcement resources examining the validity of each procedure utilized in the process.

8. Q. Is the user obliged to keep records which show whether its selection procedures have an adverse impact on race, sex or ethnic groups?

A. Yes. Under the Guidelines the user is obliged to maintain evidence indicating the impact (if any) which their selection procedures have on identifiable racial, sex or ethnic groups. § 4 a and b. If the selection procedure does have an adverse impact on one or more such groups, the user is expected to maintain documentation evidence showing the validity of the procedure. § 13a.

9. Q. What is the relationship between affirmative action and the requirements of the Guidelines?

A. The two subjects are different, although related. The Guidelines state that compliance with these Guidelines does not relieve users of any affirmative action obligations they may have. § 11. The Guidelines, however, encourage the development and effective implementation of affirmative action plans or programs in two ways. First, the Guidelines state (§ 4c) that in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. If the user has demonstrated over a substantial period of time that it is in fact providing equal employment opportunity in the job or job groups in question, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings. Secondly, the Guidelines encourage affirmative action programs by stating (§ 11) that nothing in them is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives.

10. Q. Does the language of § 4c and § 11 concerning non-discrimination in the making of employment decisions prevent the adoption of effective affirmative action programs?

A. No. The Equal Employment Opportunity Coordinating Council has adopted a policy statement on affirmative action programs (41 Fed. Reg., Sept. 13, 1976). A copy of that statement is attached hereto and incorporated herein. The language of § 4c and § 11 is based upon and merely intended as a reminder of the non-discrimination provisions contained in Title VII and Executive Order 11246. The policy statement on affirmative action contains a similar prohibition for the same reason. The kind of color conscious affirmative action steps outlined in the Coordinating Council's policy statement do not, in the judgment of the enforcement agencies, violate the language of § 4c or § 11 of the Guidelines. This view is consistent with the well established principle that affirmative action programs of this kind do not violate the comparable anti-preference provisions of Title VII or Executive Order 11246.

11. Q. If it is not feasible or appropriate to validate a selection procedure, what obligations does the user of such a procedure have?

A. The Guidelines recognize that it is not always feasible or appropriate to utilize the validation techniques of the psychological profession as contemplated by the Guidelines. If the procedure cannot be validated because it is informal, unstandardized or unscored, the user should insofar as possible eliminate adverse impact, or if feasible modify the procedure to one which is formal, scored or quantified, and then validate the procedure in accord with these Guidelines. If it is not feasible to validate a standardized selection procedure, the user should either adopt an alternative procedure to eliminate adverse impact or modify the procedure to eliminate the adverse impact. The continued use of either a standardized or unstandardized procedure may also be permitted if the user can otherwise justify such use in accord with the federal law. See § 3b.

12. Q. How can users justify continued use in accord with federal laws of a procedure which has an adverse impact and which it is not feasible or appropriate to validate?

A. That subject is one to which the Guidelines are not addressed. In *Griggs* v. *Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use. The federal agencies will consider evidence which shows "business necessity" to justify continued use of a selection procedure. Evidence of any other justification would have to be considered on a case by case basis.

13. Q. Do the Guidelines apply to the selection procedures utilized by state and local government licensing and certification boards and agencies?

A. The Guidelines neither broaden nor narrow the coverage of the underlying federal law. The Guidelines state however that licensing and certification are employment decisions to the extent that they may be covered by federal law. The courts are divided on that question. The Department of Justice has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. See, *United States* v. *North Carolina*, 400 F. Supp. 343 (E.D. N.C. 1975) (three judge court) (certification of teachers).

14. Q. Where can a user obtain a "certification of validity"?

A. The federal enforcement agencies do not recognize any certification of validity or validation. See § 7a. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedure, not a certificate that they have been validated. Thus, the assertion by anyone, including a State employment service representative, that a test battery or other selection procedure has been validated is not sufficient to satisfy the Guidelines.

15. Q. What is the relationship between the Guidelines and other statements of psychological principles, such as the Standards for Education and Psychological tests published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "APA Standards")?

A. The Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. However, to the extent that there may be differences between particular provisions of the Guidelines and expressions of principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies. With respect to any matters not addressed by the Guidelines, users are, of course, free to follow the standards of the profession so long as doing so is consistent with appli-

cable equal employment opportunity requirements.

16. Q. When should a validity study be carried out?

A. The Guidelines call for a validation study whenever a selection procedure has adverse impact on any racial, sex or ethnic group. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Waiting until a selection procedure is challenged increases the risk that the user will be found to be discriminating and be liable for back pay awards, plaintiffs' attorneys fees, loss of Federal contracts or grants and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users of selection procedures should consider the potential benefit to their employment systems and the savings in resources which can result from having a validation study completed or well under way before the procedures are administered for use in employment decisions. Public merit systems typically have a special obligation to validate selection procedures regardless of any expectation that adverse impact may result.

17. Q. Are there any special requirements as to who is allowed to perform a validity study?

A. No, a validity study is judged on its own merits, and may be performed by a member of the user's staff, a consultant, or any person knowledgeable of the principles of validity research. However, it is the user's responsibility to see that the study meets these Guidelines which are based upon professionally accepted standards.

18. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Differences in job duties, locations or study samples can affect validity, so that a selection procedure found to have validity in one situation may not have validity in different circumstances. Conversely, a selection procedure not found to have validity in one situation may have validity in different circumstances.

19. Q. Does the way a selection procedure is used affect its validity?

A. Yes. Selection procedures which have been properly validated can be used in improper ways. For this reason selection procedures must be administered and scored in a standardized manner during the research and must continue to be administered and scored in the same way while being used operationally. § 5d. A selection procedure which has been validated as predicting success on one job might be invalid for predicting success on another job.

Even if the selection procedure is properly administered and scored and the same job is involved, it may be used improperly. For instance, it would be improper to use a selection procedure to rank applicants if the validity study only supported the use of minimum acceptance levels ("pass/fail"). The validity study should reflect the way the selection procedure will be used in practice.

20. Q. Is the user of a selection procedure required to develop the procedure from scratch?

A. No, a selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the job in question is consistent with the Guidelines.

21. Q. Is evidence that a selection procedure which has been validated in one context has validity in another context (validity generalization) alone sufficient justification for its use elsewhere (transportability)?

A. No. The conditions governing transportability are stated in § 6 of the Guidelines. While some degree of validity generalization is necessary for transportability, it is not sufficient.

Validity generalization refers to the degree to which the results of a criterion-related validity study conducted on a selection procedure in one situation lead to inferences concerning the degree of validity of that selection procedure or similar selection procedures in other situations. Transportability refers to the permissible use of a selection procedure in more than one context. Validity generalization is a statistical concept concerning validity evidence, while transportability is a judgment concerning use of selection procedure.

22. Q. Under what circumstances can a criterion-related validity study done elsewhere be used as sufficient validity evidence to meet the Guidelines (on other than an interim basis)?

A. A validity study done elsewhere may be used as sufficient evidence if four conditions are met (see § 6b):

1. The weight of the evidence from one or more studies must show that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used must closely match the job(s) in the original study as shown by a comparison of results (in terms of job duties) of the job analyses in both contexts.

3. A fairness study must be contained in the original evidence for those groups constituting a significant factor in the user's labor market (see Answer to Questions 31–34 below).

4. There are no variables in the other study or studies which are likely to affect validity or fairness significantly (see Answer to Question 23 below).

23. Q. Under what circumstances can a selection procedure supported either by criterion-related validity evidence obtained elsewhere or by a partially completed validity study be used on an interim basis?

A. Interim use of criterion-related validity evidence is permitted in three situations:

1. If it is technically feasible for a user to conduct an internal validity study and there are significant differences between the research sample in a study done elsewhere and the user's job applicants in terms of such variables as age, education, job experience, etc., the selection procedure may only be used on an interim basis pending an internal validity study.

2. If validity evidence obtained elsewhere does not contain an investigation of fairness the selection procedure may only be used on an interim basis until evidence of fairness or unfairness is shown either from other sources or the user's own study.

3. If a user has substantial validity evidence either from other sources or from studies being conducted by or for the user, but which are not in complete compliance with the Guidelines, the selection procedure may be used only on an interim basis pending completion of validity studies.

24. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure does not immunize the user from liability for back pay, attorney fees and the like. should use of the selection procedures later be found to be in violation of the Guidelines (e.g., because of a showing of unfairness), and for this reason users should take steps to come into full and complete compliance with the guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

25. Q. Under what circumstances may a validity study conducted cooperatively among users or in different units of a multi-unit organization be used in locations not included in the validity study?

A. A selection procedure supported by validity evidence obtained from a cooperative or multi-unit study may be used in new situations where the conditions described in the answer to Question 22 are met, and where there are no significant differences between the applicant populations and the research subjects in such characteristics as age, education, job experience, or the like.

26. Q. How does a user choose which validation strategy to use?

A. A user should select the validation strategy which is most appropriate for the type of selection procedure, the job, and the employment situation. Content validity by itself is inappropriate where the selection procedures are measures of aptitude or personality traits, and for jobs in which the employee is expected to gain the measured skills or knowledges while on the job. In such circumstances criterion-related or construct validation strategies should be used. On the other hand where the selection procedures are work samples or measures of fully developed skills or knowledges, content validity is appropriate although criterion-related validation techniques could be used where technically feasible. Where a sample of sufficient size cannot be obtained, where appropriate measures of employee proficiency to be used as criteria cannot be developed, or where there is a severe range restriction in scores on selection procedures, and this range restriction cannot be reduced or appropriately cor-

rected, criterion-related validity may be technically infeasible.

27. Q. Why don't the Guidelines contain a preference for criterion related validity over content or construct validity?

A. Generally accepted principles of the psychological profession do not recognize any such preference, but contemplate the use of criterion related, content, or construct validity strategies as appropriate. APA Standards, E, pp. 25-26; *Washington* v. *Davis*, ____ U.S. ____, 44 U.S.L.W. 4789, fn. 13. Moreover, the Guidelines normally require criterion related evidence as a component part of any construct validity study § 12d. With respect to content validity, where the content of the selection procedure closely matches the behaviors or activities required for job performance, as in a typing test for typists or a truck driving test for truck drivers, a content validity approach is the most appropriate way of showing validity. Because the Guidelines make it clear that content validity by itself is not appropriate for aptitude, intelligence, personality or interest tests (§ 12c(1)), and that evidence of content validity depends upon the closeness of the resemblance between work behavior and the selection procedure, there is no need or justification for a general preference for criterion related validity over content validity. All three strategies are empirically based. Construct validity requires empirical research evidence, which is normally criterion-related, linking the selection procedure to the job, while content validity requires a factually based linkage of the selection procedure to the activities of the job.

28. Q. Is the use of a content validity strategy appropirate for measuring in the selection process skills or knowledges which are taught in a training academy after initial employment?

A. No. The Guidelines state (§ 12c(1)) that content validity is not appropriate where the slection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job." The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or the like.

29. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criteria in a criterion related study. See § 12a, and § 12b(3). Proper measures of the results or outcomes of job behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used if these behaviors are shown by a review of information about the job to be important in the specifics situation. A standardized rating of overall job performance may be used if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. Measures of overall job performance should be carefully developed and standardized, and their use should be carefully controlled. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

30. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when: (1) The job analysis shows that success in training is necessary for successful job performance or related to increasing proficiency on the job; and (2) training success is properly measured. § 12b(3). Where the measure of success in training is a paper and pencil test, the measure should be carefully developed to ensure that factors which are not job related do not unfairly inflate or depress the measures of training success and to ensure that the measures are in fact job related. § 12b(3).

31. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one racial, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See § 14 (k). For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then the selection procedure is unfair to the members of the lower scoring group. (The concept of test fairness has sometimes been referred to as differential validity or differential prediction).

32. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible.

33. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership, or in terms of perpetuating the effects of past discrimination. Accordingly, these studies should be performed routinely where technically feasible and appropriate, even if the probability of finding unfairness is small. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 435. Moreover, the APA Standards published in 1974 call for the investigation of test fairness in criterion related studies wherever feasible (pp. 43-44).

34. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The user has three options. See, § 12b(7)(iv). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be replaced by others. Finally, revisions may be made in the use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

35. Q. If there are not enough members of an adversely affected race, sex or ethnic group in the potential research sample to make it feasible to study test fairness, should the group still be included in the sample?

A. Yes, normally the study should be conducted on a sample which is representative of the expected candidates for the job in question. However, there may be situations in which the members of the race, sex or ethnic group available for the study are so dissimilar from other persons in the sample that the information should not be combined for data analyses.

36. Q. Do the Guidelines require a search for alternative selection procedures?

A. The Guidelines provide that while a validity study is being conducted, the user should attempt to find and apply procedures that have as little adverse impact as possible. However, once that effort has been made and the chosen procedure has been studied and shown to be valid, the Guidelines do not require the user to search further for alternative procedures. The Guidelines do call for a user to take steps to ensure that selection procedures are kept current, and to investigate any alternative procedures shown to have at least equal validity and less adverse impact. The obligation to investigate alternative procedures is greater when the user is in an interim use status.

37. Q. What does a user do if there are not enough persons in a job to conduct a criterion related study?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances.

1. Changing the procedure so as to eliminate adverse impact;

2. Validating the procedure through a content validity strategy, if appropriate (see § 12c and answer to Question 25 and 27);

3. Using a selection procedure validated elsewhere in conformity with the Guidelines (see § 6 and answers to Questions 22-24);

4. Engaging in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade association), or participating in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see § 6);

5. Combining essentially similar jobs into a single study sample may in some circumstances be consistent with the Guidelines (see § 5g and § 12b).

38. Q. If a user has previously engaged in discrimination against members of a racial, sex or ethnic group, is the user precluded from making its selection procedures more stringent?

A. In such circumstances, the Guidelines provide (§ 9) that the user should afford those members of the group discriminated against, who were available in the relevant job market during the period of discriminatory practices, an opportunity to qualify under the less stringent procedures, unless the user demonstrates that the more stringent procedures are required for the safety or efficiency of the operation. The user is not precluded from using the more stringent procedures for all other persons.

39. Q. If a user has all selection procedures administered by an employment agency or a consultant, does that relieve the user of responsibilities under the Guidelines?

A. No. The user remains responsible for the selection procedures utilized by others on behalf of the user. It is therefore expected that the user will have sufficient information available to show: (a) what selection procedures are being used on its behalf; (b) the adverse impact of those procedures, and evidence of the validity of any such procedures; and (c) the number of persons by race, sex and ethnic group referred, and the total number considered for referral or for job applications.

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Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60–3—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commission on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51744) see FR Doc. 77–1932 also appearing in this Part VIII of the issue.

CIVIL SERVICE COMMISSION

EMPLOYEES SELECTION PROCEDURE GUIDELINES

Appendices to Federal Personnel Manual Supplements

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commisison on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51752) see FR Doc. 77-1932 also appearing in this Part VIII of the issue.