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Monday	Tuesday	Wednesday	Thursday	Friday
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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.

federal register

Area Code 202 Phone 523-5240

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Title 3—The President

Proclamation 4478 • November 26, 1976

Adjustment of Duty on Certain Brandy

By the President of the United States of America

A Proclamation

1. In December, 1963, in the exercise of international rights accorded the United States, particularly paragraph 3 of Article XXVIII of the General Agreement on Tariffs and Trade (the GATT), the United States notified the Contracting Parties to the GATT that it was suspending certain trade agreement concessions made by the United States and reflected in the United States Schedules to the GATT in response to a withdrawal of certain concessions with respect to poultry, resulting from the formation of the European Economic Community (now a part of the European Communities (the EC)).

2. Pursuant to the authority vested in him by the Constitution and the statutes of the United States of America, including section 252(c) of the Trade Expansion Act of 1962 (19 U.S.C. 1882(c)), and section 350(a)(6) of the Tariff Act of 1930, as amended (19 U.S.C. 1351(a)(6)), the President determined that the European Economic Community maintained unreasonable import restrictions on poultry from the United States and suspended, by Proclamation No. 3564 of December 4, 1963, the application of the benefits of the trade agreement concessions of the United States which were suspended as noted in paragraph 1.

3. By Proclamation 4304 of July 16, 1974, pursuant to section 255(b) of the Trade Expansion Act of 1962 (19 U.S.C. 1885(b)), and section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), the President, in order to encourage the resolution of outstanding trade disputes between the United States and the European Communities, particularly the removal of unreasonable import restrictions maintained by the EC on poultry from the United States, terminated in part Proclamation 3564 of December 4, 1963, restored in part the application of the benefits of the suspended trade agreement concessions on certain brandy valued over $9 and not over $17 per gallon, and maintained a rate of duty for column 1 of $5 per gallon for brandy valued over $17 per gallon provided for in items 168.20 and 168.22 of the Tariff Schedules of the United States (TSUS). This action was taken for the purpose of providing a temporary adjustment for a period of time during which a satisfactory solution to the aforementioned trade dispute could be found.

4. No solution having been reached between the United States and the EC regarding the removal of unreasonable import restrictions on poultry from the United States, I have determined it to be appropriate, in the exercise of United States rights under Article XXVIII of the GATT following from the suspension of the concessions noted in paragraph 1 above, to increase rates of duty on certain brandy as provided in this proclamation.

5. Pursuant to Section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135(c)), whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to the Trade Act of 1974, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States.

6. Moreover, section 255(b) of the Trade Expansion Act of 1962, and section 350(a)(6) of the Tariff Act of 1930, as amended, authorize the termination, in whole or in part, of any proclamation issued pursuant to Title II of the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930, as amended, respectively.

7. For purposes of the Generalized System of Preferences, the former TSUS items 168.20 and 168.22, providing for all brandy valued over $9 per gallon, were subdivided into new items 168.23, 168.26, 168.28, and 168.32, the first two of which apply to pisco and singani, which are types of brandy not produced in the EC, and the latter two of which provided for all other brandy valued over $9 per gallon.

8. In accordance with the requirements of the Trade Act of 1974, the Trade Policy Staff Committee held a public hearing on September 21 and 22, 1976, at which all interested persons were given reasonable opportunity to be present, to produce evidence, and to be heard on the proposed duty increase on brandy. Public notice of the hearing was given on August 19, 1976 (41 FR 35107).

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including section 125(c) of the Trade Act of 1974, section 255(b) of the Trade Expansion Act of 1962, and section 350(a)(6) of the Tariff Act of 1930, as amended, in the exercise of the rights of the United States, do hereby proclaim, until the President otherwise proclaims or until otherwise superseded by law, that:

A. Proclamation 4304 of July 16, 1974, is terminated; and

B. Item 945.16 of Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States (TSUS), is amended to read as follows:

Item	*Article*	*Rate of Duty* 1	2
945.16	Brandy valued over $13 per gallon provided for in item 168.28, and brandy valued over $9 per gallon provided for in item 168.32	$3 per gallon	No Change

The modifications of Subpart B of Part 2 of the Appendix to the TSUS, made by this proclamation, shall be effective as to all articles that are both

(i) imported, and

(ii) entered, or withdrawn from warehouse, for consumption,

on or after December 10, 1976.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord nineteen hundred seventy-six, and of the Independence of the United States of America the two hundred and first.

Gerald R. Ford

[FR Doc.76-35274 Filed 11-26-76;11:26 am]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 404—WESTERN UNITED STATES APPLE CROP INSURANCE

Regulations for the 1977 and Succeeding Crop Years

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the regulations contained in 7 CFR Part 404, as amended, and the title of Part 404 are hereby revised effective with the 1977 crop year to read as provided below. This revision would make the regulations applicable only to the Western United States; provide for the use of the Standard Application Form and for the processing of applications in the same manner and by the same method as is currently used in connection with other crops; make the minimum insurable acreage two acres; incorporate three previous amendments; change the termination for indebtedness date for nonpayment of premium to February 28 to allow more time for payment; provide for a reduction of the 30 percent deductible for those insureds having more than a 70 percent grade reduction resulting from losses due to insurable causes; retitle the policy as "Western United States Apple Crop Insurance;" and make other editorial changes to remove excess wordage while retaining the force of the previous provisions. The provisions of this subpart shall apply, until amended or superseded, to all continuous apple crop insurance contracts in the Western United States as they relate to the 1977 and Succeeding Crop Years.

7 CFR Part 404 is revised as set forth below:

Subpart—Regulations for the 1977 and Succeeding Crop Years

Sec.
404.20 Availability of apple crop insurance.
404.21 Premium rates and amounts of insurance.
404.22 Application for insurance.
404.23 Public notice of indemnities paid.
404.24 Creditors.
404.25 The policy.

AUTHORITY: The provisions of this subpart issued under Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.

Subpart—Regulations for the 1977 and Succeeding Crop Years

§ 404.20 Availability of apple crop insurance.

Apple crop insurance shall be offered for the 1977 and succeeding crop years under the provisions of § 404.20 through § 404.25 in counties in the Western United States within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from a list of counties approved by the Board of Directors of the Corporation for apple crop insurance. The counties designated by the Manager shall be published by an appendix to this section.

§ 404.21 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and the amounts of insurance per acre which shall be shown on the actuarial table on file in the office for the county. Such premium rates and amounts of insurance may be changed from year to year.

(b) The following shall apply to the transfer of any premium reduction earned under the provisions of section 7 of the policy set forth in § 404.25 if the insured is a partnership, corporation, or any other joint enterprise and there is no break in continuity of participation. Upon dissolution of such enterprise, such premium reduction may be credited to the contract of any member or stockholder thereof if the Corporation determines such person is operating only land formerly operated by the dissolved enterprise. Upon formation of a joint enterprise, the smallest premium reduction (zero if none), which the Corporation determines would have been applicable to any insurable acreage brought into the enterprise if the enterprise had not been formed may be credited to the joint enterprise contract.

§ 404.22 Application for insurance.

An application for insurance, on a form prescribed by the Corporation, may be submitted at the office for the county for the Corporation. The closing date for the taking of applications shall be the February 28 (March 15 in Chelan, Douglas, and Okanogan Counties, Washington) immediately preceding the beginning of the crop year. However, the Corporation reserves the right to discontinue the taking of applications in any county, prior to the closing date for the filing of applications, upon its determination that the insurance risk involved is excessive. The Corporation further reserves the right to reject any application or to exclude any definitely identified acreage for any crop year of the contract if upon inspection it deems the risk on such acreage to be excessive. If any acreage is to be excluded, the insured shall be notified of such exclusion before insurance attaches for the crop year for which the acreage is to be excluded. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county by publishing a notice in the FEDERAL REGISTER, upon his determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period the Corporation will immediately discontinue the acceptance of applications.

§ 404.23 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at the county courthouse a listing of the indemnities paid in the county.

§ 404.24 Creditors.

An interest of a person other than the insured in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest of any benefit under the contract other than as provided in the policy as set forth in § 404.25.

§ 404.25 The apple insurance policy.

The provisions of the policy for Western United States Apple Crop Insurance for the 1977 and Succeeding Crop Years are as follows:

WESTERN UNITED STATES APPLE INSURANCE POLICY

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person against unavoidable loss of production of the insured apple crop due to causes of loss insured against that are specified in this policy. No term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For purposes of insurance on Western United States Apples:

(a) "Acreage report" means the form prescribed by the Corporation for initially reporting and revising (if necessary) all of the insured's acreage and share therein of apples in the county.

(b) "Actuarial table" means the Western United States Apple insurance forms and related material approved by the Corporation which are on file for public inspection in the office for the county and which show the dollar amounts of insurance per acre and premium rates for the county.

(c) "Box(es)" means a standard container, accepted by the industry, containing a minimum of 35 pounds of apples.

(d) "Contiguous land" means land which is touching at any point, except that land

which is separated by only a public or private way shall be considered contiguous.

(e) "Contract" means the application, this policy, and the actuarial table.

(f) "County" means the Western United States county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(g) "Crop year" means the period beginning with the date insurance attaches to the apple crop and extending through normal harvesttime and shall be designated by the calendar year in which the apples are normally harvested.

(h) "Harvest" means the picking of marketable apples from the trees or from the ground.

(i) "Insurable acreage" means the acres of apples, as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, grown on land classified as insurable by the Corporation and shown as such on the actuarial map or appropriate land identification list for the county, or as otherwise provided on the actuarial table.

(j) "Office for the county" means the Corporation's office serving the county or such office as may be designated by the Corporation.

(k) "Person" or "Insured" means an individual, partnership, association, corporation, estate, or trust or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(l) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured apples as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share in the apple crop shall be deemed to be insurable.

(m) "Tenant" means a person who rents land from another person for a share of the crop or proceeds therefrom.

(n) "Time of loss" means the earliest of (1) the date harvest is completed on the unit; (2) the calendar date for the end of the insurance period; or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(o) "Unit" means all the insurable acreage of apples in the county which is located on contiguous land and, at the time insurance attaches for the crop year, (1) in which the insured has a 100 percent share; (2) which is owned by one person and operated by the insured as a tenant; or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or for any consideration other than a share in the crop on such land only shall be considered as owned by the lessee. The Corporation may, by agreement in writing with the insured before insurance attaches in any crop year, divide the insured's insurable acreage into two or more units, taking into consideration separate and distinct orchard operations. The Corporation shall determine units as defined herein when adjusting a loss, notwithstanding what is shown on the acreage report, and reserves the right to consider any acreage and share reported by or for the insured's spouse, child, or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share of the insured having the bona fide share.

(p) "Western United States Apples" (as used in the heading of this policy) means insurable varieties of apples grown on insurable acreage in those states west of a line running north-south along the eastern State boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas.

2. *Causes of loss.* (a) The insurance provided is against unavoidable loss of production occurring within the insurance period resulting from frost, freeze, windstorm, or hail.

(b) The contract shall not cover any loss due to (1) neglect or malfeasance of the insured, any member of the insured's household, tenants, or employees; (2) failure to follow recognized good farming practices; (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project; or (4) any cause not specified as an insured cause in this policy.

3. *Apples insured.* (a) Insurance attaches only to apples grown on insurable acreage (1) in which the insured has a share on the date insurance attaches; and (2) having a minimum expected production on the date insurance attaches of the amount per acre shown on the actuarial table.

(b) Unless a written agreement is in effect between the Corporation and the insured, insurance shall not attach on a unit of less than two acres.

4. *Life of contract and contract changes.* (a) The contract shall be in effect for the first crop year specified on the application and may not be canceled for the first crop year. Thereafter, either party may cancel insurance for any crop year by giving written notice to the other by the December 31 immediately preceding such crop year. In the absence of such notice to cancel and subject to the provisions of subsections (b), (c), and (d) of this section, the contract shall continue in force for each succeeding crop year.

(b) If the insured is an individual who dies or is judicially declared incompetent or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches in any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(c) "The contract shall terminate if the premium for any crop year is not paid by February 28 (March 15 in Chelan, Douglas, and Okanogan Counties, Washington) following the calendar year in which insurance attached: *Provided,* That the date of payment for a premium (1) deducted from a loss claim shall be the date the insured signs such claim; or (2) deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(d) The contract shall terminate if no premium is earned for three consecutive years.

(e) The Corporation reserves the right to change the terms and conditions of the contract from year to year. Notice thereof shall be mailed to the insured or placed on file and made available for public inspection at the office for the county by December 15 immediately preceding the crop year for which such changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract, as provided in subsection (a) of this section.

(f) The Corporation, because of the risk involved, also reserves the right to (1) limit the amount of insurance, or (2) exclude any acreage from insurance after the December 15 preceding the beginning of the crop year for which such limitation or exclusion is to become effective. In such cases, the insured shall have the right to cancel the contract by giving written notice to the Corporation within 15 days after notice of such limitation or exclusion is mailed to and received by the insured.

(g) For any crop year, the insured, with the consent of the Corporation, may change the amount of insurance per acre which was in effect for any prior crop year by so notifying the office for the county in writing by the December 31 immediately preceding the crop year.

5. *Responsibility of the insured to report acreage and share.* (a) The insured at the time of filing the application shall also file on a form prescribed by the Corporation a report of all the acreage of apples in the county in which the insured has a share and show the share therein. Such report shall include a designation of all the acreage of apples which is uninsurable under the provisions of section 3 above. This report shall be revised before insurance attaches for any crop year if the acreage to be insured or share therein has changed and the latest report filed shall be considered as the basis for continuation of insurance from year to year.

(b) If the insured does not submit an acreage report in accordance with the provisions of subsection (a) of this section for any crop year, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero."

6. *Insurance period.* Insurance attaches each crop year on March 1 (March 16 in Chelan, Douglas, and Okanogan Counties, Washington) and ceases upon the earlier of harvest or October 31 of the crop year.

7. *Annual premium.* (a) The annual premium for each unit is earned and payable on the date insurance attaches and shall be determined by multiplying the insured acreage times the premium rate per one hundred dollar amount of insurance, times the hundred dollar amount of insurance per acre elected, times the insured's share on the date insurance attaches, and where applicable, applying the discount or adjustment herein provided.

(b) In counties where the actuarial table does not provide for adjustments in premium, the total annual premium on all units shall be reduced as follows after consecutive years of insurance without a loss for which an indemnity was paid on any unit hereunder (eliminating any year in which a premium was not earned):

Percent premium reduction	*Consecutive insurance years without a loss*
5 percent after	1
5 percent after	2
10 percent after	3
10 percent after	4
15 percent after	5
20 percent after	6
25 percent after	7 or more

However, if the insured has a loss for which an indemnity is paid hereunder, the number of such consecutive years of insurance without a loss shall be reduced by three years,

except that where the insured has seven or more such years, a reduction to four shall be made and where the insured has three or less such years, a reduction to zero shall be made: *Provided*, That if, at any time, the cumulative indemnities paid hereunder exceed the cumulative premiums earned hereunder from the start of the insuring experience through the previous crop year, the 5, 10, and 15 percent premium reductions in this subsection shall not thereafter apply until such cumulative premiums equal or exceed such cumulative indemnities.

(c) In counties where the actuarial table provides for adjustments in premium rate, the total annual premium on all units for each crop year shall be adjusted on the basis of the provisions of the actuarial table.

(d) If there is no break in continuity of participation, any premium reduction or adjustment applicable under subsections (b) and (c) of this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured; (2) the contract of the person who succeeds the insured as the insured's transferee in operating only the same orchard or orchards, if the Corporation finds that such transferee has previously actively participated in the orchard operation involved; or (3) the contract of the same insured who stops operating an orchard in one county and starts operating an orchard in another county.

(e) If there is a break in the continuity of the contract, the following shall not thereafter apply: Subsection (b) of this section, or any reduction in premium earned under subsection (c) of this section.

8. *Notice of damage or loss.* (a) The insured shall give notice to the office for the county immediately after each damage to the apples from an insured cause of loss giving the date and cause(s) and estimated extent of such damage so that a prompt inspection and determination of the extent of damage can be made prior to completion of harvest.

(b) If a loss is to be claimed, the insured shall also give notice to the Corporation at the office for the county of the date of intended harvest at least seven days prior to the start of harvest.

(c) The Corporation reserves the right to reject any claim if any of the requirements of this section are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

(d) There shall be no abandonment of the apple crop to the Corporation.

9. *Claim for loss.* (a) Any claim for loss on a unit shall be submitted to the Corporation on a form prescribed by the Corporation within 60 days after harvest of the insured crop is completed on the unit but not later than December 31 of the crop year. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(b) It shall be a condition precedent to the payment of any claim that the insured establish to the satisfaction of the Corporation the production of apples on the unit and that the loss has been caused by one or more of the hazards insured against during the insurance period, and furnish any other information regarding the manner and extent of loss as may be required by the Corporation. If the production harvested from a unit is commingled with the production harvested from any other acreage and the insured fails to keep separate records satisfactory to the Corporation of the acreage involved and the production from each, the Corporation may (1) allocate the commingled production as it deems appropriate; or (2) reject the claim for the unit without affecting the insured's liability for the premium.

(c) Losses shall be adjusted separately for each unit. The amount of loss on any unit shall be determined by (1) multiplying the insured acreage on the unit by the applicable amount of insurance per acre; (2) multiplying the result by the applicable percent of insured damage (determined in accordance with the provisions of subsection (d) of this section) in excess of 25 percent; and (3) multiplying this product by the insured share: *Provided*, That the amount of loss shall be determined with respect to all of the insurable acreage and share, but the amount of loss shall be reduced proportionately if the premium computed on all of the insurable acreage and share exceeds the premium computed on the acreage and share shown on the acreage report: *Provided, further*, That the insured share shall not exceed the share which the insured has in the apple crop at the time of loss or the beginning of harvest, whichever is earlier.

(d) The percent of insured damage shall be the ratio of the number of boxes the Corporation determines were lost from insured causes as provided hereinafter to the applicable number of boxes determined as follows: (1) If no spring freeze damage is determined by the Corporation, the total boxes of all production harvested, remaining on the trees, lost due to windstorm or hail knocking the apples from the trees, lost due to uninsured causes and lost due to not following good cultural practices; (2) If spring freeze damage is determined by the Corporation, the lower of (i) the expected boxes of production for the crop year as determined by the Corporation based on the number, age, size, condition and care of the trees and the cultural practices followed or (ii) the highest number of boxes harvested from the acreage in any one of the previous four crop years as determined by the Corporation from warehouse and processor records provided by the insured. No freeze damage shall be deemed to have occurred, even though reported, if the determination made as provided in subsection (d)(1) of this section exceeds the determination as provided in subsection (d)(2) of this section.

No insurance shall be considered to have attached to any acreage on which the Corporation determines the expected production was less than the production shown on the actuarial table as a prerequisite for insurability.

The boxes of production lost shall be the difference between the production as determined by the Corporation and the production count which shall include all boxes harvested, remaining on the trees, lost due to uninsured causes and lost due to failure to follow good cultural practices: *Provided, however*, That for those apples determined by the Corporation to have been reduced below fancy grade (based on standards established by the duly authorized agency of the state) directly and solely by insured causes, only 70 percent to 90 percent of the apples so reduced in grade shall be counted as production lost. This shall be determined as follows: A representative sample of the apples in the orchard will be taken, the number of apples reduced below fancy grade due to insured causes shall be determined and a percentage so reduced below fancy of the total sample shall be calculated, (1) if the percentage is less than 70 percent, 70 percent of the apples reduced shall be counted as production lost, (2) if the percentage is 70 percent or more but less than 90 percent, the actual percent of apples reduced shall be counted as production lost, (3) if the percentage is 90 percent or more, 90 percent of the apples reduced shall be counted as production lost. In no event shall a reduction in grade be applied to any apple grading less than fancy due solely to shape or color.

(e) If any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That such action must be brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

10. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for loss is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled therto.

11. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right or remedy including the right to collect any unpaid premiums if at any time, either before or after any loss, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

12. *Collateral assignment.* Upon submission and approval of forms prescribed by the Corporation, the insured may assign the right to an indemnity in any crop year, and the assignee shall have the right to submit the loss notices and forms as required by the contract.

13. *Transfer of insured share.* If the insured transfers all or any part of the insured share in any crop year, the Corporation will, upon submission and approval of forms prescribed by the Corporation, continue to provide protection according to the provisions of the policy to the transferee for such crop year with respect to the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the transferor.

14. *Subrogation.* The insured assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment therefor is made by the Corporation and shall execute all papers required and take appropriate action to secure such rights.

15. *Records and access to farm.* The insured shall keep or cause to be kept, for two years after the time of loss, separate records of the harvesting, storage, shipments, sale, or other disposition of all apples produced on each unit and on any uninsured acreage of apples in the county in which the insured has a share. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

16. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

It is desirable that these regulations become effective with the 1977 crop year.

Notice of changes must be given to insureds on or before December 15, 1976. It would, therefore, be impossible to follow both the procedure for notice and public participation prescribed by 5 U.S.C. 553(b) and (c) prior to the adoption of these regulations and to comply with the contractual provisions with respect to filing such changes before December 15, 1976. Under the circumstances, the Board of Directors found that it would be impracticable and contrary to the public interest to follow the procedure for notice and public participation prescribed by 5 U.S.C. 553(b) and (c), as directed by the Secretary of Agriculture in a Statement of Policy, executed July 20, 1971 (36 FR 13804), prior to their adoption.

Accordingly, said regulations were adopted by the Board of Directors on November 10, 1976.

The Federal Crop Insurance Corporation 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.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

Approved on November 22, 1976.

JOHN A. KNEBEL,
Secretary.

[FR Doc.76-34859 Filed 11-26-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16285; Amdt. 39-2779]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corp. BAC 1-11 200 and 400 Series Airplanes

There have been reports of fractures of the flexible oxygen hoses of the emergency oxygen system resulting from the oxygen hoses being placed too close to heat producing electrical equipment and hot water pipes on BAC 1-11 200 and 400 series airplanes that could result in oxygen leaks and possible in-flight fires. Since this condition is likely to exist in other airplanes of the same type design, an airworthiness directive is being issued which requires a leak test of the emergency oxygen system, repetitive inspections, reworking, and replacement, as necessary, of the flexible hoses of the emergency oxygen system on BAC 1-11 200 and 400 series airplanes.

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

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).)

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BRITISH AIRCRAFT CORPORATION. Applies to BAC 1-11 200 and 400 series airplanes, certificated in all categories.

Compliance is required as indicated.

To detect oxygen leaks, due to fractures in the flexible oxygen hoses of the emergency oxygen system, and prevent possible in-flight fires, accomplish the following:

(a) Within the next 250 hours time in service after the effective date of this AD, unless already accomplished in the last 1,000 hours time in service, conduct a leak test of the emergency oxygen system in accordance with paragraph 2.3 of the section entitled "Accomplishment Instructions" of British Aircraft Corporation Alert Service Bulletin 35-A-PM 5394, issue 2, dated February 2, 1976, or an FAA-approved equivalent.

(b) If, during the leak test required by paragraph (a) of this AD, a leak is found, before further flight, locate the source of the leak and replace the defective part with a new part of the same part number and then retest the emergency oxygen system in accordance with paragraph (a) of this AD.

(c) Within the next 1,000 hours time in service or six months after the effective date of this AD, whichever occurs sooner, unless already accomplished within the preceding 1,500 hours time in service, and thereafter at intervals not to exceed 5,000 hours time in service or two years, whichever occurs sooner, inspect and rework the flexible hoses of the emergency oxygen system in accordance with figures 1 through 3, table 1, and paragraph 2.4 of British Aircraft Corporation Alert Service Bulletin 35-A-PM 5394, issue 2, dated February 2, 1976, or an FAA-approved equivalent.

(d) If, during an inspection required by paragraph (c) of this AD, the flexible oxygen hoses are found fractured or embrittled, before further flight, replace the affected parts with new parts of the same part number and then retest the oxygen system for leaks in accordance with paragraph (a) of this AD.

This amendment becomes effective December 14, 1976.

NOTE: The Federal Aviation 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.

Issued in Washington, D.C. on November 19, 1976.

J. A. FERRARESE,
Acting Director, Flight Standards Service.

[FR Doc.76-34935 Filed 11-26-76;8:45 am]

[Docket No. 76-CE-6-AD; Amdt. 39-2778]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 210 Series Airplanes

Amendment 39-2670, AD 76-14-07, is an Airworthiness Directive (AD) published in the FEDERAL REGISTER on July 15, 1976 (41 FR 29093) and applicable to Cessna 210 Series airplanes. It requires the replacement and inspection of the main landing gear saddles on these series airplanes in accordance with Cessna Service Letter SE 75-26. The present compliance time for AD 76-14-07 is within 100 hours' time in service after August 16, 1976. Information now received shows that the manufacturer is unable to supply a sufficient number of parts for all aircraft to permit AD accomplishment prior to exhausting the compliance time specified in AD 76-14-07. Owners/operators of unmodified aircraft are thus faced with loss of aircraft usage and accompanying economic hardship. Consequently, the FAA is forced to weigh the alternatives of grounding aircraft versus the effects of extending the ADs compliance time. After evaluating the problem, it has been determined that an acceptable level of safety can be reasonably assured for a limited period of time by extending AD compliance to April 1, 1977, provided that the main landing gear saddles are inspected for cracks using dye penetrant procedures at 25 hours' time in service intervals until the required modification has been accomplished. Therefore, AD 76-14-07 is being amended accordingly.

Since this amendment is in part relieving in nature and is in the interest of safety, notice and public procedure hereon are unnecessary and the amendment may become effective in less than thirty (30) days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697), Section 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-2670, AD 76-14-07, is amended so that it now reads as follows:

CESSNA. Applies to Models 210 thru 210J (Serial Numbers 57001 thru 57575, 21057576 thru 21059199) and Models T210F thru T210J (Serial Numbers T210-0001 thru T210-0454) airplanes.

Compliance: Required as indicated, unless already accomplished.

To decrease the possibility of main landing gear extension failures, accomplish the following:

(A) On Models 210 and 210A (Serial Numbers 21057001 thru 21057840) airplanes with 1,000 hours' or more time in service or upon accumulation of 1,025 hours' time in service on those aircraft with less than 1,000 hours' time in service:

1. Within 25 hours' time in service after the effective date of this AD and within each 25 hours' time in service thereafter, inspect Part Numbers 1241004-1 and 1241004-2 landing gear saddles for cracks using dye penetrant procedures in accordance with the instructions outlined in paragraph "E" of this AD. Particular attention should be given to the critical areas shown in Figure 1 of this AD. When all modifications specified in Paragraph A(3) have been accomplished, the requirements of this Paragraph A(1) are no longer applicable.

2. Prior to further flight, replace any cracked saddles found during any inspection required by Paragraph A(1).

3. Within 100 hours' time in service after August 16, 1976, or prior to April 1, 1977, whichever occurs later, and thereafter at each 1,000 hours' time in service replace P/N's 1241004-1 and 1241004-2 main landing gear saddles with new components having the same P/N's in accordance with Cessna Serv-

ice Letter SE 75-26 dated December 5, 1975, or later approved revisions.

B. On Models 210B thru 210G (Serial Numbers 21057841 thru 21058936) and T210F and T210G (Serial Numbers T210-0001 thru T210-0307) airplanes with 1,000 or more hours' time in service or upon accumulation of 1,025 hours' time in service on those aircraft with less than 1,000 hours' time in service:

1. Within 25 hours' time in service after the effective date of this AD and within each 25 hours' time in service thereafter, inspect P/N's 1241423-1 and 1241423-2 main landing gear saddles for cracks using dye penetrant procedures in accordance with the instructions outlined in paragraph "E" of this AD. Particular attention should be given to the critical area shown in Figure 2 of this AD. When all modifications specified in Paragraph B(3) have been accomplished, the requirements of this Paragraph B(1) are no longer applicable.

2. Prior to further flight, replace any cracked saddles found during any inspection required by Paragraph B(1).

3. Within 100 hours' time in service after August 16, 1976, or prior to April 1, 1977, whichever occurs later, replace P/N's 1241423-1 and 1241423-2 main landing gear saddles with improved saddles of the same part number in accordance with Cessna Service Letter SE 75-26 dated December 5, 1975, or later approved revisions.

Note (1): The improved main landing gear saddle for Models 210B thru 210G, T210F and T210G aircraft is identified in Figure 3 accompanying this AD.

C. On those airplanes having improved main landing gear saddles installed per Paragraph B and on Models 210H and 210J (Serial Numbers 21058937 thru 21059199) and Models T210H and T210J (Serial Numbers T210-0308 thru T210-0454) airplanes, within the next 100 hours' time in service after the effective date of this AD, for airplanes with over 1,200 hours' time in service or upon accumulation of 1,300 hours' time in service for those airplanes with less than 1,200 hours' time in service, and at each annual inspection thereafter, inspect the P/N's 1241423-1 and 1241423-2 main landing gear saddles for cracks using dye penetrant procedures in accordance with the instructions outlined in Paragraph "E" of this AD. Particular attention should be given to the critical area shown in Figure 2 accompanying this AD. Replace any saddles showing evidence of cracks.

D. On those airplanes on which main landing gear saddles have been replaced, base the compliance time for Paragraphs A, B, and C on the new saddles time in service rather than the airplane time in service.

E. Perform the dye penetrant inspections required by Paragraphs A(1), B(1) and C of this AD as outlined in either procedure 1 or 2 below:

(1) Procedure 1:

Place the airplane on jacks, disconnect the main landing gear doors, retract the landing gear and perform dye penetrant inspection of the saddle fittings from underneath the airplane, or:

(2) Procedure 2:

With the airplane in normal ground attitude, remove the inspection cover in the floorboard area of the airplane and perform dye penetrant inspection of the saddle fittings from inside the airplane.

Refer to applicable Cessna Maintenance Manual instructions for disconnecting main landing geardoors and removal of inspection.

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

Note (2): A significant savings of manhours will result if initial compliance with this AD and modifications required by AD 76-04-01 are accomplished at the same time.

Note (3): It is imperative that new saddles required to comply with this AD be ordered immediately to assure that a sufficient supply of saddles will be available for modification of all aircraft on or before April 1, 1977. The purpose of this admonishment is to forewarn owners/operators to avoid grounding of their aircraft for failure to comply with this AD by April 1, 1977.

This amendment becomes effective December 2, 1976.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Kansas City, Missouri, on November 18, 1976.

John E. Shaw,
Acting Director, Central Region.

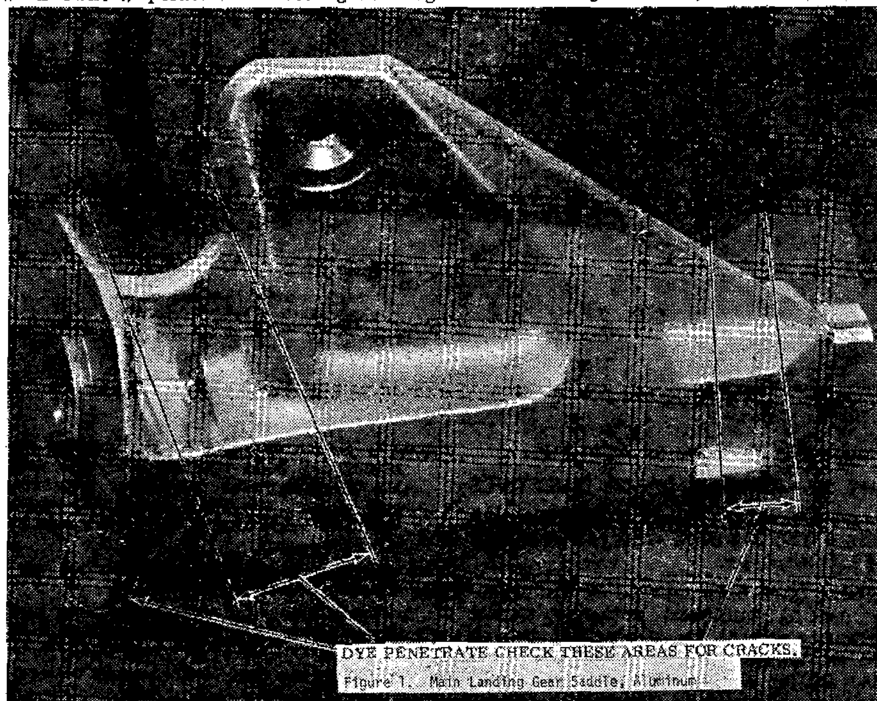

Figure 1. Main Landing Gear Saddle, Aluminum.

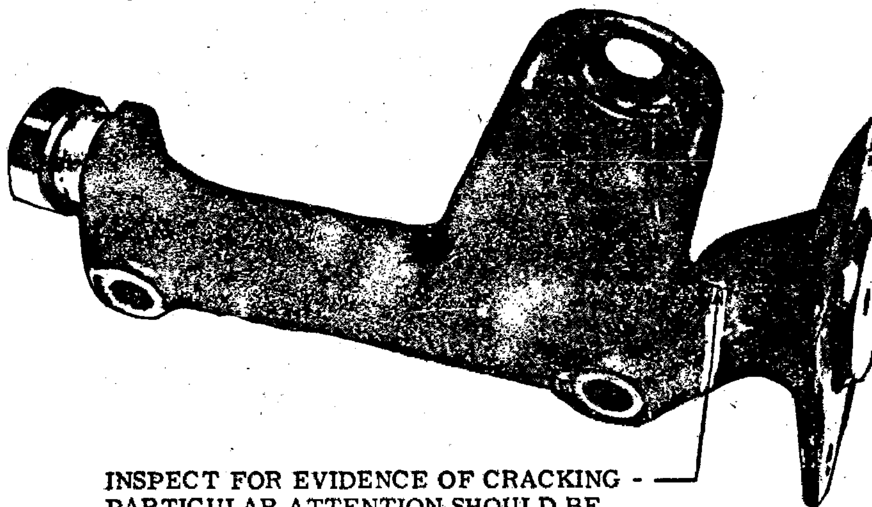

Figure 2. Main Landing Gear Saddle.

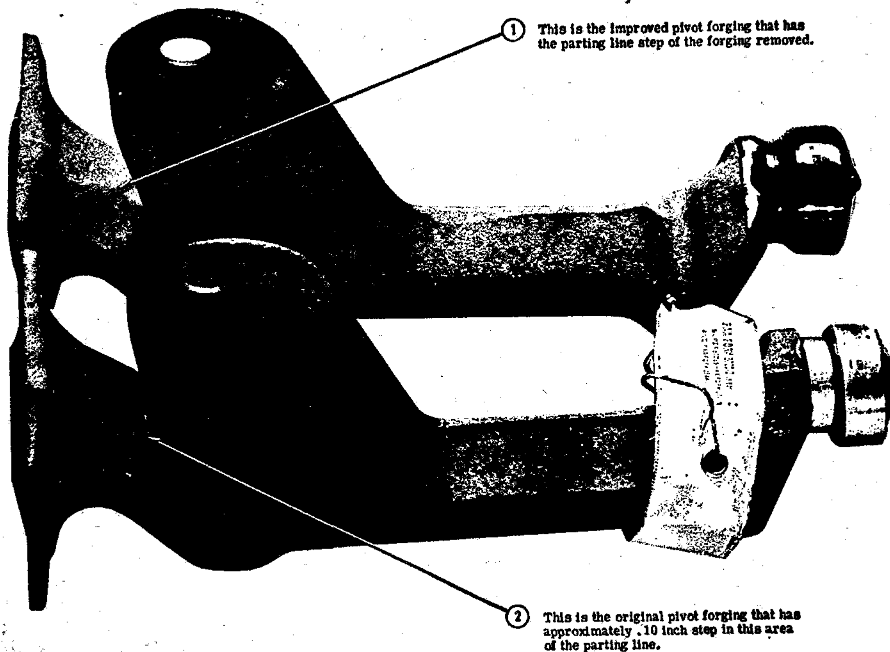

Figure 3. Main Landing Gear Saddles

[FR Doc.76-34938 Filed 11-26-76;8:45 am]

[Docket No. 16286; Amdt. 39-2780]

PART 39—AIRWORTHINESS DIRECTIVES

Morane Saulnier (Socata) Models MS 892A-150, MS 892E-150, MS 893A, MS 893E, Airplanes

There have been reports of the cylinder cooling bulkhead deflector spring rubbing against the rocker oil return pipe on certain Morane Saulnier (Socata) Rallye series airplanes that could result in puncture of the rocker oil return pipe and subsequent engine failure. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection and replacement, as necessary, of the rocker oil return pipe and reworking of the cylinder cooling bulkhead deflector spring on certain Morane Saulnier (Socata) Models MS 892A-150, MS 892E-150, MS 893A, and MS 893E airplanes.

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

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

MORANE SAULNIER (SOCATA). Applies to Models MS 892A-150, MS 892E-150, and MS 893A airplanes, all serial numbers, and Model MS 893E airplanes, serial numbers 12674 and below, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To detect rocker oil return pipe wear and prevent possible engine failure, accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this AD, inspect the rocker oil return pipes for wear in accordance with Socata Service Bulletin No. 124, GR 79-09, dated January 1976, or an FAA-approved equivalent.

(b) If, during the inspection required by paragraph (a) of this AD, rocker oil return pipe wear is found to exceed 10% of pipe wall thickness, before further flight, replace the part with a new part of the same part number.

(c) Within the next 25 hours time in service after the effective date of this AD, rework the cylinder cooling deflector spring in accordance with Socata Service Bulletin No. 124, GR 79-09, dated January 1976, or an FAA-approved equivalent.

This amendment becomes effective, on December 14, 1976.

NOTE: The Federal Aviation 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.

Issued in Washington, D.C. on November 19, 1976.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.76-34940 Filed 11-26-76;8:45 am]

[Docket No. 16287; Amdt. 39-2781]

PART 39—AIRWORTHINESS DIRECTIVES

Rolls-Royce Bristol Viper Mk 601-22 Engines

There have been reports of failures of the inner exhaust cone-front diaphragm weld on Rolls-Royce Bristol Viper Mk 601-22 engines that could result in damage to the second stage turbine, turbine disc overheating, and turbine disc rupture. Since this condition is likely to exist or develop in other engines of the same type design, an airworthiness directive is being issued to require replacement of the inner exhaust cone assembly on Rolls-Royce Bristol Viper Mk 601-22 engines.

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

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).)

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

ROLLS-ROYCE (1971) LIMITED. Applies to Rolls-Royce Bristol Viper Mk 601-22 engines installed, or being held for installation on Hawker Siddeley/Beechcraft Hawker Model DH/BH-125 series airplanes, certificated in all categories.

Compliance is required within the next 150 hours time in service after the effective date of this AD, unless already accomplished.

To prevent possible turbine disc damage, replace the inner exhaust turbine cone assembly in accordance with the "Accomplishment Instructions" of Rolls-Royce Alert Service Bulletin No. 72-A69, dated May 1976, or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, APO New York, N.Y. 09667.

This amendment becomes effective December 14, 1976.

NOTE: The Federal Aviation 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.

Issued in Washington, D.C. on November 19, 1976.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.76-34939 Filed 11-26-76;8:45 am]

[Airspace Docket No. 76-SO-90]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On September 20, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 40500),

stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Asheboro, N.C., transition area.

Interested persons were afforded an opportunity to participate in the rulemaking through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 24, 1977, as hereinafter set forth.

In § 71.181 (41 FR 440), the Asheboro, N.C., transition area is amended to read:

ASHEBORO, N.C.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Asheboro Municipal Airport (lat. 35°39'18" N., long. 79°53'41" W.), within 3 miles each side of the 051° bearing from the City Lake RBN, (lat. 35°42'58" N., long. 79°51'56" W.), extending from the 8-mile radius area to 8.5 miles northeast of the RBN.

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

Issued in East Point, Ga., on November 16, 1976.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.76-34937 Filed 11-26-76;8:45 am]

[Airspace Docket No. 76-SO-88]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On September 20, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 40499), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Mount Airy, N.C., transition area.

Interested persons were afforded an opportunity to participate in the rulemaking through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 24, 1977, as hereinafter set forth.

In § 71.181 (41 FR 440), the following transition area is added:

MOUNT AIRY, N.C.

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Mount Airy-Surry County Airport (lat. 36°27'30" N., long. 80°33'08" W.); excluding that portion that coincides with the Elkin transition area.

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

Issued in East Point, Ga., on November 16, 1976.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.76-34936 Filed 11-26-76;8:45 am]

[Airspace Docket No. 76-WA-19]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to divide by definition the two segments of the Fort Sill, Okla., Restricted Area R-5601D. This area excludes the airspace above 6,000 feet MSL south of Lat. 34°38'15" N. To preclude a possible misunderstanding, the airspace below 6,000 feet MSL south of Lat. 34°38'15" N., is hereby defined as R-5601E and removed from R-5601D.

Because this action merely clarifies the present status of designated airspace by redescription of its boundaries, it is administrative in nature and a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 30, 1976, as hereinafter set forth.

§ 73.56 [Amended]

Section 73.56 (41 FR 691) is amended as follows:

1. R-5601D, Fort Sill, Okla., is amended to read as follows:

R-5601D FORT SILL, OKLA.

Boundaries. Beginning at Lat. 34°38'15" N., Long. 98°38'00" W.; to Lat. 34°38'15" N., Long. 98°48'00" W.; to Lat. 34°42'15" N., Long. 98°50'00" W.; to Lat. 34°45'00" N., Long. 98°40'30" W.; to Lat. 34°43'30" N., Long. 98°35'39" W.; to Lat. 34°41'58" N., Long. 98°39'43" W.; to Lat. 34°41'58" N., Long. 98°45'20" W.; to Lat. 34°38'15" N., Long. 98°45'20" W.; to point of beginning.

Designated altitudes. Surface to 16,500 feet MSL.

Time of designation. Sunrise to sunset.

Controlling agency. Federal Aviation Administration, Fort Worth ARTC Center.

Using agency. Commanding General, Fort Sill, Okla.

2. R-5601E is added to read as follows:

R-5601E FORT SILL, OKLA.

Boundaries. Beginning at Lat. 34°38'15" N., Long. 98°38'00" W.; to Lat. 34°36'00" N., Long. 98°46'45" W.; to Lat. 34°38'15" N., Long. 98°48'00" W.; to point of beginning.

Designated altitudes. Surface to 6,000 feet MSL.

Time of designation. Sunrise to sunset.

Controlling agency. Federal Aviation Administration, Fort Worth ARTC Center.

Using agency. Commanding General, Fort Sill, Okla.

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

Issued in Washington, D.C., on November 24, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-35125 Filed 11-26-76;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2841]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Nosoma Systems, Inc., et al.

Correction

In FR Doc. 76-34098, appearing at page 50810, in the issue for Thursday, November 18, 1976, the following change should be made:

On page 50810, the thirteenth line of the third column should read *"Service of Atlantic City, Inc., a Cor—"*.

[Docket No. C-2842]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Owens-Corning Fiberglas Corporation

Correction

In FR Doc. 76-34078, appearing at page 50811, in the issue for Thursday, November 18, 1976 the following material should be added after the fifteenth line of the third column on page 50811:

"spondent must maintain accurate records of documentation which supports adver-".

[Docket C-2839]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Tri-State Driver Training, Inc., et al.

Correction

In FR Doc. 76-34099, appearing at page 50812, in the issue for Thursday, November 18, 1976, the following changes should be made:

On page 50812, the second line of the third column should read "cel provision; § 13.1895 Scientific or other".

On page 50812, the fourteenth line of the third column should read "(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets".

On page 50814, the thirteenth line from the bottom of the first column should read "II. 1. *It is further ordered,* That: (a) Re-".

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7442]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Special Elections for Certain Section 403(b) Annuity Contracts

This document contains temporary income tax regulations (26 CFR Part 11) under section 415(c)(4) of the Internal Revenue Code of 1954, as added by section 2004(a)(2) of the Employee Retirement Income Security Act of 1974 (Pub.

L. No. 93-406, 88 Stat. 979) (hereinafter referred to as the "Act").

Section 415(c) of the Code imposes limitations on the amount that may be contributed to qualified defined contribution plans as well as so-called "tax sheltered annuities" described in section 403(b) of the Code. Under section 415 (c) (1) and Revenue Ruling 75-481, 1975-2 C.B. 188, "annual additions" to a participant's account for any limitation year may not exceed the lesser of $25,000 or 25 percent of the participant's compensation for the limitation year. The $25,000 amount that an employer may contrib- creases. In addition, the maximum amount that an employee may contribute for any taxable year on behalf of an employee for an annuity contract described in section 403(b) that is excludable from such employee's gross income for the taxable year (the so-called "exclusion allowance") is computed under section 403(b) (2) (A). Thus, the limitations on excludable employer contributions to an annuity contract described in section 403(b) for any year will generally be the lesser of the employee's exclusion allowance determined under section 403 (b) (2) (A) for the taxable year or the section 415(c) (1) limitation applicable to such employee for the limitation year which ends with or within such taxable year.

However, under section 415(c) (4), certain eligible individuals covered by annuity contracts described in section 403(b) may elect for a particular limitation year or taxable year to be covered by alternate limitations in order to permit larger contributions to be made on their behalf for such annuity contracts. These special elections are available only for employees of educational institutions, hospitals and home health service agencies. The first election, described in section 415(c) (4) (A) and available only for the limitation year ending with or within the taxable year in which an individual separates from service, permits excludable employer contributions up to the employee's "exclusion allowance" for the particular taxable year with or within which such limitation year ends, taking into account only his years of service for the 10-year period ending on the date of separation. However, an employer may not make excludable contributions for the limitation year ending with or within a taxable year beginning in 1976 in excess of $26,825. The second election, described in section 415(c) (4) (B), permits excludable employer contributions for a particular limitation year up to the least of the following amounts: (1) $4,000, plus 25 percent of the individual's includible compensation (as defined in section 403 (b) (3)) for the taxable year with or within which such limitation year ends; (2) the individual's exclusion allowance for such taxable year under section 403 (b) (2) (A); or (3) $15,000. The amount of the alternate limitation under section 415(c) (1) (A) is not affected by this election. The third election, described in sections 415(c) (4) (C) and 403(b) (2) (B), permits excludable employer contributions for a particular taxable year up to the section 415(c) (1) limitations applicable to the individual for the limitation year ending with or within such taxable year without regard to the individual's exclusion allowance under section 403 (b) (2) (A) for such taxable year.

Each of the special elections described in section 415(c) (4) (B) and (C) may be made on a year by year basis. However, the election described in section 415 (c) (4) (A) may be made only once by an individual in his lifetime. Under section 415(c) (4) (D), once an individual has elected the application of any of the special elections for a year, neither of the other special elections may be elected for any future year with respect to contributions made for section 403(b) contracts by any employer of such individual. Once made, such election is irrevocable with respect to the year to which it relates.

These temporary regulations provide a definition of the term "limitation year" as applied to an individual on whose behalf an annuity contract described in section 403(b) has been purchased.

These temporary regulations also provide the rules for electing any one of the special election limitations described in section 415(c) (4) for a limitation year ending with or within a taxable year beginning in 1976.

The provisions of these temporary regulations do not affect any position taken by the Internal Revenue Service in Revenue Ruling 75-481, 1975-2 C.B. 188.

Adoption of regulations. In order to prescribe temporary income tax regulations (26 CFR Part 11) under section 415 (c) (4) of the Internal Revenue Code of 1954, as added to such Code by section 2004(a) (2) of the Employee Retirement Income Security Act of 1974 (Pub. L. No. 93-406, 88 Stat. 979) the following temporary regulations are hereby adopted:

§ 11.415(c) (4)-1 Special elections for section 403(b) annuity contracts purchased by educational institutions, hospitals and home health service agencies.

(a) *Limitations applicable to contributions for section 403(b) annuity contracts*—(1) *In general.* An annuity contract described in section 403(b) which is treated as a defined contribution plan (as defined in section 414(i)) is subject to the rules regarding the amount of annual additions (as defined in section 415(c) (2)) that may be made to a participant's account in a defined contribution plan for any limitation year (as defined in subparagraph (2) of this paragraph) under section 415(c) (1) and Revenue Ruling 75-481, 1975-2 C.B. 188. An annual addition to the account of an individual under a section 403(b) annuity contract in excess of such limitation for a limitation year is includible in the gross income of the individual for the taxable year with or within which such limitation year ends and reduces the exclusion allowance under section 403 (b) (2) for such taxable year to the extent of the excess. Such annuity contracts are, of course, also subject to the limitation imposed by section 403(b) (2) with respect to the amount that may be contributed by the employer for the purchase of an annuity contract described in section 403(b) and be excluded from the gross income of the employee on whose behalf such annuity contract is purchased. In general, the excludable contribution for such an annuity contract for a particular taxable year is the lesser of the exclusion allowance computed under section 403(b) (2) for such taxable year or the limitation imposed by section 415(c) (1) for the limitation year ending with or within such taxable year. For purposes of the limitation imposed by section 415(c) (1), the amount contributed toward the purchase of an annuity contract described in section 403(b) is treated as allocated to the employee's account as of the last day of the limitation year ending with or within the taxable year during which such contribution is made.

(2) *Limitation Year.* For purposes of this section—

(i) Except as provided in subdivision (ii) of this subparagraph, the limitation year applicable to an individual on whose behalf an annuity contract described in section 403(b) has been purchased by an employer shall be the calendar year unless such individual elects to change the limitation year to another 12-month period and attaches a statement to his income tax return filed for the taxable year in which such change is made.

(ii) The limitation year applicable to an individual described in subdivision (i) of this subparagraph who is in control (within the meaning of section 414 (b) or (c) as modified by section 415(h)) of any employer shall be the same as the limitation year of such employer.

(3) *Special elections.* Under section 415(c) (4), special elections are permitted with respect to section 403(b) annuity contracts (including custodial accounts treated as section 403(b) annuity contracts under section 403(b) (7)) purchased by educational institutions (as defined in section 151(e) (4) and the regulations thereunder), home health service agencies (as defined in subparagraph (4) of this paragraph) and hospitals. In lieu of the limitation described in section 415(c) (1) (B) otherwise applicable to the annual addition (as defined in section 415(c) (2)) that may be made to the account of a participant in a qualified defined contribution plan for a particular limitation year, an individual for whom an annuity contract described in this subparagraph is purchased may elect, in accordance with the provisions of paragraph (b) of this section, to have substituted for such limitation the amounts described in subparagraph (5) (i) or (5) (ii) of this paragraph. In lieu of the exclusion allowance determined under section 403(b) (2) and the regulations thereunder otherwise applicable for the taxable year with or within which the limitation year ends to an individual on whose behalf an annuity contract described in this subparagraph is purchased, such an individual may elect, in accordance with the provisions of paragraph (b) of this section, to have substituted for such exclusion allowance the

amount described in subparagraph (5) (iii) of this paragraph.

(4) *Definition.* For purposes of this section, a home health service agency is an organization described in section 501 (c)(3) which is exempt from taxation under section 501(a) and which has been determined by the Secretary of Health, Education and Welfare to be a home health agency under section 1395(x)(o) of Title 42 of the United States Code.

(5) *Elections.* (i) For the limitation year that ends with or within the taxable year in which an individual separates from the service of his employer (and only for such limitation year), the "(A) election limitation" shall be the exclusion allowance computed under section 403(b)(2)(A) and the regulations thereunder (without regard to section 415) for the taxable year in which such separation occurs taking into account such individual's years of service (as defined in section 403(b)(4) and the regulations thereunder) for the employer and contributions described in section 403(b)(2)(A)(ii) and the regulations thereunder during the period of years (not exceeding 10) ending on the date of separation. For purposes of the preceding sentence, all service for the employer performed within such period must be taken into account. However, the "(A) election limitation" shall not exceed the amount described in section 415(c)(1)(A) (as adjusted under section 415(d)(1)(B)) applicable to such individual for such limitation year.

(ii) For any limitation year, the "(B) election limitation" shall be equal to the least of the following amounts—

(A) $4,000, plus 25 percent of the individual's includible compensation (as defined in section 403(b)(3) and the regulations thereunder) for the taxable year with or within which the limitation year ends,

(B) The amount of the exclusion allowance determined under section 403(b)(2)(A) and the regulations thereunder for the taxable year with or within which such limitation year ends, or

(C) $15,000.

(iii) For any taxable year, the "(C) election limitation" shall equal the lesser of the amount described in section 415 (c)(1)(A) (as adjusted under section 415 (d)(1)(B)) or the amount described in section 415(c)(1)(B) applicable to the individual for the limitation year ending with or within such taxable year. For purposes of the preceding sentence, compensation described in section 415(c)(1)(B) taken into account for a particular limitation year does not include amounts contributed toward the purchase of an annuity contract described in section 403 (b) during such limitation year (whether or not includable in the gross income of the individual on whose behalf such contribution is made).

(b) *Special rules for elections and salary reduction agreements for 1976*—(1) *Election.* For a limitation year that ends with or within a taxable year beginning in 1976 (or for such a taxable year), an individual may take advantage of the alternative limitations described in section 415(c)(4) by attaching to his individual income tax return for such taxable year a statement of intention stating that, with respect to such limitation or taxable year, such individual intends to make an election described in paragraph (a)(3) of this section and specifying which election he intends to make. No form is prescribed for the statement of intention, but it shall include the individual's name, address and Social Security number. If the individual is not required to file an income tax return for 1976, the statement of intention shall be filed at the Internal Revenue Service Center where (and on or before the time by which) such individual would file such return if he were required to file. The statement of intention shall be treated by the Internal Revenue Service as an election for such limitation or taxable year for all purposes except for purposes of subparagraph (3) of this paragraph. The election for 1976 shall be made by filing such election with the Internal Revenue Service, in a manner to be prescribed by the Commissioner, on or before the due date of such individual's income tax return for the taxable year beginning in 1977. An individual may make any election, or not make an election, for the 1976 year even though he has filed a statement of intention for such year and determined his tax for such year in accordance with the intended election. For purposes of section 6654 (relating to failure of an individual to pay estimated tax), a difference in tax determined in accordance with such statement of intention and tax ultimately determined for such year shall not be treated as an underpayment to the extent such difference is due to the making of, or the failure to make, an election described in paragraph (a)(3) of this section.

(2) *Salary reduction agreements.* An individual who is employed by an organization described in paragraph (a)(3) of this section may make a salary reduction agreement for a taxable year beginning in 1976 at any time prior to the end of such year without such agreement being considered a new agreement within the meaning of § 1.403(b)-1(b)(3)(i), provided such individual makes an election described in paragraph (a)(5) (i) or (ii) of this section for the limitation year ending with or within such taxable year or (if applicable) makes an election described in paragraph (a)(5)(iii) of this section with respect to such taxable year. A salary reduction agreement described in the preceding sentence may be made effective with respect to any amounts earned during the taxpayer's most recent one-year period of service (as described in § 1.403(b)-1(f)) ending not later than the end of such taxable year, notwithstanding the provisions of § 1.403(b)-1(b)(3)(i).

(3) *Election is irrevocable.* The election described in paragraph (a)(3) of this section, once made in accordance with the provisions of subparagraph (1) of this paragraph, shall be irrevocable with respect to the limitation year or taxable year to which such election relates.

(4) *Limitations.* With respect to any limitation or taxable year, an election by an individual pursuant to subparagraph (1) of this paragraph to have any subdivision of paragraph (a)(5) of this section apply to contributions made on his behalf by his employer with respect to any section 403(b) annuity contract will preclude an election to have any other subdivision of paragraph (a)(5) apply for any future limitation or taxable year with respect to any section 403 (b) annuity contract contributions made by any employer of such individual. With respect to any limitation year, an election by an individual to have paragraph (a)(5)(i) of this section apply to contributions made on his behalf by his employer with respect to any section 403(b) annuity contract will preclude an election to have any subdivision of paragraph (a)(5) apply for any future limitation or taxable year with respect to any section 403(b) annuity contract contributions made by any employer of such individual.

(5) *Aggregation rules*—(i) *Annuity contracts described in section 403(b).* For purposes of applying the limitations of this section for a particular limitation or taxable year, all contributions toward the purchase of annuity contracts described in section 403(b) made on behalf of an individual by his employer and any related employer (as defined in subdivision (ii) of this subparagraph) must be aggregated without regard to:

(A) Whether such individual makes any election pursuant to subparagraph (1) of this paragraph for such year; and

(B) Whether such individual files a statement of intention pursuant to subparagraph (1) of this paragraph, for such year. In addition, any other aggregation required by Revenue Ruling 75-481, 1975-2 C.B. 188, must be made to the extent applicable.

(ii) *Definition.* For purposes of this section, with respect to a particular employer, a related employer is any other employer which is a member of a controlled group of corporations (as defined in section 414(b), and the regulations thereunder and as modified by section 415(h)) or a group of trades or business (whether or not incorporated) under common control (as defined in section 414(c) and the regulations thereunder and as modified by section 415(h)) in which such particular employer is a member.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Doctor M is an employee of H Hospital (an organization described in section 501(c)(3) and exempt from taxation under section 501(a)) for the entire 1976 calendar year. M is not in control of H within the meaning of section 414 (b) or (c), as modified by section 415(h). M uses the calendar year as the taxable year and M uses the calendar year as the limitation year. M has includible compensation (as defined in section 403(b)(3) and the regulations thereunder) and compensation (as defined in section 415(c)(3)) for taxable year 1976 of $30,000, and M has 4 years of service (as defined in § 1.403(b)-1(f)) with H as of December 31, 1976. During M's prior service with H, H

had contributed a total of $12,000 on M's behalf for annuity contracts described in section 403(b), which amount was excludable from M's gross income for such prior years. Thus, for the limitation year ending with or within taxable year 1976, M's exclusion allowance determined under section 403(b) (2) (A) is $12,000 ((.20×$30,000×4)−$12,000). The limitation imposed by section 415(c) (1) that is applicable to M for limitation year 1976 is the lesser of $26,825 (the amount described in section 415(c) (1) (A) adjusted under section 415(d) (1) (B) for limitation year 1976) or $7,500 (the amount described in section 415(c) (1) (B)). Absent the special elections provided in section 415(c) (4), $7,500 would be the maximum contribution H could make for annuity contracts described in section 403(b) on M's behalf for limitation year 1976 without increasing M's gross income for taxable year 1976. However, because H is an organization described in section 415(c) (4), M may make a special election with respect to amounts contributed by H on M's behalf for section 403(b) annuity contracts for 1976. Assume that M does not separate from the service of H during 1976 and that, therefore, the "(A) election limitation" described in section 415(c) (4) (A) is not available to M. If M elects the "(B) election limitation" for 1976, H could contribute $11,500 on M's behalf for annuity contracts described in section 403(b) for that year (the least of $11,500 (the amount described in section 415(c) (4) (B) (i)); $12,000 (the amount described in section 415(c) (4) (B) (ii)), and $15,000 (the amount described in section 415(c) (4) (B) (iii))). If M elects the "(C) election limitation" for 1976, H could only contribute up to $7,500 (the lower of the amounts described in section 415(c) (1) (A) or (B)) for section 403(b) annuity contracts on M's behalf for 1976 without increasing M's gross income for that year.

Example (2). Assume the same facts as in example (1) except that H had contributed a total of $18,000 on M's behalf for annuity contracts in prior years, which amount was excludable from M's gross income for such prior years. Accordingly, for 1976, M's exclusion allowance determined under section 403 (b) (2) (A) is $6,000 ((.20 x $30,000 x 4) − $18,000). The limitation imposed by section 415 (c) (1) applicable to M for 1976 is $7,500 (the lesser of the amount described in section 415 (c) (1) (A) or (B)). Absent the special elections provided in section 415 (c) (4), $6,000 would be the maximum amount H could contribute for annuity contracts described in section 403 (b) on M's behalf for 1976 without increasing M's gross income for that year. However, if M elects the "(C) election limitation" for 1976, H may contribute up to $7,500 without increasing M's gross income for that year.

Example (3). G, a teacher, is an employee of E, an educational institution described in section 151 (e) (4). G uses the calendar year as the taxable year and G uses the 12-month consecutive period beginning July 1 as the limitation year. G has includible compensation (as defined in section 403 (b) (3) and the regulations thereunder) for taxable year 1976 of $12,000 and G has compensation (as defined in section 415 (c) (3)) for the limitation year ending with or within taxable year 1976 of $12,000. G has 20 years of service (as defined in § 1.403 (b)-1 (f)) as of May 30, 1976, the date G separates from the service of E. During G's service with E before taxable year 1976, E had contributed $34,000 toward the purchase of a section 403 (b) annuity contract on G's behalf, which amount was excludable from G's gross income for such prior years. Of this amount, $19,000 was so contributed and excluded during the 10 year period ending on May 30, 1976. For the taxable year 1976, G's exclusion allowance determined under section 403 (b) (2) (A) is $14,000 ((.20 x $12,000 x 20) − $34,000). Absent the special elections described in section 415(c) (4), $3,000 (the lesser of G's exclusion allowance for taxable year 1976 or the section 415(c) (1) limitation applicable to G for the limitation year ending with or within such taxable year) would be the maximum excludable contribution E could make for section 403(b) annuity contracts on G's behalf for the limitation year ending with or within taxable year 1976. However, because E is an organization described in section 415(c) (4), G may make a special election with respect to amounts contributed on G's behalf by E for section 403(b) annuity contracts for the limitation year ending with or within taxable year 1976. Because G has separated from the service of E during such taxable year, G may elect the "(A) election limitation" as well as the "(B) election limitation" or the "(C) election limitation". If G elects the "(A) election limitation" for the limitation year ending with or within taxable year 1976, E could contribute up to $5,000 ((.20×$12,000×10)−$19,000) on G's behalf for section 403(b) annuity contracts for such limitation year without increasing G's gross income for the taxable year with or within which such limitation year ends. If G elects the "(B) election limitation" for such limitation year, E could contribute $7,000 (the least of $7,000 (the amount described in section 415(c) (4) (B) (i)); $14,000 (the amount described in section 415(c) (4) (B) (ii)); and $15,000 (the amount described in section 415(c) (4) (B) (iii))). If G elects the "(C) election limitation" for taxable year 1976, E could contribute $3,000 (the lesser of the amounts described in section 415(c) (1) (A) or (B)).

(d) *Plan year*. For purposes of section 415 and this section, an annuity contract described in section 403(b) shall be deemed to have a plan year coinciding with the taxable year of the individual on whose behalf the contract has been purchased unless that individual demonstrates that a different 12-month period should be considered to be the plan year.

(e) *Effective date*. The provisions of this section are applicable for taxable years beginning in and for limitation years ending with or within taxable years beginning in 1976.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 415(c) (4) (D) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 983; 26 U.S.C. 415(c) (4) (D) and 68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: November 19, 1976.

GEORGE H. DIXON,
Deputy Secretary of the Treasury.

[FR Doc.76-35040 Filed 11-23-76;4:24 pm]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-140]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Mokelumne River, California

This amendment changes the regulations for the Millers Ferry Bridge across the North Fork of the Mokelumne River near Walnut Grove to extend the opening periods from May 15 through September 15 to May 1 through October 31. This amendment was circulated as a public notice dated September 3, 1976, by the Commander, Twelfth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CGD 76-140) on September 2, 1976 (41 FR 37119). The one reply received had no objection to the proposal.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.714(f) (2) (i) to read as follows:

§ 117.714 San Joaquin River and its tributaries, CA.

* * * * *

(f) * * *

(2) * * *

(i) From May 1 through October 31, from 9 a.m. to 5 p.m., the draw shall open on signal.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655 (g) (2)); 49 CFR 1.46(c) (5), 33 CFR 1.05-1 (c) (4))

Effective date: This revision shall become effective on January 1, 1977.

The Coast Guard 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: November 16, 1976.

D. J. RILEY,
Captain, United States Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.76-35002 Filed 11-26-76;8:45 am]

[CGD 76-172]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Columbia River, Washington

This amendment changes the regulations for the highway vertical lift drawbridges (Interstate 5) across the Columbia River, mile 106.5, to permit the draws to remain closed to the passage of vessels from 6:30 a.m. to 8 a.m., and 3:30 p.m. to 6 p.m., Monday through Friday, except holidays. This amendment was circulated as a public notice dated September 29, 1976, by the Commander, Thirteenth

Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGD 76-172) on September 2, 1976 (41 FR 37118). Eight responses were received. Seven supported the proposal or had no objection thereto. Three of these seven suggested more restrictive periods, however, it is felt that the proposed periods will meet the reasonable needs of navigation without unduly disrupting vehicular traffic. One recommended the use of radiotelephone communication in lieu of sound and visual signals. As this is not a part of the original proposal, this will be considered as a new proposal at a later date.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.758a immediately after § 117.758 to read as follows:

§ 117.758a Columbia River, Vancouver, Wash.

(a) The draws of the highway vertical lift drawbridges (Interstate 5) need not open for the passage of vessels from 6:30 a.m. to 8 a.m., and 3:30 p.m. to 6 p.m., Monday through Friday, except holidays.

(b) The draws need not open at any time for the passage of recreation vessels that may pass under the several fixed navigation spans which provide a higher vertical clearance than the draw span.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date: This revision shall become effective on December 31, 1976.

The Coast Guard 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: November 19, 1976.

A. F. FUGARO,
Rear Admiral, United States Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-35003 Filed 11-26-76;8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 222—DELEGATIONS OF AUTHORITY

Delegation of Authority to Director, Office of International Postal Affairs, to Sign International Express Mail and Other Agreements

This document amends 39 CFR Part 222 to authorize the Director, Office of International Postal Affairs, to sign International Express Mail and other agreements. This revision is effective immediately.

Accordingly, in Part 222 of Title 39, CFR, new § 222.10 is added, reading as follows:

§ 222.10 Delegation of Authority to the Director, Office of International Postal Affairs.

The Director, Office of International Postal Affairs, is authorized to sign Express Mail agreements with foreign postal administrations, and to sign technical agreements for the exchange of postal personnel and property with foreign postal administrations.

(39 U.S.C. 401(2))

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.76-34927 Filed 11-26-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 639-2]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Amendments to Reference Methods 13A and 13B

On August 6, 1975 (40 FR 33151), the Environmental Protection Agency (EPA) Promulgated Reference Methods 13A and 13B in Appendix A to 40 CFR Part 60. Methods 13A and 13B prescribe testing and analysis procedures for fluoride emissions from stationary sources. After promulgation of the methods, EPA continued to evaluate them and as a result has determined the need for certain amendments to improve the accuracy and precision of the methods.

Methods 13A and 13B require assembly of the fluoride sampling train so that the filter is located either between the third and fourth impingers or in an optional location between the probe and first impinger. They also specify that a fritted glass disc be used to support the filter. Since promulgation of the methods, EPA has found that when a glass frit filter support is used in the optional filter location, some of the fluoride sample is retained on the glass. Although no tests have been performed, it is believed that fluoride retention may also occur if a sintered metal frit filter support is used. However, in tests performed using a 20 mesh stainless steel screen as a filter support no fluoride retention was noted. Therefore, to eliminate the possibility of fluoride retention, sections 5.1.5 and 7.1.3 of Methods 13A and 13B are being revised to require the use of a 20 mesh stainless steel screen filter support if the filter is located between the probe and first impinger. If the filter is located in the normal position between the third and fourth impingers, the glass frit filter support may still be used.

In addition to the changes to sections 5.1.5 and 7.1.3, a few corrections are also being made. The amendments promulgated herein are effective on November 29, 1976. EPA finds that good cause exists for not publishing this action as a notice of proposed rulemaking and for making it effective immediately upon publication because:

1. The action is intended to improve the accuracy and precision of Methods 13A and 13B and does not alter the overall substantive content of the methods or the stringency of standards of performance for fluoride emissions.

2. The amended methods may be used immediately in source testing for fluoride emissions.

Dated: November 17, 1976.

JOHN QUARLES,
Acting Administrator.

In Part 60 of Chapter I, Title 40 of the Code of Federal Regulations, Appendix A is amended as follows:

1. Reference Method 13A is amended as follows:

(a) In section 3., the phrase "300 μg/liter" is corrected to read "300 mg/liter" and the parenthetical phrase "(see section 7.3.6)" is corrected to read "(see section 7.3.4)".

(b) Section 5.1.5 is revised to read as follows:

5.1.5 Filter holder—If located between the probe and first impinger, borosilicate glass with a 20 mesh stainless steel screen filter support and a silicone rubber gasket; neither a glass frit filter support nor a sintered metal filter support may be used if the filter is in front of the impingers. If located between the third and fourth impingers, borosilicate glass with a glass frit filter support and a silicone rubber gasket. Other materials of construction may be used with approval from the Administrator, e.g., if probe liner is stainless steel, then filter holder may be stainless steel. The holder design shall provide a positive seal against leakage from the outside or around the filter.

(c) Section 7.1.3 is amended by revising the first two sentences of the sixth paragraph to read as follows:

7.1.3 Preparation of collection train. * * * Assemble the train as shown in Figure 13A-1 with the filter between the third and fourth impingers. Alternatively, the filter may be placed between the probe and first impinger if a 20 mesh stainless steel screen is used for the filter support. * * *

* * * * *

(d) In section 7.3.4, the reference in the first paragraph to "section 7.3.6" is corrected to read "section 7.3.5".

2. Reference Method 13B is amended as follows:

(a) In the third line of section 3, the phrase "300μg/liter" is corrected to read "300 mg/liter".

(b) Section 5.1.5 is revised to read as follows:

5.1.5 Filter holder—If located between the probe and first impinger, borosilicate glass with a 20 mesh stainless steel screen filter support and a silicone rubber gasket; neither a glass frit filter support nor a sintered metal filter support may be used if the filter is in front of the impingers. If located between the third and fourth impingers, borosilicate glass with a glass frit filter support and a silicone rubber gasket. Other materials of construction may be used with approval from the Administrator, e.g., if probe liner is stainless steel, then filter holder may be stainless steel. The holder design shall provide a positive seal against leakage from the outside or around the filter.

(c) Section 7.1.3 is amended by revising the first two sentences of the sixth paragraph to read as follows:

7.1.3 Preparation of collection train. * * * Assemble the train as shown in Figure 13A-1 (Method 13A) with the filter between the third and fourth impingers. Alternatively, the filter may be placed between the probe the first impinger if a 20 mesh stainless steel screen is used for the filter support. * * *

* * * * *

(d) In section 7.3.4, the reference in the first paragraph to "section 7.3.6" is corrected to read "section 7.3.5".

(Secs. 111, 114, and 301(a) Clean Air Act, as amended by sec. 4(a) of Pub. L. 91-604, 84 Stat. 1678 and by sec. 15(c)(2) of Pub. L. 91-604, 84 Stat. 1713 (42 U.S.C. 1857c-6, 1957c-9, and 1857g(2)).)

[FR Doc.76-34888 Filed 11-26-76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[PLO 5609]
[UT-31368]

UTAH

Withdrawal for Reclamation Project

Correction

In FR Doc. 76-34446 appearing at page 51035 in the issue for Friday, November 19, 1976, in the middle column in the areas described, for Sec. 20, the last figure in the first line now reading "W¼" should have read "SW¼".

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-22; Amdt. No. 171-35]

PART 171—GENERAL INFORMATION AND REGULATIONS

Matter Incorporated By Reference

• The purpose of this amendment to the Hazardous Materials Regulations is to update the reference to sections VIII (Division I) and IX of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. •

On October 12, 1976, a notice of proposed rule making was published, Docket No. HM-22; Notice 76-8 (41 FR 44711), proposing to make the above change. No comments were received on the proposal.

§ 171.7 [Amended]

In consideration of the foregoing, paragraph (d)(1) of § 171.7 is amended by changing the date December 31, 1975 to read "June 30, 1976."

Effective: December 31, 1976.

(18 U.S.C. 834, 46 U.S.C. 170(7), 49 U.S.C. 1472 (h)(1); 49 CFR 1.53(f)-(h). Under a final rule making (41 FR 38175), January 3, 1977, the authority citation for this amendment is changed to read: (49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e))).

The Materials Transportation Bureau 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.

Issued in Washington, D.C. on November 19, 1976.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

[FR Doc.76-34855 Filed 11-26-76;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Lake Mason National Wildlife Refuge, Montana

The following special regulation is issued and is effective November 29, 1976.

§ 32.11 List of open areas; migratory waterfowl.

MONTANA

LAKE MASON NATIONAL WILDLIFE REFUGE

Migratory waterfowl may be hunted within a portion of the Lake Mason National Wildlife Refuge in accordance with all applicable State and Federal regulations. All of the land of the refuge controlled by the United States within Townships 9 and 10, Ranges 23 and 24 East except those portions of the lake lying in the N½NW¼ Section 24; the N½N½ Section 23; the N½NE¼ Section 22; the SE¼ Section 15; the S½ Section 14 and the SW¼ Section 13 of T9N, R24E Montana Principal Meridian shall be open to hunting.

The provisions of this special regulation opening a portion of the refuge supplement the general regulations covering migratory waterfowl hunting on wildlife refuges set forth in Title 50, Code of Federal Regulations, Part 32, and will remain effective through August 31, 1977.

LARRY L. CALVERT,
Refuge Manager, Charles M. Russell National Wildlife Range, Lewistown, Montana.

NOVEMBER 14, 1976.

[FR Doc.76-34932 Filed 11-26-76;8:45 am]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

Exposure of Individuals to Concentrations of Radioactive Materials in Air in Restricted Areas

On August 21, 1974, (39 FR 30164) the Atomic Energy Commission published in the FEDERAL REGISTER proposed amendments to 10 CFR Part 20 concerning control of internal occupational exposures to radioactive materials including provision for use of respiratory protective equipment. The availability of drafts of a related regulatory guide on acceptable programs for respiratory protection and of a related manual of respiratory protection against radioactive materials was also announced in the notice of proposed rule making.

Interested persons were invited to submit written comments or suggestions for consideration in connection with the proposed amendments by October 7, 1974, and the comment period was extended, upon request, to November 6, 1974. In addition, copies of the draft guide and manual were provided in response to requests.

Licensing and related regulatory functions of the AEC were transferred to the NRC pursuant to section 201 of the Energy Reorganization Act of 1974.

After consideration of the comments received and other considerations, the Nuclear Regulatory Commission has adopted the proposed amendments to Part 20 published for comment, with certain clarifying modifications and editorial changes. The more important changes, based largely on the comments received, are summarized as follows:

Since the limits on exposure to airborne radioactive materials are now expressed in terms of intake of such materials into the body, it was suggested that reference be made in the regulation (§ 20.103(a)(1)) to some standardized bases for estimating intake. Accordingly, the effective rule includes a reference to an NRC Regulatory Guide on acceptable concepts, models, equations and assumptions for a bioassay program (Regulatory Guide 8.9).

The intake limits for certain mixtures of uranium in soluble form (§ 20.103(a)(2)) have been changed to conform with those adopted by the Atomic Energy Commission on July 29, 1974 (39 FR 23990).

Licensees may, under the amended regulation, ordinarily control exposures to radioactive materials in much the same way as they do under the regulation before amendment. For example, if from measured concentrations of radioactive materials in air, and from generally known work patterns and staytimes in airborne radioactivity areas, it can be ascertained that no exposure of an individual in excess of the quarterly limit could occur, individual estimates of intake of radioactive material would not be required. In those circumstances where the licensee finds it necessary to maintain individualized records of intake estimates, a requirement to record very small assessments of intake could result in burdensome and unnecessary recordkeeping. To avoid such a requirement the effective regulation has been clarified so that assessment of individual intakes less than specified amounts need not be included in such records (§ 20.103(a)(3)). Licensees might, of course, maintain notes of individual entry into airborne radioactivity areas through "work permit" or similar means, for purposes such as checking effectiveness of respiratory protection programs, without estimating intakes and maintaining

individual intake records unless they were needed.

Some commenters were concerned that Regulatory Guide 8.15, which is referenced in the amended § 20.103(c), might be changed without sufficient notice to licensees. Changes to the guide would result in a redating or renumbering of the guide with appropriate changes to § 20.103(c) including prior public notice and procedures thereof in the FEDERAL REGISTER. In addition, a draft of Regulatory Guide 8.15 and its associated manual were noticed with publication of the proposed rule and made available for comment even before adoption of the present procedures.

While no reference is made in the new rule to allowance for particle size in determining exposures to airborne radioactivity, licensees may continue to apply for an exception for such allowance under the provisions of § 20.501.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and sections 552 and 553 of the United States Code, the following amendment to Title 10, Chapter 1, Code of Federal Regulations, Part 20, is published as a document subject to codification.

1. Section 20.103 is amended to read as follows:

§ 20.103 Exposure of individuals to concentrations of radioactive materials in air in restricted areas.

(a) (1) No licensee shall possess, use, or transfer licensed material in such a manner as to permit any individual in a restricted area to inhale a quantity of radioactive material in any period of one calendar quarter greater than the quantity which would result from inhalation for 40 hours per week for 13 weeks at uniform concentrations of radioactive material in air specified in Appendix B, Table I, Column 1.[1,2,3] If the radioactive material is of such form that intake by absorption through the skin is likely, individual exposures to radioactive material shall be controlled so that the uptake of radioactive material by any organ from either inhalation or absorption or both routes of intake[4,5] in any calendar quarter does not exceed that which would result from inhaling such radioactive material for 40 hours per week for 13 weeks at uniform concentrations specified in Appendix B, Table I, Column 1.

(2) No licensee shall possess, use, or transfer mixtures of U-234, U-235, and U-238 in soluble form in such a manner as to permit any individual in a restricted area to inhale a quantity of such material in excess of the intake limits specified in Appendix B, Table I, Column 1 of this part. If such soluble uranium is of a form such that absorption through the skin is likely, individual exposures to such material shall be controlled so that the uptake of such material by any organ from either inhalation or absorption or both routes of intake[4] does not exceed that which would result from inhaling such material at the limits specified in Appendix B, Table I, Column 1 and footnote 4 thereto.

(3) For purposes of determining compliance with the requirements of this section the licensee shall use suitable measurements of concentrations of radioactive materials in air for detecting and evaluating airborne radioactivity in restricted areas and in addition, as appropriate, shall use measurements of radioactivity in the body, measurements of radioactivity excreted from the body, or any combination of such measurements as may be necessary for timely detection and assessment of individual intakes of radioactivity by exposed individuals. It is assumed that an individual inhales radioactive material at the airborne concentration in which he is present unless he uses respiratory protective equipment pursuant to paragraph (c) of this section. When assessment of a particular individual's intake of radioactive material is necessary, intakes less than those which would result from inhalation for 2 hours in any one day or for 10 hours in any one week at uniform concentrations specified in Appendix B, Table I, Column 1 need not be included in such assessment, provided that for any assessment in excess of these amounts the entire amount is included.

(b) (1) The licensee shall, as a precautionary procedure, use process or other engineering controls, to the extent practicable, to limit concentrations of radioactive materials in air to levels below those which delimit an airborne radioactivity area as defined in § 20.203(d) (1) (ii).

(2) When it is impracticable to apply process or other engineering controls to limit concentrations of radioactive material in air below those defined in § 20.203(d) (1) (ii), other precautionary procedures, such as increased surveillance, limitation of working times, or provision of respiratory protective equipment, shall be used to maintain intake of radioactive material by any individual within any period of seven consecutive days as far below that intake of radioactive material which would result from inhalation of such material for 40 hours at the uniform concentrations specified in Appendix B, Table 1, Column 1 as is reasonably achievable. Whenever the intake of radioactive material by any individual exceeds this 40-hour control measure, the licensee shall make such evaluations and take such actions as are necessary to assure against recurrence. The licensee shall maintain records of such occurrences, evaluations, and actions taken in a clear and readily identifiable form suitable for summary review and evaluation.

(c) When respiratory protective equipment is used to limit the inhalation of airborne radioactive material pursuant to paragraph (b) (2) of this section, the licensee may make allowance for such use in estimating exposures of individuals to such materials provided that such equipment is used as stipulated in Regulatory Guide 8.15, "Acceptable Programs for Respiratory Protection."[6]

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this section, the Commission may impose further restrictions:

(1) On the extent to which a licensee may make allowance for use of respirators in lieu of provision of process, containment, ventilation, or other engineering controls, if application of such controls is found to be practicable; and

(2) As might be necessary to assure that the respiratory protective program of the licensee is adequate in limiting exposures of personnel to airborne radioactive materials.

(e) The licensee shall notify, in writing, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix D at least 30 days before the date that respiratory protective equipment is first used under the provisions of this section.

(f) A licensee who was authorized to make allowance for use of respiratory protective equipment prior to December 29, 1976 shall bring his respiratory protective program into conformance with the requirements of paragraph (c) of this section within one year of that date, and is exempt from

[1] Since the concentration specified for tritium oxide vapor assumes equal intakes by skin absorption and inhalation, the total intake permitted is twice that which would result from inhalation alone at the concentration specified for H 3 S in Appendix B, Table I, Column 1 for 40 hours per week for 13 weeks.

[2] For radioactive materials designated "Sub" in the "Isotope" Column of the table, the concentration value specified is based upon exposure to the material as an external radiation source. Individual exposures to these materials may be accounted for as part of the limitation on individual dose in § 20.101. These materials shall be subject to the precautionary procedures required by § 20.103(b) (1).

[3] Multiple the concentration values specified in Appendix B, Table I, column 1 by 6.3×10^8 ml to obtain the quarterly quantity limit.

[4] Significant intake by ingestion or injection is presumed to occur only as a result of circumstances such as accident, inadvertence, poor procedure, or similar special conditions. Such intakes must be evaluated and accounted for by techniques and procedures as may be appropriate to the circumstances of the occurrence. Exposures so evaluated shall be included in determining whether the limitation on individual exposures in § 20.103(a) (1) has been exceeded.

[5] Regulatory guidance on assessment of individual intakes of radioactive material is given in Regulatory Guide 8.9, "Acceptable Conceots, Models, Equations and Assumptions for a Bioassay Program," single copies of which are available from the Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, upon written request.

[6] This incorporation by reference provision was approved by the Director of the Federal Register on October 19, 1976. Single copies of Regulatory Guide 8.15 are available from the Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, upon written request.

the requirement of paragraph (e) of this section.

* * * * *

2. In § 20.104, paragraph (c) is revised to read as follows:

§ 20.104 Exposure of minors.

* * * * *

(c) The provisions of §§ 20.103(b)(2) and 20.103(c) shall apply to exposures subject to paragraph (b) of this section except that the references in §§ 20.103 (b)(2) and 20.103(c) to Appendix B, Table I, Column 1 shall be deemed to be references to Appendix B, Table II, Column 1.

(3) In § 20.405, paragraph (a) is revised to read as follows:

§ 20.405 Reports of overexposures and excessive levels and concentrations.

(a) In addition to any notification required by § 20.403, each licensee shall make a report in writing within 30 days to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix D, of (1) each exposure of an individual to radiation in excess of the applicable limits in §§ 20.101 or 20.104 (a) or the license; (2) each exposure of an individual to radioactive material in excess of the applicable limits in §§ 20.103(a)(1), 20.103(a)(2), 20.104(b) or the license; (3) levels of radiation or concentrations of radioactive material in a restricted area in excess of any other applicable limit in the license; (4) any incident for which notification is required by § 20.403; and (5) levels of radiation or concentrations of radioactive material (whether or not involving excessive exposure of any individual) in an unrestricted area in excess of ten times any applicable limit set forth in this part or in the license. Each report required under this paragraph shall describe the extent of exposure of persons to radiation or to radioactive material, including estimates of each individual's exposure as required by paragraph (b) of this section; levels of radiation and concentrations of radioactive material involved; the cause of the exposure, levels or concentrations; and corrective steps taken or planned to assure against a recurrence.

* * * * *

Effective date. These amendments become effective on December 29, 1976.

(Secs. 53, 63, 81, 103, 104, 161 b and o, Pub. L. 83-703, 88-489, 91-560, 68 Stat. 930, 933, 935, 937, 948-949, 70 Stat. 1069, 78 Stat. 602, 84 Stat. 1472, 88 Stat. 475 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841)).

Dated at Washington, D.C. this 23rd day of November 1976.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-35131 Filed 11-26-76;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[EDR-305B; Docket No. 29421; Dated October 29, 1976]

SERVICE OF CHARTER TARIFF PUBLICATIONS ON CHARTERERS

Supplemental Notice of Proposed Rulemaking

Correction

In FR Doc. 76-32267, appearing at page 48377 in the issue for Wednesday, November 3, 1976, the headings, especially the bracketed information should have read as set forth above.

FEDERAL POWER COMMISSION

[18 CFR Parts 1 and 3]

[Docket No. RM77-4]

OBSERVATION OF COMMISSION MEETINGS AND EX PARTE COMMUNICATIONS

Proposed Rulemaking

NOVEMBER 15, 1976.

Pursuant to 5 U.S.C. 553, sections 308 and 309 of the Federal Power Act (49 Stat. 858, 859; 16 U.S.C. 825g, 825h), sections 15 and 16 of the Natural Gas Act (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), and Pub. L. No. 94-409 (90 Stat. 1241), the Commission gives notice it proposes to amend portions of Parts 1 and 3 of the Commission's rules, and to adopt a new § 1.3a, Chapter I, Title 18, CFR, to be entitled "Notice and procedures for Commission meetings."

The main purpose of the proposed amendments is to conform the Commission's General Rules to the procedures established by section 3 of the Government in the Sunshine Act, Pub. L. No. 94-409, which provides for opening agency meetings to public observation. While the meetings of the Federal Power Commission (i.e., the deliberations of the Commissioners) have already been opened to public observation pursuant to Administrative Order No. 160, issued April 1, 1976, the Sunshine Act requires that agency procedures be promulgated by rulemaking, with opportunity for public comment (5 U.S.C. 552b(g)). The new § 1.3a (18 CFR 1.3a), proposed herein, would provide for physical arrangements for open meetings, exemptions to the open meeting rule, procedures for transcribing meetings closed to public observation and for making the non-exempt portions of the transcript available to the public, and procedures for the public announcement of meetings open or closed to public observation. Miscellaneous sections of the Commission's rules (18 CFR 1.1(c)(1), 1.2(a), 1.36(a), 1.36(c)(14), and 3.102(b)) would be amended to provide reference to and consistency with the proposed new section 1.3a.

The third exemption to the Commission's Freedom of Information Act rules (newly designated as 18 CFR 1.36(c)(15)(iii)) would be revised to conform to the revision prescribed by section 5(b) of the Sunshine Act. Section 5(b) amends the third exemption of the Freedom of Information Act (5 U.S.C. 552(b)(3)). The FOIA's third exemption, and its counterpart in the Commission's rules, incorporates by reference exemptions contained in other statutes. The new language prescribed by the Sunshine Act is intended to overrule the decision of the Supreme Court in *Administrator, FAA v. Robertson*, 422 U.S. 255 (1975), by requiring that a statute must affirmatively require the withholding of information or must establish particular criteria for withholding in order to come within this exemption (See: S. Rept. No. 94-1178, 94th Cong., 2d Sess. 25 (1976)).

The purpose of the amendments to the Commission's present ex parte rule, proposed herein, is to clarify certain Commission procedures in light of section 4 of the Sunshine Act. For example, in sections 1.4 (d)(1), (d)(2)(vii), and (d)(3), ex parte communications would be defined to include certain defined oral and written communications and to exclude requests for status reports. As recommended by the Senate report on the Sunshine legislation, provision would be made in section 1.4(d)(3) that actual notice of the ex parte communication be provided to all parties (See: S. Rept. No. 94-354, 94th Cong., 1st Sess. 37 (1975)). New section 1.4(d)(6) would provide sanctions for violations of the ex parte rule and section 1.4(d)(7) would more clearly define the time from which the ex parte rule would apply.

In addition, the proposed amendments to the Commission's ex parte rule would add two new exceptions to the rule in subparagraphs 1.4(d)(2)(v) and (vi). On July 19, 1976, the Commission gave public notice[1] that a petition had been filed requesting that the Commission consider the adoption of similar amendments and has received comments in response thereto. The amendments proposed herein are intended: (1) to expedite reasonably the conduct of Commission business, as requested in the petition, by allowing limited informal discussions between staff and parties and copies of the same upon all parties to the (2) to maintain simultaneously the integrity of the decisional process. These goals would be accomplished by barring all decisional employees from such contacts with participants in the proceeding. Non-decisional employees would be exempted from the ex parte prohibitions for the limited purpose of discussing possible settlements or agreements in the presence of, or after coordination with, counsel or party to the proceeding. Proposed subparagraph (v) would also require after such informal discussions regarding non-unanimous settlement agreements that the offering party reduce such offers to writing and serve copies of the same upon all parties to the proceeding prior to the submission of such offers to the Commission. It is contemplated that upon the adoption of the amendments to the ex parte rule, proposed herein, the pending proceeding in Docket No. RM76-24 would be terminated.

Finally, the proposed amendments to the Commission's ex parte rule would add three further exceptions to the rule in subparagraphs 1.4(d)(2)(viii), (ix), and (x) to clarify Commission procedures with respect to routine field inspections, audits and data requests. The Commission staff is charged with the duty to carry out periodic inspections of hydroelectric projects for information gathering purposes to determine whether a project is safe and is being maintained and operated in accordance with the terms of an existing license. Such inspections cover all features of the project, including areas where the general public is not permitted because moving machinery, high voltages, climbing, and other hazards are involved. Besides safety inspections, construction inspection visits are also conducted with even greater hazards to members of the general public. Such inspections normally involve matters wholly unrelated to a contested on-the-record proceeding; however, where such a proceeding involving the same project is underway, it has been the practice to provide opportunity to intervenors in the contested on-the-record proceeding to attend such inspections, even if the subject of the inspection does not relate to a matter in controversy in such a proceeding. Furthermore, the inspectors have been instructed not to discuss the merits of any matter in controversy in any pending proceeding.

Such a practice has led to concern for the safety of intervenor representatives attending the inspections, an increase in the potential liability of the licensee, and undue delay and expense to the FPC and

[1] Notice of Filing of Petition for Amendment of the Commission's Rules of Practice and Procedure, issued July 19, 1976 in Petition of Certain Utilities and Others for Amendment of 18 CFR § 1.4(d) to Facilitate Settlement or Disposition of Particular Issues in Proceedings Before the Commission, Docket No. RM76-24.

the licensee in scheduling and providing accommodations to all parties in remote project areas. Therefore, in the interests of safety and the appropriate administration of the projects subject to Commission inspection, we would clarify the ex parte rule prohibition by specifically exempting all staff communications necessary for full and complete safety and construction inspections, when such inspections are not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding. In any event, written reports of such inspections are prepared and placed in the Commission's public files.

Certain other staff communications not normally related to matters pending before the Commission in any on-the-record proceeding are necessary during routine audits of jurisdictional companies' books and records and should also be specifically exempted from the ex parte prohibitions. Similarly, routine, informal data requests necessary for an understanding of factual materials contained in Commission filings would be exempted from the ex parte prohibitions.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than January 5, 1977, data, views, comments or suggestions in writing concerning all or part of the rules and amendments proposed herein. Written 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 written 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, title, mailing address, and telephone number of the person to whom communications concerning the proposals should be addressed and whether the person filing them requests a conference with the staff of the Federal Power Commission to discuss the proposals. The staff, in its discretion, may grant or deny requests for conference.

The proposed amendments to Parts 1 and 3 of the Commission's rules would be issued under the authority granted the Federal Power Commission by the Federal Power Act, as amended, particularly sections 308 and 309 (49 Stat. 858, 859; 16 U.S.C. 825g, 825h), by the Natural Gas Act, as amended, particularly sections 15 and 16 (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), and by Pub. L. No. 94-409 (90 Stat. 1241).

A. Accordingly, Part I—Rules of Practice and Procedure—Chapter I, Title 18 of the Code of Federal Regulations, would be amended as follows:

1. Section 1.1(c)(1) would be revised to read as follows:

§ 1.1 The Commission.

* * * * *

(c) *Sessions*. * * *

(1) *Public*. Public sessions of the Commission will be held after due notice as ordered by the Commission. (See §§ 1.3 and 1.3a).

* * * * *

2. Section 1.2(a)(1) would be revised to read as follows:

§ 1.2 The Secretary.

(a) *Official records*. (1) The Secretary shall have custody of the Commission's seal, the minutes of all action taken by the Commission, the transcripts, electronic recordings or minutes of meetings closed to public observation, its rules and regulations and its administrative orders.

* * * * *

3. Immediately following § 1.3, a new § 1.3a would be added to read as follows:

§ 1.3a Notice and procedures for Commission meetings.

(a) *Definitions*. In this section:

(1) "Agency", as defined in 5 U.S.C. 551(1) as "* * * each authority of the Government of the United States, whether or not it is within or subject to review by another agency, * * *" includes "* * * any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency * * *" (5 U.S.C. 552(e)) which is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) "Meeting" means the deliberations of at least the number of individual members of the Federal Power Commission required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct of disposition of official Commission business, but does not include deliberations required or permitted by subsections (d)(3) and (f) of this section;

(3) "Member" means an individual who belongs to the collegial body heading the Federal Power Commission; and

(4) "Staff" includes the employees of the Federal Power Commission other than the five Commissioners.

(b) *Open meetings*. (1) Every portion of every meeting of the Federal Power Commission will be open to public observation subject to the exemptions provided in subsection (d)(1) of this section. Open meetings will be attended by the Commissioners, certain Commission staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate nor to record any of the discussions by means of electronic or other devices or cameras. Documents being considered at Commission meetings may be obtained subject to the procedures and exemptions set forth in section 1.36 of this Part.

(2) Commission members shall not jointly conduct or dispose of agency business other than in accordance with this section.

(c) *Physical arrangements*. The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate accoustics are provided for public observation of the Commission meetings.

(d) *Closed meetings*. (1) Meetings will be closed to public observation where the Commission properly determines, according to the procedures set forth in paragraph (3) of this subsection, that such portion or portions of the meeting or disclosure of such information is likely to:

(i) Disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are (B) in fact properly classified pursuant to such Executive order;

(ii) Relate solely to the internal personnel rules and practices of an agency;

(iii) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential, including geological geophysical information and data, including maps, concerning wells;

(v) Involve accusing any person of a crime, or formally censuring any person;

(vi) Disclose information of a personal nature where disclosure would constitute a clearly unwarrantd invasion of personal privacy, including personnel and medical files and similar files;

(vii) Disclose investigatory records compiled for law enforcement purposes, or informaton which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal pirvacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a cirminal 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, (E) disclose investigative techniques and procedures, or, (F) endanger the life or physical safety of law enforcement personnel;

(viii) 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;

(ix) Disclose information the premature disclosure of which would:

(A) in the case of an agency which regulates currencies, securities, com-

modities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) 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

(x) Specifically concern the Commission's issuance of a subpoena, or the Commission'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 Commission of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(2) Commission meetings shall not be closed pursuant to paragraph (1) of this subsection when the Commisison finds that the public interest requires that they be open.

(3) (i) Action to close a meeting, or portion thereof, pursuant to the exemptions defined in paragraph (1) of this subsection shall be taken only when a majority of the entire membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public or with respect to any information which is proposed to be withheld. 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. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(ii) When any person whose interests may be directly affected bv a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (d) (1) (v), (d) (1) (vi), or (d) (1) (vii) of this section, the Commission, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(iii) Within one day of any vote taken pursuant to paragraph (d) (3) (i) or (d) (3) (ii) of this section, the Secretary of the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (d) (3) (i) or (d) (3) (ii) of this section, make publicly available a full written explanation of the Commission's action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this subparagraph shall be disclosed except to the extent that it is exempt from disclosure under the provision of paragraph (d) (1) of this section.

(e) *Transcripts.* (1) For every meeting closed pursuant to paragraph (d) of this section, the General Counsel of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Secretary of the Commission as part of the transcript, recording or minutes required by paragraph (e) (2) of this section.

(2) The Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraphs (d) (1) (viii), (d) (1) (ix) (A), or (d) (1) (x) of this section, the Secretary shall maintain either such a transcript or recording, or 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 on any item and the record of any roll-call vote (reflecting the vote of each member on the question). All documents considered in connection with any Commission action shall be identified in such minutes.

(3) The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding, with respect to which the meeting or portion was held, whichever occurs later.

(4) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Commission shall make available to the public, in the Office of Public Information of the Commission, Washington, D.C., the transcript, electronic recording, or minutes (as required by paragraph (2) of this subsection) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Director of Public Information determines to contain information which may be withheld under subsection (d) of this section. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription (See § 3.102).

(5) The determination of the Director of Public Information to withhold information pursuant to paragraph (4) of this subsection may be appealed to the Chairman of the Commission, in his capacity as administrative head of the Commission pursuant to Section 1 of Reorganization Plan No. 9 of 1950. The Chairman, or officer designated pursuant to § 3b.224 (f) of this subchapter, will make a determination to withhold or release the requested information within twenty days from the date of receipt of the request for review (excluding Saturdays, Sundays, and legal public holidays).

(6) For an extension of the time limits prescribed by paragraphs (e) (4) and (e) (5) of this section, the provisions of § 1.36(f) (3) of this part shall apply.

(f) *Public announcement.* (1) Except to the extent that such information is exempt from disclosure under the provisions of paragraph (d) of this section, in the case of each meeting, the Secretary of the Commission shall make public announcement at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Commission determines by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Secretary shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (f) (1) of this section only if the Secretary publicly announces such change at the earliest practicable time. 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 this subsection only if (i) a majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires (as for example, pursuant to paragraph (d) (3) (ii) of this section) and that no earlier announcement of the change was possible, and (ii) the Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time: *Provided,* That individual items which have been announced for Commission consideration may be deleted without notice.

(3) The "earliest practicable time", as used in this subsection, means as soon as possible, which should in few, if any, instances be later than the commencement of the meeting or portion in question.

(4) The Secretary of the Commission shall use reasonable means to assure that the public is fully informed of the public announcements required by this subsection. For example, such announcements may be posted on the Commission's public notice boards, published in official FPC publications, or sent to the persons on a mailing list maintained for those who want to receive such material.

(5) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting shall also be submitted by the Secretary of the Commission for publication in the FEDERAL REGISTER.

(6) Following each Commission meeting, the Secretary shall issue a list of Commission actions taken which shall become effective as of the date of issuance of the related order or other document, which the Secretary shall issue in due course, all in the manner prescribed by the Commission under the Natural Gas Act, Federal Power Act, or other legal authority.

* * * * *

4. Section 1.4(d) would be amended as follows:

a. Paragraph (1) would be amended by adding a new definition to the second sentence.

b. Six new subparagraphs (v)–(x) would be added to paragraph (2).

c. Paragraph (3) would be amended by the addition of a phrase to the first sentence and by the addition of a second sentence.

d. Paragraph (6) would be redesignated as paragraph (7) and a new paragraph (6) would be added.

e. Newly designated paragraph (7) would be completely revised.

Section 1.4(d), as amended, would read as follows:

§ 1.4 Appearances and practice before the Commission.

* * * * *

(d) *Ex parte communiactions.* * * *

(1) * * *

For the purposes of this paragraph, the term "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given; * * *

(2) The prohibitions contained in paragraph (d)(1) of this section do not apply to a communication:

* * * * *

(v) When the communication proposes settlement or agreement for disposition of any or all issues in such proceeding and the communication is between the staff counsel assigned to the proceeding or, in the presence of or after coordination with such staff counsel, any other employee of the Commission (except a Commisioner or member of his personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected to be involved in the decisional process of the proceeding) and any party or counsel to any party or parties to the proceeding or, in the presence of or after coordination with such counsel or party, an agent of any such party: *Provided,* That any employee of the Commission (except a Commissioner or member of his personal staff, an administrative law judge, or employee who is actually involved in the decisional process) who may reasonably be expected to participate in the decisional process may waive such participation by entering a staff appearance in the proceeding: *Provided further,* That non-unanimous settlement offers shall thereafter be served on all participants in the proceeding prior to the submission of such offers to the Commission;

(vi) Which all the participants agree may be made on an ex parte basis, except a communication with a Commissioner or member of his personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected, in the absence of waiver of participation, to be involved in the decisional process of the proceeding;

(vii) Which requests a status report on any Commission matter or proceeding covered by this subsection and which is not intended to affect the merits of the proceeding, except a communication with a Commissioner or member of his personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected in the absence of waiver of participation, to be involved in the decisional process of the proceeding;

(viii) Related to routine safety, construction, and operational inspections of project works by the Commission staff not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding;

(ix) Related to routine field audits of the accounts or any books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding;

(x) Which relates solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with the Commission in a proceeding covered by this subsection and which is made in the presence of or after coordination with counsel, except a communication with a Commissioner, or member of his personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected, in the absence of waiver of participation, to be involved in the decisional process of the proceeding.

(3) All written communications prohibited by paragraph (d)(1) of this section, all memoranda stating the substance of all such oral communications, and all written responses and memoranda stating the substance of all oral responses to such prohibited communications shall be delivered to the Secretary of the Commission who shall place the communication in public files associated with the case, but separate from the record material upon which the Commission can rely in reaching its decision. The Secretary shall serve all such prohibited communications upon all parties to the proceeding.

* * * * *

(6) Upon receipt of a communication knowingly made in violation of paragraph (d)(1) of this section, the Commission, Administrative Law Judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of underlying statutes administered by the Commission, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(7) The prohibitions contained in paragraph (d)(1) of this section shall apply from the time at which a proceeding is noticed for hearing or at the time at which a protest or a petition or notice to intervene in opposition to requested Commission action has been filed, unless the person responsible for such communication has knowledge that it will be noticed for hearing, in which case, the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

* * * * *

5. Section 1.36 would be amended as follows:

a. Paragraph (a) would be amended by adding a new sentence immediately following the second sentence.

b. Subparagraph (14) of paragraph (c) would be redesignated as (15) and a new subparagraph (14) would be added.

c. Subparagraph (iii) of the newly designated subparagraph (15), in paragraph (c), would be revised.

Section 1.36, as amended, would read as follows:

§ 1.36 Public information and requests.

* * * * *

(a) *Notice of proceedings.* * * *

Notice of applications for certificates of public convenience and necessity under section 7 of the Natural Gas Act is provided for by § 157.9 of this chapter. Notice of public sessions and proceedings and of meetings of the Commission is provided for by §§ 1.3 and 1.3a of this chapter.

* * * * *

(c) *Public records.*

* * * * *

(14) Transcripts, electronic, recordings or minutes of Commission meet-

ings closed to public observation containing material non-exempt pursuant to § 1.3a of this Part.

(15) All other records of the Commission except for those that are:

* * * * *

(iii) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

* * * * *

B. Section 3.102(b), Part 3—Organization; Operation; Information and Requests; Miscellaneous Charges; Ethical Standards, Chapter I, Title 18 of the Code of Federal Regulations would be amended by adding a new sentence immediately following the third sentence. As amended, § 3.102(b) would read as follows:

§ 3.102 Public information requests, and assistance; miscellaneous charges.

* * * * *

(b) * * * Any person may obtain a copy of the schedule of fees by coming in person to the Office of Public Information, by telephone, or by mail. Copies of transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material non-exempt pursuant to § 1.3a of this Part are available to the public at the actual cost of duplication or transcription. * * *

* * * * *

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.76-34434 Filed 11-26-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 76-216]

DUTCH KILLS, NEW YORK

Proposed Drawbridge Operation Regulations

At the request of New York City and the Long Island Railroad, the Coast Guard is considering revising the regulations for the two railroad drawbridges and the Borden Avenue drawbridge across Dutch Kills to require that the draws of these bridges open on signal if at least six hours notice is given. In addition, the two railroad bridges would be closed to navigation from 7:30 a.m. to 9:30 a.m., and 3:30 p.m. to 5:30 p.m., Monday through Friday, to expedite commuter traffic. This change is being considered because of limited requests for openings.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Third Coast Guard District, Governors Island, New York, New York 10004. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Third Coast Guard District.

The Commander, Third Coast Guard District, will forward any comments received before December 31, 1976, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising § 117.162 to read as follows:

§ 117.162 Dutch Kills, N.Y.

(a) The draws of the Hunters Point Avenue and Borden Avenue bridges shall open on signal if at least six hours notice is given to the New York City Highway Department's Radio (Hotline) Room.

(b) The draws of the Long Island Railroad bridges shall open on signal if at least six hours notice is given to the Long Island Railroad Movement Bureau. However, the draws need not open from 7:30 a.m. to 9:30 a.m. and 3:30 p.m. to 5:30 p.m., Monday through Friday.

(c) The draws of these bridges shall open as soon as possible for passage of public vessels of the United States and of the City of New York, upon notification to the New York City Highway Department's Radio (Hotline) Room and the Long Island Railroad Movement Bureau.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937 (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46 (c)(5), 33 CFR 1.05-1(c)(4).)

The Coast Guard 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: November 19, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-35004 Filed 11-26-76;8:46 am]

[33 CFR Part 117]

[CGD 76-117]

LAKE WASHINGTON SHIP CANAL, WASHINGTON

Proposed Drawbridge Operation Regulations

At the request of the City of Seattle, the Coast Guard is considering revising the regulations for the highway drawbridges across the Lake Washington Ship Canal at 15th Avenue (Ballard), Fremont Avenue, SH-522 (University), and Mont Lake Boulevard to require at least one hour notice from 12 midnight to 8 a.m. This change is being considered because of infrequent openings during this period. A complete revision of § 117.795 is also proposed to simplify, update, and clarify the provisions of this section.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 96174. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Thirteenth Coast Guard District.

The Commander, Thirteenth Coast Guard District, will forward any comments received before December 28, 1976, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising § 117.795 to read as follows:

§ 117.795 Lake Washington Ship Canal; bridges.

(a) The draw of each of the Burlington Northern Railroad bridges shall open on signal.

(b) The draws of the Ballard, Fremont Avenue, University and Mont Lake Boulevard bridges shall open on signal except that they—

(1) Need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except national holidays, for vessels of less than 1,000 tons unless the vessel has a vessel of over 1,000 tons in tow, except under emergency conditions when the Seattle City Engineer is notified; and

(2) Shall open on signal from 12 midnight to 8 a.m. if at least one hour notice is given by telephone or otherwise to the drawtender at the Fremont Avenue drawbridge.

(c) Signals.

(1) The opening sound signal for each bridge is one long blast followed by one short blast, except that the University bridge opens on one long blast followed by three short blasts.

(2) The acknowledging sound signal from the drawtender of each bridge is the same as the opening signal when the draw will open.

(3) The acknowledging sound signal from the drawtender of each bridge when the draw will not open or is open and must close is four short blasts.

(4) The opening visual signal is a white flag by day or a white light at night swung in circles at arms length while facing the drawbridge.

(5) The acknowledging visual signal when the draw will open is a white flag by day or a white light raised and lowered vertically while facing the vessel.

(6) The acknowledging visual signal when the draw will not open or is open and must close is a red flag by day or a red light at night swung in circles at arms length while facing the vessel.

(d) During conditions of restricted visibility, as defined in the Rules of the Road, the drawtender after giving the acknowledging signals that the draw will open, shall toll a bell continuously during the approach and passage of the vessel.

(e) The following provisions shall not relieve the owner of or agency controlling a drawbridge from opening the draw for the passage of vessels in accordance with paragraphs (a) and (b) of this section.

(1) A vessel shall not require the opening of the draw when such opening is needed only to provide additional clearance for appurtenances unessential to navigation of the vessel, or for appurtenances essential to navigation but which may be altered by hinging, telescoping, collapsing, or otherwise, so as to require no greater clearance than the highest fixed and essentially unalterable point of the vessel.

(2) Appurtenances unessential to navigation shall include but not be limited to fishing outriggers, radio antennae which are or can reasonably be made flexible or collapsible, television antennae, false stacks, and masts purely for ornamental purposes. Apputenances unessential to navigation shall not include radar antennae, flying bridges, sailboat masts, piledriver leads, spud frames on hydraulic dredges, drilling derricks, derrick substructures and/or buildings, cranes on drilling or construction vessels, or other items of permanent and fixed equipment clearly necessary to the intended use of the vessel.

(3) Owners of or agencies controlling drawbridges shall report to the District Commander in charge of the locality the names of any vessels causing bridge openings considered to be in violation of this paragraph. The District Commander may at any time cause an inspection to be made of any craft so reported and is empowered to decide in each case whether or not the appurtenances are unessential to navigation. If the District Commander decides a vessel has appurtenances unessential to navigation, he shall notify the vessel owner of his decision, specifying a reasonable time for making necessary alterations. If the vessel owner is aggrieved by the decision of the District Commander, he may within 30 days after receipt of the request to perform necessary alterations appeal the decision to the Commandant in writing. If the Commandant rules that an appurtenance is unessential to navigation, the District Commander shall again specify to the vessel owner a reasonable time for making necessary alterations to the appurtenance, and after the expiration of the time specified, any operation of the vessel in such a manner as to require drawbridge openings shall be deemed in violation of the regulations of this paragraph unless the necessary alterations shall have been made.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937 (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

The Coast Guard 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: November 18, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76–35005 Filed 11–26–76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 125]

[FRL 643–2]

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Proposed Miscellaneous Amendments

Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 et seq., (33 U.S.C. 1251 et seq.), hereinafter referred to as "the Act,") provides that the Administrator may, after opportunity for public hearing, issue National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants into the navigable waters of the United States, upon condition that such discharge will meet all applicable requirements set forth in the Act. On May 22, 1973, regulations were promulgated and published in the FEDERAL REGISTER (38 FR 13528) establishing procedures for the issuance of such permits. On July 24, 1974, certain amendments to the notice requirements and hearing procedures in Part 125 were promulgated and published in the FEDERAL REGISTER (39 FR 27078). Experience with this part has indicated that certain additional changes are needed.

Notice is hereby given that the Administrator of the Environmental Protection Agency proposes to amend 40 CFR Part 125. The principal changes hereby proposed affect the public notice procedures, the requirements for the content of requests for evidentiary hearings, intervention, prehearing procedures and the powers of the presiding officer. Among the new matters hereby proposed are the establishment of an agency public file and provision for summary judgments and interlocutory appeals.

Interested persons may participate in this proposed rulemaking by submitting comments or suggestions in writing to the Legal Branch (EN–338), Office of Water Enforcement, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, Attention: Counsel for NPDES Hearings. Each person submitting a comment should include his or her name and address and give reasons for any recommendations. A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922, Rear Library-Mall, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying. All comments received on or before January 23, 1977, will be considered.

It is therefore proposed to amend 40 CFR Part 125 as set forth below.

Dated: November 18, 1976.

JOHN QUARLES,
Acting Administrator

PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. 40 CFR Part 125, Subpart D is proposed to be amended by deleting §§ 125.36 and 125.37 and by revising §§ 125.32 and 125.35 to read as follows:

Subpart D—Permit Determinations and Public Participation

* * * * *

§ 125.32 Public notice.

(a) Notice of the proposed issuance, denial or modification of a permit and notice of all hearings related thereto shall be given by the Regional Administrator as follows:

(1) By mailing a copy to the applicant, to Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and to other appropriate governmental authorities, and to any person who has filed a written request with the Regional Administrator to receive copies of notices relating to permits proposed to be issued, denied or modified for particular facilities or for effluent sources located within a certin state or geographical area, provided that such person shall have renewed such request in writing on a semiannual basis; and,

(2) By either of the following methods:

(i) By publication at least once not less than 30 days before (A) The effective date of the proposed issuance, denial or modification of the permit, or (B) The date of such hearing, as the case may be, in a daily or weekly newspaper of gen-

eral circulation within the area in which the effluent source is located; or,

(ii) By posting a copy at the principal office of the municipality in which the effluent source is located, or if such source is not located within a municipality, then at the principal office of the political subdivision with general jurisdiction over the premises on which such source is located, and by posting a copy at the United States Post Office serving such premises.

(b) For a period of 30 days immediately following the date of publication, posting and mailing of notice of the proposed issuance, denial or modification of a permit, interested persons may submit written comments to the Regional Administrator concerning the tentative determinations and/or may request that a public hearing be held under § 125.34. The Regional Administrator may grant additional time for the submission of comments when the public interest warrants. The Regional Administrator shall retain all such comments and shall consider them in formulating his determination under § 125.35.

(c) All public notices issued under this subpart shall contain the following information:

(1) Name and address of the Regional Office processing the application or conducting the hearing, as the case may be;

(2) Name and address of the applicant and the discharger (if different from the applicant);

(3) Name and water quality standards classification of the receiving waters into which the discharge occurs or is proposed, and a general description of the location of each existing or proposed discharge point on such waters:

(4) Address and telephone number of the place where interested persons may obtain further information, including copies of the fact sheet, if any, prepared pursuant to § 125.33 and the draft permit prepared pursuant to § 125.31, and where such persons may inspect and copy all relevant non-confidential forms, documents and other materials contained in the Public File kept pursuant to § 125.35(e);

(5) Such additional statements, representations or information as the Regional Administrator shall deem necessary and proper.

(d) In addition to the information required under paragraph (c) of this section. public notice of the proposed issuance, denial or modification of a permit shall contain the following information:

(1) Brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to new or existing dischargers (e.g., new municipal waste treatment plant, existing steel manufacturing, or new drainage from existing mining activities, etc.);

(2) Statement of the Regional staff's tentative determination to issue, deny or modify a permit for the discharge described in the application;

(3) In casse where the tentative determination involves a proposed variance from the effluent limitations established for a category or point source under Subchapter N of this title, a comparison of the proposed discharge limitations and such established limitations;

(4) Brief description of the procedures under which the Regional Administrator will formulate findings and a determination under § 125.35, including reference to the 30-day comment period provided under paragraph (b) of this section and other means by which interested persons may submit comments relating to such determination;

(5) Statement that a public hearing shall be held if the Regional Administrator finds that there exists a significant degree of public interest in the proposed issuance, denial or modification of the permit;

(e) In addition to the information required under paragraph (c) of this section, public notice of a public hearing held pursuant to § 125.34 shall contain the following information:

(1) Reference to date and manner of public notice of the proposed issuance, denial or modification of the permit;

(2) Date, time and place of the hearing; and,

(3) Brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(f) In addition to the information required under paragraph (c) of this section, public notice of an evidentiary hearing held under Subpart E of this chapter shall contain the following information:

(1) Reference to the date and manner of each public notice of the proposed issuance, denial or modification of the permit(s) and any public hearings thereon;

(2) Name and address of the person requesting the evidentiary hearing and the name and address of each known party to such proceedings;

(3) Brief description of the nature and purpose of the hearing, together with a statement of the applicable rules and procedures, and including the following declarations:

(i) Any person who can establish that he will be directly and adversely affected by the issuance, modification or denial of the subject permit(s) may, under 40 CFR 125.46, file a request to be admitted as a party to the hearing within 30 days of the date of publication of this notice;

(ii) Any person requesting to be admitted as a party may propose material issues of fact and/or law not already raised by the original requester or another party;

(iii) Any person admitted as a party shall, prior to the hearing, serve the Presiding Officer and all other parties with copies of any and all documents, written evidence, data, information or testimony which he intends to produce at the hearing; and,

(iv) The terms and conditions of the subject permit(s) may be amended by the Regional Administrator prior to or after the evidentiary hearing and any person interested in the subject permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administrative determination;

(g) The Regional Administrator, in his discretion, may issue prior to or as part of any notice of the proposed issuance, denial or modification of a permit, a notice of public hearing in accordance with paragraphs (c) and (d) of this section, whether or not any request for such public hearing has been submitted to him.

(h) Public notice issued under this section may describe more than one permit and more than one discharge. No public notice shall be given in cases where a request for permit modification is denied.

(i) The Regional Administrator may enter into agreements with States for joint Federal/State public notices and joint public hearings regarding (1) Applications for and issuance of Federal or State NPDES permits or (2) Applications for certification required by section 401 of the Act.

§ 125.35 **Issuance and effective date of permit.**

(a) Not less than 30 days after the date of publication and/or posting of notice of the proposed issuance, denial or modification of a permit under § 125.32, whichever date is later, the Regional Administrator shall, after considering all written comments submitted under § 125.32(b), the relevant facts and the requirements and policies expressed in the Act and regulations promulgated thereunder, make a determination with respect to the issuance, denial or modification of such permit. Such determination shall take the form of a permit, modified permit or notice of a permit denial, as the case may be.

(b) Upon making such determination, the Regional Administrator shall forthwith issue the permit, modified permit or notice of permit denial, as the case may be, and shall mail a notice of issuance, modification or denial of the permit to the applicant and to each person who has submitted written comments regarding the permit. Such notice shall include reference to the procedures under § 125.44 et seq. to contest such determination. Where the determination reflects substantial changes to the effluent limitations or construction schedule contained in the tentative determinations and/or draft permit prepared under § 125.31, the notice of said determination shall identify such changes.

(c) The determination of the Regional Administrator to issue a permit, modified permit or notice of permit denial under paragraph (b) of this section shall be deemed the final action of the Environmental Protection Agency, unless a request for an evidentiary hearing is granted under § 125.45. The 30-day period within which a person may request an evidentiary hearing under said section shall commence on the date of mailing of notice by the Regional Administrator under § 125.35(b).

(d) (1) Except as provided in paragraph (d)(2) of this section, the permit or modification shall be in full force

and effect 30 days after the mailing of notice of the determination unless (i) A later effective date is specified in the determination, or (ii) A request is submitted for an evidentiary hearing, in which case (A) If such request is denied, then the permit or modification shall take effect 30 days after the denial of such request, or (B) If such request is granted, then the permit or modification shall take effect as provided in paragraph (d)(2) of this section.

(2) If a request for an evidentiary hearing is granted pursuant to § 125.45, or if a petition for review of the denial of a request for an evidentiary hearing is granted by the Administrator under § 125.58, the force and effect of the contested provision(s) of the permit or modification shall be stayed and shall not be subject to judicial review pursuant to § 509(b) of the Act, pending final Agency action under § 125.58. Provided, however, requests for modification shall not stay the force and effect of the permit terms and conditions sought to be modified, whether or not an evidentiary hearing has been granted. Contested provisions of a permit or modification shall include uncontested provisions which are inseverable from those provisions contested. Uncontested provisions of a permit, as designated by the Regional Administrator, shall remain in full force and effect, and the permittee shall be subject to all such provisions.

(3) For purposes of judicial review under § 509(b) of the Act, final administrative action on a permit issuance, modification or denial shall not be deemed to have occurred unless and until a party has first sought review by the Administrator under § 125.58. Any party who neglects or fails to seek review under § 125.58 shall be deemed to have waived its opportunity to exhaust available Agency remedies.

(e) (1) *Public File.* The Public File for each permit shall consist of the NPDES permit applications filed under § 125.12 and the supporting data and supplementary information furnished by the applicant, with the exception of information deemed confidential or otherwise exempt from public disclosure under 5 U.S.C. 552(b) or 33 U.S.C. 1318. In addition, the Public File shall contain (i) All non-confidential data and information submitted by interested persons, (ii) All non-confidential data and information and other non-exempt material utilized by the Regional Administrator in the preparation of the fact sheet under § 125.33, (iii) The tentative determinations and draft permit prepared under § 125.31, and (iv) The determination prepared under paragraph (a) of this section. The Public File shall not contain any papers, documents or other materials filed in connection with a request for evidentiary hearing under § 125.44. In cases where such request has been granted, a brief notation thereof containing a reference to the Regional Hearing Clerk's docket number shall appear in the File.

(2) *Availability of Public Files to interested persons.* The Public File shall be available for inspection in the Regional Office upon written request from any interested person during such regular hours of business as the Regional office shall prescribe. No person other than members of the Agency staff may remove documents from the Public File. Photocopies will be made available, on request, to interested persons. The charge for such copies shall be made in accordance with the written schedule contained in Part 2 of this Chapter.

§§ 125.36–125.37 [Reserved]

2. Subpart E is proposed to be revised to read as follows:

Subpart E—Evidentiary Hearings

Sec.
125.41 Applicability.
125.42 Definitions.
125.43 Filing and submission of documents.
125.44 Requests for evidentiary hearing and/or legal decision.
125.45 Ruling on requests for hearing.
125.46 Additional parties and issues.
125.47 Filing and service.
125.48 Assignment of administrative law judge.
125.49 Consolidation and severance.
125.50 Prehearing conferences.
125.51 Summary determination.
125.52 Hearing procedure.
125.53 Record of hearings.
125.54 Proposed findings of fact and conclusions; briefs.
125.55 Decisions.
125.56 Interlocutory appeal.
125.57 Decisions of General Counsel on matters of law.
125.58 Appeal of decisions or the denial of an evidentiary hearing.
125.59 Delegation of authority; time limitations.
125.60 Public access to information.

Subpart E—Evidentiary Hearings

§ 125.41 Applicability.

The regulations set forth in this subpart govern the practices and procedures applicable to all evidentiary hearings conducted by the United States Environmental Protection Agency pursuant to section 402 of the Federal Water Pollution Control Act, as amended, except as otherwise provided in any Agency regulation.

§ 125.42 Definitions.

As used in this subpart, the following terms shall have the meanings specified:

(a) "Administrator" means the Administrator of the United States Environmental Protection Agency (Agency), or any officer or employee of the Agency to whom authority may be delegated to act in his stead, including, where appropriate, a Judicial Officer.

(b) "Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to these regulations who shall meet the qualifications and perform functions as follows:

(1) *Officer.*—There may be designated for the purposes of this section one or more Judicial Officers. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(2) *Qualifications.*—A Judicial Officer shall be a duly licensed attorney. Such Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Hazardous Materials, and he shall not participate in the consideration or decision of any case in which he directly or indirectly prepared or presented evidence in or for an evidentiary hearing held pursuant to this subpart.

(3) *Functions.*—The Administrator may delegate any of his authority to act in a given case under this subpart to a Judicial Officer who, in addition, may perform other duties for the Agency. The Administrator may delegate his authority to make findings of fact in a particular proceeding, provided that such delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate. The Administrator, in deciding a case himself, may consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

(c) "Party" means the Enforcement Division in and for a Regional Office of the Agency, the applicant or permittee, and any person whose request for a hearing under § 125.44 or whose request to be admitted as a party or to intervene under § 125.46 has been granted.

(d) "Person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or an interstate body or a Federal agency.

(e) "Presiding officer" means an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and designated to preside at the hearing.

(f) "Regional Administrator" means the chief Agency executive officer, or his designee, in and for the Region in which is located the effluent source subject to the contested permit or modification.

(g) "Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents and other materials relating to hearings under this subpart.

§ 125.43 Filing and submission of documents.

(a) All petitions, requests, comments, objections, notices, motions, briefs, compilations of data or information, or other documents authorized or required to be filed or submitted to the Agency shall be filed with the Regional Hearing Clerk, unless otherwise provided herein. Such documents shall be deemed to be filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative on his or its behalf. If a submission is signed by a person (other than an attorney) in a representative capacity, the submission shall be accompanied by a signed statement or other document verifying the authority of the agent or representative, unless such authorization has previously been

submitted as part of the Public File in the same proceeding.

(c) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the Public File in the same proceeding.

(1) A copy of any article or other reference or source cited shall be included, except for state or federal statutes and regulations, judicial decisions published in the National Reporter System, and other documentary or factual material of which official or judicial notice may be taken.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, the irrelevant matter shall be deleted and only the relevant data or information shall be submitted. Whenever any deletions are made, a statement briefly describing such deleted matter shall accompany the submission.

(4) The failure to comply with the requirements of this section or any other requirement in this subpart shall result in the exclusion from consideration of any portion of the submission which fails to comply. If the Regional Administrator or the Presiding Officer, on motion by any party or on his own initiative, determines that a submission fails to meet any requirement of this subpart, he may direct the Hearing Clerk to return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. A deficient submission may, upon a showing of good cause and with leave of the Regional Administrator or the presiding officer, be corrected or supplemented and subsequently filed.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) All factual material, data and information shall be submitted under oath and shall also contain an express representation that, to the best of the knowledge, information, and belief of the person making the submission, all statements made in the submission are true and accurate. All such submissions are subject to section 309(c)(2) of the Act and the False Reports to the Government Act, 18 U.S.C. 1001, under which a willfully false statement or representation is a criminal offense.

§ 125.44 Requests for evidentiary hearing and/or legal decision.

(a) Within 30 days following the date of mailing notice of the Regional Administrator's determination to issue a permit, modification, or notice of permit denial under § 125.35, any interested person may submit to the Regional Administrator a request for an evidentiary hearing and/or legal decision, pursuant to paragraph (b) of this section, to reconsider or contest such determination with regard to the terms and conditions contained therein. Where a request for an evidentiary hearing is submitted by a person other than the permittee, the person shall contemporaneously serve a copy of the request on the permittee.

(b) Requests for an evidentiary hearing shall contain the following:

(1) Name, mailing address and telephone number of the person making such request.

(2) Clear and concise factual statement of the nature and scope of the interest of the requester and an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial or modification of the subject permit.

(3) Names an addresses of all persons whom the requester represents.

(4) Express understanding and agreement by the requester that, upon the request of the presiding officer on his own motion or on motion of any party, and without cost or expense to any other party,

(i) The requester,

(ii) All persons represented by the requester, and

(iii) All officers, directors, employees and consultants of the requester and the persons represented by the requester, shall be made available for and subject to examination and cross-examination.

(5) Clear and concise statement of the genuine and substantial factual issues proposed for consideration at the hearing.

(6) Clear and concise statement of the legal issues, if any, proposed for referral to the Office of the General Counsel for decision under § 125.57.

(7) Specific references to the contested permit terms and conditions, as well as suggested revised or alternative permit terms and conditions which, in the judgment of the requester, woul be required to implement the purposes and policies of the Act.

§ 125.45 Ruling on requests for hearing.

(a) Within 30 days following the expiration of the time period allowed by § 125.44 for submitting a request for an evidentiary hearing, which period may be extended by the Regional Administrator upon notice to all known parties, the Regional Administrator shall grant a request, on a provisional basis only, if he determines that the request meets all of the requirements set forth in § 125.44(b). Notice of such provisional grant shall be given to the requester and all known parties.

(b) Within 45 days following receipt of notice from the Regional Administrator that a hearing request has been provisionally granted, the requester shall submit a detailed description and anlysis of the specific data, information and facts and intended to be presented in support of the relief requested in the event a hearing is held.

(c) Within 60 days following the expiration of time allowed by paragraph (b) of this section for submitting supporting evidence, the Regional Administrator shall officially grant a request if he determines that all of the following are true:

(1) The request sets forth genuine and substantial issues of fact relevant to the questions of whether a permit should be issued, denied or modified.

(2) The factual issues are capable of being resolved by available and specifically identified reliable evidence or by other relevant information which is appropriate for submission in an evidentiary hearing. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted under paragraph (b) of this section, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requester, as well as to justify the action requested. A hearing will be denied if the Regional Administrator concludes that, even assuming the truth and accuracy of the data and information submitted in support of the request for hearing, there is an insufficient showing to warrant both the factual determination urged and action in favor of the requester.

(4) The action requested is not on its face inconsistent with or in violation of any provision in the Act or any regulations promulgated thereunder.

(d) Within 30 days following the expiration of the time allowed by § 125.44 (a), the Regional Administrator shall deny any and all requests that do not meet the criteria set forth in § 125.44(b). He shall rescind a provisional grant and deny the hearing request in every case in which a requester does not meet the requirements set forth in paragraphs (b) and (c) of this section. In any case where a hearing request is denied, the Regional Administrator shall give reasons for his decision, and he shall notify the requester of the appeal provisions contained in § 125.58. If a hearing request does not set forth genuine and substantial issues of fact, but raises legal issues relevant to the interpretation of the Act or the regulations, he shall refer such issues to the Office of General Counsel for decision under § 125.57. If the Regional Administrator determines that only some of the factual issues alleged in a hearing request meet the criteria in paragraph (c) of this section, he may grant the hearing request limited to those factual issues that meet such criteria.

(e) If the Regional Administrator grants a request for an evidentiary hearing in regard to a particular permit, he shall treat each other request for an evidentiary hearing regarding such permit as a request to be a party, and he shall grant any such request that otherwise meets the requirements of § 125.44(b)

and paragraphs (b) and (c) of this section.

(f) The Regional Administrator shall issue public notice of such hearing in the manner specified in § 125.32.

§ 125.46 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 60 days after the date of mailing, publication or posting of notice of an evidentiary hearing, whichever occurs last. The Regional Administrator shall grant only such requests that meet the requirements of § 125.44(b) and § 125.45 (b) and (c), except that if such request does not set forth new factual or legal issues, then it must specifically set forth which of the issues the requester seeks to address at the hearing.

(b) After the expiration of 60 days from the date of mailing, publication or posting of notice of an evidentiary hearing, whichever occurs last, any person may file a motion for leave to intervene as a party in the hearing. Such motion must meet the requirements of § 125.44 and § 125.45 (b) and (c) and set forth the grounds for the proposed intervention, provided, however, that no additional factual or legal issues may be proposed. Any such motion must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party, and shall be granted only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervenor has consented to be bound by:

(i) Prior agreements and understandings by and between the existing parties, and

(ii) All orders previously entered in the proceedings; and,

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 125.47 Filing and service.

(a) An original and four (4) copies of all documents, papers and other required or authorized submissions relating to an evidentiary hearing shall be filed with the Regional Hearing Clerk.

(b) A copy of each such submission shall be served by the person making the submission upon the presiding officer and each party of record. Service pursuant to this paragraph shall be accomplished by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgment of service by the person served or proof of service in the form of a statement of the date, place, time, and manner of service and of the names of the persons served, certified by the person who made service.

(d) The Regional Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

§ 125.48 Assignment of administrative law judge.

(a) After the expiration of 60 days from the date of mailing, publication or posting of notice of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall assign himself or another administrative law judge to serve as presiding officer for the hearing.

(b) In initial permit issuance proceedings where the Regional Administrator has determined that the hearing record will not be certified directly to himself for decision, but rather that the presiding officer will be required to prepare and issue an initial decision, the Regional Administrator shall so indicate at the time the matter is referred to the Chief Administrative Law Judge under paragraph (a) of this section.

§ 125.49 Consolidation and severence.

(a) The Administrator, a Regional Administrator or the presiding officer, in his discretion, may consolidate in whole or in part two or more proceedings to be held under this subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation. At the conclusion of the evidentiary hearing, proposed findings and conclusions for each proceeding shall be received by the presiding officer, and separate initial or tentative decisions shall be rendered by the Regional Administrator or the presiding officer, as the case may be.

(b) The presiding officer may sever, in whole or in part, consolidated matters where he determines that consolidation will not be conducive to an expeditious, full and fair hearing.

§ 125.50 Prehearing conferences.

(a) The presiding officer, on his own initiative or at the request of any party, may direct the parties and/or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences prior to or during the course of a hearing, or to submit written proposals for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(b) Except as circumstances otherwise require, the presiding officer shall allow a reasonable period prior to commencement of the hearing for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances so warrant, the presiding officer shall, not less than 60 days following the date of publication of notice of the evidentiary hearing, call a prehearing conference, to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to formulate a schedule for their completion, and to set a tentative date for the commencement of the hearing.

(c) In conferences held, or in suggestions submitted, pursuant to paragraph (a) of this section, the following matters may be considered:

(1) Necessity or desirability of simplification, clarification, amplification or limitation of the issues, including but not limited to the identification and referral of issues of law to the Office of General Counsel for decision under § 125.57, and the elimination of issues relating to effluent conditions and other terms, conditions and requirements contained in the permit that are attributable to a cerification under section 401 of the Act.

(2) Admission of facts and of the genuineness of documents, and the possibility of stipulations with respect to facts.

(3) Consideration of and ruling upon objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the Public File maintained under § 125.35(e) shall be received in evidence. Notwithstanding the foregoing, at any stage of the proceedings prior to the termination of the hearing any party may make, and the presiding officer shall consider and rule upon, motions to strike testimony or other evidence on the grounds of admissibility, relevance, materiality or competence.

(4) Identification of matters of which official notice shall be taken.

(5) Establishment of a schedule which includes definite or tentative times for as many of the following as are deemed necessary and proper by the presiding officer:

(i) Submission of narrative statements of position on each factual issue in controversy.

(ii) Submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports and any other type of written material) in support of such statements.

(iii) Written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) Grouping participants with substantially like interests for purposes of eliminating duplicative or repetitive development of the evidence and making and arguing motions and objections.

(7) Such other matters as may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or within some reasonable time set by the presiding officer, not to exceed 30 days after such conference, each party shall make available to all other parties the names of the expert and other witnesses the party expects to call. At its discretion a party may include a brief narrative summary of any witness' anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the Public

File maintained under § 125.35(e), shall be marked for identification as ordered by the presiding officer. Witnesses, proposed written testimony and other evidence may be added or amended only upon a finding by the presiding officer that good cause existed for failure to introduce the additional or amended material within the time specified by the presiding officer.

(e) The presiding officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. Such order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. Such order shall control the subsequent course of the hearing unless modified by the presiding officer for good cause shown.

§ 125.51 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determinaiton in his favor upon all or any part of the issues being adjudicated. Any such motion shall be filed at least 30 days prior to the date set for the hearing.

(b) Any other party may, within 21 days after service of the motion, file and serve a response thereto and/or a countermotion for summary determination. When a motion for summary judgment is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine and substantial issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The presiding officer may, at his discretion, set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The determination sought by the moving party shall be rendered not more than 30 days after the date the motion is filed if papers or other material filed under § 125.44 and any admissions on file or matters officially noticed show that there is no genuine issue as to any material fact and that the moving party is otherwise entitled to such determination.

(e) If all of the issues (or dispositive issues) are decided on a motion for summary determination, no hearing will be held. The presiding officer shall certify the record, together with the summary determination and any proposed findings and conclusions, to the Regional Administrator for a tentative decision under § 125.55(a)(1), or the presiding officer shall thereupon prepare an initial decision under § 125.55(a)(2) or § 125.55 (b)(1), as the case may be. If only some of the issues (not including dispositive issues) are decided on a motion for summary determination, or if the motion is denied, the presiding officer shall issue a memorandum opinion and order, interlocutory in character, and hearing will proceed on the remaining issues. Appeal from interlocutory rulings shall be governed by § 125.56.

§ 125.52 Hearing procedure.

(a) The participant who, by raising material issues of fact, contends (1) That particular terms, conditions or requirements in the permit are improper, invalid or unreasonable, and who desires either (i) The inclusion of new or different terms, conditions or requirements, or (ii) The deletion of such terms, conditions or requirements, or (2) That the denial of a permit is improper, invalid or unreasonable, shall have the burden of going forward to present an affirmative case upon the issues and has the ultimate burden of persuasion thereon. Such party shall have the opportunity to submit evidence on rebuttal.

(b) *Powers of Presiding Officer.* The Presiding Officer shall have the authority and duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of the proceedings, and to maintain order. He shall have all powers necessary to these ends, including, but not limited to, the following:

(1) To arrange and issue notice of the date, time and place of hearings and conferences and, upon proper notice, to change the date, time, and place of hearings and conferences previously set.

(2) To establish the methods and procedures to be used in the development of evidentiary facts.

(3) To prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants.

(4) To hold conferences to settle, simplify, determine or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing.

(5) To administer oaths and affirmations.

(6) To regulate the course of the hearing and govern the conduct of participants therein.

(7) To examine witnesses.

(8) To identify and refer issues of law to the Office of General Counsel for decision under § 125.57.

(9) To rule on, admit, exclude, or limit evidence.

(10) To establish the time for filing motions, testimonv and other written evidence, briefs, findings, and other submissions.

(11) To rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 125.51.

(12) To order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex.

(13) To take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding.

(c) *Presentation of evidence.* (1) In initial permit issuance proceedings all direct and rebuttal evidence at an evidentiary hearing shall be submitted in writing. In post-initial permit proceedings, oral direct and rebuttal evidence may be received. Written testimony may be prepared, at the discretion of each party, in either narrative or question-and-answer form.

(2) In initial permit issuance proceedings and in other permit proceedings where all parties have agreed to submit all testimony in writing the presiding officer shall set (i) A date convenient to the parties for the simultaneous filing of all direct testimony, and (ii) A date, at least 21 days thereafter, for the simultaneous filing of any rebuttal testimony.

(d) *Receipt of evidence.* (1) The presiding officer shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Relevant, competent and material evidence may be received at any hearing even though inadmissible under the strict rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value. The Public File kept pursuant to § 125.35(e) shall be received and made part of the record, and such parts of it as are material and relevant shall be admitted in evidence.

(2) Whenever any evidence or testimony is excluded by the presiding officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the administrative record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof, which shall consist of a brief statement on the record describing the testimony excluded.

(3) Where two or more parties have substantially similar interests and positions, the presiding officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of such parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(4) Rulings of the presiding officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall control further proceedings and shall appear in the record, except if reversed as a result of an interlocutory appeal taken under § 125.56.

(5) Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(6) Where the Regional Administrator, in the process of making his tentative decision under § 125.55(a), determines that the presiding officer erroneously excluded any evidence or testimony, he may order the hearing reopened to permit the

consideration of such evidence or testimony. Where appropriate, the Regional Administrator may evaluate improperly excluded evidence or testimony in preparing his decision.

(7) No evidence shall be excluded on the grounds that it was generated, discovered or became available after the issuance of the subject permit.

§ 125.53 Record of hearings.

(a) All orders issued by the presiding officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information, and other written material of any kind submitted in the proceeding shall be a part of the administrative record of the hearing, and shall be available to the public in the office of the Regional Hearing Clerk promptly upon receipt in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transscribed. Following the termination of the hearing, the reporter shall file with the Regional Hearing Clerk (i) The original of the transcript, and (ii) The exhibits received or offered into evidence at the hearing.

(c) The presiding officer shall promptly certify (i) The original transcript as the true and official transcript of the testimony offered or received into evidence at the hearing, and (ii) The exhibits accompanying the transcript as all of the exhibits offered or received into evidence at the hearing.

(d) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may request such copy from the Regional Hearing Clerk and pay the costs thereof. In cases where the transcript of proceedings has been prepared by a private stenographer or court reporter, the Regional Hearing Clerk may direct interested persons to make arrangements for copies by dealing directly with such reporter.

§ 125.54 Proposed findings of fact and conclusions; briefs.

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions and a brief in support thereof, each containing appropriate references to the record. A copy of any such findings, conclusions and brief shall be contemporaneously served upon every other party and the presiding officer. The presiding officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief.

§ 125.55 Decisions.

(a) *Initial permit issuance.* (1) In cases where the Regional Administrator has determined to have the entire record certified directly to himself for decision, the presiding officer shall, within a reasonable time following the expiration of the filing period and any extension thereof provided in § 125.54, certify the record, including the proposed findings and conclusions and briefs, if any, submitted by the parties, to the Regional Administrator. Within 60 days following certification of the record, the Regional Administrator (or his authorized designee) shall prepare and issue a tentative decision and shall serve copies thereof upon all parties (or their attorneys of record) and the Administrator. Such decision shall become the final decision of the Agency unless, within 21 days after such service of copies, any party shall have filed a petition for review by the Administrator of the decision or any part thereof under § 125.58(a), or unless the Administrator on his own motion under § 125.58(b) determines to review the decision of the Regional Administrator.

(2) In cases where the Regional Administrator has determined that the record will not be certified directly to himself for decision, the presiding officer shall, within 60 days following the expiration of the filing period and any extensions thereof provided in § 125.54, review and evaluate the record and the proposed findings and conclusions and any briefs filed by the parties. He shall then prepare and issue an initial decision and shall serve copies thereof upon all parties (or their attorneys of record) and the Regional Administrator. Such decision shall become the final decision of the Agency unless, within 21 days after such service of copies, (i) Any party shall have appealed the decision to the Regional Administrator by filing exceptions, together with supporting reasons therefor, to the initial decision or any part thereof, or (ii) The Regional Administrator on his own motion directs that the initial decision and the entire record be transmitted to him for review. In the latter case, the Regional Administrator shall notify the parties (or their attorneys of record) of a 21-day period within which they may file exceptions, together with supporting reasons therefore, to the initial decision.

(A) A party who appeals the initial decision, or any part thereof, to the Regional Administrator shall serve copies of its exceptions to the initial decision upon all other parties (or their attorneys of record) and the presiding officer. Within 21 days after such service of copies, all other parties may file a responsive brief. Promptly thereafter, the Regional Administrator shall indicate his election either *(1)* to accept the case himself for review or *(2)* to waive his right of review and forward to the Administrator the entire record, the initial decision and the papers filed by the parties in the appeal.

(B) In cases where the Regional Administrator has determined to accept the case himself for review the matter shall proceed in the manner provided in paragraph (a)(1) of this section. In cases where the entire record has been forwarded to the Administrator, the matter shall proceed as provided in § 125.58, except that no further briefs or exceptions may be filed.

(b) *Post-initial permit proceedings.* (1) In all cases, the presiding officer shall, within 60 days following the expiration of the filing period and any extensions thereof provided in § 125.54, review and evaluate the record before him, and the proposed findings and conclusions and any briefs filed by the parties. He shall then prepare and issue an initial decision in the matter. Copies of such decision shall be served upon all parties (or their attorneys of record) and the Administrator.

(2) Such decision shall become the final decision of the Agency unless, within 21 days after such service of copies, any party shall have filed a petition for review by the Administrator under § 125.58(a), or unless the Admintrator on his own motion determines to review the decision under § 125.58(b).

(c) *Where no hearing is held.* (1) In cases where no decision of the General Counsel is contested and where no evidentiary hearing is conducted (i) Because the material facts are stipulated, (ii) Because the parties have mutually agreed that the permit be revised to contain certain terms, conditions or requirements, or (iii) Because no material issues of fact exist or remain, no decision will be prepared by either the Regional Administrator or the presiding officer. The Regional Administrator shall make a determination under § 125.35 consistent with any such stipulation or agreement, and he shall issue a revised permit in conformity therewith.

(2) In cases where a decision of the General Counsel is contested, but where no evidentiary hearing is conducted for the reasons set forth in paragraph (c)(1) of this section, the Regional Administrator shall prepare and issue a tentative decision or the presiding officer shall prepare and issue an initial decision, as the case may be, consistent with any stipulation or agreement and relying upon the decision of the General Counsel, and copies of such decision shall be served upon all parties (or their attorneys of record) and the Administrator. Such decision shall become the final decision of the Agency unless, within 21 days after such service of copies, any party shall have filed a petition for review by the Administrator of the General Counsel's decision or any part thereof under § 125.58(a), or unless the Administrator on his own motion under § 125.58(b) determines to review the decision of the Regional Administrator.

§ 125.56 Interlocutory appeal.

(a) *Request for interlocutory appeal.* Except as provided in this section, appeals to the Administrator shall obtain as a matter of right only under § 125.58. Appeals from other orders or rulings shall occur only if the presiding officer, upon motion of a party, certifies on the record or in writing such orders or rulings to the Administrator for appeal. Requests to the presiding officer for such certification shall be filed in writing within three days of the order or ruling and shall state briefly the grounds relied upon.

(b) *Availability of interlocutory appeal.* The presiding officer may certify a ruling for appeal to the Administrator:

(1) When the order or ruling involves an important question for which there is substantial ground for differences of opinion;

(2) Where either:

(i) An immediate appeal for the order or ruling will materially advance the ultimate completion of the proceeding, or

(ii) A review after the final order is issued will be inadequate or ineffective; and,

(3) Where such an appeal is necessary to prevent exceptional delay, expense or prejudice to any party.

(c) *Decision.* If the Administrator determines that certification was improperly granted, he shall deny the appeal; if he takes no action within 21 days after he receives notice of the certification, the appeal shall be deemed dismissed. When the presiding officer declines to certify an order or ruling to the Administrator on interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the decision of the Regional Administrator, except when the Administrator determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within three days after receipt of notification from the presiding officer that he has refused to certify an order or ruling for interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the presiding officer. The Administrator may, however, allow briefs and oral argument.

(d) *Stay of proceedings.* The presiding officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the presiding officer for an interlocutory appeal, or upon the denial of such certification by the presiding officer. Only in exceptional circumstances will proceedings be stayed. No stay shall be granted for more than a 30-day period, except that the presiding officer may grant an additional stay not to exceed 30 days upon good cause therefor being shown.

(e) The failure to request an interlocutory appeal shall not foreclose a party from taking exception to an order or ruling in an appeal under § 125.58.

§ 125.57 Decisions of General Counsel on matters of law.

(a) Issues of law, including questions relating to the interpretation of provisions of the Act, and the legality and interpretation of regulations promulgated pursuant to the Act, shall be decided in accordance with this subsection and shall not be considered at the evidentiary hearing.

(b) The Regional Administrator or his designee shall determine which issues, if any, submitted by the parties fall into the category specified in paragraph (a) of this section; he shall then refer such issues to the General Counsel for resolution and notify the parties of such referral. Within 28 days following the referral of legal issues, any party may file briefs with the General Counsel. All briefs shall contain, in the order indicated, the following:

(1) A subject index of the issues presented in the brief, with page references, and a table of statutes, cases, treatises and other material cited, with page references thereto;

(2) A concise statement of each referred issue;

(3) A discussion of each issue, including arguments in favor of the referring party's position and citations to cases, statutes, legislative history and other appropriate references and authorities tending to support such position; and

(4) A recommended decision for each referred issue.

(c) Where no evidentiary hearing will be conducted because no material issues of fact exist, the Regional Administrator or his designee may nevertheless refer issues of law to the General Counsel for decision in the manner provided hereinabove. After the granting of a request for hearing, even when all factual issues have been resolved, the Regional Administrator or the presiding officer may nevertheless refer issues of law to the General Counsel. The Regional Administrator and the presiding officer need not refer any issue of law where a previously issued General Counsel Decision or Federal Court decision would resolve the issue.

(d) The General Counsel shall provide the Regional Administrator, the presiding officer, where appropriate, and each party with a written decision on each referred issue of law. A written opinion setting forth the reasons and basis for the decision shall also be provided. The decision of the General Counsel shall be final with respect to each referred issue of law as it relates to the particular permit in question and shall be relied upon by the presiding officer or the Regional Administrator, as the case may be, in rendering a decision under § 125.55. The General Counsel's decision may not be directly appealed to the Administrator, but the Administrator may review such decision in the context of an appeal under § 125.58 and he may reach different or additional conclusions of law. For purposes of § 125.55(c)(2), a decision of the General Counsel shall be deemed "contested" if, within 30 days following service upon the parties of such decision, any party files a notice of intent to appeal such decision. Copies of such notice shall be served upon all parties to the proceeding and the Office of General Counsel, Water Quality Division.

§ 125.58 Appeal of decisions or the denial of an evidentiary hearing.

(a) Any person whose request for an evidentiary hearing has been denied may file a petition seeking review by the Administrator of such denial. Any party may appeal from a tentative or initial decision or from any exception taken thereto, by filing a petition seeking review by the Administrator.

(b) The Administrator may, on his own initiative, review a tentative or initial decision or the denial of an evidentiary hearing. Within seven (7) days after the Administrator has determined, pursuant to this section, to review an initial or tentative decision or the denial of an evidentiary hearing, notice of such determination shall be served by mail upon all affected parties, the presiding officer and the Regional Administrator.

(c) Within 30 days after:

(1) The date of service of the initial or tenttive decision, or

(2) The date of denial or the request for evidentiary hearing, any party or requester, as the case may be, may take exception to any matter set forth in such decision or to any adverse order or ruling to which he objected during the hearing and may appeal such exceptions to the Administrator for decision by filing with the Administrator a notice of appeal and petition for review. Proof of service upon all parties shall accompany such filing. The petition shall include a statement of the supporting reasons for such exceptions and, where appropriate, a showing that the initial or tentative decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous or,

(ii) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(d) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. The Administrator, in his discretion, may decline to review an initial or tentative decision or the denial of an evidentiary hearing, in which case such decision or denial shall be deemed the final action of the Agency. When the Administrator grants a petition for review or determines on his own motion to review a decision, he may notify the parties that only certain issues are to be briefed.

(e) After granting a petition for review or determining on his own motion to review a decision, the Administrator may nevertheless summarily affirm without opinion an initial or tentative decision or the denial of evidentiary hearing.

(f) A petition to the Administrator for review of any initial or tentative decision or the denial of an evidentiary hearing pursuant to paragraph (c) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g) Unless a party timely files a petition for review, or unless the Administrator on his own initiative orders review, the initial or tentative decision or the denial or an evidentiary hearing shall be deemed the final decision of the Agency. Where a petition for review is granted, or action to review is taken by the Administrator on his own initiative pursuant to paragraph (b) of this section, the initial or tentative decision or the denial of an evidentiary hearing shall not become the final action of the Agency.

(h) The petitioner may file a brief in support of the petition within 21 days after the Administrator has allowed review pursuant to a petition for review. Proof of service upon all parties shall accompany such filing. Any other party

may file a responsive brief, together with proof of service, within 21 days of service of a brief in support of the petition. The petitioner may file a reply brief within 14 days of service of a responsive brief. In cases where the Administrator determines, on his own motion, to review a tentative or initial decision or the denial of an evidentiary hearing, he shall notify the parties of the briefing schedule.

(i) (1) Review by the Administrator of an initial or tentative decision or the denial of an evidentiary hearing shall be limited to issues specified pursuant to paragraph (d) of this section, except that following notice to all parties, the Administrator, in his discretion, may raise and decide other matters which, on the basis of the record, he deems material.

(2) Upon review, the Administrator may affirm, modify, set aside or remand for further proceedings, in whole or in part, an initial or tentative decision or the denial of an evidentiary hearing, and he may make any findings or conclusions which in his judgment are proper and supported by the record. Where an initial or tentative decision or a denial of an evidentiary hearing is affirmed by the Administrator, for whatever reason, such determination shall be deemed to be affirmed for the reasons indicated in the initial or tentative decision or in the denial of evidentiary hearing, unless other reasons are stated by the Administrator.

(j) (1) Briefs shall be confined to the particular matters remaining at issue. Each exception which is briefed shall be suported by citation of such statutes, rules, decisions and other authorities and by page reference to such portions of the record as may be relevant. Reply briefs shall be confined to matters in original briefs of other parties. The length and filing schedule for reply briefs shall be determined by the Judicial Officer.

(2) All briefs filed with the Administrator shall include an index and a summary of points and authorities. Each brief shall be dated, and no brief shall exceed 45 pages in length except with leave of the Judicial Officer. All briefs must contain the signature and address of the party filing same or his attorney.

(k) The Administrator shall decide the matters under review on the basis of the hearing record presented. Oral argument before the Administrator will be available only where the Administrator, in his discretion, desires, and requests such argument.

(l) All papers required to be filed with the Administrator shall be served either by delivery in person or by certified or registered mail to the Office of the Administrator (A-101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Judicial Officer—NPDES Appeal, and must be received by the Agency within the time limit for such filing. All papers required to be served on any party shall be either delivered in person or mailed to such party, certified or registered mail, at the address for such party as it appears on the record, within the time limit for such service.

(m) Two (2) copies of all material filed under this section shall be contemporaneously filed with the Regional Hearing Clerk, and a certificate evidencing such filing shall accompany all papers filed with the Office of the Administrator.

(n) The Administrator for good cause shown may upon motion extend the time prescribed herein for doing any act or may permit an act to be done after the expiration of such time, but the Administrator may not extend the time for filing a notice of appeal and petition for review under paragraph (c) of this section.

§ 125.59 Delegation of authority; time limitations.

(a) The Administrator may delegate to a Judicial Officer any or part of his authority to act pursuant to this subject.

(b) The failure of the Administrator, Regional Administrator or presiding officer to do any act within the time periods specified herein shall not be construed as a waiver or in derogation of any rights, powers or authority of the United States Environmental Protection Agency.

§ 125.60 Public access to information.

(40 CFR 125.37 is transferred to Subpart E and redesignated § 125.60. 40 CFR 125.37 is vacated and reserved.)

3. CFR 125.41 through 125.44 are proposed to be transferred to Subpart F (new) and redesignated §§ 125.61 through 1235.64 respectively without substantive change.

Subpart F—Miscellaneous

§§ 125.61–125.64 [Redesignated from §§ 125.41 and 125.44]

APPENDIX A—SAMPLE NOTICES IN ABBREVIATED FORM FOR NEWSPAPER PUBLICATION

Form No. 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region ______

Street Address

City, State, Zip Code

PUBLIC NOTICE OF PROPOSED (ISSUANCE, DENIAL, MODIFICATION) OF A PERMIT UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Notice is hereby given pursuant to 40 C.F.R. § 125.32, that the United States Environmental Protection Agency (EPA) is proposing to [issue, deny, modify] a permit to:

Name of applicant-discharger

Mailing address

for the discharge of certain pollutants from its (existing or new) (activity or operation) plant located at ______ into (name of receiving waters), which are classified as [water quality standards classification].

Interested persons may obtain further information, including a description of the location of each discharge point on such waters, the procedures under which a final determination will be made by EPA, and the means by which such persons may inspect and copy all relevant, nonconfidential forms, documents and other materials from the (e.g., Permits Branch, Water Enforcement Division), Room No. ______, EPA, Region ______ weekdays between (regular business hours) at the above address or by calling (area code, telephone number).

Name

Regional Administrator

Form No. 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region ______

Street Address

City, State, Zip Code

PUBLIC NOTICE OF PUBLIC HEARING ON PROPOSED [ISSUANCE, DENIAL, MODIFICATION] OF A PERMIT UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Notice is hereby given, pursuant to 40 C.F.R. § 125.34, that the Regional Administrator of Region ______ of the United States Environmental Protection Agency (EPA) has found a significant degree of public interest in the following permit(s) proposed to be (issued, denied, modified) by the Regional Administrator: Name of Permittee(s), Mailing Address, Facility Address, Name of navigable waters and discharge point(s).

A public hearing relating to the above permit(s) will be held on the ____ day of ______, 19__, at [address], at ______ o'clock (a.m./p.m.). Interested persons may obtain further information, including a statement of any issues to be considered, (copies of the fact sheet, if any, prepared pursuant to 40 C.F.R. § 125.33 and) the draft permit prepared pursuant to § 125.31, and the means by which persons may inspect and copy all relevant, nonconfidential forms, documents, and other materials at the Office of the Regional Hearing Clerk, Room No. ______, EPA Region ______ weekdays between (regular business hours) at the above address or by calling (area code, telephone number).

Name

Regional Administrator

Form No. 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region ______

Street Address

City, State, Zip Code

PUBLIC NOTICE OF EVIDENTIARY HEARING UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Notice is hereby given, pursuant to 40 C.F.R. § 125.32, that the United States Environmental Protection Agency (EPA) has granted a request from:

Name of Requestor

Mailing Address

for an evidentiary hearing on the [its] National Pollutant Discharge Elimination System (NPDES) permit (No. ______) issued under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251 et seq., to:

(if different from requestor)

Name of Permittee

Mailing Address

for its (new or existing) (type of activity or operation) located at ______ which discharges into (name of receiving waters).

Public notice of EPA's proposal to (issue, modify, deny) the subject NPDES permit was given on ______, 19__. A public hearing thereon was held on ______, 19__, at (place of hearing). (Use second sentence if appropriate).

Interested persons may obtain further information, including the names and addresses of other parties, if any, a description

of the permittee's activities, the factual issues to be considered at the hearing, a description of the nature and purpose of the hearing together with a statement of the applicable rules and procedures, and the means by which persons may inspect and copy all relevant, nonconfidential forms, documents and other materials comprising the public file, at the Office of the Regional Hearing Clerk, Room No. ______, EPA Region ______, weekdays between (regular business hours) at the above address or by calling (area code, telephone number).

Name

Regional Administrator

[FR Doc.76-34884 Filed 11-26-76;8:45 am]

[FRL 640-8]

[40 CFR Part 201]

RAILROAD NOISE EMISSION STANDARDS

Special Local Determinations

The Environmental Protection Agency (EPA) proposes to amend Interstate Railroad Noise Emission Regulations, 40 CFR Part 201, by adding Subpart D relating to waiver by the EPA Administrator of the preemption of certain State and local railroad noise regulations. The amendments proposed herein are intended to clarify the preemptive effect of section 17(c) (1) of the Noise Control Act, 42 U.S.C. Section 4916(c) (1), and to provide procedures for the implementation of the waiver authority of section 17(c) (2) of the Act.

Section 17(a) of the Noise Control Act required EPA to publish noise emission regulations for surface carriers engaged in interstate commerce by rail. On January 14, 1976 (41 FR 2184), EPA published regulations setting noise emission standards for railcars and locomotives. According to section 17(c) (1) of the Act, after the effective date of Federal regulations applicable to noise emissions resulting from the operation of any equipment or facility of an interstate rail carrier, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to the Federal standard prescribed under section 17. Subsection 17(c) (2), however, provides that nothing in section 17 shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation or movement of any product if the Administrator of the Environmental Protection Agency, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under section 17.

The implementation of section 17(c) (2) requires that State and local governments planning to adopt or enforce regulations preempted by the terms of section 17(c) (1) apply to the EPA Administrator for waiver of that preemption. Accordingly, EPA intends by these proposed regulations to: (1) define the precise nature of the preemption imposed by section 17(c) (1) of the Act, so that State and local governments will know what regulations they may no longer adopt or enforce without EPA approval, (2) establish procedures for State and local governments to follow in seeking EPA approval of their adoption or enforcement of regulations where necessary, as authorized under section 17(c) (2), and (3) provide guidance as to EPA's interpretation of its authority under section 17(c) (2).

Section 201.32 as proposed would provide guidance as to which State and local regulations are subject to preemption by Federal railroad noise regulations. The Agency has interpreted section 17(c) (1) of the Noise Control Act as prohibiting State and local governments from adopting or enforcing any noise control regulation which requires, or has the practical effect of requiring, the physical modification of a facility or piece of equipment which is in compliance with Federal noise emission standards. More specifically, the prohibition would apply to all more stringent numerical noise emission limitations on Federally regulated equipment or facilities and all design or equipment standards, i.e., regulations affecting a Federally regulated facility or piece of equipment which explicitly require modifications in addition to or more stringent than those necessary for the facility or equipment to meet Federal standards. Further, in the case of other regulations enacted or enforced for the purpose of noise control, if compliance can be achieved by physical modification of such facilities or equipment, and no reasonable alternatives exist which do not involve physical modification of such facilities or equipment, the regulations would be preempted and require EPA approval.

EPA has considered other interpretations of section 17(c). For example, during the public comment period on the railroad noise emission standards, it was suggested to the Agency that EPA's standards would, after their effective date, totally preempt the authority of State and local governments to regulate railroads for noise emission purposes. A less radical approach considered was that after the effective date of the standards for rail cars and locomotives, the State or local governments could no longer take any action with respect to rail cars or locomotives, whether it involved physical modification or simply control of use, operation, or movement. This approach was represented by EPA's discussion of preemption in the preamble to the final railroad regulations (41 FR 2184). Though less consistent with the plain language of section 17(c) than the approach now proposed, this interpretation was deemed acceptable because of certain ambiguous elements of the legislative history of the Act. After gaining experience with the practical aspects of controlling noise sources in interstate commerce, and after reviewing the legislative history in light of that experience, EPA believes that the intent of the Act is best served by following the plain language of section 17(c).

Proposed § 201.31 would provide that if a State or local regulation is not in the category of preempted regulations, it may be adopted and enforced without EPA involvement. If a regulation is so preempted, it will require EPA approval. Proposed § 201.33 contains provisions concerning the filing and processing of applications, including a provision allowing the applicant or an affected interstate carrier to request review of EPA's decision. The proposal also provides for consultation between the EPA Administrator and the Secretary of Transportation as required by the Noise Control Act.

As a supplement to the provisions proposed herein, the Agency has prepared and will make available guidelines establishing detailed procedures to be followed by State and local governments in filing, and by the Agency in processing applications for waiver of preemption. It is important that State and local governments follow the requirements of and utilize the guidance provided by the guidelines as well as the proposed procedures in addressing any questions or issues concerning the preemptive aspects of the EPA's Interstate Railroad Noise Emission Regulation.

Included in such guidelines are procedural requirements as to where applications must be filed and what information must be included in supporting statements necessary for the Administrator to make a determination. Also included are procedures which delineate the manner in which the decision process will be conducted for all applications submitted to the Agency. The determinations will be treated as informal rule making, and interested parties will have the opportunity to participate. The guidelines provide for publication in the FEDERAL REGISTER of applications when received, allowance for a public comment period, and publication of the final determination. The guidelines also contain provisions concerning the Agency's processing of requests for review of final determinations.

Under section 17(c) (2) of the Noise Control Act, the Administrator may waive preemption in any case where he determines that the State or local action is necessitated by special local conditions and is not in conflict with the Federal regulations. This provision was intended to allow flexibility to deal with situations where circumstances surrounding the operations of railroad equipment and facilities within particular communities result in essentially unique local health and welfare problems. Proposed Section 201.34 gives guidance as to EPA's interpretation of this provision of the Act. It defines in a general manner the kinds of factors which EPA will consider as evidence of a special local condition, and it explains how the Administrator will assess the degree of conflict between the State or local action and the Federal regulations. Finally, it provides that the Administrator will balance these factors against one another taking into account

the availability of reasonable alternative means of solving the special local noise problem. Because every comunity is different, each will present a different set of factors for the administrator to consider. Thus, it is not possible to develop an exhaustive list of actions he would or would not approve. However, the general rules proposed in § 201.34 are expected to be sufficient guidance to State and local governments as to the limits of the Administrator's authority under section 17(c) (2) of the Act.

The Administrator's grant of an application for waiver of preemption is somewhat limited; it represents an administrative action with the effect that the provisions of section 17 of the Noise Control Act will no longer be a legal basis upon which to challenge the State or local agency's authority to adopt or enforce the regulation. The Administrator does not believe that this finding represents an approval of the proposed State or local law, or that it affects in any way any other requirements which that standard must meet. Specifically, the Administrator's waiver of preemption with respect to a proposed law or rule does not mean that it may contravene other standards established by law, for example those related to safety; nor, as limited by the Commerce Clause of the U.S. Constitution, may it impose an undue burden on interstate commerce, although some of the factors relevant to that test will already have been determined by the Administrator in assessing conflict with Federal regulations. State and local agencies are encouraged to carefully consider these matters during the development of such proposals.

It is the Agency's intention that the guidance provided State and local governments by the proposed procedures and the supplemental guidelines, when finalized, be augmented where necessary by consultation with the EPA Regional Offices. State and local governments are, therefore, encouraged to freely communicate their questions and concerns on all matters related to prospective applications for preemption waiver determinations, or otherwise concerning the preemptive aspects of the EPA's Interstate Railroad Noise Regulation, to the appropriate EPA Regional Office. This consultation will help ensure that applications for determinations are submitted properly and only when necessary, and will aid in the effective solution of State and local noise problems in the most expeditious manner.

Interested persons are invited to participate in the development of these proposed regulations by submitting their written data, views, and arguments. Communications should identify the regulatory docket number and be submitted with five copies to: Director, Standards and Regulations Division, Office of Noise Abatement and Control (AW-471), Attention: Docket No. 76-10, U.S. Environmental Protection Agency, Washington, D.C. 20460. To assure that all comments receive adequate consideration, they should reach the Agency no later than 45 days after the date of this notice.

Dated: November 18, 1976.

JOHN QUARLES,
Acting Administrator.

It is proposed to amend 40 CFR Part 201 by adding the following subpart:

Subpart C—State and Local Authority

Sec.
201.30 Definitions.
201.31 General rules.
201.32 Preemption.
201.33 Filing and processing of applications.
201.34 Basis for determinations.

AUTHORITY: 42 U.S.C. sec. 4916(c) and 5 U.S.C. sec. 552(a) (1) (C), (D).

§ 201.30 Definitions.

(a) *Administrator.* As used in this subpart, the term Administrator shall refer to the Administrator of the Environmental Protection Agency or any person who performs any act on his behalf.

(b) *Federally regulated equipment.* Any piece of equipment of an interstate rail carrier to which a standard is in effect under 40 CFR Part 201, including any item which is an integral element or component of such equipment and any item whose interaction contributes to the noise measured when operating under the conditions specified in such regulations for compliance measurement. Included among such items are refrigeration units, or auxiliary engines on locomotives or rail cars, and track. Items excluded from the applicability of the Federal standards by 40 CFR 201.10 are not Federally regulated equipment.

(c) *Non-federally regulated equipment.* Any piece of equipment of an interstate rail carrier which is not Federally regulated equipment as defined in § 201.30(b).

(d) *Design or equipment standards.* Those actions taken by States or political subdivisions thereof which expressly require for the purpose of noise control the installation of sound attenuation equipment or other hardware, or the implementation of design changes, in addition to or more stringent than those necessary for equipment or facilities to meet the Federal standards.

(e) *General environmental noise standards.* Those actions taken by States or political subdivisions thereof which establish allowable ambient noise levels. or receiving land use noise levels standards which focus on the identity of land receiving the sound rather than the identity of noise sources.

(f) *Use, operation, or movement controls.* Those actions taken by States or political subdivisions thereof which attempt to regulate the time, manner, nature, or frequency of the operation of particular equipment or facilities of interstate rail carriers for the purpose of noise control.

(g) *Action which effectively requires physical modification of Federally-regulated equipment or facilities.* Any action imposing a requirement such that compliance can be achieved by physical modification of Federally-regulated equipment or facilities, and no reasonable alternative exists which does not involve physical modification of Federally-regulated equipment or facilities.

(h) *Physical modification of Federally regulated equipment or facilities* Physical modifications in addition to or more stringent than those necessary for the equipment or facilities to meet the Federal standards.

(i) *Agency guidelines on the filing and processing of applications.* Procedural guidelines prepared and published by the EPA as a supplement to the provisions of this subpart which establish the procedures to be followed by State and local governments in filing, and by the EPA in processing applications for waiver of preemption under Section 17(c) (2) of the Noise Control Act of 1972.

§ 201.31 General rules.

(a) No State or local government shall adopt or enforce any regulation which is preempted, according to the rules in § 201.32, unless an application has been submitted to the EPA in the manner prescribed in § 201.33 (a) and (b) and in the Agency's guidelines on the filing and processing of applications; and a final determination approving such application in whole or in part under § 201.33(c) or § 201.33(d) has become effective.

(b) Any regulation which is not preempted under § 201.32 may be adopted and enforced without EPA approval.

(c) The State and local government shall itself, or through consultation with the appropriate EPA Regional Office, decide whether a regulation which it proposes to adopt or enforce is preempted under § 201.32.

(d) Where the Agency finds that EPA approval is not required because an application relates to a regulation which is not preempted, such decision will not constitute EPA approval or disapproval of the proposed State or local regulation.

(e) Any final determination under § 201.33(c) or § 201.33(d) may approve in part and disapprove in part the adoption or enforcement of the regulation to which an application relates. In any such case, that part of the regulation disapproved may not be adopted or enforced.

(f) Any final determination approving the adoption or enforcement of a regulation, or any part thereof, under § 201.33 (c) or § 201.33(d) will specify an effective date before which such adoption or enforcement may not take place. The effective date of a final determination under § 201.33(c) will normally be 30 days from the date of publication of such determination, or, if reviewed pursuant to § 201.33(d), the date of issuance of final approval under § 201.33(d), whichever comes later.

§ 201.32 Preemption.

(a) The Federal interstate rail carrier noise emission regulations under 40 CFR Part 201 preempt, after their effective dates, the authority of States and political subdivisions thereof to adopt or enforce any standard applicable to noise emissions resulting from operation of the same facilities or equipment covered by such Federal regulations unless such

standard is identical to the Federal standard. Therefore, before taking any such preempted action, as defined in (b) through (d) of this section, States or political subdivisions thereof are required to obtain a determination by the Administrator of the EPA in accordance with these provisions.

(b) A State or local action shall be deemed to be a preempted standard applicable to noise emissions resulting from operation of Federally regulated facilities or equipment if, for the purpose of noise control, it:

(1) Establishes a numerical noise emission limitation on Federally regulated equipment or facilities which is more stringent than the Federal standard applicable to such equipment or facilities; or

(2) By its terms requires the physical modification of Federally regulated equipment or facilities; or

(3) It is neither (1) nor (2) above, but it effectively requires the physical modification of Federally regulated equipment or facilities (as defined in § 202.30 (g) and (h)).

(c) *Preempted actions as to adoption or enforcement.* A determination according to this subpart is required regarding the adoption or enforcement of the following types of regulations which are considered to be preempted:

(1) Regulations which establish noise emission standards for Federally regulated equipment which are more stringent than the Federal standards.

(2) Regulations which establish design or equipment standards for Federally regulated equipment.

(3) Regulations establishing use, operation, or movement controls on Federally regulated equipment for the purpose of noise control which require the physical modification of the Federally regulated equipment. Regulations in this category include those which attempt to restrict the use, operation, or movement of Federally regulated equipment that emit more than a specified number of decibels, or that are not equipped with mufflers or other specified noise abatement equipment.

(4) Regulations establishing noise emission standards for non-Federally regulated facilities of interstate rail carriers which effectively require the physical modification of Federally regulated equipment operating within the facility.

(5) Regulations establishing use or operation controls for non-Federally regulated facilities of interstate rail carriers which effectively require the physical modification of Federally regulated equipment operating within the facility.

(d) *Preempted actions as to enforcement only.* A determination according to this subpart is required with respect to regulations establishing general environmental noise standards only at such time as a State or political subdivision thereof proposes to enforce such standards against interstate rail carriers, and only if compliance would effectively require the physical modification of Federally regulated equipment or facilities.

(e) *Nonpreempted actions.* A determination according to this subpart is not required regarding the adoption or enforcement of the following types of regulations which are considered to be not preempted:

(1) Regulations establishing noise emission standards which are identical to the Federal noise emission standards for interstate rail carriers.

(2) Regulations establishing noise emission standards for Federally regulated equipment which are less stringent than the Federal standards.

(i) Such less stringent regulations must ensure that virtually each piece of equipment found in violation of those regulations would if tested be found in violation of the Federal standards.

(ii) Such less stringent regulations can specify testing conditions less rigorous than those specified in the Federal regulations if the level of the standard is relaxed so as to only identify equipment which would violate the Federal standards.

(iii) Such less stringent regulations can be used under less than ideal testing conditions to identify "gross violations"; i.e., equipment that violates the Federal standards by a substantial amount.

(3) Regulations establishing use, operation, or movement controls for Federally regulated equipment of interstate rail carriers, compliance with which does not effectively require physical modification of such Federally regulated equipment.

(4) Regulations establishing the following for non-Federally regulated equipment of interstate rail carriers: (i) Noise emission standards, (ii) Use, operation or movement controls, (iii) Design or equipment standards.

(5) Regulations establishing noise emission standards for non-Federally regulated facilities of interstate rail carriers which do not effectively require the physical modification of Federally regulated equipment operating within the facility.

(6) Regulations establishing use or operation controls on non-Federally regulated facilities of interstate rail carriers which do not effectively require the physical modification of Federally regulated equipment operating within the facility.

(7) Regulations establishing design or equipment standards for non-Federally regulated facilities of interstate rail carriers. Examples of such regulations would include regulations requiring installation of quiet retarders or noise barriers around retarders in railroad hump yards, or installation of noise barriers along selected sections of railroad rights-of-way.

(8) Regulations establishing general environmental noise level standards where either the operations of interstate rail carriers are not among the noise sources causing a violation of the regulation, or if such operations are among the noise sources causing a violation, such regulations do not effectively require the physical modification of the Federally regulated equipment of interstate rail carriers.

(9) Regulations establishing use controls which prohibit or restrict the use of warning devices such as horns, whistles, or bells. An example of such a control would be an ordinance which prohibited the sounding of a locomotive horn except as a necessary warning signal.

(10) Regulations which impose use, operation or movement controls on the equipment or facilities of interstate rail carriers for purposes unrelated to noise control. Examples of such regulations would be ordinances which prohibit the transport of hazardous freight within populous areas by interstate rail carriers.

(11) Regulations used for identifying interstate rail carrier equipment that is in probable violation of Federal standards, provided that ultimate non-compliance be based upon the failure to meet standards no more stringent than those specified in Federal regulations. Such regulations are sometimes called "screening tests" and serve to identify probable violators of Federal standards so that voluntary corrective action might be taken without resort to a test according to Federally authorized procedures, or so that probable violators can be instructed to have a test performed according to Federally authorized procedures with compliance based on meeting standards either identical to Federal standards, or otherwise approved under this Subpart.

§ 201.33 Filing and processing of applications.

(a) An application for a determination by the Administrator approving the adoption or enforcement of a regulation which is preempted according to § 201.32 may be submitted only by a State or local governmental office or agency which has the authority to adopt or enforce such regulation.

(b) Each applicant shall have published in a newspaper of general circulation within its jurisdiction, notice of its intent to file an application with the EPA for a special local determination under this Subpart.

(c) The Administrator after consultation with the Secretary of Transportation or his delegate, will, within 180 days of the Agency's receipt of an application, issue a final determination approving or disapproving the application or any part thereof, and will publish such determination in the FEDERAL REGISTER along with an explanation of the basis for his determination. Subject to subsection (d), such determination will constitute final agency agency action on the application.

(d) Within 30 days after such publication, the applicant or any affected interstate rail carrier may request that the Administrator review the final determination published under subsection (c), upon which such final determination may be either affirmed, overruled, or held for further consideration.

§ 201.34 Basis for determinations.

(a) The Administrator, after consultation with the Secretary of Transportation or his delegate, will permit the adoption and enforcement of any preempted State or local regulation which he deter-

mines is necessitated by special local conditions and is not in conflict with the regulations in this Part.

(b) In making any determination under subsection (a) of this section, the Adinistrator will balance the following factors:

(1) The nature and extent of the special local condition upon which the application is based.

(2) The degree to which the State or local action would conflict with the Federal regulatory scheme.

(3) The availability of solutions other than those proposed which could provide the necessary relief yet conflicting to a lesser degree with the Federal regulatory scheme.

(c) In assessing the severity of the special local condition upon which the application is based, the Administrator will consider the degree to which denying the application would be inconsistent with the policy of the Noise Control Act of providing an environment free from noise that jeopardizes the public health and welfare.

(1) In general the Administrator will consider whether there exist geographical, topographical or demographic conditions which render Federal noise emission standards inadequate to protect public health and welfare. Such factors as the proximity of noise-sensitive populations to noise sources, or conditions which increase either the duration or intensity of noise will be considered relevant.

(2) In particular, the following are considered illustrative examples of the kinds of conditions which may cause or contribute to a special local condition:

(i) Steep upgrades or downgrades which cause Federally regulated locomotives to operate for sustained periods at or near full throttle.

(ii) The location of hospitals, nursing homes, retirement homes, or other institutions for the recuperation of the sick or elderly near a heavily used railroad facility or right-of-way.

(iii) The location of large numbers of residential structures near a heavily used railroad facility or right-of-way.

(iv) The location of schools, churches, or other educational facilities near a heavily used railroad facility or right-of-way.

(3) The following factors will be considered relevant but not determinative in and of themselves as to the question of the existence of a special local condition:

(i) Public concern for noise control.

(ii) Enactment of noise control regulations prior to the promulgation of the Federal Railroad Noise Emission Standards.

(d) In assessing the degree to which the State or local action would conflict with the Federal regulatory scheme, the Administrator will consider the degree to which granting the application would be inconsistent with the policy of the Noise Control Act of providing Federal standards for sources of noise in commerce which require national uniformity of treatment. The following factors will be considered relevant to assessing the degree of conflict with the Federal regulatory scheme:

(1) The number of pieces of railroad equipment that would be affected by the action.

(2) The degree to which equipment affected by the State or local action operate in localities other than that of the State or local government which proposed to regulate them.

(3) Whether the State or local action would impose testing requirements or procedures which are different from those imposed by Federal regulations and which constitute a significant burden on interstate rail carriers.

(4) The degree to which the free flow of interstate commerce would be impeded by compliance with the State or local regulation.

[FR Doc.76-34885 Filed 11-26-76;8:45 am]

[40 CFR Part 202]

[FRL 641-1]

INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

Special Local Determinations

The Environmental Protection Agency (EPA) proposes to amend Interstate Motor Carrier Noise Emission Regulations, 40 CFR Part 202, by adding Subpart C relating to waiver by the EPA Administrator of the preemption of certain State and local truck noise regulations. The amendments proposed herein are intended to clarify the preemptive effect of section 18(c)(1) of the Noise Control Act, 42 U.S.C. Section 4917(c)(1), and to provide procedures for the implementation of the waiver authority of section 18(c)(2) of the Act.

Section 18(a) of the Noise Control Act required EPA to publish noise emission regulations for motor carriers engaged in interstate commerce. On October 29, 1974 (39 FR 38208), EPA published regulations setting noise emission standards for vehicles over 10,000 pounds GVWR/GCWR operated by motor carriers engaged in interstate commerce. According to section 18(c)(1) of the Act, after the effective date of Federal regulations applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political subdivision thereof may adopt or enforce any Standard applicable to noise emissions resulting from the same operation of such motor carrier unless such standard is identical to the Federal standard prescribed under section 18. Subsection 18(c)(2), however, provides that nothing in section 18 shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation or movement of any product if the Administrator of the Environmental Protection Agency, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under section 18.

The implementation of section 18(c)(2) requires that State and local governments planning to adopt or enforce reglations preempted by the terms of section 18(c)(1) apply to the EPA Administrator for waiver of that preemption. Accordingly, EPA intends by these proposed regulations to: 1) define the precise nature of the preemption imposed by section 18(c)(1) of the Act, so that State and local governments will know what regulations they may no longer adopt or enforce without EPA approval, 2) establish procedures for State and local governments to follow in seeking EPA approval of their adoption or enforcement of regulations where necessary, as authorized under section 18(c)(2), and 3) provide guidance as to EPA's interpretation of its authority under section 18(c)(2).

Section 202.32 as proposed would provide guidance as to which State and local regulations are subject to preemption by Federal motor carrier noise regulations. The Agency has interpreted section 18(c)(1) of the Noise Control Act as prohibiting State and local governments from adopting or enforcing any noise control regulation which requires, or has the practical effect of requiring, the physical modification of a facility or piece of equipment which is in compliance with Federal noise emission standards. More specifically, the prohibition would apply to all more stringent numerical noise emission limitations on Federally regulated equipment or facilities and all design or equipment standards, i.e., regulations affecting a Federally regulated facility or piece of equipment which explicitly require modifications in addition to or more stringent than those necessary for the facility or equipment to meet Federal standards. Further, in the case of other regulations enacted or enforced for the purpose of noise control, if compliance can be achieved by physical modification of such facilities or equipment, and no reasonable alternatives exist which do not involve physical modification of such facilities or equipment, the regulations would be preempted and require EPA approval.

EPA has considered other interpretations of section 18(c), such as that where the EPA's standards would, after their effective date, totally preempt the authority of State and local governments to regulate motor carriers for noise emission purposes. A less radical approach considered was that after the effective date of the standards for vehicles over 10,000 pounds GVWR/GCWR, the State or local governments could no longer take any action with respect to such vehicles, whether it involved physical modification or simply control of use, operation, or movement. This approach was represented by EPA's discussion of preemption in the preamble to the final motor carrier regulation (39 FR 38208). Though less

consistent with the plain language of section 18(c) than the approach now proposed, this interpretation was deemed acceptable because of certain ambiguous elements of the legislative history of the Act. After gaining experience with the practical aspects of controlling noise sources in interstate commerce, and after reviewing the legislative history in light of that experience, EPA believes that the intent of the Act is best served by following the plain language of section 18(c).

Proposed § 202.31 would provide that if a State or local regulation is not in the category of preempted regulations, it may be adopted and enforced without EPA involvement. If a regulation is so preempted, it will require EPA approval. Proposed § 202.33 contains provisions concerning the filing and processing of applications, including a provision allowing the applicant or an affected interstate carrier to request review of EPA's decision. The proposal also provides for consultation between the EPA Administrator and the Secretary of Transportation as required by the Noise Control Act.

As a supplement to the provisions proposed herein, the Agency has prepared and will make available guidelines establishing detailed procedures to be followed by State and local governments in filing, and by the Agency in processing applications for waiver of preemption. It is important that State and local governments follow the requirements of and utilize the guidance provided by the guidelines as well as the proposed procedures in addressing any questions or issues concerning the preemptive aspects of the EPA's Interstate Motor Carrier Noise Emission Regulation.

Included in such guidelines are procedural requirements as to where applications must be filed and what information must be included in supporting statements necessary for the Administrator to make a determination. Also included are procedures which delineate the manner in which the decision process will be conducted for all applications submitted to the Agency. The determinations will be treated as informal rule making, and interested parties will have the opportunity to participate. The guidelines provide for publication in the FEDERAL REGISTER of applications when received, allowance for a public comment period, and publication of the final determination. The guidelines also contain provisions concerning the Agency's processing of requests for review of final determinations.

Under section 18(c)(2) of the Noise Control Act, the Administrator may waive preemption in any case where he determines that the State or local action is necessitated by special local conditions and is not in conflict with the Federal regulations. This provision was intended to allow flexibility to deal with situations where circumstances surrounding the operations of motor carrier equipment and facilities within particular communities result in essentially unique local health and welfare problems. Proposed § 202.34 gives guidance as to EPA's interpretation of this provision of the Act. It defines in a general manner the kinds of factors which EPA will consider as evidence of a special local condition, and it explains how the Administrator will assess the degree of conflict between the State or local action and the Federal regulations. Finally, it provides that the Administrator will balance these factors against one another taking into account the availability of reasonable alternative means of solving the special local noise problem. Because every community is different, each will present a different set of factors for the Administrator to consider. Thus, it is not possible to develop an exhaustive list of actions he would or would not approve. However, the general rules proposed in § 202.34 are expected to be sufficient guidance to State and local governments as to the limits of the Administrator's authority under section 18(c)(2) of the Act.

The Administrator's grant of an application for waiver of preemption is somewhat limited; it represents an administrative action with the effect that the provisions of section 18 of the Noise Control Act will no longer be a legal basis upon which to challenge the State or local agency's authority to adopt or enforce the regulation. The Administrator does not believe that this finding represents an approval of the proposed State or local law, or that it affects in any way any other requirements which that standard must meet. Specifically, the Administrator's waiver of preemption with respect to a proposed law or rule does not mean that it may contravene other standards established by law, for example those related to safety; nor, as limited by the Commerce Clause of the U.S. Constitution, may it impose an undue burden on interstate commerce, although some of the factors relevant to that test will already have been determined by the Administrator in assessing conflict with Federal regulations. State and local agencies are encouraged to carefully consider these matters during the development of such proposals.

It is the Agency's intention that the guidance provided State and local governments by the proposed procedures and the supplemental guidelines, when finalized, be augmented where necessary by consultation with the EPA Regional Offices. State and local governments are, therefore, encouraged to freely communicate their questions and concerns on all matters related to prospective applications for preemption waiver determinations, or otherwise concerning the preemptive aspects of the EPA's Interstate Motor Carrier Noise Regulation, to the appropriate EPA Regional Office. This consultation will help ensure that applications for determinations are submitted properly and only when necessary, and will aid in the effective solution of State and local noise problems in the most expeditious manner.

Interested persons are invited to participate in the development of these proposed regulations by submitting their written data, views, and arguments. Communications should identify the regulatory docket number and be submitted with five copies to: Director, Standards and Regulations Division, Office of Noise Abatement and Control (AW-471), Attention: Docket No.: 76-11, U.S. Environmental Protection Agency, Washington, D.C. 20460. To assure that all comments receive adequate consideration, they should reach the Agency no later than 45 days after the date of this notice.

Dated: November 18, 1976.

JOHN QUARLES,
Acting Administrator.

It is proposed to amend 40 CFR Part 202 by adding the following subpart:

Subpart C—State and Local Authority

Sec.
202.30 Definitions.
202.31 General rules.
202.32 Preemption.
202.33 Filing and processing of applications.
202.34 Basis for determinations.

AUTHORITY: 42 U.S.C. sec. 4917(c) and 5 U.S.C. sec. 552(a)(1) (C), (D).

§ 202.30 Definitions.

(a) *Administrator.* As used in this subpart, the term Administrator shall refer to the Administrator of the Environmental Protection Agency or any person who performs any act on his behalf.

(b) *Federally regulated equipment.* Any piece of equipment of an interstate motor carrier to which a standard is in effect under 40 CFR Part 202, including any item which is an integral element or component of such equipment and any item whose interaction contributes to the noise measured when operating under the conditions specified in such regulations for compliance measurement. Included among such items are refrigeration units. Items excluded from the applicability of the Federal standards by 40 CFR 202.12 are not Federally regulated equipment.

(c) *Non-federally regulated equipment.* Any piece of equipment of an interstate motor carrier which is not Federally regulated equipment as defined in § 202.30(b).

(d) *Design or equipment standards.* Those actions taken by States or political subdivisions thereof which expressly require for the purpose of noise control the installation of sound attenuation equipment or other hardware, or the implementation of design changes, in addition to or more stringent than those necessary for equipment or facilities to meet the Federal standards.

(e) *General environmental noise standards.* Those actions taken by States or political subdivisions thereof which establish allowable ambient noise levels or receiving land use noise level standards which focus on the identity of the land receiving the sound rather than the identity of noise sources.

(f) *Use, operation, or movement controls.* Those actions taken by States or political subdivisions thereof which attempt to regulate the time, manner, na-

ture, or frequency of the operation of particular equipment or facilities of interstate motor carriers for the purpose of noise control.

(g) *Action which effectively requires physical modification of federally regulated equipment or facilities.* Any action imposing a requirement such that compliance can be achieved by physical modification of Federally regulated equipment or facilities, and no reasonable alternative exists which does not involve physical modification of Federally regulated equipment or facilities.

(h) *Physical modification of federally regulated equipment or facilities.* Physical modifications in addition to or more extensive than those necessary for the equipment or facilities to meet the Federal standards.

(i) *Agency guidelines on the filing and processing of applications.* Procedural guidelines prepared and published by the EPA as a supplement to the provisions of this subpart which establish the procedures to be followed by State and local governments in filing, and by the EPA in processing applications for waiver of preemption under section 18(c)(2) of the Noise Control Act of 1972.

§ 202.31 General rules.

(a) No State or local government shall adopt or enforce any regulation which is preempted, according to the rules in § 202.32, unless an application has been submitted to the EPA in the manner prescribed in § 202.33 (a) and (b) and in the Agency's guidelines on the filing and processing of applications; and a final determination approving such application in whole or in part under § 202.33(c) or § 202.33(d) has become effective.

(b) Any regulation which is not preempted under § 202.32 may be adopted and enforced without EPA approval.

(c) The State and local government shall itself, or through consultation with the appropriate EPA Regional Office, decide whether a regulation which it proposes to adopt or enforce is preempted under § 202.32.

(d) Where the Agency finds that EPA approval is not required because an application relates to a regulation which is not preempted, such decision will not constitute EPA approval or disapproval of the proposed State or local regulation.

(e) Any final determination under § 202.33(c) or § 202.33(d) may approve in part and disapprove in part the adoption or enforcement of the regulation to which an application relates. In any such case, that part of the regulation disapproved may not be adopted or enforced.

(f) Any final determination approving the adoption or enforcement of a regulation, or any part thereof, under § 202.33(c) or § 202.33(d) will specify an effective date before which such adoption or enforcement may not take place. The effective date of a final determination under § 202.33(c) will normally be 30 days from the date of publication of such determination, or, if reviewed pursuant to § 202.33(d), the date of issuance of final approval under § 202.33(d), whichever comes later.

§ 202.32 Preemption.

(a) The Federal interstate motor carrier noise emission regulations under 40 CFR Part 202 preempt, after their effective dates, the authority of States and political subdivisions thereof to adopt or enforce any standard applicable to noise emissions resulting from the same operation of motor carriers covered by such Federal regulations unless such standard is identical to the Federal standard. Therefore, before taking any such preempted action, as defined in (b) through (d) of this section, States or political subdivisions thereof are required to obtain a determination by the Administrator of the EPA in accordance with these provisions.

(b) A State or local action shall be deemed to be a preempted standard applicable to noise emissions resulting from same operation of motor carriers covered by Federal regulations if, for the purpose of noise control, it:

(1) Establishes a numerical noise emission limitation on Federally regulated equipment or facilities which is more stringent than the Federal standard applicable to such equipment or facilities; or

(2) By its terms requires the physical modification of Federally regulated equipment or facilities; or

(3) It is neither (1) nor (2) above, but it effectively requires the physical modification of Federally regulated equipment or facilities (as defined in § 202.30(g) and (h)).

(c) *Preempted actions as to adoption or enforcement.* A determination according to this subpart is required regarding the adoption or enforcement of the following types of regulations which are considered to be preempted:

(1) Regulations which establish noise emission standards for Federally regulated equipment which are more stringent than the Federal standards.

(2) Regulations which establish design or equipment standards for Federally regulated equipment.

(3) Regulations establishing use, operation, or movement controls on Federally regulated equipment for the purpose of noise control which require the physical modification of the Federally regulated equipment. Regulations in this category include those which attempt to restrict the use, operation, or movement of Federally regulated equipment that emit more than a specified number of decibels, or that are not equipped with mufflers or other specified noise abatement equipment.

(4) Regulations establishing noise emission standards for non-Federally regulated facilities of interstate motor carriers which effectively require the physical modification of Federally regulated equipment operating within the facility.

(5) Regulations establishing use or operation controls for non-Federally regulated facilities of interstate motor carriers which effectively require the physical modification of Federally regulated equipment operating within the facility.

(d) *Preempted actions as to enforcement only.* A determination according to this subpart is required with respect to regulations establishing general environmental noise standards only at such time as a State or political subdivision thereof proposes to enforce such standards against interstate motor carriers, and only if compliance would effectively require the physical modification of Federally regulated equipment or facilities.

(e) *Nonpreempted actions.* A determination according to this subpart is not required regarding the adoption or enforcement of the following types of regulations which are considered to be not preempted:

(1) Regulations establishing noise emission standards which are identical to the Federal noise emission standards for interstate motor carriers.

(2) Regulations establishing noise emission standards for Federally regulated equipment which are less stringent than the Federal standards.

(i) Such less stringent regulations must ensure that virtually each piece of equipment found in violation of those regulations would if tested be found in violation of the Federal standards.

(ii) Such less stringent regulations can specify testing conditions less rigorous than those specified in the Federal regulations if the level of the standard is relaxed so as to only identify equipment which would violate the Federal standards.

(iii) Such less stringent regulations can be used under less than ideal testing conditions to identify "gross violations"; i.e., equipment that violates the Federal standards by a substantial amount.

(3) Regulations establishing use, operation, or movement controls for Federally regulated equipment of interstate motor carriers, compliance with which does not effectively require physical modification of such Federally regulated equipment.

(4) Regulations establishing the following for non-Federally regulated equipment of interstate motor carriers:

(i) Noise emission standards,

(ii) Use, operation or movement controls,

(iii) Design or equipment standards.

(5) Regulations establishing noise emission standards for non-Federally regulated facilities of interstate motor carriers which do not effectively require the physical modification of Federally regulated equipment operating within the facility.

(6) Regulations establishing use or operation controls on non-Federally regulated facilities of interstate motor carriers which do not effectively require the physical modification of Federally regulated equipment operating within the facility.

(7) Regulations establishing design or equipment standards for non-Federally regulated facilities of interstate motor carriers. Examples of such regulations would include regulations requiring installation of noise barriers at certain locations around motor carrier terminals, or installation of sound insulation in the

walls of motor carrier maintenance shops.

(8) Regulations establishing general environmental noise level standards where either the operations of interstate motor carriers are not among the noise sources causing a violation of the regulation, or if such operations are among the noise sources causing a violation, such regulations do not effectively require the physical modification of the Federally regulated equipment of interstate motor carriers.

(9) Regulations establishing use controls which prohibit or restrict the use of warning devices such as horns. An example of such a control would be an ordinance which prohibited the sounding of a truck horn except as a necessary warning signal.

(10) Regulations which impose use, operation or movement controls on the equipment or facilities of interstate motor carriers for purposes unrelated to noise control. Examples of such regulations would be ordinances which prohibit the transport of hazardous freight within populous areas by interstate motor carriers.

(11) Regulations used for identifying interstate motor carrier equipment that is in probable violation of Federal standards, provided that ultimate noncompliance be based upon the failure to meet standards no more stringent than those specified in Federal regulations. Such regulations are sometimes called "screening tests" and serve to identify probable violators of Federal standards so that voluntary corrective action might be taken without resort to a test according to Federally authorized procedures, or so that probable violators can be instructed to have a test performed according to Federally authorized procedures with compliance based on meeting standards either identical to Federal standards, or otherwise approved under this Subpart.

§ 202.33 Filing and processing of applications.

(a) An application for a determination by the Administrator approving the adoption or enforcement of a regulation which is preempted according to § 202.32 may be submitted only by a State or local governmental office or agency which has the authority to adopt or enforce such regulation.

(b) Each applicant shall have published in a newspaper of general circulation within its jurisdiction, notice of its intent to file an application with the EPA for a special local determination under this Subpart.

(c) The Administrator after consultation with the Secretary of Transportation or his delegate, will, within 180 days of the Agency's receipt of an application, issue a final determination approving or disapproving the application or any part thereof, and will publish such determination in the FEDERAL REGISTER along with an explanation of the basis for his determination. Subject to subsection (d), such determination will constitute final agency action on the application.

(d) Within 30 days after such publication, the applicant or any affected interstate motor carrier may request that the Administrator review the final determination published under subsection (c), upon which such final determination may be either affirmed, overruled, or held for further consideration.

§ 202.34 Basis for determinations.

(a) The Administrator, after consultation with the Secretary of Transportation or his delegate, will permit the adoption and enforcement of any preempted State or local regulation which he determines is necessitated by special local conditions and is not in conflict with the regulations in this Part.

(b) In making any determination under subsection (a) of this section, the Administrator will balance the following factors:

(1) The nature and extent of the special local condition upon which the application is based.

(2) The degree to which the State or local action would conflict with the Federal regulatory scheme.

(3) The availability of solutions other than those proposed which could provide the necessary relief yet conflicting to a lesser degree with the Federal regulatory scheme.

(c) In assessing the severity of the special local condition upon which the application is based, the Administrator will consider the degree to which denying the application would be inconsistent with the policy of the Noise Control Act of providing an environment free from noise that jeopardizes the public health and welfare.

(1) In general the Administrator will consider whether there exist geographical, topographical or demographic conditions which render Federal noise emission standards inadequate to protect public health and welfare. Such factors as the proximity of noise-sensitive populations to noise sources, or conditions which increase either the duration or intensity of noise will be considered relevant.

(2) In particular, the following are considered illustrative examples of the kinds of conditions which may cause or contribute to a special local condition:

(i) Steep upgrades or downgrades which cause Federally regulated vehicles to operate for sustained periods at or near full throttle.

(ii) The location of hospitals, nursing homes, retirement homes, or other institutions for the recuperation of the sick or elderly near a heavily used motor carrier facility, highway, or truck route.

(iii) The location of large numbers of residential structures near a heavily used motor carrier facility, highway, or truck route.

(iv) The location of schools, churches, or other educational facilities near a heavily used motor carrier facility, highway, or truck route.

(3) The following factors will be considered relevant but not determinative in and of themselves as to the question of the existence of a special local condition:

(i) Public concern for noise control.

(ii) Enactment of noise control regulations prior to the promulgation of the Federal Motor Carrier Noise Emission Standards.

(d) In assessing the degree to which the State or local action would conflict with the Federal regulatory scheme, the Administrator will consider the degree to which granting the application would be inconsistent with the policy of the Noise Control Act of providing Federal standards for sources of noise in commerce which require national uniformity of treatment. The following factors will be considered relevant to assessing the degree of conflict with the Federal regulatory scheme:

(1) The number of pieces of motor carrier equipment that would be affected by the action.

(2) The degree to which equipment affected by the State or local action operate in localities other than that of the State or local government which proposed to regulate them.

(3) Whether the State or local action would impose testing requirements or procedures which are different from those imposed by Federal regulations and which constitute a significant burden on interstate motor carriers.

(4) The degree to which the free flow of interstate commerce would be impeded by compliance with the State or local regulation.

[FR Doc.76-34886 Filed 11-26-76;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

[41 CFR Parts 51-1, 51-2, 51-3 and 51-5]

PRIORITY FOR SERVICES

Pub. L. 92-28, as amended (41 U.S.C. 46) required that priority for services be given to Blind Workshops through December 31, 1976.

The proposed changes will delete, effective January 1, 1977, all reference to priority for Blind Workshops for services.

In addition, it is proposed to (1) Revise paragraph (b) of Section 51-5.1-1 to clarify responsibilities of procuring agencies who authorize other agencies to procure items included on the Procurement List; (2) Revise paragraph (i) of Section 51-3.2 to require Committee authorization for Central Nonprofit Agencies to enter into contracts with the Government for furnishing commodities or services under Public Law 92-28; (3) Add paragraph (e) to Section 51-5.2 to clarify the authority of the Committee to grant purchase exceptions; and (4) Revise Section 51-5.8 to clarify that the Committee has final authority in resolving disputes between central nonprofit agencies and procuring agencies regarding performance under the Act.

Comments and views regarding these proposed changes may be filed with the Committee on or before December 27, 1976. Communications should be ad-

dressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

C. W. FLETCHER,
Executive Director.

In consideration of the foregoing, it is proposed to amend 41 CFR Chapter 51, as follows:

PART 51-1—GENERAL

1. By revising § 51-1.3 to read as follows:

§ 51-1.3 Priorities.

(a) The Federal Prison Industries, Inc. has priority, under the provisions of Section 4124 of title 18, United States Code, over workshops for the blind and other severely handicapped in the production of commodities for sale to the Government.

(b) The Committee, in the assignment of commodities for procurement under the Act, shall accord priority to commodities produced and offered for sale by workshops for the blind.

PART 51-2—COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPED

2. By revising paragraph (e) of § 51-2.3 to read as follows:

§ 51-2.3 Duties and powers.

* * * * *

(e) To assure that workshops for the blind will have priority over workshops for the other severely handicapped in the production of commodities.

* * * * *

PART 51-3—CENTRAL NONPROFIT AGENCIES

3. By revising paragraph (i) of § 51-3.2 to read as follows:

§ 51-3.2 Responsibilities.

* * * * *

(i) When authorized by the Committee, enter into contracts with Federal procuring activities for the furnishing of commodities and services provided by its workshops.

* * * * *

PART 51-5—PROCUREMENT REQUIREMENTS AND PROCEDURES

4. By revising paragraph (b) of § 51-5.1-1 to read as follows:

§ 51-5.1-10 General.

* * * * *

(b) When a commodity is identified on the procurement list as being available through DSA or from GSA supply distribution facilities, it shall be obtained in accordance with the requisitioning procedures of the supplying agency. When DSA or GSA authorize an ordering office to procure a commodity or service which is on the Procurement List, the authorization shall inform the ordering office that the commodity or service must be procured from the appropriate workshop(s) under the provisions of this part.

* * * * *

5. By amending § 51-5.2 to add paragraph (e).

§ 51-5.2 Purchase exceptions.

* * * * *

(e) The Committee shall grant a purchase exception when it deems such action is appropriate.

§ 51-5.8 [Amended]

6. By amending § 51-5.8 to add the following sentence:

* * * In those instances where the problem cannot be resolved by the central nonprofit agency and the procuring activity involved, the procuring activity or central nonprofit agency shall notify the Committee of the problem so that action can be taken by the Committee to resolve it.

§ 51-5.10 [Amended]

7. By amending paragraph (c) of § 51-5.10 to correct the spelling of "activity" in line three.

[FR Doc.76-35036 Filed 11-26-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 173, 179]

[Docket No. HM-144; Notice No. 76-12]

TRANSPORTATION OF HAZARDOUS MATERIALS

Shippers; Specification for Pressure Tank Car Tanks

As a result of a series of serious railroad accidents involving pressure tank cars transporting hazardous materials, the Materials Transportation Bureau is considering amending Parts 173 and 179 of the Hazardous Materials Regulations to modify the specifications for uninsulated pressure tank car tanks (112 and 114 specifications) so as to improve design and construction of new and existing cars.

BACKGROUND

On March 15, 1976, a "Petition for Advance Notice of Proposed Rulemaking * * * to amend 49 CFR Part 179, Subpart C; 49 CFR Part 173; Docket No. HM-125, Notice 75-4; and Docket No. HM-109, Amendment Nos. 173-83 and 179-5" was submitted to the Bureau by the Railway Progress Institute Committee on Tank Cars. The petitioner (representing the five principal tank car builders and lessors in the United States: ACF Industries, General American Transportation Corporation, North American Car Corporation, Pullman Leasing Company and Union Tank Car Company) stated that: This petition requests significant changes in the regulations which will improve the safety of transportation of flammable compressed gases and anhydrous ammonia in railroad tank cars.

The petition seeks the following:

A. Amendment of 49 CFR Part 179 to add specifications for two new DOT class tank cars. These cars would be "thermally" shielded counterparts of DOT Class 112A and 114A cars. Thermal shield systems could be of any type (e.g., coating or insulaton with jacket) that qualifies thermally. If a jacket is used, a ½-inch thick jacket head would be used in lieu of a tank head shield.

B. Amendment of 49 CFR Part 173 to authorize the use of these two new specification tank cars for the transportation of all products currently authorized in 112A and 114A tank cars.

C. Amendment of 49 CFR 173.314 to prohibit the transportation of flammable gases and anhydrous ammonia:

1. In DOT Class 112A and 114A tank cars built after the date the specifications proposed in "A" are published, and

2. In DOT Class 112A and 114A tank cars after six years from the date that the specifications proposed in "A" are published.

D. Withdrawal of Docket HM-125 which proposed to prohibit new construction of DOT Class 112A and 114A tank cars.

E. Amendment of the tank head shield specifications (49 CFR 173.314 and 179.100-23):

1. To extend the date for equipping Class 112A and 114A tank cars with such shields from December 31, 1977, to December 31, 1979;

2. To delete the requirements for head shields in DOT Class 112A and 114A tank cars built new after the date that the two specifications proposed in "A" are published; and

3. To modify certain of the head shield design requirements.

Several other interested persons have addressed one or more of these subjects in commenting on notices of proposed rulemaking (particularly in HM-109 and HM-125), or in related correspondence. In establishing this new Docket and issuing this notice of proposed rulemaking, the Bureau intends to consolidate its rulemaking activity for pressure tank cars that pertain to upgrading the existing specifications 112 and 114 to improve their design and construction. After this has been accomplished, Docket HM-125 proposing to prohibit new construction of 112A and 114A tank cars will be terminated.

Pressure tank cars transporting hazardous materials have been involved in accidents and caused concern since the adoption of the first "pressure" specification on January 1, 1918. However, since 1969 there has been a growing concern due to an increase in the number of pressure tank cars involved in derailments during which they have lost their lading under violent, catastrophic conditions. According to information reported to the Department, from January 1, 1969, through December 31, 1975, there have been 519. 112 and 114 pressure tank cars in derailments of which 168 lost some, or all of their lading. These occurrences have caused 18 deaths, 832 injuries, and

45 major evacuations involving more than 40,000 persons.

As a result of analyzing these accidents, the National Transportation Safety Board (NTSB) has issued several recommendations regarding pressure tank cars used to transport hazardous materials, particularly liquefied flammable gases. On October 6, 1969, the NTSB issued Recommendation NTSB-69-R-29 which called for prototype tank cars to be throughly tested under the full scope of accident conditions known to be encountered in service and for the development and implementation of suitable regulations to correct any identified deficiencies.

On January 24, 1971, the NTSB issued Recommendation NTSB-71-R-9, calling for a revision of the specifications for the construction of new tank cars. Other NTSB recommendations have been issued recommending that existing and new pressure tank cars be upgraded to provide a greater level of safety.

Considerable research has been performed by the Department through the Federal Railroad Administration in conjunction with the U.S. Army Ballistics Research Laboratory, the Association of American Railroads, the Railway Progress Institute and the Railroad Tank Car Safety Research and Test Project Committee, in analyzing the problem of puncture and rupture of pressure tank cars involved in an accident environment. Twenty-five reports have been written and placed in the Public Docket. Most of these reports can be obtained from the National Technical Information Service (NTIS), Springfield, Virginia 22151. A list of these reports is in Appendix A to this notice.

Additional references to research performed concerning pressure tank car problems is contained in Railroad Research Information Service Special Bibliography dated October 1976, pages 351-379 (PB-258-066).

Due to the catastrophic nature of accidents involving pressure tank cars, the Bureau believes that promulgation of improved design and construction standards for new cars and for retrofitting such improvements on existing cars at the earliest opportunity is essential to assure safety. Based upon the results of the research programs being conducted by the Federal Railroad Administration and industry, performance standards for puncture resistance from impacts and thermal protection from fire exposure are being proposed in this Notice.

PROPOSAL

A new § 179.105 entitled "Special Requirements for Specification 112 and 114 Tank Cars" is proposed to be added in Part 179 of the regulations. This section provides new specifications for improving the safety of these tank cars. It contains a requirement that within six months after the effective date of the final rule, all new specification 112 and 114 tank cars are to be built equipped with "shelf couplers," a tank head puncture resistance system, a thermal protection system and a safety relief valve of adequate capacity to protect each thermally insulated tank.

Previously built specifications 112 and 114 tank cars shall be required to be similarly equipped in accordance with the following schedule:

1. Either shelf couplers or a tank head puncture resistance system within one year after the effective date of the rule;
2. Notwithstanding "1", shelf couplers within two years after the effective date of the rule; and
3. Thermal protection and tank head puncture resistance systems with adequate safety relief valve capacity within four years after the effective date of the rule.

In order to assure compliance with the requirements for thermal protection and head puncture resistance within the four-year period, it is further proposed that each car owner be required, as a minimum, to so equip its previously built 112 and 114 tank cars in accordance with a prescribed schedule. This schedule requires that 20 percent of each owner's tank cars be equipped during the first year, 30 percent the second year, 30 percent the third year and the final 20 percent the fourth year. This schedule takes into account production start-up problems during the first year when arrangements must be made for shop space and production techniques must be refined. In addition, it recognizes the difficulties likely to be experienced during the fourth year of locating, removing from service, and re-equipping the remaining cars in the fleet which traditionally have been the most difficult to locate and remove from service. The end result would be that after four years, all previously built 112 and 114 tank cars used to transport compressed gases would be equipped with shelf couplers, a tank head puncture resistance system, an adequate relief valve and a thermal protection system.

THERMAL PROTECTION

Analyses of accidents involving uninsulated pressure tank cars by both the Federal Railroad Administration and industry (including shippers, tank car builders and railroads) recognize the need to establish a standard for thermal protection. The Federal Railroad Administration in cooperation with the industry conducted pool fire tests at the U.S. Army Ballistics Research Laboratory at White Sands, New Mexico. Also, at a torch facility located at the Pueblo Test Center, extensive testing was conducted to obtain thermal evaluation of numerous promising thermal protection candidates in several forms. Both small plate sample and full scale tank cars were subjected to the torching environment. Based on these tests, information is available to specify a performance standard for thermal protection for pressure tank cars. In proposed § 179.105-4, two tests are specified for qualifying thermal protection systems. One is a pool fire for a time period of 100 minutes, and the other is a torch fire for 30 minutes.

Calculations based on the results of full scale pool fire tests conducted at White Sands, New Mexico, indicate that all of the liquid lading in a thermally protected tank having a nominal capacity of 33,600 gallons will be vented when exposed to a pool fire of 100 minutes duration. Previous experimental tests and computations have shown that the severity of a failure is directly related to the amount of liquid lading present at the time of failure. If no liquid lading remains, the possibility of rupture is remote. Accordingly, 100 minutes has been selected as the duration for the pool fire test to qualify proposed thermal insulation systems, and a description of the qualifying test procedure is included. Evidence indicates that systems incorporating "coating" of insulating materials or insulating materials encased in a steel jacket can qualify under this test procedure. Likewise, based upon torching tests conducted at the Pueblo Test Center, a torch fire test requirement is specified. During the Pueblo Tests it was calculated that a tank car will empty its liquid contents within 30 minutes through a hole in its shell, resulting from the pentration and withdrawal of a coupler head. For this reason, 30 minutes has been selected as the prescribed minimum duration of the torch test.

A simulated torch fire test is described as are methods for qualifying proposed thermal insulation systems in the torching environment. Again, tests indicate that systems incorporating a "coating" of insulating materials and insulating materials encased in a steel jacket can qualify and are available for use.

TANK HEAD PUNCTURE PROTECTION

Another major area of concern to the Bureau has been protection of tank heads from punctures, particularly punctures caused by vertical disengagement of couplers on adjacent cars. Proposed § 179.105-5 establishes criteria for protecting the tank head from puncture. These criteria are based upon analyses of accidents and impact tests involving tank head punctures in which tank cars loaded close to their rail load limit of 263,000 pounds have impacted at speeds of up to 18 miles per hour.

Three options are proposed to afford adequate tank head puncture resistance:

1. Installation of a protective head shield system that meets the requirements of existing § 179.100-23;
2. Installation of a specified steel jacket head having a minimum thickness of ½ inch; or
3. A tank head puncture resistance system with the capability of withstanding specified impacts without loss of lading based upon a performance requirement.

COUPLERS

Impact tests recently performed by the Federal Railroad Administration at the Pueblo Test Center have demonstrated that the use of shelf couplers in addition

to the application of tank head puncture resistance systems, effectively lessens the possibility of tank punctures by constraining vertical disengagements of couplers or causing a coupler head to break away thereby preventing it from acting as a ram. The retrofit schedule for head puncture resistance systems for previously built cars is proposed to extend over a four-year period. The Bureau believes that the impact resistance that can be realized from the relative ease of application of shelf couplers can and should be achieved much more quickly. For this reason, proposed § 179.105-6 would require the installation of specifically designated shelf E couplers, F top shelf couplers, or other couplers approved by the Federal Railroad Administrator, within one year on 112 and 114 tank cars not equipped with head shields. In this connection, the Bureau notes that in August 1974 the Association of American Railroads petitioned for a requirement that shelf couplers be applied to all 112 and 114 pressure tank cars within one year.

SAFETY RELIEF VALVES

Tests conducted by the Federal Railroad Administration indicate that existing safety relief valves installed on uninsulated 112 and 114 tank cars may not provide sufficient relief capacity under extreme fire accident conditions. However, these tests have demonstrated that if thermal protection is applied to a tank, the existing valves provide sufficient relief capacity. Section 179.105-7 would require that newly built and retrofitted cars having thermal protection be equipped with the same capacity safety relief valves currently required on noninsulated 112 and 114 tank cars.

MARKING REQUIREMENTS

Section 179.105-8 provides revised stencilling requirements for indentifying 112 and 114 tank cars equipped with thermal protection systems. The Bureau believes this is necessary to assist in identifying cars equipped with thermal and tank head puncture resistance systems and the type of systems applied.

TANK CAR APPROVAL

The regulations proposed in this notice do not contain any requirement for "approval" by the AAR Committee on Tank Cars as do many of the existing Part 179 provisions, since the Bureau believes the addition of thermal protection and tank head puncture protection can be properly achieved by compliance with the proposed standards without the imposition of "approval" requirements.

CANADIAN TANK CARS

In § 179.105-1, paragraph (c) is being proposed to require that after four years after the effective date of the final rule, 112 and 114 tank cars built to specifications promulgated by Canadian Transport Commission (formerly the Board of Transport Commissioners for Canada) and used to transport compressed gases in the United States must also be equipped in accordance with the same special requirements as United States built and owned specification 112 and 114 tank cars. Because of the catastrophic consequences of accidents involving 112 and 114 tank cars, the Bureau believes that all such cars used in the United States to transport compressed gases must be equipped as proposed in this notice within four years after the effective date of the rule.

PART 173

A revision to § 173.31(a)(3) is proposed so as to enable new and retrofitted 112 and 114 tank cars stencilled with "T" and "J" to be used in the same manner as corresponding tank cars stencilled "A" and "S."

In § 173.314, the Table in paragraph (c) has a Note 23 which now provides that after December 31, 1977, 112 and 114 tank cars used to transport compressed gases must be equipped with protective head shields. The Bureau proposes to modify this requirement so as to require either protective head shields or shelf couplers on these cars within one year after the effective date of the final rule. If the tank car has head shields, shelf couplers are required to be installed within two years after the effective date. Also, the change would require all such tank cars to be equipped with thermal protection and tank head puncture resistance systems within four years after the effective date.

In order to maintain editorial consistency between the new proposed § 179.105 requirements and existing requirements in other sections of Part 173 and 179, the Bureau will issue conforming changes in §§ 173.8, 179.5, 179.14, 179.100-4, 179.100-15, 179.100-21, 179.101-1, and 179.103 in the final rule.

The Bureau has evaluated this proposal in accordance with the policies of the Department of Transportation as published in the April 16, 1976, issue of the FEDERAL REGISTER (41 FR 16200) and believes that the proposed changes in this notice will result in substantial reductions in property loss and damage, and are otherwise warranted from the standpoint of public safety.

The estimated minimum capital investment necessary to implement the requirements proposed in this notice relative to existing tank cars is $5,000 per tank car. This figure does not include the installation of head shields since they are presently required by an earlier amendment to § 173.314. For new tank cars, the minimum cost is estimated to be $4,200 in additional capital investment per car, based on an estimated 500 new cars that will be placed into service each year. Therefore, the minimum cost of implementing the requirements proposed in this notice will be $100,000,000 for the estimated 20,000 existing tank cars to be retrofitted and the additional annual investment for 500 new cars will be $2,100,000 (current dollars). Based on these data, the average annual sum of capital to be invested over the four-year period would be $27,100,000 if the minimum requirements proposed herein are adopted.

On the benefit side, the Bureau believes that the foregoing costs will be offset not only by reductions in the number of accidents involving property loss and damage, but also by the magnitude of dollar losses sustained. This does not take into account the social benefits—and to the extent they can be quantified, the economic benefits—in public safety that will be derived by significantly reducing the number of deaths, injuries and evacuations that have characterized the accident experience of 112/114 tank cars in the past. Accident data for calendar years 1969-1975 indicates that 519 tank cars were involved in derailments and 168 of these cars lost some or all of their lading. These occurrences resulted in 18 deaths, 832 injuries and 45 major evacuations involving more than 40,000 persons. Four of these accidents resulted in losses estimated as totaling more than $100,000,000.

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted to the Section of Dockets, Office of Hazardous Materials Operations, Department of Transportation, Washington, D.C. 20590. It is requested that five copies of all comments be submitted.

Communications received on or before January 13, 1977, will be considered before final action is taken on this proposal. All comments received will be available for examination by interested persons at the Office of Hazardous Materials Operations, Room 6500, Trans Point Building, 2100 Second Street, SW., Washington, D.C., both before and after the closing date for comments.

Representatives from the technical staff of the Federal Railroad Administration will conduct a public briefing concerning the tank car research and development activities upon which these proposals are based. The public briefing will begin at 2:00 p.m., December 8, 1976, in Room 2230, Nassif Building (DOT Headquarters) at 7th and D Streets, SW., Washington, D.C. It is not the purpose of the briefing to receive views and comments on the merits of the proposals made in this notice.

In consideration of the foregoing, it is proposed to amend Parts 173 and 179 as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. Section 173.31 paragraph (a)(3) would be revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(3) Unless otherwise specifically provided in this Part 173 when class DOT-105AW, 105ALW, 106A, 109A-ALW, 110AW, 111A, 112AW, or 114AW tank car tanks are prescribed, the same class tanks having higher marked test pressures than those prescribed may also be

used. When class DOOT-111AW1 tank car tanks are prescribed, class 111AW3 tank cars tanks may also be used. When class DOT-112A tank car tanks are prescribed, classes DOT-112S, 112T, and 112J tanks having equal or higher marked test pressures than those prescribed may also be used. When class DOT-114A tank car tanks are prescribed, classes DOT-114S, 114T, and 114J tanks having equal or higher marked test pressures than those prescribed may also be used.

* * * * *

2. Section 173.314 paragraph (c) Table, Note 23 would be revised to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

* * * * *

(c) * * *

NOTE 23.—Specification 112 and 114 tank cars built before (six months after effective date) used for transportation of compressed gases must be equipped with: Either protective head shields or shelf couplers after (one year after effective date), shelf couplers after (two years after effective date); and thermal protection and tank head puncture resistance systems after (four years after effective date). See § 179.105 of this subchapter for other special requirements.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

3. Section 179.105 would be added to read as follows:

§ 179.105 Special requirements for specifications 112 and 114 tank cars.

§ 179.105-1 General.

(a) Subject to the requirements of this Part, tanks built under specifications 112 and 114 must meet the requirements of §§ 179.100, 179.101 and when applicable, §§ 179.102 and 179.103.

(b) Notwithstanding the provisions of §§ 179.3, 179.4 and 179.6, AAR approval is not required for changes in or additions to specifications 112 and 114 tank cars necessary to comply with this section.

(c) Notwithstanding the provisions of § 173.8 of this subchapter, specifications 112 and 114 tank cars manufactured to specifications promulgated by the Canadian Transport Commission that are not equipped as described in this section may not be used to transport compressed gases in the United States after (four years after effective date).

§ 179.105-2 New cars.

(a) Each specification 112 and 114 tank car built after (six months after effective date) shall be equipped with:

(1) A thermal protection system that meets the requirements of § 179.105-4;

(2) A tank head puncture resistance system that meets the requirements of § 179.105-5;

(3) A safety relief valve that meets the requirements of § 179.105-7; and

(4) Notwithstanding the provisions of § 179.14, the car shall be equipped with a coupler restraint system that meets the requirements of § 179.105-6.

(b) Each specification 112 and 114 tank car shall be stenciled as prescribed in § 179.105-8.

§ 179.105-3 Previously built cars.

(a) Each specification 112 and 114 tank car built before (six months after effective date) shall be equipped as follows:

(1) After (effective date), it shall be equipped with a safety relief valve that meets the requirements of § 179.105-7.

(2) After (one year after effective date), it shall be equipped with either—

(i) A tank head puncture resistance system that meets the requirements of § 179.105-5; or

(ii) Notwithstanding the requirements of § 179.14, a coupler restraint system that meets the requirements of § 179.105-6.

(3) After (two years after effective date) it shall be equipped with a coupler restraint system that meets the requirements of § 179.105-6.

(4) After (four years after effective date) it shall be equipped with a thermal protective system and a tank head puncture resistance system that meet the requirements of §§ 179.105-4 and 179.105-5, respectively, and be stenciled as prescribed in § 179.105-8.

(b) Each tank car owner shall equip each of its specification 112 and 114 tank cars built before (six months after effective date) with a thermal protective system and a tank head puncture resistance system that meet the requirements of §§ 179.105-4 and 179.105-5, respectively, in accordance with the following schedule:

(1) At least 20 percent of those cars owned on (one year after effective date) must be so equipped by that date;

(2) At least 50 percent of those cars owned on (two years after effective date) must be so equipped by that date;

(3) At least 80 percent of those cars owned on (three years after effective date) must be so equipped by that date, and

(4) All of those cars owned on (four years after effective date) must be so equipped by that date.

§ 179.105-4 Thermal protection.

(a) *Performance standard.* Each specification 112 and 114 tank car shall be equipped with a thermal protection system that prevents the release of any of the car's contents (except release through the safety relief valve) when subjected to:

(1) A pool fire for 100 minutes, and

(2) A torch fire for 30 minutes.

(b) *Test verification.* Compliance with the requirements of paragraph (a) of this section shall be verified by testing the thermal protection system in accordance with the test procedures prescribed in paragraphs (c) and (d) of this section and the analysis required by paragraph (e) of this section. A complete record of each test verification shall be made, retained and, upon request, made available for inspection and copying by authorized representatives of the Department.

(c) *Simulated pool fire test.* (1) A pool fire environment shall be simulated in the following manner:

(i) The source of deflagration of the simulated pool fire shall be a hydrocarbon fuel. The flame temperature from the simulated pool fire shall be at 1600° F.±100° F. throughout the duration of the test.

(ii) An uninsulated square steel plate with thermal properties equivalent to tank car steel shall be used. The plate dimensions shall be not less than one foot by one foot by nominal ⅝-inch thick. The plate shall be instrumented with not less than nine theromcouples to record the thermal response of the plate. The thermocouples shall be attached to the surface not exposed to the simulated pool fire. The surface of plate shall be divided into nine equal squares and a thermocouple placed in the center of each square.

(iii) The pool fire simulator shall be constructed in a manner that results in total flame engulfment of the front surface of the bare plate. The apex of the flame shall be directed at the center of the plate.

(iv) The steel plate holder shall be constructed in such a manner that the only heat transfer to the back side of the plate is by heat conduction through the plate and not by other heat paths.

(v) Before the plate is exposed to the simulation pool fire, none of the temperature recording devices shall indicate the plate temperature in excess of 100° F. nor less than 32° F.

(vi) A minimum of two thermocouples devices shall indicate 800° F. after not less than 12 minutes nor more than 14 minutes of simulated pool fire exposure.

(2) A thermal insulation system shall be tested in the simulated pool fire environment described in paragraph (c)(1) of this section in the following manner:

(i) The thermal insulation system shall cover a steel plate identical to that used to simulate a pool fire under paragraph (c)(1)(ii) of this section.

(ii) The back of the steel plate shall be instrumented with not less than nine thermocouples placed as described in paragraph (c)(1)(ii) of this section to record the thermal response of the steel plate.

(iii). Before exposure to the pool fire simulation, none of the thermocouples on the thermal insulation system/steel plate configuration shall indicate a plate temperature in excess of 100° F. nor less than 32° F.

(iv) The entire outside surface of the thermal insulation system shall be exposed to the simulated pool fire.

(v) A pool fire simulation test shall run for a minimum of 100 minutes. The thermal insulation system shall retard the heat flow to the steel plate so that none of the thermocouples on the back of the steel plate indicates a plate temperature in excess of 800° F.

(vi) A minimum of three consecutive successful simulation fire tests shall be

performed for each thermal insulation system.

(d) *Simulated torch fire test.* (1) A torch fire environment shall be simulated in the following manner:

(i) The source of deflagration of the simulated torch shall be a hydrocarbon fuel. The flame temperature from the simulated torch shall be 2200° F.±100° F. throughout the duration of the test. Torch velocities shall be 40 miles per hour±10 miles per hour throughout the duration of the test.

(ii) An uninsulated square steel plate with thermal properties equivalent to tank car steel of dimensions not less than four feet by four feet by nominal ⅝-inch thick shall be instrumented with not less than nine thermocouples to record the thermal response of the plate. The thermocouples shall be attached to the surface not exposed to the simulated torch. The surface of the plate shall be divided into nine equal squares and a thermocouple placed in the center of each square.

(iii) The steel-plate holder shall be constructed in such a manner that the only heat transfer to the back side of the plate is by heat conduction through the plate and not by other heat paths. The apex of the flame shall be directed at the center of the plate.

(iv) Before exposure to the simulated torch, none of the temperature recording devices shall indicate a plate temperature in excess of 100° F. or less than 32° F.

(v) A minimum of two thermocouples shall indicate 800° F. in a time of 4.0±0.5 minutes of torch simulation exposure.

(2) A thermal insulation system shall be tested in the simulated torch fire environment described in paragraph (d) (1) of this section in the following manner:

(i) The thermal insulation system shall cover a steel plate identical to that used to simulate a torch fire under paragraph (d) (1) (ii) of this section.

(ii) The back of the steel plate shall be instrumented with not less than nine thermocouples placed as described in paragraph (d) (1) (ii) of this section to record the thermal response of the steel plate.

(iii) Before exposure to the simulated torch, none of the thermocouples on the thermal insulation system steel plate configuration shall indicate a plate temperature in excess of 100° F. nor less than 32° F.

(iv) The entire outside surface of the thermal insulation system shall be exposed to the simulated torch fire environment.

(v) A torch simulation test shall be run for a minimum of 30 minutes. The thermal insulation system shall retard the heat flow to the steel plate so that none of the thermocouples on the back of the steel plate indicates a plate temperature in excess of 800° F.

(vi) A minimum of two consecutive successful torch simulation tests shall be performed for each thermal insulation system.

(e) *Analysis.* The analysis required by paragraph (b) of this section must verify that the entire surface of the tank car, including discontinuous structures (e.g., stub sills, protective housings, etc.), complies with the requirements of paragraph (a) of this section.

§ 179.105-5 Tank head puncture resistance.

(a) *Performance standard.* Each specification 112 and 114 tank car shall be capable of sustaining, without loss of contents, coupler-to-tank head impacts within the area of the tank head described in § 179.100-23 at relative car speeds of 18 miles per hour when:

(1) The weight of the impact car is at least 263,000 pounds;

(2) The impacted tank car is coupled to one or more "backup" cars which have a total weight of at least 480,000 pounds and the hand brakes are applied on the first car; and

(3) The impacted tank car is pressurized to at least 100 psi.

(b) *Test verification.* Compliance with the requirements of paragraph (a) of this section shall be verified by full scale testing or by the alternate test procedures prescribed in paragraph (c) of this section. However, protective head shields that meet the requirements of § 179.-100-23 or full tank head jackets that are at least ½-inch thick and made from steels specified in § 179.100-23(a) (1), comply with the requirements of paragraph (a) of this section, need not be verified by testing.

(c) *Tank head puncture resistance test.* A tank head resistance system shall be tested under the following conditions:

(1) The ram car used shall weigh at least 263,000 pounds, be equipped with a coupler and duplicate the condition of a conventional draft sill including the draft yoke and draft gear. The coupler will protrude from the end of the ram car so that it will be the leading location of perpendicular contact with the standing tank car.

(2) The impacted test car will be loaded with water at six percent outage with internal pressure of at least 100 psi and coupled to one or more "backup" cars which have a total weight of 480,000 pounds with hand brakes applied on the first car.

(3) At least two separate tests will be conducted with the coupler on the vertical center line of the ram car. One test will be conducted with the coupler at a height of 21 inches ±1 inch above the top of the sill; the other test will be conducted with the coupler height at 31 inches ±1 inch above the top of the sill. If the combined thickness of the tank head and any additional shielding material at any position over the area described in § 179.100-23 is less than the combined thickness on the vertical centerline of the car, a third test shall be conducted with the coupler positioned so as to strike the thinnest point.

(4) One of the following test procedures shall be applied:

	Minimum velocity of impact (miles per hour)	Restriction
Minimum weight of ram car plus attached cars (pounds):		
263,000	18	1 ram car only.
343,000	16	1 ram car or 1 ram car plus 1 rigidly attached car.
686,000	14	1 ram car plus 1 or more rigidly attached cars.

(5) A test is successful if there is no visible leak from the standing tank car within one hour after impact.

§ 179.105-6 Coupler vertical restraint system.

(a) *Performance standard.* Each specification 112 and 114 tank car shall be equipped with couplers capable of sustaining without disengagement or material failure, vertical loads of at least 200,-000 pounds applied in upward and downward directions in combination with buff loads of from 2,000 to 725,000 pounds, when coupled to cars equipped with couplers that do and do not have this capability.

(b) *Test vertification.* Except as provided in paragraph (c) of this section, compliance with the requirements of paragraph (a) of this section shall be achieved by:

(1) Verification testing of the coupler vertical restraint system in accordance with paragraph (d) of this section; and

(2) Approval of the Federal Railroad Administrator.

(c) The following classes of couplers have been approved by the Federal Railroad Administrator and need not be verified by the testing requirements in paragraph (b) of this section:

(1) E top and bottom shelf couplers designated by the Association of American Railroads' Catalog No. SE60CHT or SE60CHTE; or

(2) F top shelf couplers designated by the Association of American Railroads' Catalog No. F70CHTX or F70CHTEX.

(d) *Coupler vertical restraint tests.* A coupler vertical restraint system shall be tested under the following conditions:

(1) The test coupler shall be tested with one coupler system that complies with the performance standard prescribed in paragraph (a) of this section, and with another system that does not comply.

(2) The testing apparatus shall simulate the performance of coupler/draft gear systems, and may not interfere with coupler failure or otherwise inhibit failure due to force applications.

(3) The test shall be conducted as follows:

(i) A minimum of 200,000 pounds vertical downward load shall be applied continuously for at least five minutes to the test coupler head simultaneously with the application of a normal 2,000-pound buff load, and again stimultaneously with

the application of a nominal 725,000 pound buff load;

(ii) The procedures prescribed in paragraph (c) (3) (ii) of this section shall be repeated with a minimum vertical upward load of 200,000 pounds;

(iii) A minimum of three consecutive successful tests shall be performed for each load combination prescribed in paragraphs (d) (3) (i) and (d) (3) (ii) of this section. A test is successful when a vertical disengagement of material failure does not occur during any of the prescribed load combinations.

§ 179.105–7 Safety relief valves.

Notwithstanding the provisions of § 179.105–4, each 112 and 114 tank car shall be equipped with safety relief valves that meet the requirements of Appendix A of the AAR Specifications for Tank Cars. However, the relieving or discharge capacity shall be calculated in accordance with Section A8.01 of Appendix A for compressed gases in noninsulated tanks.

§ 179.105–8 Stenciling.

(a) Each 112 and 114 tank car that is equipped with a thermal protection system enclosed in a metal jacket shall have the letter "J" substituted for the "A" & "S" in the specification marking.

(b) Each 112 and 114 tank car that is equipped with a nonjacketed thermal protection system shall have the letter "T" substituted for the "A" and "S" in the specification marking.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e) and paragraph (a) (4) of App. A to Part 102.)

The Materials Transportation Bureau 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 or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et. seq.).

Issued in Washington, D.C., on November 19, 1976.

DR. C. H. THOMPSON,
Acting Director, Office of Hazardous Materials Operations.

APPENDIX A—RESEARCH REPORTS

1. Bullerdiek, W. A., Vassalo, F. A., Adams, D. E., and Mathesis, C. W., "A Study to Reduce the Hazards of Tank Car Transportation," Report No. FRA–RT–71–74, Calspan Corporation, November 1970 (PB–199–154).

2. Everett, J. E. and Phillips, E. A., "Hazardous Materials Tank Cars—Tank Head Protective Shield or Bumper Design," Report No. FPA–RP–72–01, Association of American Railroads, August 1971 (PB–202–624–1).

3. Levine, D. and Dancer, D., "Fire Protection of Railroad Tank Cars Carrying Hazardous Materials—Analytical Calculations and Laboratory Screening of Thermal Insulation Candidates," Report No. MOLTR–72–142, U.S. Naval Ordinance Lab, July 1972 (AD–747974).

4. Adams, D. E., Bullerdiek, W. A., Pattern, J. S., and Vassalo, F. A., "Cost/Benefit Analysis of Head Shields for 112A/114A Series Tank Cars," Report No. FRA–OR&D 75–34, Calspan Corporation, March 1974 (PB–241298/AS).

5. Anderson, C., Townsend, W., and Zook, J., "Railroad Tank Car Fire Test: Test No. 6," Report No. FRA–OR&D 75–36, U.S. Army Ballistics Research Laboratories, August 1973 (PB–241–207).

6. Anderson, C., Townsend, W., Zook, J., Wright, W., and Cowgill, G., "Railroad Tank Car Fire Test: Test No. 7," Report No. FRA–OR&D 75–37, U.S. Army Ballistics Research Laboratories, December 1973 (PB–241–145).

7. Graves, K. W., "Development of a Computer Program for Modeling the Heat Effects on a Railroad Tank Car," Report No. FRA–OR&D 75–33, Calspan Corporation, January 1973 (PB–241–365).

8. Anderson, C. and Norris, E. B., "Fragmentation and Metallurgical Analysis of Tank Car RAX 201" Report No. FRA–OR&D 75–30, U.S. Army Ballistics Research Laboratories, April 1974 (PB–241–254).

9. Anderson, C., Townsend, W., Zook, J., and Cowgill, G., "The Effects of a Fire Environment of a Rail Tank Car Filled with LPG," Report No. FRA–OR&D 75–31, U.S. Army Ballistics Research Laboratories, September 1974 (PB–241–358).

10. Townsend, W., Anderson, C., Zook, J., and Cowgill, G., "Comparison of Thermally Coated and Uninsulated Rail Tank Cars Filled with LPG Subjected to a Fire Environment," Report No. FRA–OR&D 75–32, U.S. Army Ballistics Research Laboratories, December 1974 (PB–241–702/AS).

11. Adams, D. E., "Cost/Benefit Analysis of Thermal Shielded Coatings Applied to 112A/114A Series Tank Cars," Report No. FRA–OR&D 75–39, Calspan Corporation, December 1974 (PB–241–295/AS).

12. National Academy of Sciences, "Pressure Relieving Systems for Marine Cargo Bulk Liquid Containers (sponsored by the United States Coast Guard)." 1973.

13. Konvacs, F. and Honti, G., "Secondary Heat Effect on LPG Storage Spheres in Case of Fire," Loss Prevention and Safety Promotion in the Process Industries, pp. 385–404, Elsevier Scientific Publishing Company; 1974.

14. "Phase II Report on Effects of Fire on LPG Tank Cars," Report No. RA–11–1–5, Railway Progress Institute/Association of American Railroads, 1971.

15. Hohenemser, K. H., Diboll, W. B., Yin, S. K., and Szabo, B. A., "Computer Simulation of Tank Car Head Puncture Mechanisms," Report No. FRA–OR&D 75–23, Washington University, February 1975 (PB–250–409/AS).

16. Hicho, G. E. and Brady, C. H., "Hazardous Materials Tank Cars—Evaluation of Tank Car Shell Construction Material," Report No. FRA–OR&D 75–46, National Bureau of Standards, September 1970 (PB–250–697/AS).

17. Interrante, C. G., and Hicho, G. E., "Metallurgical Analysis of a Steel Shell Plate Taken from a Tank Car Accident near South Byron, New York, Report No. FRA–OR&D 75–47, National Bureau of Standards, October 1971 (PB–250–063/AS).

18. Interrante, C. G., Hicho, G. E., and Harne, D. E., "A Metallurgical Analysis of Five Steel Plates Taken from a Tank Car Accident Near Crescent City, Illinois, Report No. FRA–OR&D 75–48, National Bureau of Standards, March 1972 (PB–250–539/AS).

19. Interrante, C. G., Hicho, G. E., and Harne, D. E., "A Metallurgical Analysis of Eleven Steel Plates Taken from a Tank Car Accident Near Callao, Missouri," Report No. FRA–OR&D 75–49, National Bureau of Standards, September 1972 (PB–250–544/AS).

20. Interrante, C. G., Hicho, G. E., and Early, J. G., "Analysis of Findings of Four Tank Car Accident Reports," Report No. FRA–OR&D 75–50, National Bureau of Standards, January 1975 (PB–251–097/AS).

21. Interrante, C. G., and Early, J. G., "A Metallurgical Investigation of a Full Scale Insulated Rail Tank Car Filled with LPG Subjected to a Fire Environment," Report No. FRA–OR&D 75–52, National Bureau of Standards, January 1975 (PB–250–587/AS).

22. Schalit, L., Schneyer, G., Toor, J., and Laird, D., "Development of Analytical Fire Models," Report No. FRA–OR&D 75–53, Systems Scientific Software, October 1974 (PB–250–731/AS).

23. Townsend, W. and Markland, R., "Preparation of the BRL Tank Car Torch Facility at the DOT Transportation Test Center, Pueblo, Colorado," Report No. FRA–OR&D 76–72, U.S. Army Ballistics Research Laboratories, September 1975 (PB–251–151/AS).

24. Adams, D. E., Bullerdiek, W. A., and Vassalo, F. A., "Rail Hazardous Material Tank Car Design Study," Calspan Report No. ZL–5226–D–4., April 1975.

25. Wesson and Associates, Inc., "Relative Costs of Installed Coating Systems." Contract No. DAADOS–76–C–0053, September 1976.

Copies of most of these reports can be obtained from the National Technical Information Service (NTIS), Springfield, Virginia 22151. They are identified by the NTIS accession number which has been included in parenthesis at the end of each listing.

[FR Doc.76–34856 Filed 11–26–76;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

SHIPPERS ADVISORY COMMITTEE

Postponement of Public Meeting

The meeting of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905) originally scheduled for November 30, 1976 (41 FR 49188), is postponed until December 28, 1976. The meeting will be held in the A. B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida, at 10:30 a.m., local time. This notice is issued pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770). Marketing Order No. 905 reguates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). At its meeting of November 23, 1976, the committee recommended regulations it deemed appropriate to the current supply situation, and requested that the meeting scheduled for November 30 be delayed until December 28, 1976.

The meeting will be open to the public and a brief period will be set aside for public comments and questions. The agenda of the committee includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, summary of the meeting and other information pertaining to the meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813-682-3103.

Dated: November 24, 1976.

DONALD E. WILKINSON,
Administrator.

[FR Doc.76-35201 Filed 11-26-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 28456]

EASTERN AIR LINES, INC.

Subpart N Application (Pittsburgh-Atlanta); Postponement of Hearing

United Air Lines, Inc., pursuant to Rule 1406(b) has withdrawn its request for hearing in the above-captioned proceeding and waived all other applicable procedural steps.

Accordingly, the hearing in this proceeding now scheduled for December 8, 1976 (41 FR 45043, October 14, 1976) is postponed indefinitely.

Dated at Washington, D.C. November 23, 1976.

RICHARD V. BACKLEY,
Administrative Law Judge.

[FR Doc.76-35014 Filed 11-26-76;8:45 am]

[Docket Nos. 28648, 21998; Order No. 76-10-64]

IMM ACCEPTANCE CORP., ET AL.

Order To Show Cause

Correction

In FR Doc. 76-30943 appearing at page 46508 in the issue for Thursday, October 21, 1976 and corrected at page 50463 in the issue for Tuesday, November 16, 1976, the bracketed material should have read as set forth above.

DEPARTMENT OF COMMERCE

Economic Development Administration

MAJESTIC SILVER CO.

Petition for a Determination

A petition for certification of eligibility to apply for trade adjustment assistance, by the Majestic Silver Company, 241 Wolcott Street, New Haven, Connecticut 06513, a producer of stainless steel flatware, was accepted for filing on November 22, 1976, under section 251 of the Trade Act of 1974 (Pub. Law 93-618). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Departmentof Commeroe, Washington, D.C. 20230, no later than the close of business of December 9, 1976.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.76-34972 Filed 11-26-76;8:45 am]

National Oceanic and Atmospheric Administration

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the Mid-Atlantic Regional Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Mid-Atlantic Regional Fishery Management Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority; prepare comments on applications for foreign fishing; and conduct public hearings.

This meeting of the Council will be held December 2, 1976, at the Holiday Inn, 4089 Nesconset-Port Jefferson Highway, Centereach, New York, from 10 a.m. to 5 p.m. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

1. Review Interim Regulations.
2. Discuss Budget.
3. Polish GIFA.
4. Discuss Staff Selection.
5. Other Management Business.

This meeting is open to the public and there will be seating for approximately 30 public members available on a first-come, first-serve basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. Interested members of the public should contact:

Mr. Donald G. Birkholz, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, State Fish Pier, Gloucester, Massachusetts 01930.

before the meeting to receive information on changes in the agenda, if any.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to provide written comments should do so by submitting them to Mr. Birkholz at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should

be received within 10 days after the close of the Council meeting.

Dated: November 24, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-35113 Filed 11-26-76;8:45 am]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the South Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The South Atlantic Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the east coast of Florida, Georgia, North Carolina, and South Carolina. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

The meeting will be held on Wednesday, December 16, 1976, in the Conference Room at the Admiral Benbow Inn, 1419 Virginia Avenue, College Park, Georgia. The meeting will convene at 9 a.m. and adjourn at approximately 5 p.m. The meeting will be extended or shortened depending upon progress on the agenda.

Proposed Agenda:

1. Council Budget for FY 1977, 1978 and 1979.
2. Council Organization and Administration Procedures.
3. Technical Procedures including Fishery Management Plan Development.

This meeting is open to the public and there will be seating for a limited number of public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about December 9, 1976:

Mr. Robert Cummins, Special Assistant to the Regional Director, South Atlantic Fishery Management Council, National Marine Fisheries Service, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing Mr. Robert Cummins at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meetings, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: November 22, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-73964 Filed 11-26-76;8:45 am]

WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the Western Pacific Regional Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Western Pacific Council will have authority, effective March 1, 1977, over fisheries within the conservation zone adjacent to the State of Hawaii, American Samoa and Guam. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

The meeting will be held December 15 and 16, 1976, in Conference Room No. 6, second floor, Hawaii State Capitol Building, Honolulu, Hawaii. The meeting will convene at 9 a.m. and adjourn at approximately 5 p.m. on December 15 and convene at 9 a.m. and adjourn at approximately 4 p.m. on December 16.

Proposed Agenda:

1. Organization.
2. Practice and procedures.
3. Budget.
4. Acquisition of baseline information.
5. Development of fishery management plans.
6. Role of the Council in fishery development.

This meeting is open to the public and there will be seating for approximately 30 public members on a first come, first served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact Mr. Wilvan G. Van Campen, Executive Director, Western Pacific Regional Fishery Management Council, c/o National Marine Fisheries Service, P.O. Box 3830, Honolulu, Hawaii 96812, on or about 10 days before the meeting.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing Mr. Van Campen at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: November 22, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76-34963 Filed 11-26-76;8:45 am]

Office of the Secretary

[BDC Delegation 4]

ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION

Delegation of Authority

1. *Authority.* This delegation of authority to the Administrator of the Federal Energy Administration is issued pursuant to the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 et seq.; Executive Order 11912, dated April 13, 1976, 41 FR 15825; Defense Mobilization Order 13, 41 FR 43720; Department of Commerce Organization Orders 10-3, 41 FR 24202 as amended, 41 FR 28334, ------ FR ------; and 40-1; ------ FR ------ Department of Commerce, Domestic and International Business Administration Organization and Function Orders 41-1, 41 FR 1935, as amended, ------ FR ------; 45-1, 40 FR 10217, as amended ------ FR ------; 45-2, 40 FR 10218, as amended 40 FR 42228, 41 FR 4951, 41 FR 22619, ------ FR ------.

2. *Delegations.* (a) The Administrator of the Federal Energy Administration (hereafter, together with his duly authorized delegates within the Federal Energy Administration, referred to as the "Administrator"), is delegated the authority to make allotments of controlled materials and to apply or assign to others the right to apply DO ratings and authorize allotments with respect to contracts and delivery orders for supplies of materials and equipment to meet the needs of programs or projects determined by the Administrator as necessary to maximize domestic energy supplies. In connection with the exercise of such functions, the Administrator is delegated the authority to take such actions associated therewith as are necessary to implement such functions. The Bureau of Domestic Commerce in consultation with the Administrator, may specify such functions and implementing actions by a Statement of Understanding to this Delegation. The herein delegated authority shall not be used to require allocation or priority performance under contracts or orders relating to supplies of materials and equipment for authorized energy programs or projects until the four findings required by section 101(c)(3) of the Defense Production Act of 1950, as amended, have been made.

(b) As required by Executive Order 11912, the Administrator is hereby delegated the authority to make two of the findings called for in section 101(c)(3) of the Defense Production Act of 1950, as amended; that is, that specific supplies of materials and equipment are (1) critical and (2) essential to main-

tain or further (i) exploration, production, refining, transportation, or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities.

3. *DX Authority.* The Administrator is delegated the authority to use, or authorize others to use, the DX symbol in placing rated orders and authorized controlled materials orders to meet only those programs declared by the President to be of the highest national priority and specifically designated as eligible for DX rating by the Director of the Federal Preparedness Agency, GSA.

4. *Limitations of Authority.* (a) The authority delegated by paragraph 2(a) of this delegation shall not be used for material or equipment purchased from exclusively retail establishments except in emergency situations.

(b) The authority delegated by paragraph 2(a) of this delegation shall be exercised in accordance with regulations and orders of BDC consistent with section 101(c) of the Defense Production Act of 1950, as amended, Executive Order 11912, DMO 13, and this delegation; and in accordance with such instructions (including instructions as to forms), recordkeeping and reporting requirements, and directives as may be issued from time to time by BDC in a Statement of Understanding.

(c) The authority delegated by paragraphs 2 (a) and (b) of this delegation shall be exercised subject to the overall policy guidance and direction of the Federal Preparedness Agency, GSA.

5. *Certifications.* The Administrator, in making allotments of controlled materials and in authorizing or applying ratings as the case may be, shall use the certification prescribed by the appropriate regulation or order of the Bureau of Domestic Commerce. The Administrator assigning to others the right to exercise this authority, shall use the following certification:

By authority of the Bureau of Domestic Commerce the right is hereby assigned to (description of scope of assignment).

This certification shall be authenticated with the signature of an authorized official of the Federal Energy Administration or its delegate agency.

6. *Redelegations.* The authority granted by this delegation may be redelegated within the Federal Energy Administration. Other redelegations of such authority may be made only with the prior written approval of the Bureau of Domestic Commerce after coordination with the Director, Federal Preparedness Agency. All redelegations of such authority shall be made in writing and a copy thereof furnished to the Office of Industrial Mobilization, Bureau of Domestic Commerce, and the Federal Preparedness Agency.

This delegation shall take effect December 1, 1976.

CHARLEY M. DENTON,
Acting Deputy Assistant Secretary for Domestic Commerce.

[FR Doc.76-34991 Filed 11-26-76;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS RECEIVED FROM NOVEMBER 15 THROUGH 19, 1976

Environmental impact statements received by the Council on Environmental Quality from November 15 through November 19, 1976. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the minimum period for public review and comment on draft environmental impact statements in forty-five (45) days from this FEDERAL REGISTER notice of availability. (January 10, 1977) The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036

DEPARTMENT OF AGRICULTURE

Contact: Coordinator of Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Allegheny National Forest Timber Management Plan, several counties in Pennsylvania, November 16: Proposed is the establishment of a new 8-year timber management plan for the Allegheny National Forest, Pennsylvania, for the period July 1, 1975 through June 30, 1984. As a result of the sell program portion of the plan, an estimated 66 MCcf (40 MMBF) of sawtimber and 84 MCcf (106 M cords) of pulpwood per year will be harvested. Timber management activities may affect air and water quality and soil will be subjected to erosive forces. Other negative impacts include alteration of landscape and the loss of some roadless area. (79 pages.) (ELR Order No. 61632.)

Final

Cascade Head Scenic Research Area, Siuslaw National Forest, Tillamook and Lincoln Counties, Oreg., November 16: Proposed is a management plan for the 9,670 acre Cascade Head Scenic-Research Area on the central Oregon coast. The plan provides for limited new public facilities and strives to promote a cooperative relationship with the landowners so the intent of Public Law 93-535 and the plan can be met. Restrictions are placed on the construction of new residential units within the area. A long term goal of the plan is to restore the Salmon River estuary and its associated wetlands to a natural estuarine system. No adverse effects are anticipated. (221 pages.) Comments made by: DOT, EPA, COE, USCG, USDA, DOI, AHP, state and local agencies, concerned citizens. (ELR Order No. 61631.)

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-967-4335.

ECONOMIC DEVELOPMENT ADMINISTRATION

Draft

Eastern Market Wholesale Distribution Center Railroad Spur, Wayne County, Mich.: The proposed action calls for construction of a railroad spur to be located within the Eastern Market Wholesale Distribution Center in Detroit, Michigan. The project consists of constructing 3,600 ft. of track connected to the maintrack of the Grand Trunk and Western Railroad, a 40′ × 200′ public shed, and related street reconstruction and signalization. Adverse impacts include increased auto and truck traffic volumes, and increased levels of noise and air pollution. (109 pages.) (ELR Order No. 61649.)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Development, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, 202-693-6795.

Draft

Toad Suck Ferry L & D, Water Supply Relocation, Conway County, Ark., November 17: Proposed is a water supply impoundment to provide a water supply for Conway, Arkansas equivalent to that existing prior to construction of the McClellan-Kerr Arkansas River Navigation System. The 1,850-acre lake will provide 19,250 acre-feet of storage for portable water for Conway. Approximately 5 miles of Cypress Creek and 3 miles of tributaries would be flooded, thereby changing the partially wooded area to a setting where the streams and adjacent flood plains have been replaced by a large dominant body of water. Adverse impacts include relocation of 41 families, 1 school and 4 churches, loss of wildlife habitat, and increased stream turbidity. (68 pages.) (ELR Order No. 61640.)

Final

Lucky Peak Dam and Lake, Boise County, Idaho, November 15: The statement evaluates the continued operation, management, and maintenance of Lucky Peak Dam and Lake on the Boise River. Project purposes include flood control, water quality control, supplemental irrigation storage, recreation, and fish and wildlife resources. Adverse impact will result from seasonal fluctuations in reservoir water levels. There has been a loss of mule deer habitat, and the reservoir presents an obstacle to deer migration. (Walla Walla District.) (196 pages.) Comments made by: HUD, DOI, EPA, USDA, state and local agencies, concerned citizens (ELR Order No. 61626.)

Clinton River Dredging, Disposal Facility, Macomb County, Mich., November 17: Proposed is the construction of a diked disposal facility for maintenance dredging of the Clinton River Federal Navigation Channel. Placement of dredged material on the proposed site, 3 miles upstream of the mouth of the Clinton River, will restore 30 acres of unused, Federally-owned land to the local community. Adverse effects include the destruction of 30 acres of desirable vegetation. If accidental spills/leaks occur, impairment to water quality will occur in the waterfront area of adjacent residences. (Detroit District.) (114 pages.)

Comments made by: AHP, DOC, DOI, USDA, DOT, EPA, FPC, state and local agencies, concerned citizens, (ELR order No. 61639.)

Clinton River Channel, Maintenance Dredging, several counties in Michigan, November 17: Proposed is the continuation of maintenance dredging for the Clinton River, Michigan, Federal Navigation Channel. Increased water turbidity in the area of operation will result, and aquatic life in the dredging areas will be disturbed or destroyed. Disposal of dredged sediments will alter habitats and may otherwise adversely affect orga-

nisms at the disposal area. (Detroit District.) (146 page.) Comments made by: AHP, USDA, DOC, DOI, DOT, EPA, state and local agencies, concerned citizens. (ELR order No. 61642.)

Atlantic IC Waterway Side Chanels, Maintenance, North Carolina, November 17: This action involves the maintenance of nine authorized side channels to the Atlantic Intracoastal Waterway from Morehead City to Southport, N.C. Removal of shoals in the channels will be performed by pipeline and side cast type dredges. The turbidity caused by the dredging activities will increase sedimentation and destroy benthic organisms. Terrestrial organisms will be buried in the upland diked disposal areas. (Wilmington District.) (283 pages.) Comments made by: EPA, DOC, DOI, USDA, HUD, HEW, DOT, state and local agencies, concerned individuals. (ELR order No. 61640.)

Nonconnah Creek Flood Protection (2), several counties in Tennessee and Mississippi, November 17: The statement discusses a flood prevention, watershed protection and recreation project on Nonconnah Creek to be carried out jointly by USDA and the Army Corps. The project includes: installation of 3 floodwater-retarding structures; treatment of erosion and sediment control on 35,010 acres; construction of a reservoir; channel cleanout and enlargement; and, establishment of a greenway-floodway. Adverse impacts are loss of 6 miles of channel, loss of 2,300 acres, inundation 18 archeological sites, displacement of 22 families, loss of stream benthos and increased bank erosion following channel disturbance. (Memphis District.) (327 pages.) Comments made by: EPA, DOI, OEO, USDA, DOT, state and local agencies, concerned citizens. (ELR Order No. 61641.)

Supplement

Tampa Harbor Deepening Project (S-1), Florida. This statement supplements a final EIS filed with CEO in July 1975. The revised disposal plan for Tampa Harbor calls for modifying the original plan to include the deletion, shifting, or division of certain areas, riprapping of certain areas to prevent erosion, and the creation of 2 emergent recreation/wildlife islands. Adverse effects of the revised plan include prolongation of turbid conditions and destruction of some beach dwelling invertibrates due to activity on the second beach disposal sites on Mullet Key. (Jacksonville District.) (65 pages.) (ELR Order No. 61648.)

NAVY

Contact: Mr. Peter M. McDavitt, Special Assistant to the Assistant Secretary of the Navy (Installations and Logistics), Washington, D.C. 20350, 202-692-3227.

Final

Naval Submarine Base, Groton, Conn., November 15: Proposed is a Master Plan for the Naval Submarine Base in New London, Connecticut. The plan proposes new construction and rearrangement of facilities on the 1,000-acre Base for the next 5 years. Changes include extension of sewage collection service lines to tie in with the city of Groton, increases in electric generating capacity, consolidation of weapon functions in the northern portion, and reduction of traffic congestion. The major adverse impacts will be increased water runoff and decreased water quality in the Beaver dam Brook Swamp due to development of a commissary. (Northern Division.) (42 pages.) Comments made by: HEW, DOI, DOC, USDA, EPA, USCG, state and local agencies, concerned citizens. (ELR Order No. 61629.)

In the FEDERAL REGISTER of November 12, 1976 the Council on Environmental Quality published a notice stating that due to inadequate distribution the commenting period for the supplement to the Final EIS concerning the Dredge River Channel, USN Submarine Base, New London, Connecticut would not begin until CEQ received assurances from the Department of Defense that there had been full distribution of the document. Full distribution was completed October 20, 1976 and the 30 day period for this statement will terminate November 19, 1976.

ENVIRONMENTAL PROTECTION AGENCY

Please refer to the separate notice published by EPA in this issue of the FEDERAL REGISTER for the appropriate EPA contract.

Draft

Westside Trunk Wastewater Facilities Plan, Jackson County, Oreg., November 15: Proposed is the construction of a wastewater collection system to serve the 2,000 residents of the Westside Trunk District, Jackson County, Oregon. Wastewater from the 5400-acre District, located southwest of Central Point, would be transported to Lower Bear Creek Interceptor and then be treated at the Medford Regional Sewage Treatment Plant on Rogue River. Negative effects include short term losses of vegetation, distruption of wildlife, and increased air and noise pollution. (Region X.) (119 pages.) (ELR Order No. 61630.)

FEDERAL POWER COMMISSION

Contact: Dr. Jack M. Heinemann, Acting Asst. Director, for Environmental Quality, 441 G Street, NW., Washington, D.C. 20426, 202-275-4791.

Supplement

Chippewa Project (S-2), Sawyer County, Wisc., November 15: This statement supplements a final EIS filed with CEQ in August 1973. The document considers the effects of the Chippewa Flowage Management Plan which proposes joint Federal takeover of the Chippewa Flowage by the USDA, Forest Service and the DOI, Bureau of Indian Affairs from the present operator, Northern States Power Co. (NSP). Under Federal takeover, the Flowage's rich resources of walleye and muskellunge would be preserved and the cultivation of rice would be reestablished by holding the winter drawdown to 2 feet in the winter and eliminating drawdown in the summer. (200 pages.) (ELR Order No. 61628.)

GENERAL SERVICES ADMINISTRATION

PUBLIC SERVICES SERVICE

Contact: Carl W. Penland, Director, Program Support Division, Public Buildings Service, General Services Administration, 18th and F Sts., NW., Washington, D.C. 20405, 202-566-1416.

Draft

John F. Kennedy Library, Columbia Point, Massachusetts, November 19: Proposed is the construction of the John F. Kennedy library on a twelve acre site donated to the U.S. Government in 1975 by the Commonwealth of Massachusetts specifically for the construction of this presidential library. The library will be privately created by J.F.K. Library Incorporated, a non-profit Massachusetts Charitable Corporation. When completed it will be a federally-owned and operated depository housing the papers, and other historical materials relating to President Kennedy's career and administration. Few adverse effects are anticipated. (350 pages.) (ELR Order No. 61652.)

DEPARTMENT OF HOUSING URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7258, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6308.

Draft

Northeast Suisan, 983-acre Development, Suisan, and Solano Counties, Calif., Nov. 17: The proposed action consists of the development of 953 acres of land in the northeastern portion of Suisan, Solano County, California. The project calls for the construction of 2468 single family units, 1220 medium density apartments, 1500 high density apartments, 2 potential schools, and commercial services. Potential adverse impacts include increased noise levels, and stress on the existing water-system. (170 pages) (ELR Order No. 61635.)

Section 104(h)

The following are Community Development Block Grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local chief executive. (Copies are not available from HUD.)

Final

Florence Hill Water and Sewer Project, Dallas County, Tex., Nov. 18: Proposed is the development of water and sewer facilities by the City of Grand Prairie, Tex. The project is intended to promote growth of a residential nature changing the setting from agricultural/semi-rural to suburban. Possible negative impacts include greater demand for fossil fuels due to increased automobile traffic, effects on the air and water qualities, and loss of potentially productive agricultural land. (104 pages). Comments made by: AHP, DOD, DOI, and State and local agencies, concerned citizens. (ELR Order No. 61651.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF INDIAN AFFAIRS

Final

Navajo-Exxon Uranium Development, San Juan County, N. Mex., Nov. 16: Proposed is the approval of an exploration permit and mining lease which are part of a uranium exploration, mining, and milling agreement negotiated between the Navajo Tribe and the Exxon Corp. The exploration area is a 400,000 acre tract located on the Navajo Reservation, New Mexico. If uranium ore in sufficient quantities to warrent development is discovered, Exxon is authorized to take a total of 51,200 acres to lease for mining, of which only 5,120 surface acres may be used for mining and milling purposes. Adverse effects of exploration include disturbance of soils and vegetation, and degradation of air. (549 pages). Comments made by: EPA, FEA, COE, HEW, DLAB, USDA, DOT, ERDA, NRC, DOI, and Navajo Tribal Council, concerning groups, and persons. (ELR Order No. 61633.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Benard Rersche, Director of Division of Reactor Licensing, P-722, NRC, Washington, D.C. 20555, 301-492-7373.

Supplement

Palisades Nuclear Generating Plant (S-1), Van Buren County, Mich. This statement serves as an addendum to a final EIS filed with CEQ in May 1971. It addresses new information and changes in staff evaluation. The proposed action is the issuance of a

full-term operating license at an increased power level to Consumers Power Co. for operation of Palisades Nuclear Power Plant No. 1, in Van Buren Co., Michigan. The plant, located on Lake Michigan, uses a pressurized water reactor to presently produce about 2200 MWe to generate a net electric output of 686 MWe. Under the proposed action the plant would operate under 2683 MWt and 786 MWe. The cooling tower blowdown will be discharged into Lake Michigan. (82 pages). (ELR Order No. 61650.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW, Washington, D.C. 20590, 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Southwest Florida Regional Airport, Lee County, Fla., November 15: The proposed action calls for construction of the Southwest Florida Regional Airport in Lee County, Fla. Plans for the new air carirer airport include construction of an air traffic control tower, an 8400' x 150' air carrier runway, a 3600' x 75' general aviation runway, and a terminal with support facilities. The project will require acquisition of 3,185 acres of land and will expand existing facilities to meet the projected 1982 demand level of 2,000,000 enplaned passengers per year. Adverse impacts include loss of agricultural land, relocation of 19 families, and occurrence of wind and water erosion due to clearing activities (360 pages). ELR Order No. 61627.)

Final

Civil Airplane Fleet Noise Requirements, November 17: The proposed action is a revision of the FAA Regulations, Part 36 extending noise standards to all civil subsonic turbojet airplanes with maximum take-off gross weight of 75,000 lbs. or more, operating into U.S. airports. The proposal is intended to provide substantial noise relief. Minor increases in fuel consumption and air pollution from aircraft emissions may result from compliance with the noise standards (255 pages). Comments made by: EPA, DOT, DOC, HUD, DOI, NASA, FEA, State and local and agencies, and concerned citizens. (ELR Order No. 61647.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Fremont Bridge (I-405) Access Study, November 17: The proposed action is the opening of a traffic connection to the existing east-end ramps of the Fremont Bridge (I-405) in Portland, Oreg. Project alternatives include: (1) restricting or limiting general use, (2) connecting the ramps to local collector streets to serve as a neighborhood route, (3) connecting the ramps to an arterial street to serve as a community route and limiting total traffic use, and (4) connecting the ramps to the same arterial but not limiting total traffic use. Adverse impacts will be increased traffic congestion, violations of the federal 8-hour carbon monoxide standard, and increased noise levels (Region 10) (158 pages). (ELR Order No. 61644.)

Massachusetts Route 2, Franklin County, Mass, November 17: Proposed is the relocation of 14 miles of S.R. 2 from the Erving and Orange town line west to Greenfield to the Franklin County towns of Orange, Erving, Wendell, Gill, and Greenfield, all in Massachusetts. Several alternatives are under consideration for the construction of the 2-lane, limited access, undivided highway. Between 23 and 43 households, and 13 and 14 businesses will be displaced subject to the alternative selected (Region 1) (246 pages). (ELR Order No. 61636.)

Southern Tier Expressway, Hinsdale-Erie, Cattaraugus and Chautaugua Counties, N.Y., November 17: Proposed is the completion of a 4-lane limited access highway within 12 alternate corridors between the termini of Hinsdale, N.Y. and Erie, Pa. This action would complete the Development Highway originally proposed by the Appalachian Regional Commission as Corridor T, which extends from Binghamton, N.Y. to Erie, Pa. and which is commonly referred to as the Southern Tier Expressway. The 12 alternate routes under consideration range in length from 33.0 miles to 68.6 miles. Negative impacts include increased auto emissions, higher noise levels and loss of agricultural land. (Region 5) (297 pages). (ELR Order No. 61643.)

Haleakala Highway (FAP Route 37), Maui County, Hawaii, November 15: The proposed action is construction of a new bypass highway in the Makowao District on the Island of Maui, Hawaii. The highway will begin near the intersection of FAP 37 and Haliimaile Road and will extend 3 miles to FAP 37 and FAS 377. The project will be a primary class, 2-lane highway with partial access control, 12-ft. wide lanes and 10-ft. shoulders. Associated adverse effects will be increased emissions of air pollutants, higher noise levels, and construction impacts (Region 9) (206 pages). Comments made by: USDA, DOT, HUD, OE, 2 AHP, DOC, DOI, State and local agencies and concerned citizens. (ELR Order No. 61625.)

Montana Highway 40, Columbia Falls-East and West, Mont., November 17: The proposed project is the reconstruction of 4.7 miles of FAP Route 38, known as Montana Highway No. 40. The project begins 2.25 miles west of Columbia Falls and extends east to U.S. 2 in Columbia Falls Heights. The new alignment will follow the existing highway and sections of from 64 ft. to 88 ft. wide will be used. Adverse impacts include acquisition of 26 acres for right-of-way, loss of wildlife, and increases in noise levels. A 4(f) statement is included for the .003-acre of land needed from Pinewood Park (Region 8) (139 pages). Comments made by: DOI, EPA, USDA, COE, USCG, HEW, State and local agencies, and concerned citizens. (ELR Order No. 61638.)

Nebraska 2, 14th-38th-Old Cheney Road, Lancaster County, Nebr., November 17: The statement proposes various improvements on Nebraska Highway 2 in and near the southern urban limits of Lincoln, Nebr. Plans call for intersection improvements and the widening of the road to a 4-lane divided highway beginning .25-mile northwest of the intersection of Pioneers Boulevard and N-2 and terminating .5-mile east of the intersection of N-2 and Old Cheney Road. As part of the project 13th Street would be extended from Arapahoe Street .4-mile to the intersection of U.S. 77 and N-2. Adverse impacts include acquisition of 15 acres of land, degradation of water, and removal of some trees (Region 7) (160 pages). Comments made by: DOT, COE, USDA, HUD, DOI, EPA, State and local agencies, and concerned citizens. (ELR Order No. 61645.)

Supplement

U.S. 280, Opelika-Phenix City, Russel County, Ala., November 17: This statement supplements a final EIS filed with CEQ in July 1971. The proposed action is the improvement of U.S. 280 from Opelika to Phenix City in Lee and Russel Counties, a distance of approximately 23 miles. The purpose of the supplement is to set forth a proposal to acquire sufficient right-of-way at the Phenix City terminus of the project at the present time in order to construct an interchange at some future date. Adverse effects include the displacement of 20 mobile homes, a short channel change in Mill Creek, and some loss of wildlife habitat (31 pages). (ELR Order No. 61637.)

URBAN MASS TRANSPORTATION ADMINISTRATION

Draft

Red Line Exten., Harvard Sq.-Arlington Heights, Mass., November 17: Proposed is the extension of the Red Line rapid transit from its present termini at Harvard Square to Arlington Heights, Mass. The Harvard Station will be rebuilt on new location and 5 other stations will be constructed on various locations. Approximately 3 miles of the system will be in a tunnel, 2 will be mostly depressed, and the remaining 440 feet will be at grade. Adverse impacts include disturbance of 3 acres of wetland vegetation, and degradation of air. A 4(f) statement is being prepared for the 3.5 acres of publicly owned parklands to be affected (743 pages). (ELR Order No. 61634.)

This notice is to inform the public that Illinois Project F-237 (Illinois Route 127 from Carlyle to I-70, Clinton and Bond Counties) has been dropped. In consultation with the Illinois Department of Transportation the DOT, FHWA, Region 5 has determined that the subject draft EIS will not be studied further for development into a final EIS.

The following is a list of Department of Transportation, Urban Mass Transportation Administration projects requiring administrative actions for which environmental impact statements are being prepared for the first quarter of FY 1977.

1. Draft EIS on the Red Line Extension North, Boston, Mass.
2. Draft EIS on the Orange Line Relocation, Boston, Mass.
3. Supplemental EIS on Washington METRO's Shady Grove Extension, Montgomery County, Md.
4. Draft EIS on North Operating Base, Seattle, Wash.

The following is a list of draft and final environmental impact statements in preparation and a list of negative declarations prepared and filed by the U.S. Coast Guard during the quarter ending September 30, 1976.

DRAFT (D) AND FINAL (F) ENVIRONMENTAL IMPACT STATEMENTS (EIS) BEING PREPARED BY THE U.S. COAST GUARD

D—Implementation of the International Convention for the Prevention of Pollution from Ships, 1973.

F—Proposed changes to CG Station, New London, Conn.

F—Regulations for U.S. Tank Vessels Carrying Oil in Foreign Trade and Foreign Tank Vessels That Enter the Navigable Waters of the United States (Notice of DEIS in FR 4-16-76).

F—Deepwater Port (LOOP) Louisiana Offshore Oil Port (Notice of DEIS in FR 4-23-76).

F—Deepwater Port (SEADOCK) Offshore of Freeport, Tex. (Notice of DEIS in FR 4-23-76).

D—Proposed Route 22 Bridge across the Ohio River between Wierton, W. Va. and Steubenville, Ohio.

D—Calhoun Street Bridge, Delaware River between Morrisville, Pa. and Trenton, N.J.

D—Ponquoque Avenue Bridge, Shinnecock Bay, N.Y.

F—Route 18 Bridge, Raritan River, New Brunswick, N.J. (Notice of FEIS in FR 7-19-76).

F—West Bank Expressway, U.S. Route 90 Business Route (Notice of DEIS in FR 7-23-76).
D—Proposed Coast Guard Search and Rescue Station, Cockspur Island, Ga.
F—Bridge across Station Creek, Beaufort County, S.C.
D—Greater New Orleans Bridge No. 2, New Orleans, La.
D—Relocation of U.S. Highway 90 from Louisiana Route 311 to Morgan City, La.
D—Cameron Hurricane Escape Route, Cameron Parish, La.
D—Proposed LORAN-C Transmitting Station in Northern Minnesota.
D—Proposed highway bridge across the Wisconsin River, Wausau, Wis.
F—Proposed highway bridge across the Wolf River, Fremont, Wis.
F—Proposed Replacement of the Dumbarton Bridge across San Francisco Bay, San Mateo and Alameda Counties, Calif.
F—Proposed Coast Guard Family Housing, Eureka, Calif. (Notice of DEIS in FR 7-7-76).
D—Proposed Barrack at Coast Guard Base, Galveston, Tex.

NEGATIVE DECLARATIONS PREPARED AND FILED IN COAST GUARD HEADQUARTERS DURING THE THIRD QUARTER OF CY 1976

1. Support Center Kodiak Solid Waste Management System.
2. Port Angeles Air Station, Renewal Project.
3. New Federal Regulations—Oil Pollution Prevention Equipment (CGD 76-088).
4. Montague Island and Potato Mountain Microwave Facilities.
5. Pier Improvement, CG Station, Block Island.
6. Closure of CG Air Station Annette, Alaska.

Negative declarations for final bridge permit actions taken during the 3d quarter of calendar year 1976

Project, waterway, location:	Permit No.
1. Bayou Dezarie, St. Tammany Parish, La	71-76
2. Cocohatchee River, Bonita Springs Fla	72-76
3. Overflow between Lake Champlain and Kings Bay Wetlands, Rouses Point, N.Y.	73-76
4. Mystic River, Medford, Mass	54-76
5. South Slough (Winchester Creek), Charleston, Oreg	78-76
6. Grand Calumet River, Calumet City, Ill	74-76
7. Willanch Slough, Cooston, Oreg	75-76
8. Point Lookout Creek, Point Lookout State Park, Md	67-76
9. San Gabriel River, San Gabriel, Calif	76-76
10. Unnamed tidal tributary of North Newport River, Cattle Hammock, Ga	93-76
11. Awendaw Creek, Awedaw, S.C	95-76
12. Kingsley Creek, Fernandina, Fla	85-76
13. The Narrows, Seminole Pacs, Fla	35-76
14. Tributary to Hawk Channel, Coplum, Fla	98-76
15. Pipeline across Doctor's Pass Waterway, Naples, Fla	84-76
16. Tutter's Neck Creek, Williamsburg, Va	65-76
17. Canal No. 5, Lake Pontchartrain, St. Tammany Parish, La	80-76
18. Campbell's Slough, Hoquiam, Wash	83-76
19. St. Jones River, Kent Country, Del	88-76
20. Clearwater River, Myrtle, Idaho	92-76
21. Tom's River (North Branch), Dover Township, N.J	97-76
22. Oyster Creek, Lake, Jackson, Tex	99-76
23. Commodore Creek, Wagoner, Okla	106-76

The FEDERAL REGISTER of November 19, 1976 incorrectly listed the termination date for public review and comment on draft EISs received by CEQ from November 8 through November 12, 1976 as being December 27, 1976. The final date for commenting on these draft statements is in fact January 3, 1977.

GARY L. WIDMAN,
General Counsel.

[FR Doc.76-34995 Filed 11-26-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 651-1]

WESTSIDE TRUNK DISTRICT

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft Environmental Impact Statement (DEIS) for the Westside Trunk District, Medford, Jackson County, Oregon.

The proposed action is a grant application submitted by Bear Creek Valley Sanitary Authority to solve existing wastewater treatment problems in the Westside Trunk District. Existing problems include failing septic tanks. The proposed project would construct 3 miles of trunk sewer lines pumping sewage to an existing wastewater treatment plant at Medford, Oregon.

This DEIS was transmitted to the Council on Environmental Quality (CEQ) on November 15, 1976. In accordance with CEQ's notice of availability, comments are due on January 10, 1977. Copies for the DEIS are available for review and comment from: Mr. Dick Thiel, Chief, Environmental Section, Environmental Protection Agency, Region X, Mail Stop 443, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101 (telephone 206-442-4011 or FTS 399-4011).

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460.
Environmental Protection Agency, Oregon Operations Office, Library, 1234 Southwest Morrison Street, Portland, Oregon 97205.
Environmental Protection Agency, Region X Library, 11th Floor, 1200 Sixth Avenue, Seattle, Washington 98101.
Jackson County Library, 413 West Main Street, Medford, Oregon.

Information copies of the DEIS are available at cost (10¢/page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, D.C. 20036. Please reference No. ELR 61630.

Copies of the DEIS have been sent to various Federal, State and Local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: November 23, 1976.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

[FR Doc.76-35206 Filed 11-26-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

RTCM SC 69/FCC WARC-79 Advisory Committee for Maritime Mobile Service, eleventh meeting, 2025 M Street, N.W., Washington, D.C., Room 847, 9:30 a.m. to 12:30 p.m., Tuesday, December 14, 1976.

AGENDA

1. Call of the Agenda.
2. Chairman's Opening Remarks.
3. Reports of the Task Force.
4. Review work to be accomplished.
5. Further Business.
6. Set date for next meeting.
7. Adjournment.

Charles Dorian, Chairman SC 69, COMSAT General, 950 L'Enfant Plaza, S.W., Washington, D.C. 20024. Phone: (202) 554-6829.

Special Committee No. 68 "Marine Radiotelephone Operator Education", Notice of 18th Meeting, Wednesday, December 15, 1976—9:30 a.m., Conference Room 847, 1919 M Street, NW., Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Confirmation of Secretary; Adoption of Agenda.
3. Acceptance of SC-68 Summary Records.
4. Review proposed feature stories.
5. Discuss possible materials and plan public education effort for future.
6. New business.
7. Establishment of next meeting date.

A. Newell Garden, Chairman, SC-68, Raytheon Company, 141 Spring Street, Lexington, Mass. 02173. Phone: (617) 862-6600 (Ext. 414).

Executive Committee Meeting, Thursday, December 16, 1976.

The next Executive Committee Meeting will be on Thursday, December 16, 1976, at 9:30 a.m. in Conference Room 847, 1919 M Street, NW., Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Introduction of Attendees; Adoption of Agenda.
3. Acceptance of the Minutes of Executive Committee Meetings.
4. Progress Reports on Currently Active Committees.
5. Status Reports on Other Committees.
6. New Membership Applications for Executive Committee Approval.

7. Report on 1977 Philadelphia Assembly Meeting.
8. Approval of SC-65 "Ship Radar" Papers (Reference: RTCM Paper EC 49-76): (a) Paper 171-76/EC-205/SC 65-226 (Supersedes No. 145-76/SC 65-220) "Performance Specification for a Computer Aided Collision Avoidance System for Merchant Ships" (Mailed to Executive Committee and Assembly on November 5, 1976).
9. Acceptance of RTCM Fiscal 1976 Year-end Statement (Paper EC 58-76).
10. Acceptance of FY-1976 Audit Report (Paper EC 59-76).
11. Summary Reports and Announcements.
12. New Business.
13. Establishment of next meeting date.

HOWARD L. PETERSON,
Executive Secretary.

To comply with the advance notice requirements of Pub. L. 92-463, a comparatively long interval of time occurs between publication of this notice and the actual meeting. Consequently, there is no absolute certainty that the listed meeting room will be available on the day of the meeting. Those planning to attend the meeting should report to the room listed in the notice. If a room substitution has been made, the new meeting room location will be posted at the room listed in this notice.

Agendas, working papers, and other appropriate documentation for the meeting is available at that meeting. Those desiring more specific information may contact either the designated Chairman or the RTCM Secretariat. (Phone (202) 632-6490.)

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. Problems are studied by Special Committees and the final report is approved by the RTCM Executive Committee. All RTCM meetings are open to the public. Written statements are preferred but by previous statements are preferred but by previous arrangement, oral presentations will be permitted within time and space limitations.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

NOTE.—For approval or acceptance at this meeting.

*Not printed as of date of this notice prepared.

[FR Doc.76-34986 Filed 11-26-76;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ER77-44]

CONSOLIDATED EDISON CO.

Filing of Initial Rate Schedule

NOVEMBER 18, 1976.

Take notice that on November 8, 1976, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, copies of an energy sale agreement (the "Agreement") between Con Edison and the Power Authority of the State of New York ("PASNY").

The Agreement, dated December 30, 1975, provides for sale of supporting energy by Con Edison in connection with PASNY's sale of certain power and energy from its FitzPatrick nuclear plant to Con Edison.

A copy of the filing has been served upon PASNY.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 6, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34869 Filed 11-26-76;8:45 am]

[Docket No. ER77-35]

CONSOLIDATED EDISON CO.

Filing of Rate Schedule; Correction

NOVEMBER 17, 1976.

In FR Doc. 76-33792 issued November 10, 1976 and appearing at page 50501 in the FEDERAL REGISTER of Tuesday, November 16, 1976 please change caption appearing in brackets from "ER76-35," to read "ER77-35."

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34867 Filed 11-26-76;8:45 am]

[Docket Nos. CP73-258, CP73-259, CP73-267, CP73-268, CP73-269, and CP73-270]

EL PASO EASTERN CO. ET AL.

Availability of Supplement to the Final Environmental Impact Statement

DECEMBER 1, 1976.

Notice is hereby given in the above dockets that on December 1, 1976, as required by § 2.82(b) of the Commission's Rules of Practice and Procedures (18 CFR 2.82(b)), a supplement to the Final Environmental Impact Statement (FEIS) prepared by the staff of the Federal Power Commission was made available. The FEIS deals with the applications filed by El Paso Eastern Company, Transco Energy Company, Transco Terminal Company, and Transcontinental Gas Pipe Line Corporation in Docket Nos. CP73-258, CP73-259, CP73-267, CP73-268, CP73-269, and CP73-270 for a certificate of public convenience and necessity under Sections 3 and 7(c) of the Natural Gas Act requesting authorization for the importation of liquefied natural gas (LNG) from Algeria; for the construction and operation of a (1) LNG importation terminal at Raccoon Island, Gloucester County, New Jersey, and (2) approximately 22.74 miles of 36-inch diameter pipeline loop on Transcontinental Gas Pipe Line Corporation's existing Marcus Hook-Woodbury line at Gloucester, New Jersey; and for the sale in interstate commerce of the LNG. The supplement to the FEIS contains updated risk analyses and staff conclusions based on these updated risk analyses.

This supplement to the FEIS has been circulated to Federal, state, and local agencies and all parties to the proceeding. The supplement to the FEIS has been placed in the public files of the Commission and is available for public inspection both in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426 and at its regional office located at 26 Federal Plaza, 22nd Floor, New York, New York 10007. Copies of the supplement to the FEIS are available in limited quantities from the Federal Power Commission's Office of Public Information, Washington, D.C. 20426.

Any person who wishes to do so may file comments on the supplement to the FEIS. All comments must be filed on or before January 14, 1977. Any person who wishes to present evidence regarding environmental matters in this proceeding must file with the Commission a petition to intervene pursuant to § 1.8 of the Commission's Rules of Practice and Procedure (18 CFR 1.8). Petitioners must also file timely comments on the supplement to the FEIS in accordance with 18 CFR 2.82(c).

All petitions to intervene must be filed on or before January 14, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34865 Filed 11-26-76;8:45 am]

[Docket No. RP76-142]

EL PASO NATURAL GAS CO.

Proposed Changes in FPC Gas Tariff

NOVEMBER 19, 1976.

Take notice that El Paso Natural Gas Company ("El Paso"), on November 12, 1976, tendered for filing proposed changes in special Rate Schedule F-2 to its FPC Gas Tariff, Third Revised Volume No. 2. El Paso states that the gas purchase agreement comprising a part of said special rate schedule provides for the sale of natural gas at the wellhead to Michigan Wisconsin Pipe Line Company in Dewey County, Oklahoma.

El Paso further states that the instant filing is being made pursuant to § 154.63 (a)(3) of the Commission's Regulations in order that the rate charged under Rate Schedule F-2, commencing on July 27, 1976, may be adjusted to the national rate levels for sales of gas from wells commenced on or after January 1, 1973, and on or after January 1, 1975, as provided for by the Commission's Opinion No. 770-A and § 2.56a(a) (1) and (3) of the Commission's General Policy and

interpretations established by said opinion.

In connection with the instant notice of change, El Paso also tendered for filing and acceptance Fifth Revised Sheet No. 1-D.1 to its FPC Gas Tariff, Third Revised Volume No. 2. El Paso states that said tariff sheet reflects the rates proposed to be collected by El Paso under Rate Schedule F-2, commencing on July 27, 1976. In addition, El Paso incorporated as a part of its tender an undertaking to assure refunds of any portion of the increased rates established by Opinion No. 770-A which subsequently may be found to be unlawful.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before November 30, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34873 Filed 11-26-76;8:45 am]

[Docket No. CP75-205]

MICHIGAN WISCONSIN PIPE LINE CO.

Petition To Amend

NOVEMBER 18, 1976.

Take notice that on November 9, 1976, Michigan Wisconsin Pipe Line Company (Petitioner), One Woodward Avenue, Detroit, Michigan 48826, filed in Docket No. CP75-205 a petition to amend the order of the Commission issuing a certificate of public convenience and necessity to Petitioner in said docket pursuant to Section 7(c) of the Natural Gas Act, by which petition Petitioner requests authorization to exchange gas with Natural Gas Pipeline Company of America (Natural) at an additional delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The petition to amend states that Petitioner is authorized, in the instant docket to deliver natural gas to Natural at a point in Wheeler County, Texas, in exchange for equivalent volumes to be redelivered by Natural at a point in Hansford County, Texas, and to deliver natural gas to Natural at a point in Beaver County, Oklahoma in exchange for equivalent volumes to be redelivered by Natural at a point in Hansford Country, Texas. It is stated that the exchange of natural gas is pursuant to the terms of an exchange agreement dated November 13, 1974, which provides for the exchange of gas under circumstances which would minimize the facilities to be constructed by either party in connecting reserves to their systems.

Petitioner states that it has obtained a commitment of gas reserves from the Ratzlaff well in close proximity to the facilities of Natural in Beaver County, Oklahoma, and proposes herein pursuant to an amendment dated August 31, 1976, to the exchange agreement to deliver 500 Mcf of gas per day to Natural in Beaver County, in exchange for delivery of an equivalent volume of gas by Natural to Petitioner at the presently authorzied existing point of redelivery in Hansford County, less compressor fuel utilized by Natural in effectuating the exchange. Petitioner further states that, with respect to the facilities necessary to deliver the gas from the Ratzlaff well to facilities of Natural, it proposes to construct and operate approximately one half mile of 4-inch line under its budget authorization in Docket No. CP76-356.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 13, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34871 Filed 11-26-76;8:45 am]

[Docket No. ER77-49]

MISSISSIPPI POWER AND LIGHT CO.

Agreement for Purchase of Power

NOVEMBER 18, 1976.

Take notice that on November 10, 1976, Mississippi Power and Light Company (Mississippi) tendered for filing an Agreement for Purchase of Power. This Agreement provides for the sale of electric energy by Mississippi to Southwest Mississippi Electric Power Association (Southwest), to be delivered at a point near Peetsville, Mississippi.

Mississippi states that its Rates Schedule REA-13 (Revised) incorporated in the Agreement was heretofore filed with the Commission on January 10, 1975, as Company's service rate schedule applicable to all existing and new points of delivery. Mississippi further states that by order of the Commission on February 7, 1975 (Docket E-9058) Schedule REA-13 (Revised) became effective December 7, 1974, as affirmed by order of the Commission dated September 8, 1976, and is the currently effective tariff for service to Electric Power Associations. Subsequent to December 1, 1976, Mississippi proposes to apply, subject to refund, Rate Schedule REA-14 (Revised) filed on October 26, 1976, in compliance with the Commission's Order in Docket ER76-830.

Mississippi has asked that the Commission waive applicable notice requirements and permit the Agreement to become effective on September 21, 1976, the date service was initially rendered.

Mississippi states that a copy of this filing has been mailed to Southwest.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 13, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34870 Filed 11-26-76;8:45 am]

[Docket No. CP76-16]

TENNECO LNG INC.

Availability of Staff Draft Environmental Impact Statement

DECEMBER 1, 1976.

Notice is hereby given in the above docket that on December 1, 1976, as required by Section 2.82(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.82(b)), a Draft Environmental Impact Statement (DEIS) prepared by the Staff of the Federal Power Commission was made available for comments. This DEIS deals with an abbreviated application by Tenneco LNG Inc. pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate an LNG receiving, storage, vaporization, and natural gas sendout facility near West Deptford in Gloucester County, New Jersey. Tenneco LNG Inc. would sell the gas to Tennessee Gas Pipeline Company. The purpose of the abbreviated application is to allow the environmental and safety analysis of both the anticipated LNG terminal and the marine transportation of LNG in the Delaware River to commence prior to other aspects of the FPC proceedings. The anticipated terminal would have a 2 billion cubic feet per day output and would consist of four 900,000-barrel LNG storage tanks, river water vaporization units, LNG tanker berths and other appurtenant facilities.

This statement has been circulated for comments to Federal, state, and local agencies, has been placed in the public files of the Commission, and is available for public inspection both in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., and at its regional office located at 26 Federal Plaza, 22nd Floor, New York, New York 10007. Copies of the DEIS are available in limited quantities from the Federal Power Commission's Office of Public Information, Washington, D.C. 20426.

Any person who wishes to do so may file comments on the DEIS for the Commission's consideration. All comments must be filed on or before January 14, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34864 Filed 11-26-76;8:45 am]

[Docket No. RP74-41 (PGA76-2a)]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

NOVEMBER 19, 1976.

Take notice that Texas Eastern Transmission Corporation on November 1, 1976 tendered for filing proposed changes in its FPC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Substitute Twenty-fourth Revised Sheet No. 14
Substitute Twenty-fourth Revised Sheet No. 14A
Substitute Twenty-fourth Revised Sheet No. 14B
Substitute Twenty-fourth Revised Sheet No. 14C
Substitute Twenty-fourth Revised Sheet No. 14D

Texas Eastern is filing the above tariff sheets in substitution of Twenty-fourth Revised Sheet Nos. 14 through 14D to exclude the effectiveness of the Opinion No. 770 producer increases that were suspended until December 1, 1976 by Commission Order dated October 21, 1976.

Texas Eastern requests that the Commission waive all applicable rules and regulations to allow the above substitute tariff sheets to become effective November 1, 1976 in accordance with the original filing of Twenty-fourth Revised Sheet Nos. 14 through 14D dated September 30, 1976.

Copies of the filing were served on the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 1, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34873 Filed 11-26-76;8:45 am]

[Docket No. RP72-133 (PGA77-1)]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheet

NOVEMBER 19, 1976.

Take notice that on November 15, 1976, United Gas Pipe Line Company (United) tendered for filing Thirty-Fifth Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information are being filed 45 days before the effective date of January 1, 1977 pursuant to Section 19 of United's tariff, and the company states that the filing is in compliance with the provisions of Order Nos. 452, 452-A, and 452-B.

Copies of the revised tariff sheet and supporting data are being mailed to United's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 15, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34874 Filed 11-26-76;8:45 am]

[Docket No. RP76-41]

VALLEY GAS TRANSMISSION, INC.

Filing of Substitute Tariff Sheets

NOVEMBER 18, 1976.

Valley Gas Transmission, Inc. ("Valley"), on November 15, 1976, submitted for filing certain substitute tariff sheets, namely, Substitute Alternate Sixth Revised Sheet No. 2A, Second Substitute Seventh Revised Sheet No. 2A, and Substitute Eighth Revised Sheet No. 2A, which restate Valley's Gathering Charge for the period beginning January 2, 1976, at the level of 10.93 cents per Mcf. The previously filed Gathering Charge was 11.36 cents per Mcf, which was reduced to 10.93 cents per Mcf pursuant to a settlement agreement which was approved by the Commission on October 5, 1976. The substitute sheets are proposed to be effective for the same periods of time as the tariff sheets which they replace, namely, January 2, 1976 through June 30, 1976, for Substitute Alternate Sixth Revised Sheet No. 2A; July 1, 1976 through November 30, 1976 for Second Substitute Seventh Revised Sheet No. 2A; and December 1, 1976 for Substitute Eighth Revised Sheet No. 2A.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 8, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34866 Filed 11-26-76;8:45 am]

[Docket No. ER77-42]

WISCONSIN POWER AND LIGHT CO.

Filing of Amendment No. 1 to Joint Power Supply Agreement

NOVEMBER 18, 1976.

Take Notice that on November 4, 1976, Wisconsin Power and Light Company (WPL) tendered for filing an Amendment No. 1 (dated August 27, 1976) to the Joint Power Supply Agreement (dated July 27, 1973) between Madison Gas and Electric Company (MGE), Wisconsin Public Service Corporation (WPS) and WPL.

This Amendment No. 1 provides for revised 345 KV transmission line and Columbia Substation construction responsibilities.

WPL states that copies of the filing letter and the Amendment No. 1 have been provided to the respective parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 6, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34868 Filed 11-26-76;8:45 am]

[Docket No. RP76-10(PGA 76-4a)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets

NOVEMBER 18, 1976.

Take notice that on November 2, 1976, Arkansas Louisiana Gas Company (Arkla) tendered for filing in Docket RP76-10 (PGA 76-4) First Substitute Sixth Revised Sheet No. 185 in its Rate Schedule X-26, FPC Gas Tariff Original Volume No. 3. This tariff sheet is filed in accordance with Commission Order dated October 21, 1976 in Docket Nos. RP72-110, et al that permits Arkla to file a revised tariff sheet in its PGA 76-4 to be effective November 1, 1976, reflecting the elimination of all costs attributable to producer rate increases claimed under Opinion No. 770.

The company states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties effected by the tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34982 Filed 11-26-76;8:45 am]

[Docket No. RP74-61 (PGA 76-4a)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets

NOVEMBER 18, 1976.

Take notice that on November 2, 1976, Arkansas Louisiana Gas Company (Arkla) tendered for filing in Docket RP74-61 (PGA 76-4) First Substitute Ninth Revised Sheet No. 4 in its Rate Schedule G-2, FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet is filed in accordance with Commission Order dated October 21, 1976 in Docket Nos. RP72-110, et al that permits Arkla to file a revised tariff sheet in its PGA 76-4 to be effective November 1, 1976, reflecting the elimination of all costs attributable to producer rate increases claimed under Opinion No. 770.

The company states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by the tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commision's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 30, 1976. Protests will be considered by the Commision in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34979 Filed 11-26-76;8:45 am]

[Docket No. CP77-47]

COLUMBIA GULF TRANSMISSION CO.

Application

NOVEMBER 18, 1976.

Take notice that on November 8, 1976, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP77-47 an application pursuant to section 7(c) of the Natural Gas Act and Section 157.7 (b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction during the calendar year 1977 and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas purchased by Columbia Gas Transmission Corporation and to transport and exchange natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to construct and operate gas purchase facilities defined by Section 157.7 (b)(4) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.7(b)(4)), and to transport and/or exchange natural gas.

Applicant states that the total cost of the proposed facilities would not exceed $7,000,000 and that the cost of any single onshore or offshore project would not exceed $1,500,000 and $2,500,000 respectively. The application indicates that these costs would be financed from current working funds available to Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34978 Filed 11-26-76;8:45 am]

[Docket No. RP72-134 (DCA77-1)]

EASTERN SHORE NATURAL GAS CO.

Curtailment Credit Adjustment To Rates and Charges

NOVEMBER 18, 1976.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on November 9, 1976, tendered for filing Thirty-Fifth Revised Sheet No. 3A Superseding Substitute Thirty-Third Revised Sheet No. 3A and Thirty-Fifth Revised PGA-1 to its FPC Gas Tariff, Original Volume No. 1. These revised tariff sheets, to be effective December 1, 1976, will decrease the commodity or delivery charges of Eastern Shore's Rate Schedules CD, CD-E, G-1, E-1 and PS-1 by $.018 per Mcf to reflect curtailment credits.

Copies of this filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC, 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10). All such petitions and protests should be filed on or before November 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34984 Filed 11-26-76;8:45 am]

[Docket No. RP72-140 (PGA77-1)]

GREAT LAKES GAS TRANSMISSION CO.

Proposed Changes in FPC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

NOVEMBER 18, 1976.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on November 9, 1976, tendered for filing Twenty-First Revised Sheet No. 57, to its FPC Gas Tariff, First Revised Volume No. 1, proposed to be effective January 1, 1977.

Great Lakes states that its sole supplier of natural gas, TransCanada Pipe-Lines Limited (TransCanada), will increase the rates for gas purchased by Great Lakes effective January 1, 1977. The increase is the result of the National Energy Board of Canada's orders issued June 24, 1976, amending TransCanada's licenses for the export of natural gas to Grat Lakes by establishing that the price to be received for the gas to be exported shall be not greater than and not less than $1.94 in Canadian currency per Mcf of one thousand British Thermal Units per cubic foot equivalent gas at a temperature of 60 degrees Fahrenheit and a pressure of 14.73 pounds per square inch absolute adjusted on the ratio of the actual BTU content per cubic foot to 1,000 BTU per cubic foot.

Great Lakes is also providing for adjustments in the current PGA rate reflecting the effect of currency conversion based on $1.0277 United States equivalent to $1.00 Canadian and a BTU adjustment reflecting an average content of 1003 BTU per Mcf of gas purchased during the Determination Period.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin, and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 9, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34981 Filed 11-26-76;8:45 am]

[Docket No. RI77-7]

GRUY MANAGEMENT SERVICE CO., OPERATOR FOR V. A. HUGHES, ET AL.

Petition for Special Relief

NOVEMBER 18, 1976.

Take notice that on November 5, 1976, Gruy Management Service Co., as operator for V. A. Hughes, et al. (Petitioner), 2501 Cedar Springs Road, Dallas, Texas 75201, filed in Docket No. RI77-7 a petition for special relief pursuant to Order No. 481 and Section 2.76 of the Commission's General Policy and Interpretations (18 CFR § 2.76). Petitioner seeks an increase in its base rate from 35 cents per Mcf to 76.51 cents per Mcf for the sale of natural gas to Texas Gas Transmission Corporation from the Rosa Jones Lease, Carthage Field, Panola County, Texas. Petitioner states that two compressors used to compress gas produced from the lease are in need of repair. Petitioner also states that the wells on the lease are nearing their economic limits and may require plugging should relief not be granted.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34977 Filed 11-26-76;8:45 am]

[Project No. 2640]

KANSAS CITY STAR CO. AND FLAMBEAU PAPER CO.

Application for Transfer of Minor License

NOVEMBER 18, 1976.

Public notice is hereby given that application was filed on September 10, 1976, under the Federal Power Act (16 U.S.C. §§ 791a-825r) by The Kansas City Star Company, Flambeau Paper Division and the Flambeau Paper Company (correspondence to: Norma C. Hoefferle, President, Flambeau Paper Company, Park Falls, Wisconsin 54552) for transfer of the Minor license for the Upper Hydro-Electric Project, FPC No. 2640, located on the North Fork of the Flambeau River in the City of Park Falls, Price County, Wisconsin. The Kansas City Star Company, Flambeau Paper Division, (Licensee) seeks to transfer the project license to the Flambeau Paper Company of Park Falls, Wisconsin.

The Upper Hydro-Electric Project consists of: (1) A reinforced concrete gravity dam approximately 100 feet long and 15 feet high; (2) Four steel tainter gates, each 20.5 feet long; (3) A needle dam approximately 44 feet long; (4) a reservoir with a maximum operating head of 19.3 feet at elevation 1487.4 feet (U.S. G.S.); (5) A 1,300-foot long power canal; (6) Three short open reinforced concrete flumes with steel headgates; (7) A powerhouse containing three 650 horsepower turbines and two 450 kW generators (one turbine is not in use); (8) appurtenant facilities.

Any person desiring to be heard or to make any protests with reference to said application should on or before January 3, 1976 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34975 Filed 11-26-76;8:45 am]

[Docket No. RI77-9]

KENTUCKY OHIO GAS CO.

Petition for Special Relief

NOVEMBER 18, 1976.

Take notice that on November 8, 1976, Kentucky Ohio Gas Company (Petitioner), 2560 Hoods Creek Pike, Ashland, Kentucky, 41101, filed a petition for special relief in Docket No. RI77-9, pursuant to Commission Order No. 481. Petitioner seeks a price of 38 cents per Mcf with a 3 cent annual increase for the sale of gas to Kentucky West Virginia Gas Company. Petitioner states that unless the requested increase is granted, abandonment is imminent. The subject gas is sold from the Big Sandy Field, Brushy & Prater Fork of Right Beaver, Floyd County, Kentucky, under FPC Gas Rate Schedule No. 4.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must

file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34976 Filed 11-26-76;8:45 am]

[Docket No. E-9557]

LAC VIEUX DESERT RIPARIAN OWNERS ASSOCIATION, INC. vs. WISCONSIN VALLEY IMPROVEMENT CO.

Complaint Against Licensee

NOVEMBER 18, 1976.

Public notice is hereby given that a complaint was filed on April 23, 1976, pursuant to Section 1.6 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.6, by the Lac Vieux Desert Riparian Owners Association, Inc. (Correspondence to: Mr. Joseph L. Sieja, President, Lac Vieux Desert Riparian Owners Association, Inc., Post Office Box 333, Land O'Lakes, Wisconsin 54540) against Wisconsin Valley Improvement Company, Licensee for the Lac Vieux Desert Reservoir of FPC Project No. 2113. The reservoir is located in Vilas County, Wisconsin and Gogebic County Michigan, and constitutes the headwaters of the Wisconsin River.

Complainant alleges (1) That Licensee's failure to draw down the water level of the reservoir in accordance with provisions of the license has caused riparian lands to be eroded, damaged, destroyed, or submerged by ice and waters of the reservoir; (2) That excessively high and fluctuating water levels maintained by Licensee have prevented the reproduction of wild rice, thus depriving the reservoir of nutrients and permitting an abnormal weed-growth; (3) That Licensee's operation of the lift-gate type dam of Lac Vieux Desert Reservoir annually causes a substantial kill-off of the fish population by trapping fish in the waters escaping under high pressure from the gate at the foot of the dam; and (4) That Licensee has at times completely closed the lift-gate at the dam, thus permitting no water to pass into the Wisconsin River in violation of the rights of riparian owners below the dam.

By way of relief, Complainant requests that (1) Licensee be required to remove the existing lift-gate type dam and, in lieu thereof, construct a spill-way type dam and fish ladder; (2) That Licensee be required to maintain a constant, stabilized water level of 16.5 inches above 0.0 gage; (3) That future operation and maintenance of the dam be conducted under the direct supervision of a Federal officer for the protection of wildlife and riparian property; and (4) That, in the alternative, future operation and maintenance of the dam be conducted by the Federal Government.

Any person desiring to be heard or to make any protest with reference to said complaint should, on or before January 3, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34974 Filed 11-26-76;8:45 am]

[Docket No. RP73-8; (PGA 77-2a) (PGA 77-3a)]

NORTH PENN GAS CO.

Proposed Changes In FPC Gas Tariff

NOVEMBER 18, 1976.

Take notice that North Penn Gas Company (North Penn) on November 3, 1976 tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause and Federal Power Commission Order issued October 21, 1976, for proposed rates to be effective November 1 and December 1, 1976.

North Penn states that the filings were necessitated by an order issued by the Federal Power Commission on October 21, 1976 in Docket No. RM75-14 which deferred the effectiveness of tariff sheets filed under Opinion No. 770 and a change in rates from Consolidated Gas Supply Corporation filed October 26, 1976 for effectiveness November 1, 1976.

North Penn is requesting a waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates to go into effect as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers, as well as interested state commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34983 Filed 11-26-76;8:45 am]

[Docket No. CP77-53]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

NOVEMBER 18, 1976.

Take notice that on November 9, 1976, Transcontinental Gas Pie Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-53 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis on behalf of Federal Paper Board Company, Inc. (Federal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Federal up to 625 Mcf daily for a period of two years following the date of first delivery, for use at Federal's Riegelwood, North Carolina, mill. It is stated that the transportation service is required by Federal to offset curtailments from its supplier, North Carolina Natural Gas Corporation (NCN), a resale customer of Applicant.

It is stated that the gas to be transported has been purchased by Federal from Southport Exploration, Inc. and Vulcan Materials Company (Southport, et al.) to be produced from the Bayou Piquant Field, Terrebonne Parish, Louisiana. It is further stated that Federal will arrange to have said quantities delivered to a mutually agreeable point on Applicant's Southeast Louisiana Gathering System in Terrebonne Parish and Applicant will redeliver the transportation volumes to existing points of delivery to NCN for the account of Federal. Applicant further asserts that NCN has agreed to transport such quantities of natural gas delivered by Applicant to Federal's Riegelwood, North Carolina, mill.

It is stated that Federal would pay to Applicant an initial charge of 22 cents per Mcf (at 14.7 psia) for all quantities transported and delivered to NCN for Federal's account. It is also stated that Applicant would retain 3.8 percent of the volumes received for transportation as makeup for compressor fuel and line loss, which percentage is based on Applicant's "company use" factor for pipeline throughput to and within Rate Zone 2 in which the delivery by Applicant will be made.

Applicant states that it did not consider the subject natural gas supply to be available for purchase by it because at the time this transaction was consummated, the Commission had given no indication that it would authorize a sale to interstate pipelines at the price level reflected herein. It further states that Southport, et al. was unwilling to make any sales from Bayou Piquant Field to

interstate pipelines for resale or be subject to any form of federal regulation as a result of such sales.

It is asserted that Federal proposes to use the transported gas solely for high priority uses in its coating-drying operations on its two paper machines. It is stated that curtailment of gas to Federal would affect not only Riegelwood Operations but also independent pulpwood harvesters and customers of Federal. It is further asserted that Federal employs over 1,600 people with an annual payroll of $28,400,000 and any curtailment or slowdown of operations would result in a serious economic setback to the area.

The application indicates that Federal would pay Southport, et al., a rate of $1.45 per Mcf from the date of first delivery through the first contract year and effective on the first day of each contract year thereafter, the price would increase 10.0 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing wil be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appeal or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34980 Filed 11-26-76;8:45 am]

[Docket No. RI77-10]

XETRON MINERALS, INC.

Petition for Special Relief and Withdrawal of Abandonment Application

NOVEMBER 18, 1976.

Take notice that on June 16, 1976, Xetron Minerals, Inc. (Xetron), 3274 Brandard, Houston, Texas filed a petition for special relief pursuant to Section 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76) and withdrew its abandonment application filed April 5, 1976, in Docket No. CI76-447 concerning the same well.

Petitioner seeks authorization to charge 213 cents per Mcf for the sale of gas from Susie Rugeley No. 1 well, North Tidehaven Field, Matagorda County, Txas to Tennessee Gas-Pipeline Co., P.O. Box 2511, Houston, Texas. Petitioner states that there are approximately 300,000 to 400,000 Mcf of remaining reserves attributable to the subject well but continued operations are uneconomic because production costs exceed gross revenues.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-34985 Filed 11-26-76;8:45 am]

[Docket No. RP74-41 (PGA77-1)]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

NOVEMBER 22, 1976.

Take notice that Texas Eastern Transmission Corporation on November 12, 1976 tendered for filing proposed changes in its FPC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Twenty-fifth Revised Sheet No. 14. Twenty-fifth Revised Sheet No. 14A. Twenty-fifth Revised Sheet No. 14B. Twenty-fifth Revised Sheets No. 14C. Twenty-fifth Revised Sheet No. 14D.

These sheets are being issued pursuant to the Purchased Gas Cost Adjustment provision contained in Section 23 of the General Terms and Conditions of Texas Eastern's FPC Gas Tariff, Fourth Revised Volume No. 1. The change in Texas Eastern's rates proposed by this filing reflects a change in the cost of gas purchased from Texas Eastern's pipeline supplier, United Gas Pipe Line Company (United). The proposed effective date of the above tariff sheets is November 16, 1976. Texas Eastern has requested the Commission to waive the requirements of Texas Eastern's FPC Gas Tariff and any of the Commission's regulations necessary to allow the above tariff sheets to become effective November 16, 1976, coincident with the effectiveness of United's rate change.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-35065 Filed 11-26-76;8:45 p.m.]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 18, 1976. 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 FPC 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 December 14, 1976, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5216, 425 I Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-376-5425.

FEDERAL POWER COMMISSION

FPC requests an extension no change clearance for continued use of Form 334, Reserve Dedication Report. FPC contemplates that this form will not be incorporated into the FPC Regulatory Information System. The data reporting requirement as stated in FPC Order 459 and as ordered on September 27, 1976, establishes January 1, 1978, as the final deadline for reserve dedication reports. This form will be eliminated in 1978 if no further extensions of the filing date are ordered by the Commission. Respondents are Natural Gas Pipeline

Companies of which FPC estimates there will be a maximum of 26 filing from 1 to 4 forms annually requiring an estimated one-half hour per response to complete.

NORMAN F. HELY,
Regulatory Reports Review Officer.

[FR Doc.76-34882 Filed 11-26-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

TASK FORCE ON NATIVE AMERICAN VOCATIONAL EDUCATION OF THE NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Public Hearing

Notice is hereby given, pursuant to Pub. L. 92-463, that the Task Force on Native American Vocational Education of the National Advisory Council on Vocational Education will hold a hearing open to the public on December 15, 1976, from 9:00 a.m. to 3:30 p.m., local time, at the Airport Marina Hotel, Albuquerque, New Mexico, to receive the testimony of invited witnesses, regarding the effectiveness and status of Indian vocational education in the Southwestern regions of the United States. This hearing is being held in preparation for developing recommendations regarding the administration of the Educational Amendments of 1976, Pub. L. 94-482.

The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968 (20 U.S.C. 1244). The Council is directed to advise the Commissioner of Education concerning the administration of, preparation of general regulations for, and operation of vocational education programs, supported with assistance under the act; review the administration and operation of vocational education programs under the act, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations to the Secretary of HEW for transmittal to the Congress, and conduct independent evaluation of programs carried out under the act and publish and distribute the results thereof.

The meeting of the Task Force shall be open to the public.

Records shall be kept of all Task Force proceedings and shall be available for public inspection at the office of the Council's Executive Director, located in Suite 412, 425-13th Street, N.W., Washington, D.C. 20004.

Signed at Washington, D.C. on November 23, 1976.

REGINALD E. PETTY,
Executive Director.

[FR Doc.76-31564 Filed 11-26-76;8:45 am]

TASK FORCE ON NATIVE AMERICAN VOCATIONAL EDUCATION OF THE NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Public Hearing

Notice is hereby given, pursuant to Pub. L. 92-463, that the Task Force on Native American Vocational Education of the National Advisory Council on Vocational Education will hold a hearing open to the public on December 16, 1976, from 9:00 a.m. to 3:30 p.m., local time, at the Seattle Hyatt House, 17001 Pacific Highway, South, Seattle, Washington, to receive the testimony of invited witnesses, regarding the effectiveness and status of Indian vocational education in the Northwestern region of the United States. This hearing is being held in preparation for developing recommendations regarding the administration of the Education Amendments of 1976, Pub. L. 94-482.

The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968 (20 U.S.C. 1244). The Council is directed to advise the Commissioner of Education concerning the administration of, preparation of general regulations for, and operation of vocational education programs, supported with assistance under the act; review the administration and operation of vocational education programs under the act, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations to the Secretary of HEW for transmittal to the Congress, and conduct independent evaluation of programs carried out under the act and publish and distribute the results thereof.

The meeting of the Task Force shall be open to the public.

Records shall be kept of all Task Force proceedings and shall be available for public inspection at the office of the Council's Executive Director, located in Suite 412, 425-13th Street, N.W., Washington, D.C. 20004.

Signed at Washington, D.C. on November 23, 1976.

REGINALD E. PETTY,
Executive Director.

[FR Doc.76-35165 Filed 11-26-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Secretarial Order No. 2982 (Reservation of Local Easements)]

ALASKA NATIVE SELECTIONS

Waiver of Regulations and Conveyance Procedures

This order waives regulations and procedures to permit the conveyance of certain lands, within 60 days, as mandated by Congress in section 5 of the Act of October 4, 1976, Pub. L. 94-456 (hereinafter the "Act").

Section 5(a) of the Act directs the Secretary to tender conveyance of the lands described in section 5(b) of the Act, subject to valid existing rights, to Cook Inlet Region, Incorporated, within 60 days after the effective date of the Act.

Procedures for issuing conveyances pursuant to the Alaska Native Claims Settlement Act (ANCSA) are described in regulations, 43 CFR 2650, and Secretarial Order No. 2982 (Reservation of Local Easements). The time required to carry out these procedures greatly exceeds the 60 days provided by Congress for tendering conveyance to Cook Inlet Region, Incorporated, pursuant to section 5 of the Act.

It is therefore ordered, as authorized by the terms of 43 CFR 2650.0-8, that regulations within 43 CFR 2650 are waived to the extent necessary to permit the tendering of conveyance to Cook Inlet Region, Incorporated, by December 31, 1976, as mandated by Congress in section 5 of the Act. It is further ordered that the conveyance procedures in Secretarial Order No. 2982 are waived to the extent necessary to permit the tendering of conveyance to Cook Inlet Region, Incorporated, by December 3, 1976, as mandated by Congress in section 5 of the Act.

In compliance with section 17(b) (3) of the NACSA, the Joint Federal-State Land Use Planning Commission and the State of Alaska had until November 12, 1976, to make recommendations with respect to the inclusion of public easements in the conveyance pursuant to section 5 of the Act.

Dated: November 22, 1976.

H. GREGORY AUSTIN,
Acting Secretary of the Interior.

[FR Doc.76-34879 Filed 11-26-76;8:45 am]

DISTRICT MANAGERS; OREGON: SALEM, EUGENE, ROSEBURG, MEDFORD, COOS BAY, LAKEVIEW, BURNS, PRINEVILLE AND BAKER

Redelegation of Authority

Pursuant to the authority contained in section 1.1(a) of Bureau Order 701, as amended, the following specific authority delegated to the State Director in the cited Bureau Order is hereby redelegated to the incumbents of the positions designated.

Section 3.2(j) *Fire Protection.* Under terms of that General Agreement between the State of Oregon and the Bureau of Land Management dated September 29, 1976, the District Managers of the Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville and Baker Districts in Oregon may enter

into Supplemental Agreements with the Oregon State Department of Forestry, for reimbursable fire prevention and presuppression services in amounts not to exceed $30,000 for each Supplemental Agreement.

MURL W. STORMS,
State Director.

Approved: November 19, 1976.

GEORGE L. TURCOTT,
Associate Director.

[FR Doc.76-34930 Filed 11-26-76;8:45 am]

Bureau of Mines

INTERIOR COAL ADVISORY COMMITTEE

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the first meeting of the Interior Coal Advisory Committee will be held Wednesday, December 15, 1976, commencing at 9:00 a.m., in the Persian Ballroom of the Twin Bridges Marriott Motor Hotel, Route 1 and Interstate Highway I-95, Washington, D.C.

The Committee was established October 22, 1976 to advise the Secretary of the Interior and to recommend positions for policy formation and implementation leading to increase the domestic production and use of coal, consistent with national energy, economic and environmental goals.

The purpose of the meeting is to provide orientation for the members and establish an organization plan for carrying on Committee activities.

The agenda includes: a welcome to Committee members by high-level Interior officials; the swearing in of membership; orientation on coal programs and policies of the Department of the Interior, including the Bureau of Mines, the U.S. Geological Survey, the Bureau of Land Management, and the Mining Enforcement and Safety Administration; Committee discussion on coal production and use problems; establishment of ad hoc committees; and future plans for the Committee.

The meeting will be open to the public and space will be provided for approximately 40 persons to attend the meeting in addition to the Committee members.

Further information concerning this meeting may be obtained from Mr. John S. Hoover, Executive Secretary, Room 6043, Bureau of Mines, Department of the Interior, Columbia Plaza, 2401 E Street N.W., Washington, D.C. 20241, telephone number (202) 634-1030. Minutes of the meeting will be available 30 days from the date of the meeting upon written request to the Executive Secretary.

Dated: November 22, 1976.

THOMAS V. FALKIE,
Director, Bureau of Mines.

[FR Doc.76-34916 Filed 11-26-76;8:45 am]

National Park Service

GOLDEN GATE NATIONAL RECREATION AREA ADVISORY COMMISSION

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Tuesday evening, December 14, 1976 at the Golden Gate National Recreation Area Headquarters (Visitor Center), Bldg. 201, Fort Mason, San Francisco, CA.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park System in Marin and San Francisco counties.

Members of the Advisory Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Secretary
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Ms. Gimmy Park Li
Mr. Joseph Mendoza
Mr. John Mitchell
Mr. Merritt Robinson
Mr. Jack Spring
Mr. William Thomas
Dr. Edgar Wayburn
Mr. Joseph Williams

The major items on the agenda will be the vote upon the Fort Miley Subcommittee Report, an update on the planning process, and a report by the Education/Recreation Subcommittee.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact William J. Whalen, General Manager, Bay Area National Parks, Fort Mason, San Francisco, CA 94123, telephone 415-556-2920.

Minutes of the meeting will be available for public inspection by January 24, 1977 in the Office of the General Manager, Bay Area National Parks, Fort Mason, San Francisco, CA.

Dated: November 17, 1976.

JOHN H. DAVIS,
Acting Regional Director, Western Region.

[FR Doc.76-35158 Filed 11-26-76;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CONTROLLED SUBSTANCES

Proposed Aggregate Production Quota for 1977 Amphetamine

Correction

In FR Doc. 76-31786, appearing on page 47976, in the issue for Monday, November 1, 1976, the last two lines of the document should read "hearing (which shall not be less than 30 days after the date of publication)."

CONTROLLED SUBSTANCES IN SCHEDULES I AND II

Establishment of Final 1977 Aggregate Production Quotas; Establishment of An Interim 1977 Aggregate Production Quota for Phenmetrazine

Correction

In FR Doc. 76-33193, appearing at page 49873, in the issue for Thursday, November 11, 1976, the headings should read as set forth above.

IMPORTERS OF CONTROLLED SUBSTANCES

Registration

By Notice dated September 3, 1976, and published in the FEDERAL REGISTER on September 15, 1976 (41 FR 39357), Research Technology Branch, Division of Research, National Institute on Drug Abuse, DHEW, 11400 Rockville Pike, Rockville, Maryland 20852, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

Drug	*Schedule*
Tetrahydrocannabinols	I
Marihuana	I
Lysergic acid diethylamide	I
Etonitozene	I
Psilocybin	I
Psilocyn	I
5-methoxy-3, 4-methylenedioxy amphetamine	I
3,4,5-trimethoxy amphetamine	I
3,4-methoxylenedioxy amphetamine	I
4-bromo-2,5 dimethoxyamphetamine	I
Dimethyltryptamine	I
Bufotenine	I
2,5 dimethoxyamphetamine	I
4-methyl-2,5-dimethoxyamphetamine	I
4-methyl-2,5-dimethoxyamphetamine	I
4-methoxyamphetamine	I

No comments or objections having been received, and, pursuant to section 1008(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and in accordance with 21 CFR 1311.42, the above firm is granted registration as an importer of the basic class

of controlled substances listed above for research purposes only.

Dated: November 18, 1976.

FREDERICK A. RODY, Jr.,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.76-34898 Filed 11-26-76;8:45 am]

IMPORTATION OF CONTROLLED SUBSTANCES

Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 15, 1976, Carlton Turner, Department of Pharmacognosy, School of Pharmacy, University of Mississippi, University, Mississippi 38677, made application to the Drug Enforcement Administration to be registered as an importer of marihuana, a basic class of controlled substance in Schedule I.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than December 30, 1976.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, NW., Washington, D.C. 20537.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: November 18, 1976.

FREDERICK A. RODY, Jr.,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.76-34900 Filed 11-26-76;8:45 am]

MANUFACTURE OF CONTROLLED SUBSTANCES

Registration

By Notice dated August 30, 1976, and published in the FEDERAL REGISTER on September 9, 1976 (41 FR 38194), Eli Lilly & Co., 1249 South White River Parkway, East Drive, Building 30, Indianapolis, IN 46225, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	*Schedule*
Secobarbital	II
Amobarbital	II

That Notice also listed application to bulk manufacture opium powders. Eli Lilly & Co. has withdrawn their request as a bulk manufacturer of opium powders and any proceedings regarding such application are hereby terminated.

No comments or objections having been received to the application regarding secobarbital and amobarbital, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Acting Deputy Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: November 18, 1976.

FREDERICK A. RODY, Jr.,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.76-34899 Filed 11-26-76;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

MEETINGS

The National Commission on Electronic Fund Transfers announces the following: (1) On December 1 and 2, 1976, the Commission will jointly sponsor, with the Nebraska Department of Banking and Finance, an E.F.T. "switching" workshop. The workshop will meet at the Royal Inn Motor Hotel, 4706 S. 108th Street, Omaha, Nebraska. For further information contact the Nebraska Department of Banking and Finance at (402) 471-2171. (2) On December 3, 1976, the full Commission will meet at 10 a.m. in Room 2008 of the New Executive Office Building, located at 17th and Pennsylvania Avenue, NW. in Washington, D.C. The purpose of the meeting is to review Commission testimony. (3) On January 3, 1977, the Commission's Steering Committee will meet in Washington, D.C. (4) On January 11 through 14, 1977, the Commission and its four operating committees will hold a series of meetings in Jacksonville, Florida to discuss the substance of the Commission's interim report in February, 1977. Further details on the January meetings will be published at a later date. (5) Finally, as previously announced at 41 FR 50750 and at 41 FR 51150, the Commission will conduct hearings on December 9 and 10, 1976, in Washington, D.C. on the subject of sharing and on December 14, 15 and 16, 1976, in San Francisco, exploring technological issues related to privacy, security, competition and standards in EFT systems.

Dated: November 24, 1976.

JAMES O. HOWARD, Jr.,
General Counsel.

[FR Doc.76-35185 Filed 11-26-76;8:45 am]

THE NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES

THE ADVISORY COMMITTEE ON NATIONAL GROWTH POLICY PROCESSES

Meeting

Notice is hereby given, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. § 10(a), that the Advisory Committee on National Growth Policy Processes to the National Commission on Supplies and Shortages will conduct its final public meeting on December 10, 1976, in Room 2010 of the New Executive Office Building located at 17th & H Streets, NW, Washington, D.C. The meeting will begin at 9:30 a.m. The entire meeting will be devoted to reviewing the final draft of the Committee's Report and Recommendations to the National Commission on Supplies and Shortages. The Committee's final Report must be submitted to the Commission no later than December 31, 1976.

The objectives and scope of activities of the Advisory Committee on National Growth Policy Processes is "* * * to develop recommendations as to the establishment of a policy-making process and structure within the Executive and Legislative branches of the Federal Government as a means to integrate the study of supplies and shortages of resources and commodities into the total problem of balanced national growth and development, and a system for coordinating these efforts with appropriate multistate, regional and state governmental jurisdictions.

In the event the Committee does not complete its consideration of the items on the agenda on December 10, 1976, the meeting may be continued on the following day or until the agenda is completed.

The meeting is open to the public. The Chairman of the Committee will conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public that wishes to file a written statement with the Committee should mail a copy of the statement to the Advisory Committee on National Growth Policy Processes, 1750 K. Street, NW, 8th Floor, Washington, D.C. 20006, at least five days before the meeting. Members of the public that wish to make oral statements should inform Katherine Soaper, telephone (202) 254-6838, at least five days before the meeting, and reasonable provisions will be made for their appearance on the agenda.

The Advisory Committee is maintaining a list of persons interested in the operations of the Committee and will mail notice of its meetings to those persons. Interested persons may have their names placed on this list by writing James E. Thornton, Executive Director, The Advisory Committee on National Growth Policy Processes, 1750 K. Street, NW, 8th Floor, Washington, D.C. 20006.

Dated: November 23, 1976.

ARNOLD A. SALTZMAN,
Chairman, The Advisory Committee on National Growth Policy Processes.

[FR Doc.76-35027 Filed 11-26-76;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

MUSIC ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Music Advisory Panel (Planning Section) to the National Council on the Arts will be held on December 9-10, 1976, from 9 a.m.-6 p.m., in Room 1425, 2401 E Street, NW, Washington, D.C.

A portion of this meeting will be open to the public on December 10, from 9:30 a.m.-10:30 a.m. and 4 p.m.-6 p.m., on a space available basis. Accommodations are limited. The agenda for these sessions includes summaries of the Composer/Librettist policy meeting and Jazz application review meeting and discussions of the chamber music pilot program and challenge grant program.

The remaining sessions of this meeting, on December 9 from 9 a.m.-6 p.m. and December 10 from 10:30 a.m.-4 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of June 16, 1975, these sessions, which involve matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552 (b), (4), (5), and (6)) will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6377.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.76-35017 Filed 11-26-76;8:45 am]

MUSIC ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on December 7-8, 1976, from 9 a.m.-5:30 p.m., in Room 1345, Columbia Plaza Building, 2401 E Street, NW, Washington, D.C.

A portion of this meeting will be open to the public on December 8, from 3:30-5:30 p.m., on a space available basis. Accommodations are limited. During this session there will be discussions of the orchestra guidelines, challenge grant program and long range planning.

The remaining sessions of this meeting, on December 7, from 9 a.m.-5:30 p.m., and December 8, from 9 a.m.-3:30 p.m., are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of June 16, 1975, these sessions, which involve matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4), (5), and (6)) will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6377.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts, and the Humanities.

[FR Doc.76-35016 Filed 11-26-76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 18, 1976 (44 U.S.C. 3509). The Purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

COMMUNITY SERVICES ADMINISTRATION

Certification of Compliance with Section 311, Economic Opportunity Act, OEO 375, annually, CAA; LPA, Lowry, R.L., 395-3773.

Application For Recognition of a Community Action Agency, OEO 370, annually, CAA; LPA, Lowry, R.L., 395-3772.

Application For Recognition of a CAA Certification, (attorney), OEO 372, annually, CAA; LPA, Lowry, R.L., 395-3772.

Application For Recognition for CAA Notice to Political Subdivision, OEO 374, annually, CAA; LPA, Lowry, R.L., 395-3772.

Participant Characteristics Plan, Cap 84, annually, CAAS and LPA, Lowry, R.L., 395-3772.

DEPARTMENT OF COMMERCE

Economic Development Administration: Local Public Works Payroll Reporting Form, ED-746, weekly, Construction Contractors, LPW Projects, Economics and General Government Division, C. Louis Kincannon, 395-3451.

Identification of LPW Project Officer, Contractors, and Subcontractors, ED-747, on occasion, Local Public Works Program Grantees, Economics and General Government Division, C. Louis Kincannon, 395-3451.

DEPARTMENT OF DEFENSE

Departmental and Other, Reserve Forces Attitude Survey, singletime, Reserve Forces, Richard Eisinger, 395-6140.

REVISIONS

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Commercial Floriculture Survey, annually, Wholesale Flower Growers, Hulett, D. T., 395-4730.

DEPARTMENT OF COMMERCE

Bureau of Census, Animal and Vegetable Fats and Oils—Monthly Report of Producers and Consumers, M 20N, monthly, producers and consumers of fats and oils, Cynthia Wiggins, 395-5631.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, I-130, on occasion, alien relatives, Tracey Cole, 395-5870.

EXTENSIONS

NATIONAL SCIENCE FOUNDATION

Termination of Activity Questionnaire, singletime, Int supported scientists, Caywood, D.P., 395-3443.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Monthly Report of Lunch Service Operations in Commodity Only Schools, FNS-130, monthly, governing body of nonprofit private schools, Marsha Traynham, 395-4529.

Agricultural Marketing Service, Molasses Market News Program (for reporting and dissemination of market news information on molasses and syrups), weekly, molasses dealers, Marsha Traynham, 395-4529.

Packers and Stockyards Administration, statement of construction—telephone system—outside plant, REA-527, on occasion, REA telephone borrowers, Marsha Traynham, 395-4529.

DEPARTMENT OF LABOR

Employment and Training Administration, In-Season Farm Labor Report, ES-223, monthly, State agencies for agriculture reporting areas, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-35007 Filed 11-26-76;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 17, 1976 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), is applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

U.S. INTERNATIONAL TRADE COMMISSION

Producers' Questionnaire (Television Receivers), singletime, U.S. Manufacturers of television receivers, Laverne Vines Collins, 395-5867.

Importers' Questionnaire (Television Receivers), singletime, importers of television receivers, Laverne Vines Collins, 395-5867.

Purchaser' Questionnaire (Television Receivers), singletime, purchasers of television receivers, Laverne Vines Collins, 395-5867.

DEPARTMENT OF AGRICULTURE

Economic Research Service, Evaluation of Automated Cotton Fiber Test Line Results in Marketing, annually, buyers natural resources division, Louis Kincannon, 395-4586.

REVISIONS

ENVIRONMENTAL PROTECTION AGENCY

Descriptive Letters, Reply Postcard, and Questionnaires for Investigations Into Possible Noncompliance of Motor Vehicles With Federal Emission Standards, on Occasion, motor vehicle owners of suspect noncomplying vehicle groups, Tracey Cole, 395-5870.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service, Preliminary Statement of Facts Under Perishable Agricultural Commodities Act, FV-354, on occasion, growers or firms licensed under PACA, Warren Topelius, 395-5870.

Agriculture Research Service, 1977-78 Nationwide Survey of Household Food Consumption and Food Intake of Individuals, Singletime, households in 50 States and Puerto Rico, Milo B. Sunderhauf, 395-6140.

Statistical Reporting Service, December Enumerative Survey, annually, farmers, David T. Hullett, 395-4730.

DEPARTMENT OF COMMERCE

Bureau of the Census, Survey of Industrial Research and Development 1976, RD-1, 2, MA-121, annually, large industrial corporations, Charles E. Ellett, 395-5867.

DEPARTMENT OF THE TREASURY

Departmental and Other Purchases and Sales of Long-term Securities by Foreigners, monthly, banks, brokers, and dealers, David T. Hullett, 395-4730.

Customs Service, Application for Customhouse Broker's License, CF-3124, on occasion, persons wanting customhouse broker's licences, Tracey Cole, 395-5870.

EXTENSIONS

COMMUNITY SERVICES ADMINISTRATION

Certificate of Applicant's Attorney, 393, annually, CAA LPA, Roye L. Lowry, 395-3772.

ENVIRONMENTAL PROTECTION AGENCY

School and Family Health Questionnaire, singletime, households in 1 or 2 communities, Richard Eisinger, 395-6140.

NATIONAL ENDOWMENT FOR THE HUMANITIES

American Library Association Evaluation, singletime, librarians, heads of community organizations, human resources division, Louis Kincannon, 395-4586.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-35008 Filed 11-26-76;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Generalized System of Preferences; Notice of Additional Matters To Be Included in Public Hearings

1. *Additional petitions accepted for review.* Notice is hereby given by the Chairman of the Trade Policy Staff Committee (TPSC) of acceptance for review of additional petitions for modifications of the list of articles receiving duty-free treatment under the Generalized System of Preferences (GSP). Annex I to this notice lists these newly-accepted petitions, which, along with the petitions and other matters listed in the FEDERAL REGISTER of Friday, November 19, 1976 (41 FR 51375), will be the subject of the public hearings described below.

2. *Revisions.* Case Number 76-B-30 in Annex I to the FEDERAL REGISTER notice of Friday, November 19, 1976 (41 FR 51375) included a request to withdraw GSP benefits for item 706.03, Tariff Schedules of the United States (TSUS), providing for leather luggage and handbags. Because TSUS item 706.03 is not now designated as an article eligible for GSP treatment, that portion of the petition in Case Number 76-B-30 covering leather luggage and handbags will not be a subject of the scheduled hearings.

Case Number 76-B-1, listed in Annex I to the FEDERAL REGISTER notice of November 19, pertaining to TSUS item 709.27, will not be a subject of the hearings because the petitioner has withdrawn his request.

The following language, which appeared in Annex II to the FEDERAL REGISTER notice of November 19, should be deleted from that notice and will not be a subject of the public hearings:

(1) The language that appeared below TSUS item 126.71, and that stated:

Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):

(2) The language that appeared below TSUS item 140.38 and that stated: "Peas:".

(3) The language that appeared below TSUS item 152.05 and that stated:

Fruit juices, including mixed fruit juices, concentrated or not concentrated, whether or not sweetened: Not mixed and not containing over 1.0 percent of ethyl alcohol by volume:

(4) The number "799.00" that appeared opposite the word "Other", so that the language will read:

Other: 799.00 (pt) Mosquito repellents containing allethrin or pyrethrin or both

3. *Public hearings.* Hearings will begin at 10 a.m. on Tuesday, December 14, 1976, in Room 2008 of the New Executive Office Building (entrance on 17th Street between Pennsylvania Avenue and H Street, NW), Washington, D.C., and will continue until all witnesses wishing to appear have been heard. Further information about these hearings, including the method and requirements for applying to appear, may be obtained by consulting the FEDERAL REGISTER notice of Friday, November 19, 1976 (41 FR 51375), or by contacting the Secretary, Trade Policy Staff Committee, Office of the Special Representative for Trade Negotiations, 1800 G Street, NW, Washington, D.C. 20506. The telephone number of the Secretary is (202) 395-3395.

WILLIAM B. KELLEY, Jr.,
Chairman,
Trade Policy Staff Committee.

ANNEX I.--PETITIONS ACCEPTED FOR REVIEW

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action requested
		(The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.)		
76-B-44		Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases, and similar boxes, cases, and chests, all the foregoing of wood: [Cigar and cigarette boxes] Other:	American Toy & Furniture Co., Inc. Chicago, Ill.	Designate the article as eligible for GSP benefits
	204.40 or 204.40 (pt.)	Not lined with textile fabrics or Boxes or cases for carpenter's tools		
76-B-45		Dolls, and parts of dolls including doll clothing:	Ideal Toy Corporation Hollis, N.Y.	Designate the article as eligible for GSP benefits
	737.2060	Doll clothing imported separately		
76-B-46		Yarns and roving, of vegetable fibers (except cotton): Of jute: Singles:	Ludlow Corporation Needham Heights, Mass.	Withdraw GSP benefits
	305.20	Measuring under 720 yards per pound		
	305.22	Measuring 720 yards or over per pound		
		Plied:		
	305.28	Measuring under 720 yards per pound		
	305.30	Measuring 720 yards or over per pound		
		Narrow fabrics: Of vegetable fibers:		
	347.30	Webbing, of jute		
76-B-47		Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal: Articles, wares, and parts, of base metal, not coated or plated with precious metal: Of iron or steel: Not enameled or glazed with vitreous glasses: [Cast articles, coated] [Of tin plate] Other: [Toilet and sanitary ware] Other: [Stainless steel] [Chrome-plated ware] Other:	Atlanta Stove Works, Inc. Atlanta, Ga.	Withdraw GSP benefits
	653.9560 or 653.9560 (pt.)	Cooking ware or Cast-iron cooking ware		
76-B-48	685.90	Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof	Volkswagen de Mexico, S.A. de C.V. Mexico	Subdivide the items in such a manner as to permit imports from Mexico to receive GSP benefits
	or 685.90 (pt.)	or Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof, to be used as parts for automobiles		
		Chassis, bodies (including cabs), and parts of the foregoing motor vehicles: [Bodies (including cabs) and chassis] Other: [Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery]		
	692.27	Other		

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

[FR Doc.76-35122 Filed 11-26-76;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

NORTHEAST NUCLEAR ENERGY CO., ET AL.

Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 34 to Provisional Operating License No. DPR-21 issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company, for operation of the Millstone Nuclear Power Station, Unit No. 1, located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

This amendment to the Technical Specifications will (1) provide revised operating limits for fuel cycle 5 operation and (2) provide for a modification to the startup High Flux reactor trip. In regard to the latter modification, the Average Power Range Monitors (APRM) will be used in addition to the Intermediate Range Monitors (IRM) for performing the stated trip function. The Surveillance Requirements for the IRMs and APRMs are also modified to reflect the High Flux reactor trip design change.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 18, 1976 (as supplemented on October 14, 1976 and November 3, 1976) and October 18, 1976, (2) Amendment No. 34 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H. Street, NW, Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 19th day of November, 1976.

JAMES J. SHEA,
Acting Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.76-34993 Filed 11-26-76;8:45 am]

[Docket No. STN 50-484]

NORTHERN STATES POWER COMPANY (MINNESOTA) ET AL.

Receipt of Additional Antitrust Information; Time for Submission of Views

Northern States Power Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed on August 20, 1976, information requested by the Attorney General for Antitrust Review as required by 10 CFR 50, Appendix L. This information adds Cooperative Power Association, Dairyland Power Cooperative, and Lake Superior District Power Company as owners of the Tyrone Energy Park, Unit No. 1.

The information was filed by Northern States Power Company (Minnesota) in connection with an application for a construction permit and operating license for a pressurized water nuclear reactor to be located on the applicants' site in Dunn County, Wisconsin. The Tyrone Energy Park, Unit No. 1 is a SNUPPS standardized plant design.

The original antitrust portion of the application was submitted on April 30, 1974, and Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicants' Environmental Report; Time for Submission of Views on Antitrust Matters was published in the FEDERAL REGISTER on August 30, 1974 (39 FR 31683). The Notice of Hearing was published in the FEDERAL REGISTER on August 30, 1974 (39 FR 31688).

A copy of all the above stated documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the University of Wisconsin, Stout Library, Menomonie, Wisconsin 54751.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Antitrust and Indemnity Group, Nuclear Reactor Regulation, on or before January 10, 1977.

Dated at Bethesda, Maryland, this 2nd day of November, 1976.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc.76-32768 Filed 11-5-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS WORKING GROUP ON PRESSURIZED WATER REACTOR PRESSURE VESSEL BLOWDOWN FORCES

Meeting

The following is a revision of the notice originally published on November 15, 1976, 41 FR 50361 and treats changes to the meeting schedule.

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Working Group on Pressurized Water Reactor Pressure Vessel Blowdown Forces will meet on December 1, 1976, at the Quality Inn, 5245 West Century Boulevard, Los Angeles, CA. The purpose of this meeting is to continue the Committee's review of the calculations of loading on reactor pressure vessels and their supports under severe accident conditions.

The agenda for the subject meeting shall be as follows:

WEDNESDAY, DECEMBER 1, 1976

8:30 A.M.-9 A.M.

The Working Group will meet in open Executive Session, with any of its consultants who may be present, to explore their preliminary opinions, based upon their independent review of reports regarding matters which should be considered during the open sessions in order to formulate a Working Group report and recommendations to the full Committee.

9 A.M.-12:30 P.M.

The Working Group will meet in closed session with representatives of the NRC Staff, the Westinghouse Electric Corporation, and their consultants, to discuss properietary material relating to the calculation of blowdown loadings on reactor pressure vessels and their supports under severe accident conditions.

1:30 P.M.-2 P.M.

The Working Group will meet in open session with representatives of the NRC Staff, and their consultants, to discuss the status of the NRC review of Babcock and Wilcox and Combustion Engineering models for calculating the blowdown loadings on reactor pressure vessels and their supports under severe accident conditions.

2 P.M. UNTIL 4 P.M.

The Working Group will meet in open session with representatives of the NRC Staff, and their consultants, to discuss NRC funded research dealing with the modeling of blowdown forces.

4 P.M.-4:30 P.M.

The Working Group will meet in open session with members of the Westinghouse Owners' Group to discuss the goals of the Owners' Group and the concept of augmented inservice inspection as applied to Westinghouse PWRs.

4:30 P.M.-5 P.M.

The Working Group will meet in open session with members of the Combustion Engineering Owners' Group to discuss the goals of the Owners' Group, the concept of augmented inservice inspections, and estimates of the relative probability of pipe rupture at various locations in Combustion Engineering PWRs.

5 P.M.–5:30 P.M.

The Working Group will meet in closed Executive Session with any of its consultants who may be preesnt to discuss matters involving proprietary material which has been presented during the meeting.

5:30 P.M.–5:45 P.M.

The Working Group will meet in open session with members of the NRC Staff, Westinghouse Electric Corporation, and the Westinghouse and Combustion Engineering Owners' Groups, and their consultants to summarize their evaluations and conclusions.

At the conclusion of the open session, the Working Group may caucus in a brief, closed session to determine whether the matters identified in the initial closed session have been adequately covered and whether the project is ready for review by the full Committee. During this session, Working Group members and consultants will discuss their opinions and recommendations on these matters.

In addition to these closed deliberative sessions, it may be necessary for the Working Group to hold one or more closed sessions for the purpose of exploring with the NRC Staff and participants matters involving proprietary information.

I have determined, in accordance with subsection 10(d) of Pub. L. 92–463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Working Group's deliberative process (5 U.S.C. 552(b)(5), and to protect proprietary information (5 U.S.C. 552(b)(4)). Separation of factual material from individuals' advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Working Group is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

Provisions with respect to public participation contained in the Federal Register Notice of Monday, November 15, 1976, Vol. 41, No. 221, are still in effect.

A copy of the transcript of the open portion of the meeting will be available for inspection on or after December 8, 1976 at the NRC Public Document Room, 1717 H St., NW., Washington, DC 20555.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document 1717 H St., NW., Washington, D.C. 20555 after March 1, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: November 24, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76-35235 Filed 11-26-76;9:35 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.39, Revision 1, "Housekeeping Requirements for Water-Cooled Nuclear Power Plants," describes an acceptable method of complying with the Commission's regulations with regard to housekeeping requirements for the control of work activities, conditions, and environments at water-cooled nuclear power plant sites. This guide endorses ANSI Standard N45.2.3–1973, "Housekeeping During the Construction Phase of Nuclear Power Plants." This revision is intended to clarify the staff's position on the requirements and guidelines included in ANSI N45.2.3–1973.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 1.39, Revision 1, will, however, be particularly useful in evaluating the need for an early revision if received by January 28, 1977.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 22nd day of November 1976.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.76-35001 Filed 11-26-76;8:45 am]

[Docket No. 50-2]

UNIVERSITY OF MICHIGAN

Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. R-28, issued to The University of Michigan (the licensee), which renews the license for operation of the Ford Nuclear Reactor (the facility) located in Ann Arbor, Michigan. The facility is a research reactor that has been operating since September 1957 and is currently licensed to operate at 2 magawatts (thermal). The amendment is effective as of its date of issuance.

The amendment extended the duration of the Facility Operating License No. R-28 until February 17, 1985. The amendment also incorporated Technical Specifications in the license for operation of the facility and restated the license in its entirety utilizing the Commission's current license format.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rule and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of the proposed issuance of this action was published in the FEDERAL REGISTER on October 4, 1976 (41 FR 43782). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5 (d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated September 23, 1974, and April 24, 1974, and supplements thereto dated June 4 and 20, 1974, and February 25, 1975, (2) Amendment No. 21 to License No. R-28, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this sixteenth day of November, 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.76-34999 Filed 11-26-76;8:45 am]

[Dockets Nos. 50-266 and 50-301]

WISCONSIN ELECTRIC POWER CO. AND WISCONSIN MICHIGAN POWER CO.

Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 23 and 27 to Facility Operating Licenses Nos. DPR-24 and DPR-27 issued to Wisconsin Electric Power Company and Wisconsin Michigan Power Company, which revised Technical Specifications for operation of the Point Beach Nuclear Plant Units Nos. 1 and 2, located in the town of Two Creeks, Manitowoc County, Wisconsin. The amendments are effective as of the date of issuance.

These amendments consist of changes in the Technical Specifications that will correct a typographical error associated with the interval for performing selected analysis of the operational radiological environmental monitoring program.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 11, 1976, (2) Amendment No. 23 to License No. DPR-24, (3) Amendment No. 27 to License No. DPR-27, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the University of Wisconsin-Stevens Point Library, ATTN: Mr. Arthur M. Fish, Stevens Point, Wisconsin 54481.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 22nd day of November, 1976.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.76-35000 Filed 11-26-76;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the third meeting of the Board for International Food and Agricultural Development on December 22, 1976. The purpose of the meeting is to further develop policies, priorities and procedures in dealing with the duties and responsibilities of the Board as set forth in Title XII of the "International Development and Food Assistance Act of 1975" and to acquaint itself fully with the relationships between the United States and other donors of economic assistance. The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m., and will meet in Room 1105, U.S. Department of State, 21st and Virginia Avenue. The meeting is open to the public. Dr. Erven J. Long, Associate Assistant Administrator, is designated as the Federal Officer at the meeting. It is suggested that those desiring more specific information contact him at 21st and Virginia Avenue, NW., Washington, D.C., 20523 or call area code 202-632-3800.

Dated November 23, 1976.

ERVEN J. LONG,
Federal Officer, Board for International Food and Agricultural Development.

[FR Doc.76-35086 Filed 11-26-76;8:45 am]

[CM-6/136]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on radiocommunications of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 2 p.m. on Thursday, December 16, 1976, in Room 8440 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Seventeenth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO), scheduled to be held in London February 21-25, 1977. In particular, the working group will discuss the following topics:

Promulgation of navigational warnings to shipping;

Operational standards for shipboard radio equipment;

Operational requirements for emergency position-indicating radio beacons and portable radio apparatus for survival craft;

Matters resulting from the World Maritime Administrative Radio Conference, 1974, and the work of the International Radio Consultative Committee.

Requests for further information on the meeting should be directed to Lt. F. N. Wilder, United States Coast Guard. He may be reached by telephone on (area code 202) 426-1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

NOVEMBER 11, 1976.

[FR Doc.76-34928 Filed 11-26-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[76 218]

NATIONAL BOATING SAFETY ADVISORY COUNCIL VISUAL DISTRESS SIGNALS SUBCOMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the National Boating Safety Advisory Council's Visual Distress Signals Subcommittee to be held on Friday, December 17, 1976, in Room 6319, Trans Point Building, 2100 Second Street, SW. Washington, D.C. The meeting is scheduled to begin at 9:00 a.m. and adjourn in mid-afternoon.

The purpose of this meeting is to review the results of a live on-the-water practical demonstration of signaling devices for day and night use. This demonstration will take place on Thursday, December 16, 1976, at Annapolis, Maryland beginning at 2:00 p.m. and continuing about 8:00 p.m.

Attendance at both the demonstration and the meeting is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from Cdr. M. Tubella, Jr., Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA/TRPT), Washington, D.C. 20590, or by calling (202) 426-1080. Any member of the public may present a written statement to the Council's Subcommittee at any time.

Issued in Washington, D.C. on November 19, 1976.

D. F. LAUTH,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Boating Safety.

[FR Doc.76-35284 Filed 11-26-76;12:18 pm]

Federal Railroad Administration

[FRA Docket No. HS-4, Notice No. 4]

HOURS OF SERVICE ACT INTERPRETATIONS

Further Extension of Time to Comment

On September 28, 1976 the Federal Railroad Administration (FRA) pub-

lished in the FEDERAL REGISTER a proposed statement of agency policy and interpretation concerning the Hours of Service Act, as amended (45 U.S.C. 61–64b) (41 FR 42692). On November 2, 1976, FRA published in the FEDERAL REGISTER a notice extending the time for comment to November 29, 1976 and announcing a public conference which was to have been convened in Chicago on November 19, 1976 at the initiative of FRA (41 FR 48163). On November 16, 1976, FRA published in the FEDERAL REGISTER a notice announcing postponement of the public conference on an indefinite basis (41 FR 50522).

FRA has now determined that the rescheduling of a public conference cannot be accomplished within a sufficiently short period of time to permit an expeditious conclusion of this matter. There having been no written request for such a conference, it will not be rescheduled.

However, it has come to the attention of FRA that industry and employee representatives may wish to file a joint submission on certain of the issues and that a small amount of additional time is required for preparation of that information. Therefore, FRA hereby extends the period for comment through December 10, 1976. Comments received by that date will be considered in developing the final statement of agency policy and interpretation. All submissions should be made in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

Issued in Washington, D.C. on November 26, 1976.

DONALD W. BENNETT,
Associate Administrator for Safety.

[FR Doc.76-35276 Filed 11-26-76;11:27 am]

Office of Pipeline Safety Operations

TECHNICAL PIPELINE SAFETY STANDARDS COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Technical Pipeline Safety Standards Committee to be held December 16 and 17, 1976, at 9:00 a.m., in Conference Room 3201 of the Trans Point Building, 2100 Second Street, SW., Washington, D.C. The agenda for this meeting is as follows: (1) Proposed rule changes on (i) Corrosion Control of Small Metal Fittings in Plastic Pipelines (Notice 76–1), and (ii) Longitudinal Seams in Pipe Bends (Notice 76–2); (2) Proposed revision of gas reporting forms; (3) Procedures for converting a pipeline from liquid to gas; (4) Existing Federal gas pipeline regulations which should be changed or updated because of new circumstances or technology; and (5) How the Federal safety regulatory jurisdiction over master meter systems should be exercises.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements should notify, not later than 3:00 p.m. December 15, 1976, and information may be obtained from, David A. Watson, Office of Pipeline Safety Operations, 2100 Second Street, S.W., Washington, D.C. 20590, (202) 426-2392. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on November 23, 1976.

CESAR DELEON,
Acting Director, Office of Pipeline Safety Operations.

[FR Doc.76-35285 Filed 11-26-76;12:18 pm]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ADVISORY COMMITTEE ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS

Establishment

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463) and appropriate Federal Regulations, the Secretary of the Treasury announces the establishment of an Advisory Committee on Private Philanthropy and Public Needs.

Philanthropy has long played a central role in our pluralistic American life. As an addition and sometimes as an alternative to government, private philanthropy has strengthened the deeply rooted American conviction that no single institutional structure should exercise a monopoly on filling public need.

It is estimated that the value of private giving in terms of monetary gifts and labor exceeds $50 billion a year.

Yet, in spite of this monumental impact, there is a scarcity of information upon which sound government policies can be formulated.

To assist Treasury in its on-going need to formulate tax and regulatory policy affecting philanthropic and voluntary organizations, the Secretary needs the benefit of a broad range of views pertaining to such matters. It is anticipated that this advisory committee, comprised of a cross-section of philanthropic interests would guide the Secretary in determining the types of information to be collected and analyzed.

Questions or suggestions for committee membership should be made by December 10, 1976, to John Webster, Special Assistant to the Secretary for Consumer Affairs, Room 1454 Main Treasury Building, 15 and Pennsylvania Avenue, Washington, D.C. 20220 (202-566-5487).

GEORGE DIXON,
Deputy Secretary of the Treasury.

[FR Doc.76-35052 Filed 11-26-76;8:45 am]

Office of the Secretary

SACCHARIN FROM JAPAN

Antidumping Proceeding

On October 20, 1976, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Sherman-Williams Company of Cleveland, Ohio, indicating the possibility that saccharin from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

For the purposes of this notice the term "saccharin" means sodium saccharin in soluble powder and soluble granular form.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This evidence indicates that imports of saccharin from Japan have substantially undersold the domestic product and that such underselling is roughly equivalent to the alleged margins of sales at less than fair value. That underselling has apparently contributed to the substantial share of the United States market for saccharin held by the Japanese. Other data indicate that the petitioner, the sole U.S. producer, has suffered a relative decline in profits and increased excess capacity in its manufacturing facility.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: November 22, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.76-34953 Filed 11-26-76;8:45 am]

SACCHARIN FROM THE REPUBLIC OF KOREA

Antidumping Proceeding

On October 20, 1976, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Sherman-Williams Company of Cleveland, Ohio, indicating the possibility that saccharin from the Republic of Korea is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

For the purposes of this notice the term "saccharin" means sodium saccha-

rin in soluble powder and soluble granular form.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This evidence indicates that imports of saccharin from the Republic of Korea have substantially undersold the domestic product and that such underselling is roughly equivalent to the alleged margins of sales at less than fair value. That underselling has apparently contributed to the substantial share of the United States market for saccharin held by the Republic of Korea. Other data indicate that the petitioner, the sole U.S. producer, has suffered a relative decline in profits and increased excess capacity in its manufacturing facility.

Having conduted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: November 22, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.76-34954 Filed 11-26-76;8:45 am]

[Public Debt Series—No. 32-76]

TREASURY NOTES SERIES F–1980

NOVEMBER 23, 1976.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders for $2,500,000,000, or thereabouts, of securities of the United States, designated Treasury Notes of December 31, 1980, Series F–1980 (CUSIP No. 912827 GF 3). The securities will be sold at auction wtih bidding on the basis of yield, and with the interest rate and the price equivalent of each accepted bid to be determined as set forth below. Additional amounts of these securities may be issued to Government accounts and to Federal Reserve Banks for their own account in exchange for maturing Treasury securities being held by them, and to Federal Reserve Banks, as agents of foreign and international monetary authorities, for new cash only.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated December 7, 1976, and will bear interest from that date, payable on a semiannual basis on June 30, 1977, and each 6 months thereafter on December 31 and June 30 until the principal amount becomes payable. They will mature December 31, 1980, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The securities will be subject to the general regulations of the Department of the Treasury governing United States securities, now or hereafter prescribed.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Tuesday, November 30, 1976. Noncompetitive tenders, as defined below, will be considered timely if postmarked no later than Monday, November 29, 1976.

3.2. Each tender must state the face amount of securities bid for, which must be $1,000 or a multiple thereof. Competitive tenders must show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers, provided the names of the customers and the amount for each customer are furnished. Others will not be permitted to submit tenders except for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States and political subdivisions or instrumentalities thereof; public pension and retirement and other public funds; international organizations in which the United States holds membership, foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, following which public announcement will be made of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full at the average price (in three decimals) of accepted competitive tenders, and competitive tenders with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be determined at a ⅛ of one percent increment that translates into an average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price corresponding to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of yield. Additional tenders received from Government accounts and Federal Reserve Banks will be accepted at the average price of accepted competitive tenders.

3.6. Those submitting competitive tenders will be advised of the acceptance or rejection thereof. Those submitting noncompetitive tenders will not be notified except when the tender is not accepted in full or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the

amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when he deems it to be in the public interest, and his action in any such respect shall be final.

5. PAYMENT AND DELIVERY

5.1. Settlement for securities allotted hereunder must be made or completed on or before Tuesday, December 7, 1976, at the Federal Reserve Bank or Branch, or the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Friday, December 3, 1976, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Thursday, December 2, 1976, if the check is drawn on a bank in another Federal Reserve District. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be deemed to have been completed where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 55 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for securities allotted hereunder are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. Specific instructions for the issuance and delivery of the new securities, signed by the owner or his authorized representative, must accompany the securities presented. Otherwise, the presented securities should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered herein) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered herein) to be delivered to (name and address)." Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for the securities offered herein, when such securities are available, at any Federal Reserve Bank or Branch, or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

EDWIN H. YEO III,
Acting Secretary of the Treasury.

[FR Doc.76-35085 Filed 11-24-76;11:05 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 198]

ASSIGNMENT OF HEARINGS

NOVEMBER 22, 1976.

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 hearing 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 2202 Sub 478, Roadway Express, Inc., now being assigned for continued hearing on December 13, 1976 (4 days), at Atlanta Ga. will be held in the Peachtree Plaza Hotel, Peachtree at Cain.

MC 124839 (Sub-No. 29), Builders Transport, Inc. application dismissed.

MC 119908 (Sub-No. 36), Western Lines, Inc. application dismissed.

MC 97310 (Sub-No. 20), Sharron Motor Lines, now being assigned for continued hearing on December 14, 1976 (3 days), at the Ramada Inn Airport, 5216 Airport Highway, Birmingham, Alabama.

MC-F-12234, Century Express, Ltd.—Purchase—Lansdale Transportation Co., Inc., MC-F-12604, St. Johnsbury Trucking Company, Inc.—Purchase (Portion)—Lansdale Transportation Company, Inc. (Century Express Ltd., Assignor), MC 108473 (Sub-No. 37), St. Johnsbury Trucking Company, Inc., MC-F-12605, H. W. Taynton Company, Inc.—Purchase (portion)—Lansdale Transportation Company, Inc. (Century Express Ltd., Assignor) and MC 109831 (Sub-No. 44), H. W. Taynton Company, Inc., now assigned December 7, 1976, at Washington, D.C. is postponed to January 11, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34908 Filed 11-26-76;8:45 am]

[Notice No. 197]

ASSIGNMENT OF HEARINGS

NOVEMBER 22, 1976.

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.

CORRECTION

MC 134922 (Sub-No. 175), B. J. McAdams, Inc. now being assigned January 31, 1977 (1 day) at Chicago, Illinois instead of January 30, 1977 (1 day) at Chicago, Illinois in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34909 Filed 11-26-76;8:45 am]

[Rule 19; Ex Parte No. 241; 6th Rev. Exemption No. 128]

ATCHISON, TOPEKA AND SANTA FE RAILROAD CO.

Exemption Under Provision of Mandatory Car Service Rules

To: The Atchison, Topeka and Santa Fe Railroad Company
Chicago and North Western Transportation Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Rock Island and Pacific Railroad Company

Illinois Central Gulf Railroad Company
Louisville and Nashville Railroad Company
Missouri-Illinois Railroad Company
Missouri Pacific Railroad Company
St. Louis Southwestern Railway Company
Seaboard Coast Line Railroad Company
Southern Railway Company

It appearing, that the eleven railroads listed below have mutually agreed to the use of each other's empty plain cars having mechanical designations "XM", "FM"-less than 200,000 lbs., "GA", "GB", "GD", "GH", and "GS" and bearing reporting marks assigned to such carriers.

It further appearing, that these eleven railroads have mutually agreed to participate in an Expanded Clearinghouse Project in which each road will treat the cars of the other ten roads as systems, with the Car Service Division of the AAR acting as agent.

It is ordered, that pursuant to the authority vested in me by Car Service Rule 19, empty plain cars described in the Official Railway Equipment Register I.C.C.-R.E.R. No. 401, issued by W. J. Trezise or successive issues thereof, as having mechanical designations "XM", "FM"-less than 200,000 lbs., "GA", "GB", "GD", "GH", and "GS" and bearing the following reporting marks are exempt from the provisions of Car Service Rules 1[1] and 2[1] while on the lines of any of the above named railroads.

The Atchison, Topeka and Santa Fe Railroad Company
Reporting Marks: ATSF Effective August 22, 1976.[2]

Chicago and North Western Transportation Company
Reporting Marks: CNW-CGW-CMO-FDDM-MSTL Effective October 17, 1976.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Reporting Marks: MILW Effective July 15, 1976.

Chicago, Rock Island and Pacific Railroad Company
Reporting Marks: I-ROCK Effective September 12, 1976.

Illinois Central Gulf Railroad Company
Reporting Marks: ICG-GM&O-IC Effective August 22, 1976.

Louisville and Nashville Railroad Company
Reporting Marks: L&N-CIL-MON-NC Effective August 15, 1976.

Missouri-Illinois Railroad Company
Reporting Marks: MI Effective July 15, 1976.

Missouri Pacific Railroad Company
Reporting Marks: MP-C&EI-CEI-KO&G-T&P Effective July 15, 1976.

St. Louis Southwestern Railway Company
Reporting Marks: SSW Effective July 25, 1976.

Seaboard Coast Line Railroad Company
Reporting Marks: SCL-ACL-C&WC-SAL Effective August 15, 1976.

Southern Railway Company
Reporting Marks: SOU-AEC-CG-GF-NS-SA Effective July 15, 1976.[2]

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[1] Change in Rule reference.

[2] Chicago & Eastern Illinois Railroad and Texas & Pacific Railway Company eliminated. Merged into Missouri Pacific Railroad Company October 15, 1976.

It is further ordered, that this order will become effective for specific ownerships on dates to be set by the Car Service Division as each road is phased into the Project starting July 15, 1976, the Car Service Division to issue appropriate notification to Project participants, and to advise the undersigned.

Expires February 15, 1977.

Issued at Washington, D.C., November 11, 1976.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.76-34915 Filed 11-26-76;8:45 am]

[Notice No. 75]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

NOVEMBER 26, 1976.

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 December 16, 1976. 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-76551. Republication. By order entered November 18, 1976, the Motor Carrier Board approved the transfer to Three-B Freight Service, Inc., Chino, Calif., of the operating rights set forth in Certificate No. MC-120575 (Sub-No. 3), and Certificate of Registration No. MC-120575 (Sub-No. 4), issued July 17, 1974, and August 27, 1974, respectively, to Aztec Transportation Company, Inc., San Diego, Calif. 92101, authorizing the transportation of general commodities, between specified points in California. Milton W. Flack, 4311 Wilshire Boulevard, Los Angeles, Calif., 90010. The purpose of this republication is to include Certificate of Registration No. MC-120575 (Sub-No. 4) in the authority approved for transfer.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34906 Filed 11-26-76;8:45 am]

[Notice No. 74]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) 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.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 29, 1976. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

Finance Docket No. 28259, filed August 19, 1976. Transferee: INTERSTATE RENTAL OF UTAH, INC., 2475 South 3270 West, Salt Lake City, Utah 84119. Transferor: Harry H. Blanco & Co., dba Mid-Pacific Freight Forwarders, Vernon, California. Applicants' Representative: Ann M. Pougiales, Loughran & Hegarty, 100 Bush Street, 21st Floor, San Francisco, Calif. 94104. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Permit and Order No. FF-399, issued June 5, 1974, authorizing operations as a freight forwarder in the transportation of General Commodities (with exceptions) between specified points in California, on the one hand, and, on the other, ports of entry located at Los Angeles, Long Beach, San Francisco, and Oakland, Calif., restricted to the forwarding of shipments having an immediately prior or subsequent movement by water; and between specified points in California, on the one hand, and, on the other, points in Hawaii, with certain restrictions. Transferee presently holds no authority from this Commission.

Finance Docket No. 28293, filed September 14, 1976. Transferee: WILLAMETTE-WESTERN CORPORATION,

Foot of North Portsmouth Avenue, Portland, Oregon 97203. Transferor: Bert Howard (Rainier National Bank, Guardian), and Lester Howard, a Partnership, dba Atlas Tug Service, Longview, Washington 98632. Applicants' Representative: Norman E. Sutherland, White, Sutherland, Parks & Allen, 1200 Jackson Tower, Portland, Oregon 97205. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. W-401, issued, February 17, 1947, authorizing operations as a common carrier by towing vessels in performance of general towage between ports and points along the Columbia River and its tributaries below and including Bonneville, Oreg., and along the Willamette River and its tributaries below the confluence with the Yamhill River. Transferee presently holds authority from this Commission as a common carrier by water under authority in Certificate No. W-643, and subs.

No. MC-76755, filed October 8, 1976. Transferee: EMPIRE STATE MOTOR EXPRESS, INC., 8414 East Main Road, LeRoy, New York 14482. Transferor: Estate of William W. Roffe, doing business as Genesee Valley Express, 112 Main Street, Leicester, New York 14481. Applicants' Representative: William J. Hirsch, Esq., 43 Court Street, Buffalo, New York 14202. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration No. MC-120611 (Sub-No. 1), issued December 9, 1963, as follows: general commodities, between all points in Livingston County, on the one hand, and, on the other, all points in Monroe County, N.Y. Transferee is presently authorized to operate as a common carrier under Certificate No. MC-38809. Application has been filed for temporary authority under section 210a(b).

No. MC-FC-76758, filed September 29, 1976. Transferee: Jerome A. Werth, doing business as Jerome A. Werth and Sons, Rural Route No. 1, Oakley, Kansas 67748. Transferor: Zelfer, Inc., Rural Route No. 1, P.O. Box 263, Colby, Kansas. Attorney for applicants: Clyde N. Christey, 514 Capitol Federal Bldg., 700 Kansas Avenue, Topeka, Kansas 66603. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 124739, issued January 21, 1976, as follows: (1) Lumber, from points in Oregon and Idaho, to points in Kansas; (2) hay, grain, and feed, from specified points in Nebraska to Orion, Kans., and points within 35 miles thereof; (3) Agricultural implements and agricultural implement parts, from Kansas City, Mo., to specified points in Kansas; (4) livestock, between Kansas City, Mo. and Kansas City, Kans., on the one hand, and, on the other, Orion, Kans. and points within 75 miles of Orion, between Orion, Kansas and points within 75 miles of Orion, on the one hand, and, on the other specified points in Nebraska and Colorado, between Ness City, Kans., and points in Lane County, Kans., on the one hand, and, on the other, Kansas City, Mo., McCook, Nebr., and Burlington and Pueblo, Colo. (5) household goods as defined, between Orion, Kans. and points within 35 miles of Orion on the one hand, and, on the other points in Nebraska, from points in Lane County, Kans., to points in Colorado and Nebraska; (6) mill feeds, from Kansas City, Mo., to points in Lane County, Kans., (7) farm machinery, hardware and lumber, from Kansas City, Mo., to points in Lane County, Kansas (with exceptions); (8) corn and feeds, from McCook, Nebr., and points in Nebraska within 50 miles of McCook, to points in Lane County, Kans.; (8) coal, from the vicinity of Canon City and Florence, Colo., to points in Lane County, Kans. (with exceptions); and (9) processed mill feeds, from Omaha, Nebr., and St. Joseph and Kansas City, Mo., to points in Ellis, Norton, Rooks, Osborne, and Smith Counties, Kans. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority.

No. MC 76776, filed November 12, 1976. Transferee: CHARLES M. SHIRK, 424 Linden Street, Terre Hill, Pennsylvania 17581. Transferor: ROSS ESBENSHADE, R.D. No. 3, New Holland, Pennsylvania 17557. Applicants' representative: Christian V. Graf, 407 North Front Street, Harrisburg, Pennsylvania 17101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permits Nos. MC 87487, MC 89487 (Sub-No. 1), MC 87487 (Sub-No. 2), MC 87487 (Sub-No. 5), and MC 87487 (Sub-No. 6), issued June 27, 1941, October 29, 1952, March 3, 1955, November 7, 1958, and September 9, 1970, respectively, as follows: Fertilizer, from Baltimore, Md., to points in Lancaster, Bucks, Chester, Berks, and Montgomery Counties, Pa., spray material, from Baltimore, Md., and Smyrna, Del., to New Holland, Pa., cinder and cement blocks and lintels, from points in West Fallowfield and West Sudsbury Townships, Chester County, Pa., and Earl, East Earl and East Hempfield Townships, Lancaster County, Pa., to Washington, D.C., and points in Delaware and Maryland, and those in Arlington, Fairfax, Loudoun and Prince William Counties, Va., face and common building brick, from Middletown and Harrisburg, Pa., to points in New Jersey, Delaware, Maryland, and that portion of New York within 50 miles of the New York entrance of the Holland Tunnel, face and common building brick, from Ephrata, Pa., to points in New Jersey, Delaware, Maryland, and that part of New York within 50 miles of the New York entrance of the Holland Tunnel, and pallets and empty containers used in the transportation of face and common building, brick, from points in New Jersey, Delaware, Maryland, and that part of New York within 50 miles of the New York entrance of the Holland Tunnel to Ephrata, Pa., and brick, from Wyomissing, Pa., to points in Connecticut, Delaware, Maryland, New Jersey, New York, and the District of Columbia. Transferee is presently authorized to operate as a common carrier under Certificates Nos. MC 138858 and MC 138858 (Sub-No. 2). Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76779, filed October 15, 1976. Transferee: Gonzalez Freight Lines, Inc., 1445 Illinois Street, San Francisco, California 94107. Transferor: William J. Gonzalez, d.b.a. Gonzalez Freight Lines, 1445 Illinois Street, San Francisco, California 94107. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration No. MC 99298 (Sub-No. 1), issued April 7, 1964, evidencing a right to engage in transportation pursuant to Certificate of Public Convenience and Necessity granted in Decision No. 50988, dated January 18, 1955, by the Public Utilities Commission of the State of California authorizing transportation of various specified commodities between specified points in California. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76786, filed October 21, 1976. Transferee: Red Line Transport Corp., 1303 Pulaski Highway, Edgewood, Maryland 21041. Transferor: Red Line Transfer Co., Inc., 1100 East 68th Street, Baltimore, Maryland 21237. Applicant's representative: S. Harrison Kahn, Suite 733 Investment Bldg., Washington, D.C. 20005. Authority sought for purchases by transferee of the operating rights of transferor, as set forth in Certificate No. MC 33953 (Sub-No. 2) and No. MC 33953 (Sub-No. 6), issued March 25, 1971 and March 30, 1971, respectively, as follows: Bananas, from Baltimore, Md., to Philadelphia, Pa., Camden and Bridgeton, N.J., and Washington, D.C., and points in Maryland, Virginia, Pennsylvania and New York; from points in the New York, N.Y., Commercial Zone as defined by the Commission, to Baltimore, Md., Philadelphia and Easton, Pa., Trenton, Bridgeton, and Camden, N.J., and Rochester, Jamestown, and Buffalo, N.Y.; Bananas an agricultural commodities exempt from economic regulation, under section 203(b) (6) of the Act when transported in Mixed loads with bananas, from Wilmington, Del., to points in Connecticut, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and Washington, D.C. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority.

No. MC-FC-76800, filed October 26, 1976. Transferee: G. W. Transfer, Inc., 312 South Delaware Avenue, Mt. Gilead, Ohio 43338. Transferor: Gerry Madeker, doing business as G. W. Specialty Transfer Co., 312 South Delaware Avenue, Mt. Gilead, Ohio 43338. Applicant's representative: Richard H. Brandon, 220 West Bridge Street, Box 97, Dublin, Ohio 43017. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 139814 (Sub-No. 2), issued Febru-

ary 20, 1976, as follows: Power shovel parts and drag-line parts, between Marion, Ohio, on the one hand, and, on the other, points in the United States (including Alaska, but excluding Hawaii), under a continuing contract or contracts with Marion Power Shovel Co., of Marion Ohio. Transferee presently holds no authority from this Commission. Application for temporary authority has not been filed.

No. MC-FC-76801, filed October 27, 1976. Transferee: GREGG CONSTRUCTION CO., INC., Box 886, Longview, Texas 75601. Transferor: W. D. McMAHON, D. D. McMAHON and J. M. McMAHON, a partnership, doing business as GREGG CONSTRUCTION CO., Box 886, Longview, Texas 75601. Applicants' representative: Mike Cotton, Attorney at Law, P.O. Box 1148, Austin, Texas 78767. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Corrected Certificate of Registration No. MC 99025 (Sub-No. 1), issued October 19, 1967, as follows: specified commodities wholly within the state of Texas. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76802, filed October 26, 1976. Transferee: LESTER WAYNE HOLBEN, doing business as LESTER W. HOLBEN TRUCKING, Rural Route No. 2, Spearfish, South Dakota 57783. Transferor: GEORGE ALFRED HOLBEN (PEARL F. HOLBEN, EXECUTRIX), 1444 North Canyon, Spearfish, South Dakota 57783. Applicants' representative: Thomas E. Carr, Attorney at Law, 117 Fifth Avenue, Belle Fourche, South Dakota 57717. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates Nos. MC 102797 and MC 102797 (Sub-No. 2), issued November 26, 1942 and February 20, 1951, respectively, as follows: livestock, grain, feed, hay, wool, and unfinished lumber, in truckload lots, between Moorcroft, and points in Wyoming within 50 miles of Moorcroft, on the one hand, and, on the other, Rapid City, Whitewood, Spearfish, Sturgis, and Belle Fourche, S. Dak., and coal, from Gillette, Wyo., and points within ten miles of Gillette, to Spearfish, S. Dak., and points within 20 miles of Spearfish. Transferee is presently authorized to operate as a common carrier under Certificate No. MC 115796. Application has not been filed for temporary authority under section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34907 Filed 11-26-76;8:45 am]

[AB 5 (Sub-Nos. 187, 188)]

PENN CENTRAL TRANSPORTATION CO. AND MONONGAHELA RAILWAY CO.

Abandonment Between Certain Lines

NOVEMBER 17, 1976.

AB 5 (Sub-No. 187), George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees of the property of Penn Central Transportation Company, Debtor: the Monongahela Railway Company and the Connellsville & Monongahela Railway Company abandonment between Dunlap Creek Junction and Huron, in Fayette County, Pennsylvania, AB 5 (Sub-No. 188), the Monongahela Railway Company abandonment between Browns Run Junction and Moser Run Junction, in Fayette County, Pennsylvania.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonments by the Penn Central Transportation Company, the Monongahela Railway Company, and Connellsville & Monongahela Railway Company between Dunlap Creek Junction and Browns Run Junction all in Fayette County, Pa., a total distance of 18.48 miles, if approved by the Commission, do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmetal Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because traffic volume previously exhibited on the line was low and the amount of traffic diverted to motor carrier is not expected to create any substantial alterations in existing air quality and fuel consumption. Also, no land use plans of economic or industrial importance exist which would necessitate the continued operation of the line. The right-of-way has been determined to be suitable for recreation use following abandonment.

This conclusion is contained in a staff-prepared environmental threehold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before December 23, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceedings and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34913 Filed 11-26-76;8:45 am]

[AB 12 (Sub-No. 26)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between Villa Park and Tustin in Orange County, California

NOVEMBER 17, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company (SP) of its line of railroad between Milepost 516.655 to the end of the line at Milepost 522.408, a distance of 5.753 miles, near Tustin, all in Orange County, Calif., if approved by the Commission, 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., and that preparation of a detailed environmental impact statement will not be required under section 4332 (2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because no traffic has been handled on the line since 1969, and, therefore, no diversion of traffic is expected. Consequently, there will be no alterations in existing air quality, fuel consumption, or noise instrusions. In addition, no land use plans of economic or industrial importance exist in the affected area which are dependent upon the continued operation of the line.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before December 23, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the evironmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34914 Filed 11-26-76;8:45 am]

[AB 12 (Sub-No. 27)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between North Stanton and West Santa Ana in Orange County, California

NOVEMBER 16, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of

Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company (SP) of its line of railroad between Milepost 507.811 to the end of the line at Milepost 514.965, a distance of 7.154 miles, near West Santa Ana, all in Orange County, Calif., if approved by the Commission, 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., and that preparation of a detailed environmental impact statement will not be required under section 4332(2) (C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because little traffic is generated on the line and the amount diverted to motor carriers would have a minimal impact on the existing environment. Of note is the lack of industrial activity and economic development plans in the adjacent area. Since applicant intends to continue rail service to the rest of the branch, not included in the subject action, the proposed abandonment should not have a serious adverse impact on rural and community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before December 23, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34910 Filed 11-26-76;8:45 am]

[AB 12 (Sub-No. 24)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between Alla and Venice in Los Angeles County, California

NOVEMBER 17, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company of a line of railroad between Alla and Venice in Los Angeles County, Calif., a distance of 2.632 miles, if approved by the Commission, 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., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that diversion of the current level of rail traffic to motor carriers will not result in a significant increase in energy consumption, highway traffic, noise or air pollution. As there are no indications of definitive developmental activities which are dependent upon the rail line, the abandonment is not expected to have a serious adverse impact on rural or community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before December 23, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34912 Filed 11-26-76;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

NOVEMBER 17, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Wabash Railroad Company and the Norfolk and Western Railway Company of a portion of its Sullivan District, Decatur Division, between Bement and Sullivan, a distance of 22.8 miles, all in Piatt and Moultrie Counties, Ill., if approved by the Commission, 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., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the associated environmental impacts are considered insignificant because the line has been embargoed since February 1974, and traffic over the line prior to this date was minimal. Consequently, there will be no diversion of traffic to motor carriers with its attendant environmental impacts. In addition, there are no community development, historic, or ecological effects involved.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before December 23, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34911 Filed 11-26-76;8:45 am]

federal register

MONDAY, NOVEMBER 29, 1976

PART II:

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

AIRCRAFT APPROACH NOISE

Abatement

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 15020; Amdt. 91-134]

PART 91—GENERAL OPERATING AND FLIGHT RULES

Noise Abatement Landing Flap Amendment and Decision Not to Prescribe Two-Segment Approach Requirements Submitted by Environmental Protection Agency

This document contains an amendment to Part 91 of the Federal Aviation Regulations (14 CFR Part 91) requiring use of noise abatement flap settings where appropriate, and a notice of decision not to prescribe a two-segment approach under visual conditions for civil turbojet-powered airplanes or a two-segment instrument landing system (ILS) approach for civil turbojet-powered airplanes. This action involves an amendment to § 91.85 of the Federal Aviation Regulations that requires the use of the minimum certificated landing flap setting for civil turbojet-powered airplanes.

This document also gives notice of FAA's decision, pursuant to section 611 (c)(1) of the Federal Aviation Act of 1958, as amended, not to prescribe further amendments to the Federal Aviation Regulations concerning approach flap setting procedures based upon the proposals contained in an EPA recommended regulation (Notice No. 75-35). However, as part of the FAA response to the EPA recommended regulation, the FAA is also issuing a separate notice of proposed rulemaking (NPRM) under section 611(b)(1) of the Federal Aviation Act of 1958, as amended, containing a proposal that is beyond the scope of the EPA recommended regulation in Notice No. 75-35. That NPRM is published in the "Proposed Rule" portion of today's FEDERAL REGISTER. If adopted, the proposed rule would require pilots of all turbojet-powered airplanes to delay their landing flap setting until 1,000 feet above the airport elevation under both VFR and IFR conditions, unless the pilot determines that it is necessary in the interest of safety to select the final landing flap setting at a higher altitude.

I. NOTICE NO. 75-35, PUBLIC HEARING, AND COMMENTS CONSIDERED

On August 29, 1975, the EPA submitted to the FAA three separate proposed amendments to the Federal Aviation Regulations (FARs) for consideration and publication in the FEDERAL REGISTER under section 611(c) of the Federal Aviation Act of 1958, as amended ("the Act"). Accordingly, the FAA issued Notice No. 75-35 containing EPA's recommended regulations. Notice No. 75-35 was published in the FEDERAL REGISTER on September 25, 1975 (40 FR 44256), inviting interested persons to participate in the making of the proposed rule by submitting written comments.

Pursuant to section 611(c) of the Act and based upon a notice published in the FEDERAL REGISTER on September 25, 1975 (40 FR 44184), a public hearing was held in Washington, D.C., on November 5, 1975, to receive oral and written statements on the matters contained in the notice. Written, statements submitted and a transcript of the oral statements are included in the regulatory docket.

The FAA has given due and careful consideration to the information provided by the EPA, by federal government-sponsored research programs, by the written and oral statements presented at the public hearing, and by the comments submitted to the regulatory docket. In addition, the FAA has consulted with the EPA and with the Secretary of Transportation. Based on an analysis of this information and after consultation, the FAA concludes that it should adopt an amendment to the FARs based on Proposal I contained in the EPA recommended regulations but should not prescribe regulations based on Proposals II and III.

Numerous written or oral comments in response to Notice No. 75-35 were received from private citizens, citizen groups, aviation trade and user associations, Federal Government agencies, the Council on Wage and Price Stability, and foreign, state, and local governments. These comments, including oral presentations at the public hearing, address or affect the EPA proposals.

II. FLAP SETTING PROCEDURES FOR CIVIL TURBOJET-POWERED AIRPLANES

As stated in the Notice, the EPA proposed to amend § 91.85 of the FARs to provide noise relief to communities in the vicinity of airports by prescribing reduced flap setting procedures for civil turbojet-powered airplanes. This proposal was based on studies referenced in the EPA proposal showing that an approach made with less than full landing flaps reduces aircraft noise as compared to a full flap approach, since the airframe drag at the reduced settings is less, lower power is required. The reduced flap procedure for each type of turbojet-powered airplane would, as proposed, consist of the minimum final flap setting shown in the Airplane Flight Manual that is appropriate and safe for landing, based upon such factors as load, weather, runway conditions, etc. However, the EPA proposal expressly recognized that each pilot in command of an airplane has the final authority and responsibility for the safe operation of his airplane. Therefore, if the pilot in command determines, in the interest of safety that a higher flap setting for that airplane should be used for a particular approach and landing, the pilot may, under the EPA proposal, use the higher flap setting.

The explanation for the EPA reduced flap proposal stated that certain air carriers are currently using a reduced flap procedure and that the Air Transport Association recommended continuation of the reduced flap approach. The explanation further stated that "[s]ince the procedure is considered safe and will achieve an appreciable reduction in noise caused by civil turbojet engine-powered airplanes, it is proposed to make the use of a reduced flap procedure mandatory for all civil turbojet engine-powered airplanes."

The flap setting procedures developed by the Air Transport Association (ATA), which are currently used by many air carrier pilots for noise abatement (and fuel conservation) purposes at all airports with many types of approaches (ILS, VOR, Visual, etc.), both IFR and VFR, are as follows:

1. Approach the airport area at as high an altitude as possible in accordance with current ATC procedures.
2. Remain in a clean configuration for as long as possible.
3. Proceed in-bound from the final approach fix, or a similar distance for a visual approach, with flaps at one setting less than final landing flaps planned for the particular landing.
4. Extend final landing flaps at a point on final approach at which the aircraft is 1000 feet above field elevation, equipment performance permitting, with stabilization at not less than 500 feet above field elevation.
5. Use the lowest allowable landing flap setting which is permissible for the particular landing.

The ATA procedures also recommend that initiation of each successive flap extension be made at a speed near the minimum speed, for that particular configuration, to maximize noise abatement benefits. The FAA encourages air carriers to use these procedures and has approved their use, on a case-by-case basis, by individual operators where fully consistent with safety. In addition to issuance of the reduced landing flap requirements contained herein, the FAA is continuing its effort to encourage broader use of these procedures where consistent with the highest degree of safety for each operator on an individual basis.

The EPA proposed rule differed from the procedure recommended by ATA. Proposed § 91.85(c) would require pilots of all turbojet-powered airplanes to "use the minimum certificated flap setting set forth in the Airplane Flight Manual that is appropriate to each phase of that approach and landing." However, there is no minimum certificated flap setting appropriate to each phase of the approach and landing since there are no defined phases of the approach and landing in the regulations or in the Airplane Flight Manual. The ATA procedure, however, defines two points in the arrival path of the airplane—the final approach fix or a similar distance for a visual approach; and 1,000 feet above the field elevation on final approach.

The FAA does approve certain landing and approach flap settings that are included in approved performance information in the Airplane Flight Manual. In addition, certain larger airplanes have more than one approach flap setting and more than one landing flap setting. The FAA, however, does not specify when in the arrival sequence the approach or landing flap setting must be used. The FAA does not believe it is within the scope of the EPA proposal to add a new regulatory definition prescrib-

ing, for all operators, and operating conditions, when each approach phase begins and when each landing phase begins. However, the FAA believes that delaying the final landing flap setting to a point where a stabilized final approach can still be achieved is a valid means of abating noise during the early phases of the approach without compromising safety.

In consideration of the success of the delayed landing flap procedure recommended by ATA (item No. 4) and the FAA's determination that adoption of this procedure in this amendment would be beyond the scope of proposed § 91.85 (c) concerning reduced flaps, the FAA is proposing a rule to specify the highest altitude at which the landing flap setting can be selected. This proposal is included in an NPRM that is being published in the "Proposed Rule" section of today's FEDERAL REGISTER. The proposal would apply to all pilots of turbojet-powered airplanes regardless of the number of certificated landing flap settings. If adopted, the proposed rule would require that a landing flap setting be selected at an altitude no higher than 1,000 feet above the airport elevation.

The FAA has determined that it is within the scope of the EPA reduced flap proposal to require that for turbojet-powered airplanes certificated with more than one landing flap setting, the pilot in command shall use the minimum certificated landing flap setting for the appropriate conditions. In addition, the FAA believes it is necessary to allow the use of all landing flap settings for training and certification flights. The proposal, as adopted, has been revised accordingly.

The majority of comments were in favor of the EPA reduced flap proposal at least in context. Many of these commenters, however, suggested modifications or clarifications. The comments suggesting changes and the comments objecting to this proposal will be included in the discussion of the reduced flap proposal. Other comments on this proposal are more relevant to the two-segment approach concept and will be included in the two-segment approach discussion.

Several commenters supported the proposal but pointed out that increased landing speeds, heavy braking, and increased use of thrust reversers that might result from a reduction in flap settings should in no way impinge upon safety. The FAA believes that the slight increase in landing speeds (e.g., approximately four knots for a Boeing 727) is consistent with safety, and that unusual braking or stopping methods will not be required.

One commenter stated that pilots would comply with reduced flap landing profiles if encouraged by an advisory circular, but that it should not be a regulatory requirement. The FAA believes reliance on voluntary response to an advisory circular might not be sufficient, and a regulatory requirement would be more effective in assuring the use of this procedure by all segments of aviation that would be covered by the rule.

Commenters opposed to the proposal were particularly concerned that safety would be derogated, with some risk to the lives of passengers, and pointed out that the primary responsibility for flight operational safety lies with the pilot. These commenters pointed out that aircraft are certificated to operate most safely in flap profiles dictated by gross weight, meteorological conditions, landing surface conditions (i.e., wet, short, icy, high, hot, etc.), and that such prerogatives should not be taken from the pilot. Two commenters questioned the use of making such requirements regulatory, while simultaneously providing approval for the pilot not to comply if, in his judgment, a different flap setting is necessary in the interest of safety. The FAA believes that the issuance of a regulation will result in more benefit, in terms of noise reduction, than would an advisory circular, but also recognizes that the primary responsibility for the safety of the aircraft is with the pilot. Accordingly, the regulation provides that, in the interest of safety, the pilot may use a different flap setting.

Another comment stated that the most effective method of abating aircraft noise was to enact zoning ordinances in the vicinity of airports, or achieve quieter turbojet engines through technology applied at the source. While those suggested methods may ultimately produce a great benefit, they are beyond the scope of this proposal, which describes a procedure that is effective and can safely be implemented now. Most commenters opposed to the proposal asserted that use of reduced flap settings would reduce noise levels by an insignificant amount in the approach path, but that increased landing speed would result in increased use of reverse thrust on landing. They claimed that the net effect of this would be more noise in the vicinity of airports and, incidentally, would offset the fuel savings achieved during the approach. While the landing speeds are increased slightly, the FAA has concluded that the landing can be conducted safely and routinely without increased use of reverse thrust, thereby preserving the fuel savings, achieved during the descent.

Presentations made at the public hearing relative to this EPA proposal were from various sources in the industry, and were generally favorable, some with qualified approval.

One comment suggested a review of the aircraft flight manuals to insure that adequate flight and performance data is included. However, the regulation issued herein is applicable only to those operators whose aircraft flight manuals contain approved reduced landing flap settings. This will assure that required flap settings are based on adequate flight and performance data.

Another person commented that a stabilized approach at reduced flap settings should be used in order to establish consistency of touchdown points on the runway and avoid overruns, landings short of the runway, and other hazards associated with the critical approach and landing phase. Also, the time delay to spool up turbojet engines for a go-around could, he stated, be a factor with reduced flap approaches since the power required during the approach is less. He concluded, however, that experience has shown that the reduced flap technique has proven effective and safe.

Another person, in support of the proposal, commented that by flying a properly conducted single-segment approach, employing the reduced flap technique, noise reduction equal to or better than that obtained using the two-segment approach could be achieved. He stated that, if started from the same altitude, the reduced flap approach results in a savings of 100 to 200 pounds of fuel per approach, and any advantage of the two-segment approach is confined to noise levels of 95 EPNdb or less, and then only with regard to 707 aircraft. He further stated, and the FAA agrees, that a reduced flap procedure requires minimum training with no new equipment cost or complications resulting therefrom and, most importantly, it is safe. This procedure has been in use by certain segments of the aviation industry for over three years. It does not require new equipment costs or extensive training. So long as the airplane has been certificated at the reduced flap setting for approach and landing and the pilot is aware of the considerations appropriate to his airplane which may preclude a reduced flap setting, the procedure can be safe and effective.

Although the reduced landing flap procedure is being used by many operators, the FAA believes that certain operators may need time for implementation. For example, certain operators may find it necessary to revise their training programs or operations manuals, or both. Therefore, the proposal as adopted provides a reasonable period after the effective date of the amendment for implementation.

The cost required to implement this amendment to FAR 91.85 are estimated to be insignificant. No reduction in runway/airport capacity is anticipated. No new approach facilities need to be installed. There will be noise abatement at essentially all turbojet-served airports and reduced fuel consumption during the final phase of the approach.

In summary, this amendment, as adopted, applies to the pilot in command of all civil turbojet-powered airplanes, U.S., or foreign, for which the certificating authority has approved more than one landing flap setting and for which the appropriate performance information is set forth in the Airplane Flight Manual.

III. NOTICE OF DECISION NOT TO PRESCRIBE REGULATIONS

A. REGULATIONS PROPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA)

The EPA also proposed to the FAA on August 29, 1975, a visual two-segment noise abatement approach requirement for turbojet-powered airplanes. (EPA Proposal II) and a two-segment ILS noise abatement approach for turbojet-pow-

ered airplanes (EPA Proposal III). A two-segment approach to the landing runway would require the pilot to fly an initial steep glide path segment (six degrees as proposed) and to intercept the conventional glide path (generally three degrees) at approximately 700 feet altitude above the elevation of the airport. Approval of both types of two-segment approaches would, under the EPA proposal, be made by the FAA and portrayed on appropriate aeronautical charts.

EPA Proposal II. The proposal would amend § 91.87 of the Federal Aviation Regulations to require that pilots of all civil turbojet-powered airplanes, when landing on a runway with an approved visual two-segment approach during visual weather conditions, use that two-segment approach. Visual weather conditions were defined as—(1) daylight hours; (2) ceiling at or above 3,000 feet; and (3) flight visibility at or greater than 5 nautical miles. EPA stated that a two-segment approach under these visual conditions, using a conventional ILS and colocated distance measuring equipment (DME), was needed since a two-segment ILS approach would not be achieved for several years and prompt action is needed to protect the public health and welfare. EPA further stated that the visual two-segment approach would cause significant noise reduction at those airports having the necessary facilities, although recognizing that very few airports had those facilities.

Four commenters favored the proposal as published, and four commenters favored the proposals with stipulations and provisos. Twenty-two commenters opposed the proposal, and thirteen either did not specifically express an opinion or made comments beyond the scope of the proposal.

The comments favoring EPA Proposal II, as published, were generally comprised of airport administrations and individual citizens and one citizen group living in close proximity to an airport. These comments were based, essentially, on the need for noise abatement benefits. Other commenters favored the proposal if no increase in the number of accidents would result, aircrews received proper training, appropriate minimum cloud ceilings and visibilities were established, icing conditions were not present, the tailwind on the upper segment was limited to 15 knots, and the equipment proved reliable. One commenter who favored the proposal stated that any perceptible increase in the accident rate could reverse the cost/benefit of the approach.

Comments opposed to the proposal were received from individuals, airmen, foreign governments, domestic and international pilots groups, the National Transportation Safety Board, and municipal and state governments. The central objection by these comments was lack of safety involved in any two-segment approach. In brief, the following safety objections were made by the commenters:

1. An icing hazard would occur in the upper steep segment because the low power setting would cause bleed air from the engine to be insufficient to prevent ice accumulations.
2. The high sink rate occurring in the upper segment of the approach is hazardous and beyond the design specifications of some air carrier airplanes and electronic equipment.
3. The transition from the upper segment to the lower segment would be at too low an altitude.
4. The wage vortex turbulence would increase significantly for airplanes on a conventional approach.
5. The approach would be a nonstandard approach when used at only 55 airports.
6. Tailwinds would be critical for the upper segment glide slope.
7. Wind shear would be critical for the upper segment glide slope.
8. The descent rate would be greater than the current policy limitation of 1,000 feet per minute (FPM).
9. Pilot workload would be increased, during a critical phase of flight, at the transition from the upper segment slope to the conventional glide path.
10. Engine lag time is unpredictable at low altitude and a high rate of descent.
11. All airplanes cannot fly the proposed steep-segment descent of approximately six degrees.
12. The procedure is contrary to the stabilized approach procedure that has contributed so much to flight safety since the turbine-powered airplane began operation.
13. The two-segment approach must have a glide slope during the entire approach including the steep-segment.

The opposing commenters also presented airspace and equipment problems. Commenters stated that available airspace would decrease 14.3 percent in terminal areas and that the needed colocated distance measuring equipment does not exist at most of the named airports. The commenters suggested that traffic regulation, especially with the mix of approaches, would create an unacceptable workload for the air traffic controller.

Many of the commenters that opposed EPA Proposal II challenged all or part of EPA's contentions regarding cost savings and noise reduction. Some of the commenters stated that the procedure would result in an overall increase in noise levels and fuel consumption since missed approaches would likely become more frequent and large power applications would often occur to reduce the rate of descent upon interception of the three degree glide path.

EPA Proposal III. The proposal would amend § 91.87 of the Federal Aviation Regulations to require that pilots of all civil turbojet-powered airplanes, when making an approach for a landing on a runway having an approved two-segment ILS approach procedure, use that two-segment procedure. EPA stated that the two-segment ILS approach can provide significant noise reduction.

Six commenters favored the proposal as published and three commenters favored the proposal with stipulations and provisos. Twenty-four commenters opposed the proposal and ten either did not specifically express an opinion or made comments beyond the scope of the proposal.

Commenters favoring the proposal were comprised of one citizen group and individual citizens living in close proximity to an airport, airport administrations, and municipal governments. The commenters agreed with the need for noise abatement and the same general stipulations and provisos listed for the visual two-segment approach were stated for the two-segment ILS.

One comment was in favor of publishing an advisory circular concerning the two-segment ILS approach, but recommended that it not be made regulatory. The commenter further recommended that the four-degree glide slope be pursued.

Strong opposition was expressed concerning EPA Proposal III by twenty-four commenters on the basis that such a maneuver performed in instrument conditions is dangerous and could not be performed within design limitations of a significant number of airplanes. These commenters included individual airmen, domestic and foreign pilot organizations, airline organizations, foreign governments, the National Transportation Safety Board, and a number of municipal and state governments.

Opposing commenters stated that the two-segment ILS approach was not safe due to a variety of events that could adversely affect safe accomplishment of the approach. The commenters noted that not only could the airplane's limits be exceeded but that the proposed approach may exceed the ability of the pilot to correct. In addition, the same safety objections that were made for the visual two-segment approach and listed in the previous discussion were noted in the comments for the two-segment ILS approach.

One commenter estimated that the minimal cost to install the necessary airborne equipment would be $10,000 per aircraft, with a total fleet cost of over $750,000,000. Another commenter estimated that the price for colocating ILS DME equipment could run several times the EPA estimated cost of about $50,000 each. As for the visual two-segment approach, commenters also questioned the noise benefits of the two-segment ILS because increased missed approaches and significant power application upon interception of the three degree glide slope were considered probable.

B. BACKGROUND

The FAA adopted its first noise abatement procedure for certain airport traffic areas on February 23, 1960. On September 22, 1961, the required procedure was expanded to all airports with a preferential landing runway for noise abatement. This rule, which applies noise abatement runway requirements to all turbine-powered airplanes and to all large airplanes, is prescribed in § 91.87 (g) of Part 91 of the Federal Aviation Regulations. In addition, the FAA began its program to reduce aircraft source noise and to examine other operational

procedures for turbojet-powered airplanes to abate noise in the airport's traffic area. For example, minimum altitude requirements for turbine-powered and large airplanes are prescribed for noise abatement purposes in § 91.87(d). In addition, ILS equipped turbine-powered and large airplanes approaching a runway being served by an ILS are required, for noise abatement purposes, to fly at or above the glide slope during portions of the approach.

The National Aeronautics and Space Administration (NASA) and the FAA have conducted numerous investigations to determine methods for implementing noise abatement procedures and for measuring the noise reduction associated with the various procedures. In 1971, NASA began testing a two-segment approach to prove that two-segment approach avionics would provide safe and acceptable lateral and vertical approach guidance, and to evaluate the noise benefits of such an approach. In 1973, in-service evaluation began at certain selected airports. NASA reported in 1974, Operational Flight Evaluation of the Two-Segment Approach for Use in Airline Service after testing using a Boeing 727-200 airplane that "the system was determined to be safe, easy to fly and compatible with the airline operational environment." This conclusion considered the safety of the Boeing 727-200 airplane flying the two-segment approach but did not consider safety implications of other aircraft on the same approach or other aircraft flying different approaches.

Three transport category airplane manufacturers were using computers and airplane flight simulators during this period to determine the optimum upper slope capability of their turbojet-powered airplanes. The reported results indicate that a variety of upper segment slopes ranging from three degrees to six degrees would be needed to safely accommodate the airplanes that are currently in service.

The development and testing of the two-segment approach by early 1974 indicated that a two-segment instrument landing system (ILS) approach at specified airports might be feasible. An advanced notice of proposed rulemaking (ANPRM) was issued by the FAA and published in the FEDERAL REGISTER on March 26, 1974 (39 FR 11193), to invite early public participation in the identification and selection of a course or alternate courses of action concerning two-segment ILS approaches. Further research of the two-segment approach and the comments received in response to the advanced notice indicated that the FAA should give further consideration to the possible wake vortex hazard that could be associated with the complete implementation of a two-segment approach.

Although many questions remain to be answered, wake vortex is a problem generally associated with the characteristics of an airplane wing. The lift generated by the shape of a wing (airfoil) is caused by an area of high pressure on the bottom of the wing as compared to an area of lower pressure on top of the wing. This pressure differential triggers invisible counter rotating vortices from the wing tips of an airplane. The initial strength of the vortex is governed in part by the weight, speed, and shape of the wing of the generating airplane. Flight tests have shown that, except where close to the surface, the vortices from large airplanes sink at an average rate of five feet per second until about 900 feet below the flight level of the generating airplane. The vortex strength diminishes with time and with distance from the point of generation. The wake vortex can be a problem to aircraft following below the flight path of the generating aircraft, especially if the generating aircraft is heavier than the following aircraft. Pilots normally avoid the areas of possible wake vortex problems by flying above the flight path of heavier airplanes or by providing enough separation for the wake vortex to diminish sufficiently.

On July 24 and 25, 1974, the Subcommittee on Aeronautics and Space Technology of the House of Representatives Committee on Science and Aeronautics conducted detailed hearings dealing with aircraft noise abatement. These hearings were a continuation of hearings held by the Subcommittee on December 5, 6, and 18, 1973. Two of the subjects discussed were the two-segment approach research and the rule-making status of the advance notice on two-segment approaches. FAA witnesses stated that the comments presented a number of problems and that the commenters presented issues which still must be resolved. A number of witnesses to the hearing expressed concern about the wake vortex hazard associated with a mix of multiple steep-segment approaches and with a mix of steep-segment and conventional approaches. Witnesses from NASA stated that a full understanding of the operational implications of the wake vortex hazard for an aircraft following an airplane on a two-segment approach remains to be developed.

NASA and FAA reported in January, 1975, "Flight Test Investigation of the Vortex Wake Characteristics Behind a Boeing 727 During Two-Segment and Normal ILS Approaches," that vortex strength was approximately the same for a two-segment approach and for a conventional approach. The report, however, did not address the probability of encountering wake vortex.

A paper, "Wake Vortex Hazard Analysis for the Two-Step Approach Environment", was prepared June, 1975, for the FAA by the Mitre Corporation. The report assumed a situation similar to that which would exist if EPA Proposal II or III were adopted, turbojet-powered airplanes would be required to fly a steep-segment approach and other airplanes could fly a conventional approach. Although the problem of multiple steep-segments was not addressed, the report states that a preliminary analysis has shown the vortex hazard in the mix of steep-segment and conventional approaches to be one to three orders of magnitude greater than that for the conventional approach.

C. CONCLUSION

The FAA agrees that the adverse affects of aircraft noise during approach and landing should be reduced. However, before adopting a proposed regulation submitted by EPA for the control and abatement of aircraft noise, the FAA must consider the factors set forth in section 611(d) of the Federal Aviation Act of 1958, as amended. Section 611 (d)(1) requires the FAA to consider relevant available data relating to aircraft noise including the results of research, development, testing, and evaluation activities. Section 611(d)(3) requires the FAA to consider whether the proposal is consistent with the "highest degree of safety in air commerce or air transportation in the public interest."

The FAA has considered the relevant data available from the research associated with the two-segment approach. Based on existing information of wake vortex generation and persistence, the FAA finds that an unacceptable increase in wake vortex encounters may be anticipated using current minimum aircraft separation standards with any practicable two-segment approach. This finding is believed to be accurate for a mix of conventional and two-segment approaches and for a mix of approach angles for airplanes flying the steep-segment of a two-segment approach.

The additional aircraft spacing needed to allow the wake vortex to diminish sufficiently in strength so that the turbulence would not be a problem would require a doubling of the current separation standards. This would significantly increase enroute and terminal delays and energy consumption. In addition, it would result in inefficient use of the national airspace and in passenger inconvenience. This would seriously derogate the efficiency of ATC and reduce the capacity of the airports involved.

Additionally, the FAA believes that numerous conditions that are hazardous or inimical to flight safety may occur. Among these, which are enumerated above, are icing in the upper steep-segment, the high sink rate with increased engine spool up time, the critical effect of tail winds and wind shear for the upper segment, a descent rate that may exceed present operating limitations, increased pilot work load, and potential airspace and traffic conflicts.

Multiple upper segment slope angles would create a charting problem. The depiction of appropriate capture points and upper segment slope angles to accommodate different types of turbojet-powered airplanes would result in a cluttered approach chart. The complexity of these charts could result in pilot confusion during the critical approach phase of flight. Of the more than 2200 runways currently being used by turbojets, only 100 have been classified as noise sensi-

tive and would be likely candidates for the two-segment approach. Some pilots of turbojet-powered airplanes may experience difficulty interpreting these nonstandard two-segment approaches.

The direct cost of the fleet operators and the FAA facilities system has been estimated as $404 million, and the annual recurring costs commencing in 1980 as $34 million. These are in addition to the indirect costs that would result from doubling the ATC separation criteria to account for the effect of wake turbulence in a mix of two-segment and conventional approaches. The increment in noise abatement achieved by this expenditure over that which is achieved by the reduced flap setting procedure that is being adopted herein, does not justify the direct costs of implementing this procedure.

The FAA believes that the two-segment approaches under visual and instrument conditions are not consistent with the highest degree of safety in air commerce and are not in the public interest. Therefore, the FAA has determined that the two-segment approach, under either visual conditions or under IFR, should not be adopted.

IV. AMENDMENT AND NOTICE OF DECISION

In consideration of the foregoing, and under the authority of sections 313(a), 601, 604, and 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1424, and 1431), as amended by the Noise Control Act of 1972 (Pub. L. 92-574); section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and Executive Order 11514, dated March 5, 1970, the Federal Aviation Administration hereby takes the following actions:

(1) Notice is hereby given, in accordance with section 611(c)(1)(B) of the Federal Aviation Act of 1958 (49 U.S.C. 1431(c)(1)(B), that the Federal Aviation Administration is not prescribing a two-segment approach under visual conditions for civil turbojet-powered airplanes (EPA Proposal II) or a two-segment instrument landing system (ILS) approach for civil turbojet-powered airplanes (EPA Proposal III) in response to the Environmental Protection Agency submission of proposed regulations contained in the notice of proposed rulemaking published in the FEDERAL REGISTER on September 25, 1975 (40 FR 44256), and identified as Notice No. 75-35.

(2) In accordance with section 611(c)(1)(A) of the Federal Aviation Act of 1958 (49 U.S.C. 1431(c)(1)(A)), Part 91 of the Federal Aviation Regulation is amended as follows, effective January 28, 1977.

Section 91.85 is amended by adding a new paragraph (c) to read as follows:

§ 91.85 Operating on or in the vicinity of an airport; general rules.

* * * * *

(c) After (a date 60 days after the effective date of this amendment), except when necessary for training or certification, the pilot in command of a civil turbojet-powered airplane shall use, as a final landing flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the Airplane Flight Manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of his airplane, and he may use a different flap setting approved for that airplane if he determines that it is necessary in the interest of safety.

NOTE.—The Federal Aviation 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.

Issued in Washington, D.C., on November 15, 1976.

JOHN L. MCLUCAS,
Administrator.

[FR Doc.76-34179 Filed 11-26-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 91]

[Docket No. 14234; Reference Notice No. 74-40]

PROPOSED REGULATIONS SUBMITTED BY THE ENVIRONMENTAL PROTECTION AGENCY TO THE FAA: NOISE ABATEMENT MINIMUM ALTITUDES FOR TURBOJET POWERED AIRPLANES IN TERMINAL AREAS

Decision Not To Prescribe Regulations

The purpose of this notice is to announce that the Federal Aviation Administration (FAA) has determined not to prescribe the proposed amendment to the Federal Aviation Regulations (14 CFR Part 91) submitted by the Environmental Protection Agency (EPA) and published in Notice 74-40 (40 FR 1072) in the FEDERAL REGISTER on January 6, 1975, regarding noise abatement minimum altitudes for civil turbojet-powered airplanes operated under either IFR or VFR. This decision is reached in accordance with section 611 of the Federal Aviation Act of 1958, as amended, after a public hearing, consultations with the EPA and the Secretary of Transportation, and after due and careful consideration of the information provided by the EPA and of the written and oral comments presented at the public hearing or submitted to the regulatory docket. However, in reaching this decision, and after comprehensive review of the air traffic flow issues addressed in the EPA proposal, the FAA has developed, and is issuing an internal directive, aimed at the air traffic control function, that it believes will achieve the important noise reduction objectives of the EPA proposal.

Section 611(c)(1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-574; 86 Stat. 1239) (hereinafter referred to as "the Act"), provides that the EPA shall submit to the FAA proposed regulations, or proposed amendments to regulations, to provide control and abatement of aircraft noise and sonic boom which the EPA determines are necessary to protect the public health and welfare. In considering proposals submitted by the EPA, the FAA must publish the proposed regulations in a notice of proposed rulemaking (NPRM) within 30 days of the date of submission to the FAA. Within sixty days after publication of the NPRM, the FAA must conduct a public hearing in which interested persons may participate by making oral or written presentations regarding the proposals contained in the NPRM. Within a reasonable time after the conclusion of the hearing and after consultation with the EPA, the FAA must:

1. Prescribe regulations which are either substantially as submitted by the EPA, or which are a modification of the EPA proposal; or

2. Publish in the FEDERAL REGISTER a notice that it is not prescribing any regulation in response to EPA's submission, together with a detailed explanation providing reasons for the decision not to prescribe EPA's proposed regulations. This document constitutes such an explanation.

On December 6, 1974, the EPA submitted to the FAA a proposal relating to aircraft noise control and abatement that would prescribe minimum altitudes for civil turbojet-powered airplanes in terminal areas. In conformity with section 611(c), the FAA, on December 31, 1974, issued a NPRM proposing the amendment to the Federal Aviation Regulations submitted by the EPA. This notice (No. 74-40) was published on January 6, 1975 (40 FR 1072). Pursuant to a notice published in the FEDERAL REGISTER on January 30, 1975 (40 FR 4478), a public hearing was held at FAA Headquarters, Washington, D.C. on March 5, 1975.

The objective of the Environmental Protection Agency was to propose a rule which would help to reduce the noise exposure on the ground due to low altitude flight of turbojet-powered airplanes by requiring them, by regulation, to maintain certain minimum altitudes, including the recommended altitude limitations and operational procedures of the "Keep-'em-High" program described in FAA Advisory Circular 90-59 (AC 90-59), and to maintain an altitude of at least 3,000 feet above ground level (AGL) until beginning descent on the approach glide slope.

The EPA proposal contained the following recommendations:

a. Add a regulatory definition of the term "terminal area" to Part 91 and authorize Air Traffic Control (ATC) to designate the boundaries of the terminal area to accommodate the flight procedures needed for operation to or from a particular airport.

b. Require civil turbojet-powered aircraft, approaching the airport for a landing, to:

(1) Enter the terminal area at 10,000 feet AGL and remain at that altitude until further descent is required for a safe landing;

(2) Maintain at least 5,000 feet AGL until in the descent area established by ATC for the direction of the landing runway;

(3) Maintain at least 3,000 feet AGL until intercepting the glide slope; and

(4) Fly at or above the glide slope from the point of interception to the middle marker, or, at an airport with a visual approach slope indicator (VASI), fly at or above the glide slope until a lower altitude is necessary for a safe landing. The EPA proposal provided, in the case of VFR operations to a runway not served by an ILS or VASI, that "the rate of descent shall not be less than three degrees."

c. Revise the present § 91.87(d)(1) to exclude turbojet-powered airplanes from the applicability of the less stringent procedures prescribed in that section.

Section 611 of the Act requires that the FAA shall consider whether any proposed standard or regulation is:

a. Consistent with the highest degree of safety in air commerce or air transportation in the public interest;

b. Economically reasonable;

c. Technologically practicable; and

d. Appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply.

After consideration of these factors, after consultation with EPA, and after due and careful consideration of the information provided by EPA, and of the public comments submitted in response to Notice 74-40 as well as all written and oral submissions at the public hearing (Docket No. 14234), the FAA has determined not to prescribe any regulation in response to EPA's proposed "Noise Abatement Minimum Altitude for Turbojet Powered Airplanes in Terminal Areas," as submitted to the FAA on December 6, 1974.

Fifty-three public comments were received in response to Notice 74-40; 25 supporting the proposal and 28 opposing. The public comments are categorized as follows:

	Supporting	Opposing	Total
Aviation user organizations	1	5	6
Civic associations and consumer organizations	4	1	5
State and local government	14	3	17
Business corporation	4	7	11
Individuals	2	12	14
Total	25	28	53

Comments favorable to the proposed amendment were received primarily from local government representatives and civic associations. They concluded that the proposed rule would do much to reduce aircraft noise pollution and should be implemented without delay. Some of these supporting comments stated that the proposal appeared fair and reasonable and that the rules would have little or no impact on aircraft operations or ATC. It was also suggested that the proposed regulations would provide immediate relief, and with little cost as compared to retrofitting present aircraft with specific engines. Some of the supporting comments, however, qualified their support by stating that any new rules must be compatible with ATC responsibilities, consistent with safety, and not cause excessive delays. The one aviation related organization supporting the proposal represented airport operators. It stated that airports are a focal point for adverse citizen reaction; consequently, airport operators are particularly interested in solving the noise problem, and they support the proposal in principle. The commenter realized that adopting the proposal would formalize, by regulation, a wide-spread practice that is now prescribed by nonregulatory ATC procedures, and that there may be local air traffic and related operational conditions that do not permit the implementation of the "Keep-'em-High" program, even in its nonregulatory form. Therefore, any regulation based on these procedures would have to provide for

similar exceptions. Recognizing that it is not qualified to make a technical judgment, the commenter favored the 3000-foot intercept concept if consistent with safety. The civic associations and consumer organizations supporting the proposal generally endorsed the proposal without detailed analysis, as did one state, and several local governments, with the phrase "the new regulation would do much to reduce aircraft noise pollution level" appearing repeatedly in these comments. A few of these comments specifically approved the 3000-foot intercept concept. The fact that the benefits could be obtained immediately was mentioned.

In the same group of supporting comments, however, one commenter stated that the Notice reflected a lack of knowledge of operating procedures and technology. Other supporters commented that certain areas, such as New York probably should be excepted because of a potential reduction of airport capacity, and that procedures resulting from adoption of the proposal should be thoroughly flight-tested and evaluated. One comment in this group said that imposition of the 10,000-foot provision could severely restrict ATC, and that the noise relief achieved by keeping aircraft above 5,000 feet would be negligible. A number of commenters objected to all restrictions above 3,000 feet, questioned the need for any further action since the present noise perceived on the ground is well below the level considered detrimental, concluded that no real benefits would result, and stated that aircraft woud be subjected to increased exposure in the worst icing levels without justification.

The FAA believes that any reduction of perceived noise resulting from adopting this proposal would not be significant. An examination of 98 noise sensitive runways equipped with ILS revealed that 74 runways have a glide slope at or above 3 degrees and 88 runways are at or above 2.7 degrees. Furthermore, the average intercept altitude above the airport surface for the 98 runways, is already approximately 2,100 feet. The EPA's estimated health and welfare benefits attributed to an increase in the glide slope intercept altitude from 1,500 to 3,000 feet are approximately 6 to 8.5 EPNdB under the flight path in the area 5 to 10 nautical miles from a runway approach threshold. The noise reduction benefits which the EPA has attributed to a higher glide slope intercept represent maximum values at specific measuring points directly underneath the flight path, assuming a worst case situation. A single-event analysis, calculated from changes in peak noise level at single point locations and assuming a 2,100-foot reference intercept altitude, indicates a possible improvement range of between 1.7 and 5.1 EPNdB for all areas along a final approach path by increasing the intercept altitude to 3,000 feet. It is believed that implementation of the improved air traffic management order, discussed below, will yield benefits of the same magnitude.

Many persons commenting on the EPA proposal shared the opinion that the relief obtained by modifying procedures is uniquely determined by the location of the airport, the flight track, and the population centers around the airport. To establish a requirement, as proposed, to funnel all approaches onto an ILS glide slope or to achieve the same descent profile on a runway not served by an ILS glide slope would, in effect, establish an approach gate ten miles from the runway. By such action any community lying underneath such an approach path that may be avoided today by other flight paths would now be exposed continuously to noise from approaching aircraft as the current method of varying the approach path would no longer be allowed under the proposed regulation. This is an example of the importance, discussed below, of leaving the ATC function as free as possible to deal with the complex interplay of environmental and safety impacts of air traffic management. At some airports such as Minneapolis, multipath approaches dilute noise over the close-in-communities. No single community receives all the approach noise. To require the channeling of approaches on a fixed flight path would amount to a decision to concentrate all approach noise over one approach path (and any community along that path). At San Francisco, an approach path offset from the localizer is used to avoid Foster City. At Seattle, there is a "Visual bay approach" that aircraft may use, if there is a ceiling of at least 3,000 feet and visibility of at least four miles, for landings to the south at Seattle-Tacoma Airport. This is a noise abatement approach that places the aircraft over water or an industrial area until approximately five miles from the runway. If the EPA proposal were adopted, the "Visual bay approach," would not be available to turbojet-powered aircraft, and they would be required to fly over the heart of the city of Seattle. The River Approach to Washington National Airport was designed to reduce noise in Georgetown, and Arlington, Virginia, by requiring aircraft to follow the Potomac River to the airport. This approach, also, would be unavailable to turbojet-powered aircraft if the EPA proposal were adopted as proposed.

No single procedure will have the same level of effectiveness at all airports. Each procedure must therefore be evaluated on the basis of each airport. The proposal does not recognize that effective noise abatement and air traffic control require responsiveness to local circumstances and this, in turn, requires great flexibility in air traffic management.

One reply to the docket indicated that the statement "the rate of descent shall not be less than 3 degrees * * *" is ambiguous. It assumed that the proposal meant that the aircraft would follow a three degree glide path angle. However, this is not possible unless the pilot is provided with the proper navigational aids to indicate this flight path angle. Proposed § 91.87(d)(1) refers to * * * "the rate of descent prescribed in [proposed] paragraphs (d)(3) or (d)(4) of this section for the landing facility used, except that the rate of descent shall not be less than 3 degree for operation under VFR when a runway not served by an ILS or VASI is used." Proposed § 91.87 (d)(3) and (d)(4) do not prescribe a rate of descent. They prescribe a descent profile. The rate of descent could vary considerably depending on wind factors and the approach speed of the aircraft involved. As rate of descent is not measured in degrees, it is believed that the reference to a three degree rate of descent is in error, and should read, "* * * rate of descent to be not less than that associated with a 3 degree glide angle," as mentioned in the preamble.

One commenter stated that aircraft exposure to traffic conflicts would be increased due to the greater area needed for large aircraft maneuvering and flying, at times in conflict with the traffic flow of lighter aircraft which do not have to meet those noise abatement procedures. The FAA agrees that examples of such conflicts include cases where the requirements contained in the proposal would cause aircraft at one airport to fly into or across the final approach course of another airport, and cases where jet aircraft descend at high rates through altitudes occupied by general aviation aircraft. This is one aspect in which issuance of the proposal would not be consistent with the highest degree of safety in air commerce or air transportation in the public interest.

One letter observed that the majority of airports around the country without a Terminal Control Area (TCA) have airport traffic areas with radii of five miles and extend upward to 3,000 feet above the elevation of the airport. Aircraft held above 5,000 feet in proximity to such an airport are not necessarily in radio contact with its tower. Consequently, the existence of conflicting traffic may not be known. The FAA agrees with this comment. The imposition of a mandatory 5,000-foot floor, as proposed, would increase the likelihood of traffic conflicts. This is a fundamental objection to the proposed expanded terminal area concept as combined with mandatory altitude floors. Here again, the FAA believes that the proposal would not assure the highest degree of safety.

The proposed requirement that "the rate of descent shall not be less than three degrees" (Proposed § 91.87(d)(1)) in the case of VFR operations is not feasible without some form of vertical guidance to assist the pilot. This requirement does, however, closely parallel changes the FAA plans to implement with respect to nonprecision approach criteria. If the high performance jet aircraft fleet continues to grow at a significant rate, which is the present prediction, then there will be a significant operational need to change FAA policy to expand the number of nonprecision instrument approach facilities to meet this critical need. It is evident that nonprecision approach procedures must be developed to provide a vertical guidance system to as-

sist pilots in stabilizing aircraft descent rates. These procedures must be augmented with an additional descent fix to assure pilots that their aircraft are accurately positioned on a 3-degree approach path at a sufficient distance from the runway so that a normal approach to a landing can be made. However, it is not expected that enough vertical guidance equipment will be installed, in the foreseeable future, to provide an adequate basis for adopting this portion of the proposed regulation at this time. In addition, for the reasons discussed herein, the FAA questions the likelihood that a significant noise benefit would result, and concludes that the most effective tool for dealing with this procedure is a comprehensive order directed at those who control air traffic rather than an inflexible rule directed at pilots.

Several responses to the docket indicate, and the FAA agrees, that it would be difficult to enforce the proposal with respect to VFR approaches at existing facilities. As one commenter indicated, the proposed requirement for VFR turbojet aircraft to begin final descent to the runway from 3,000 feet was unrealistic, unenforceable, and could possibly bring about an unwanted effect whereby pilots might advise that they are unable to maintain their VFR clearance from cloud requirement at 3,000 feet.

Many commenters expressed concern over the reduced flexibility in the handling of traffic which would result from the adoption of the proposal. FAA Order 7110.22B implemented the policy expressed in AC 90-54 concerning the arrival and departure handling of high performance aircraft. Under this Order the arrival and departure procedures allowed the controller some latitude in adjusting descent to meet fluctuating traffic sequences. Adaptation to circumstances would be far less flexible if hard and fast altitudes were required by regulation. As discussed below, experience in implementing this order has provided a firm basis for issuing an improved order to take further advantage of the flexibility in the air traffic control system. Since each airport may have its own peculiarities in traffic handling requirements, the mandatory altitude requirements in the proposal could derogate flexibility and effective airspace utilization. In summary, the FAA believes that the most direct and effective response to aircraft noise in terminal areas is to refine and improve the air traffic control procedures in Order 7110.22B to take better advantage of the potential for noise reduction (and fuel conservation) inherent in the flexibility that the air traffic control system has and that the regulatory solution proposed by EPA does not have.

The intent of the EPA proposal is to minimize the amount of time high performance aircraft operate within the system at low altitudes in terminal airspace. However, the proposal fails to take into consideration the interdependency of arrival and departure operations. In many instances arriving aircraft enter terminal airspace at altitudes below 10,000 feet. In some cases, the flow of traffic is arranged so that the arrival traffic will pass beneath departure traffic climbing to assigned altitudes, or to specified crossing altitudes. Changing this traffic flow would tend to create problems by holding departure aircraft at lower altitudes to avoid conflict with arriving aircraft, with the consequent noise from aircraft climbing at these lower altitudes increasing the total noise exposure for that area.

Another area of concern was the possibility of extended maneuvering or vectoring at many locations and that the additional flight paths would expand the surface areas exposed to noise, increase in-flight delays and fuel usage, particularly at low activity airports or during VFR weather. This is confirmed by the following comments on the Detroit and Tampa evaluation test of a 3,000-foot glide slope intercept altitude.

> With the approach gate extended outbound of its normal location, and the variance of approach speeds, it was virtually impossible to maintain an optimum arrival interval. Under such circumstances spacing outside the gate doubled or quadrupled when a faster aircraft followed a slower aircraft in order to have a minimum of five, four, or three miles spacing, as appropriate, at the end of the runway. Because of the above, succeeding aircraft were extended progressively, longer and longer on their vector because of the 'chain reaction' effect. One controller stated that he actually was forced to place some arrivals into a holding pattern because he eventually ran out of airspace on what turned out to be an unexpected long vector * * *.

Commenters expressed concern over the possible encroachment into the operating airspace of adjacent control facilities and airports, where multiple airport locations would experience increased complexity in working traffic with a resultant decrease in free flow and system capacity if the proposal were adopted. FAA Order 7110.22B specifically exempts TCA locations from compliance with the requirement to establish formal "Keep-'em-High" programs, and from the requirement to establish descent areas. The design of each TCA is on an individual basis, taking into consideration a number of factors and complexities. The mandatory procedures outlined in the EPA proposal could have a severe and far-reaching impact on the air traffic system. High density terminal airspace may serve several airports and involve airspace that has has been carefully designed and assigned to provide the most effective service to all concerned. Facilities operating in such an environment may already be restricted by the amount of airspace available for vectoring and sequencing arriving aircraft. The imposition of the rigid flight patterns of the proposal may force some facilities to expand their vectoring area and interrupt service at adjacent airports. This could actually increase both the noise exposure, aircraft emissions level consumption, and operating costs in the affected airport areas.

It was the opinion of a number of persons making submissions to the docket that the effect upon airport capacity was not given due consideration. One respondent commented that the field evaluation of the 3,000-foot guide slope intercept program (FAA-AT-72-1) at Tampa and Detroit indicated that capacity would be reduced by two percent if all aircraft were required to comply with the proposed rule and this figure would be reduced to only .8 percent if only turbojets were involved. The respondent then commented on the fact that many large air carrier airports have few aircraft other than turbojets, and that a two percent reduction at airports such as O'Hare or Atlanta would have a substantial effect.

Operational tests of a 3,000-foot glide slope intercept were undertaken at Tampa International Airport and Detroit Metropolitan Wayne County Airport to determine the effect those procedures would have on the ATC system. In order to explore alternative methods of applying the 3,000-foot glide slope intercept concept, three variations of the procedure were agreed upon for test purposes:

1. PHASE A. Vector all arriving IFR aircraft so as to maintain at least 3,000 feet AGL until intercepting the glide slope.
2. PHASE B. Vector arriving IFR turbojet aircraft so as to maintain at least 3,000 feet AGL until glide slope intercept, all other aircraft being handled in accordance with existing procedures.
3. PHASE C. Vector all arriving IFR aircraft so as to maintain at least 3,000 feet AGL until five flight path miles from the optimum ILS turn-on point.

Of the three procedures employed during the test period, the most difficulties were experienced during Phases A and B. Phase C had much less impact on the system.

A common complaint of controllers was that they had difficulty gauging the required amount of spacing at the turn-on point to the localizer. Much of the difficulty was attributed to absence of the application of speed adjustment after the arriving aircraft passed the redefined approach gate. After passing that point, pilots were free to apply various techniques to slow the aircraft to the desired speed, which often varied even as between aircraft of the same type. "S" turns and 360 degree turns were necessary in order to achieve or maintain desired separation. In some cases speeds of aircraft differed by as much as 35 knots. Without speed control capability for a greater distance on final approach, the controller, not knowing the pilot technique that would be used in reducing speed, would apply additional spacing as a "fudge factor" to prevent go arounds or 360 degree turns on final. Consequently, the intervals between landings were greater than desired. In this respect, Phase A presented the greatest impact; Phase B, with low performance aircraft being turned on at the regular point of intercept alleviated the effect somewhat. Phase C procedures had only minimal impact.

In the tests where all arriving IFR aircraft or arriving IFR turbojet-aircraft were vectored to a 3,000 foot glide slope

intercept, the controllers were unanimous in stating that the procedures increased workload considerably. These procedures caused longer vector patterns, additional radio transmissions, and limitations on arrival airspace. Aircraft being on the communications frequencies for a greater length of time increased the number of aircraft being controlled at any given time. Controllers experienced difficulty in integrating turbojets with low performance aircraft. When the turn-on was accomplished 13 to 20 miles from the runway, it was difficult to judge spacing of turbojets behind slower aircraft.

Because the traffic flow into and departing from major airports necessitates layered procedures at the surrounding airports, the contention was made that all terminal procedures are not compatible with the proposal. Although it would not be impossible to implement the proposal, the arrival and departure flow at a major airport with surrounding airports would be significantly decreased.

It is difficult to precisely quantity the effects of the EPA proposal on major terminal areas without a complete system-wide evaluation. Such an evaluation would be extremely expensive and could seriously disrupt the ATC system. Experience gained during the Tampa and Detroit studies indicated that operations at the satellite airports in those areas were not affected during the test periods, even though the primary airports were seriously affected. However, operations at satellite airports near primary airports having higher densities of traffic would be affected.

Intra-facility coordination was increased during the test period. This was made necessary by the longer turn-on area spilling over into the departure controller's airspace. Operations in other terminal areas could be altered to a far greater extent.

At smaller airports served by only one or two instrument approach procedures it is often necessary to make the approach to a runway other than the landing runway and then make a circling approach to the landing runway. The presumption was made by many persons that this type of approach would be prohibited. The FAA agrees that the proposal does not account for this situation.

The proposal addressed various altitudes as of "AGL" (Above Ground Level). It appears that the altitudes should be designated as Above Airport Elevation. No adequate method exists for determining altitudes above ground level at all times. However, a determination of the height above the airport elevation is possible.

The EPA proposal would require that, consistent with the previously mentioned altitude minimums, a rate of descent below an altitude of 3,000 feet AGL must be no less than that associated with the existing ILS glide slope at the airport, that the preferable glide slope angle must be at least 3 degrees, and that high performance aircraft operating under VFR must also be subject to a required minimum glide angle below 3,000 feet AGL. These several requirements of the proposed rule cannot be implemented for the following reasons:

1. The angle associated with an ILS glide slope must be determined for a specific runway. It may not be applied as a single, universal airport standard.

2. It is assumed the use of the term AGL is in error and the correct term of reference should be Above Airport Elevation.

3. Aircraft cannot be required, in practice, to maintain a rate of descent associated with a specific glide slope angle since the rate of descent is not measured in degrees. A given rate of descent will not produce a constant glide path angle except in the case of a uniform zero wind condition and a uniform approach speed.

The FAA is acutely aware of the need to constantly examine the procedures used by the ATC system. Recent studies of existing modified programs proved that fuel consumption and the impact of aircraft noise can be reduced while high safety standards are maintained. However, because of the need to closely integrate air traffic departure and arrival flows with the overall safety, efficiency, and environmental objectives of the air traffic control system, the FAA believes that direct management of the ATC function, using a total systems approach, is far preferable to regulations of the kind proposed by EPA, which seriously limit ATC flexibility.

Accordingly, as stated above, a new FAA internal directive, superseding Order 7110.22B (the "keep-'em-high" Order) and aimed directly at FAA air traffic control facilities, has been developed and is being issued. This order, entitled "Local Flow Traffic Management" has been placed in the public docket and is available for examination.

The basic objectives of this new Order include: improved safety through reduced low altitude flying time, standardization of high performance aircraft arrival procedures, equitable distribution of arrival delays through metering, an enhanced effort in noise abatement, substantial fuel savings, and a more efficient ATC system.

The basic concepts contained in the new agency Order have been tested over the past year and have proved safe and effective. They will be applied to every airport where high performance aircraft operate. For the purpose of this Order, a high performance aircraft is defined as all turbojet-powered and turboprop-powered aircraft weighting more than 12,500 pounds.

These procedures for high performance aircraft are designed to minimize flying time at altitudes below 10,000 feet above airport elevation, and preclude holding or excessive vectoring at altitudes below this level for spacing or delay purposes. Maximum use of profile descents will be made from cruise altitude to the approach gate. A profile descent is defined as an unrestricted descent based on a reduced thrust, and an altitude loss of 300 feet per mile until intercepting the final approach glide path, except where level flight is required for speed reduction.

Departure procedures will be reviewed to insure maximum compatibility with profile descents and new or revised arrival routes. Uninterrupted climbs to cruise altitude will be provided to the extent possible and altitude restrictions below 5,000 feet will be avoided.

Appropriate notices and charts will be published depicting areas of concentrated high performance aircraft flows so that aircraft not in the ATC system can avoid these areas to the extent possible.

In summary, the new order adopts a systems approach to air traffic management that is designed to firmly integrate safety, fuel conservation, and noise reduction objectives into a single national program. It also provides the flexibility needed to allow and encourage change with experience.

The FAA plans initial implementation of this Order on Local-Flow Management this year, with a completion date for all affected terminals in 1978.

In consideration of the foregoing, and under the authority of 611(c) (1) (B) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1431), the Federal Aviation Administration hereby gives notice that it is not prescribing any regulation, at this time, in response to the proposed noise abatement minimum altitude amendment to Part 91 of the Federal Aviation Regulations as received from the EPA on December 6, 1974, and as published in the FEDERAL REGISTER, as Notice 74-40, on January 6, 1974 (40 FR 1072).

Issued in Washington, D.C., on November 15, 1976.

JOHN L. MCLUCAS,
Administrator.

[FR Doc.76-34177 Filed 11-26-76;8:45 am]

[14 CFR Part 91]

[Docket No. 15020; Notice No. 76-26]

TURBOJET-POWERED AIRPLANES

Delayed Landing Flap Procedure

The Federal Aviation Administration is considering amending Part 91 of the Federal Aviation Regulations (14 CFR Part 91) to add a new § 91.85(d) to require that the landing flap setting for turbojet-powered airplanes be delayed until at or below 1,000 feet above the airport elevation. Since this delayed landing flap procedure is for the purpose of noise abatement on approach and landing, the proposal also provides that the pilot in command may use a landing flap setting at a higher altitude if he determines that it is necessary in the interest of safety.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 In-

dependence Avenue, SW., Washington, D.C. 20591. Comments on the overall environmental aspects of the proposed rule are specifically invited. Information on the economic impact that might result because of the adoption of the proposed rule is also requested. All communications received by the FAA on or before January 28, 1977, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of the comments received. All comments will be available, both before and after the closing date for comments, in the FAA Rules Docket for examination by interested persons.

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW, Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

I. BACKGROUND

This proposal is part of the response to an EPA recommended regulation (Notice No. 75-35) concerning flap setting procedures for turbojet-powered airplanes. The other part of this response is published in the "Rule" portion of today's FEDERAL REGISTER and includes an amendment to Part 91 of the Federal Aviation Regulations. This amendment adds a new § 91.85(c) that will require the use of the minimum certificated landing flap setting for turbojet-powered airplanes.

On August 29, 1975, the EPA submitted to the FAA three separate proposed amendments to the Federal Aviation Regulations (FARs) for consideration and publication in the FEDERAL REGISTER under section 611(c) of the Federal Aviation Act of 1958, as amended ("the Act"). Accordingly, the FAA issued Notice No. 75-35 containing EPA's recommended regulations. Notice No. 75-35 was published in the FEDERAL REGISTER on September 25, 1975 (40 FR 44256), inviting interested persons to participate in the making of the proposed rule by submitting written comments.

Pursuant to section 611(c) of the Act and based upon a notice published in the FEDERAL REGISTER on September 25, 1975 (40 FR 44184), a public hearing was held in Washington, D.C., on November 5, 1975, to receive oral and written statements on the matters contained in the notice. Written statements submitted and a transcript of the oral statements are included in the regulatory docket.

The FAA gave due and careful consideration to the information provided by the EPA, by federal government-sponsored research programs, by the comments submitted to the regulatory docket. In addition, the FAA consulted with the EPA and with the Secretary of Transportation. Based on an analysis of this information and after consultation, the FAA concluded that it should adopt an amendment to the FARs based on EPA proposed reduced flap setting noise abatement procedure but should not prescribe regulations based on the EPA two-segment approach procedure. An amendment to Part 91 of the Federal Aviation Regulations to add a new § 91.85(c) and the notice of decision not to prescribe two-segment approach requirements are published in the "Rules" portion of today's FEDERAL REGISTER.

II. REDUCED LANDING FLAP SETTING PROCEDURES FOR CIVIL TURBOJET-POWERED AIRPLANES

As stated in Notice No. 75-35, the EPA proposed to amend § 91.85 of the FARs to provide noise relief to communities in the vicinity of airports by prescribing reduced flap setting procedures for civil turbojet-powered airplanes. This proposal was based on studies referenced in the EPA proposal showing that an approach made with less than full landing flaps reduces aircraft noise as compared to a full flap approach. Since the airframe drag at the reduced setting is less, lower power is required. The reduced flap procedure for each type of turbojet-powered airplane would, as proposed, consist of the minimum final flap setting shown in the Airplane Flight Manual that is appropriate and safe for landing based upon such factors as load, weather, runway conditions, etc. However, the EPA proposal expressly recognized that each pilot in command of an airplane has the final authority and responsibility for the safe operation of his airplane. Therefore, if the pilot in command determines that a higher flap setting for that airplane should be used in the interest of safety for a particular approach and landing, the pilot may use the higher flap setting.

The explanation for the EPA reduced flap proposal stated that certain air carriers are currently using a reduced flap procedure and that the Air Transport Association recommended continuation of the reduced flap approach. The explanation further stated that "[s]ince the procedure is considered safe and will achieve an appreciable reduction in noise caused by civil turbojet engine-powered airplanes, it is proposed to make the use of a reduced flap procedure mandatory for all civil turbojet engine-powered airplanes."

The flap setting procedures developed by the Air Transport Association (ATA), which are currently used by many air carrier pilots for noise abatement (and fuel conservation) purposes at all airports with many types of approaches (ILS, VOR, Visual, etc.), both IFR and VFR, are as follows:

1. Approach the airport area at as high an altitude as possible in accordance with current ATC procedures.

2. Remain in a clean configuration for as long as possible.

3. Proceed in-bound from the final approach fix, or a similar distance for a visual approach, with flaps at one setting less than final landing flaps planned for the particular landing.

4. Extend final landing flaps at a point on final approach at which the aircraft is 1000 feet above field elevation, equipment performance permitting, with stabilization at not less than 500 feet above field elevation.

5. Use the lowest allowable landing flap setting which is permissible for the particular landing.

The ATA procedures also recommend that initiation of each successive flap extension be made at a speed near the minimum speed, for that particular configuration, to maximize noise abatement benefits. The FAA encourages air carriers to use these procedures and has approved their use, on a case-by-case, by individual operators where fully consistent with safety. In addition to issuance of the reduced landing flap requirements, the FAA is continuing its effort to encourage broader use of these procedures where consistent with the highest degree of safety for each operator on an individual basis.

The EPA proposed rule differed from the procedure recommended by ATA. Proposed § 91.85(c) would require pilots of all turbojet-powered airplanes to "use the minimum certificated flap setting set forth in the Airplane Flight Manual that is appropriate to each phase of the approach and landing." However, there is no minimum certificated flap setting appropriate to each phase of the approach and landing since there are no defined phases of the approach and landing in the regulations or in the Airplane Flight Manual. The ATA procedure, however, defines two points in the arrival path of the airplane—the final approach fix or a similar distance for a visual approach; and 1,000 feet above the field elevation on final approach.

The FAA does approve certain landing and approach flap settings that are included in approved performance information in the Airplane Flight Manual. In addition, certain larger airplanes have more than one approach flap setting and more than one landing flap setting.

The amendment to Part 91 to add a new § 91.85(c) will require the use, for pilots of turbojet-powered airplanes, of the minimum certificated flap setting for the appropriate conditions. However, the FAA does not specify when in the arrival sequence the approach or landing flap setting must be used. The FAA believes that delaying the final landing flap setting to a point where a stabilized final approach can still be achieved is a valid means of abating noise during the early phases of the approach without compromising safety.

In consideration of the success of the delayed landing flap procedure recommended by ATA (item no. 4) and the FAA's determination that adoption of this procedure in the amendment would be beyond the scope of EPA proposed § 91.85(c) concerning reduced flaps, the FAA is proposing a rule to specify the highest altitude at which the landing flap setting can be selected.

III. DELAYED LANDING FLAP PROCEDURE

The flap setting selected by the pilot during each phase of the approach is determined by several variable factors, including the rate of descent required, the traffic mix, airspeed restrictions, airplane landing weight, the runway being used, and other conditions which may apply only at a particular airport. In the interest of fuel conservation, a pilot will normally remain in as clean a configuration as possible (e.g., a minimum flap setting) within a range of airspeeds to provide a maneuvering speed which is both safe and adaptable to the next phase of the approach. The objective of the pilot is to arrive at a point on final approach from which a stabilized approach can be maintained to landing. By effectively minimizing the variables through a constant configuration, airspeed, rate of descent, drift correction, etc., the pilots can devote their full attention to evaluating such information as wind shear, changing weather, traffic advisories, ATC requests, and possible emegencies. The FAA believes that the value of the stabilized approach is highly significant in porviding the highest degree of safety during the approach and landing.

The Air Transport Association's recommendation for a reduced and delayed final landing flap setting embodies the stabilized approach concept. The final landing flap setting (minimum certificated), is selected no earlier than 1,000 feet above the airport elevation, permitting aircraft attitude and airspeed adjustments to be made such that a stabilized approach is achieved no lower than 500 feet above the airport elevation.

The National Business Aircraft Association (NBAA) also endorses a similar procedure in the interest of noise abatement. However, their procedures distinguish between VFR and IFR conditions, as stated in the NBAA Noise Abatement brochure, dated October 1973;

1. VFR—Downwind and base leg, or straight-in approach, shall be at a maximum IAS of 160K, with not more than takeoff flap (or approach flap, if applicable). After passing one mile mark inbound from threshold, full flap may be used.

2. IFR—IAS and altitudes as directed by Approach Control, but not to exceed 250K IAS or less than $V_{1.4}$ at takeoff (or approach, if applicable) flap. Maximum of takeoff (or approach, if applicable) flap to the outer marker, with landing flap delayed until required.

In order to achieve the maximum noise abatement benefits during the approach phase, the FAA believes that delaying the landing flap setting until a point on final approach where a stabilized approach can be established and maintained to landing, that safety would not be derogated. In light of NBAA's and ATA's operational success with the delayed flap procedure, substantial noise abatement benefits may be achieved if the operators of all turbojet-powered airplanes were to delay the landing flap setting.

The FAA believes that delaying the landing flap setting until 1,000 feet above the airport elevation will enable all operators of turbojet-powered airplanes to achieve a stabilized approach to landing. However, the FAA also believes that the pilot in command should have the final authority and responsibility for the safe operation of his airplane. Therefore, if the pilot in command determines that it is necessary in the interest of safety to select a landing flap setting at a higher altitude for a particular approach he may do so.

The FAA believes that the delayed flap procedure can be applicable to all civil turbojet-powered airplanes at all airports under both VFR and IFR conditions. In addition, the FAA believes this procedure is appropriate for all types of approaches.

Commenters are also invited to discuss alternative choices which could be used to define the earliest point where the landing flap setting could be made. Such points are as follows:

1. Final approach fix inbound.
2. Interception of the glide slope on a precision approach.
3. Commencement of descent to landing minimums on all precision and straight-in nonprecision approaches.
4. 1,000 feet above airport elevation for VFR conditions only.

If a commenter believes that one of these alternatives is better than the FAA proposal, the commenter is requested to discuss the safety, environmental, economic, and other operational considerations as thoroughly as possible. In addition, commenters are invited to discuss why any one of the alternative choices would not be appropriate.

Commenters should note that the reduced landing flap procedure discussed previously in this document and published in the "Rules" portion of today's FEDERAL REGISTER is applicable only to pilots of turbojet-powered airplanes with more than one certificated landing flap setting. However, the proposed delayed flap procedure is applicable to pilots of all turbojet-powered airplanes regardless of the number of approved landing flap settings.

(Secs. 307(c), 313(a), 601, 611(b), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(c), 1354(a), 1421, and 1431(b)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et. seq.); and Executive Order 11514, March 5, 1970.)

In consideration of the foregoing, the Federal Aviation Administration proposed to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by adding a new § 91.85(d) to read as follows:

§ 91.85 Operating on or in the vicinity of an airport; general rules.

* * * * *

(d) The pilot in command of a turbojet-powered airplane may not select a landing flap setting until at or below 1,000 feet above the airport elevation unless he determines that it is necessary in the interest of safety to select a landing flap setting at a higher altitude.

NOTE.—The Federal Aviation 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.

Issued in Washington, D.C. on November 15, 1976.

R. P. SKULLY,
Director,
Flight Standards Service.

[FR Doc.76-34178 Filed 11-26-76;8:45 am]

[14 CFR Parts 121, 129]

[Docket No. 14318; Reference Notice No. 75-6]

PROPOSED REGULATIONS SUBMITTED BY THE ENVIRONMENTAL PROTECTION AGENCY TO THE FAA: FLEET NOISE LEVEL REQUIREMENTS

Decision Not to Prescribe Regulations

Notice is hereby given that the Federal Aviation Administration (FAA) has decided not to prescribe amendments to the Federal Aviation Regulations (14 CFR Part 121 and 129) concerning the Fleet Noise Level Requirements (FNL) that were proposed by the Environmental Protection Agency (EPA). The proposed amendments were published in the FEDERAL REGISTER in Notice 75-6 (40 FR 8222, February 26, 1975).

The FAA's decision is in accordance with the requirements of section 611 of the Federal Aviation Act of 1958, as amended. It was reached after due and careful consideration of the EPA recommended regulations, the comments received at a public hearing and those submitted to the regulatory docket, and consultations with the EPA.

I. BACKGROUND

Section 611(c)(1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-574; 86 Stat. 1234, October 27, 1972), provides that the Environmental Protection Agency (EPA) shall submit to the Federal Aviation Administration (FAA) proposed regulations, to provide such control and abatement of aircraft noise and sonic boom as the EPA determines are necessary to protect the public health and welfare. In considering proposals submitted by EPA, the FAA must publish the proposed regulations in a notice of proposed rulemaking (NPRM) within 30 days of the date of submission to the FAA. Within sixty days after publication of the NPRM, the FAA must conduct a public hearing at which interested persons may participate by making oral or written presentations regarding the proposals contained in the NPRM.

Section 611(c)(1) of the Federal Aviation Act further provides that within a reasonable time after the conclusion of the public hearing and after consultation with the EPA, the FAA must—

1. Prescribe regulations that are either substantially as submitted by the EPA, or that are a modification of the EPA proposal; or

2. Publish in the FEDERAL REGISTER a notice that is not prescribing any regulation in response to EPA's submission, together with a detailed explanation providing reasons for the decision not to prescribe the EPA's proposed regulations. (This document constitutes such an explanation.)

On January 28, 1975, the EPA submitted a proposal to the FAA to prescribe amendments to the Federal Aviation Regulations to require each air carrier fleet operator under Parts 121 and 129, to report, annually, its Fleet Noise Level (FNL) and the noise data and operational information used to compute the reported FNL.

Subsequently, on February 26, 1975, the FAA published two notices in the FEDERAL REGISTER: A notice of proposed rulemaking (notice No. 75-6, 40 FR 8222) that contained the EPA recommended amendment to the Federal Aviation Regulations, and a Notice of Public Hearing (FR 8243), which announced that, on April 17 and 18, 1975, the FAA would hold a public hearing, in Washington, D.C., concerning the subject EPA proposal. This hearing was held. Interested persons participated by making oral and written presentations.

II. THE DECISION NOT TO PRESCRIBE REGULATIONS

After due and careful consideration of the recommended regulations, the comments received at the public hearing and those submitted to the regulatory docket, and consultations with the EPA, the FAA has determined that the EPA proposed FNL requirement would impose an unwarranted reporting and testing burden on regulated persons without an offsetting incease in present or future relief and protection to the public health and welfare from aircraft noise. Accordingly, the FAA is not prescribing the EPA's recommended regulation at this time. The FAA's determination is based on a number of factors, including the following:

1. Since the proposed FNL regulation would not contain any enforceable noise abatement or control provisions, it would be only reportorial in nature. Consequently, it can not be expected to result in any measured or perceived reduction of aircraft noise emission levels.

Furthermore, for the reasons discussed below, the FAA has not identified any fleet management incentives to reduce noise that would be created or strengthened by an operator's reporting his fleet noise information. Consequently, the proposed regulation cannot be expected to result in any measured or perceived reduction of aircraft noise emission levels.

2. The proposed formula for computing the FNL does not adequately account for variables, such as operating weights and the size of exposed populations. Consequently, the FNL would not accurately describe the actual noise impact which a given aircraft fleet has. Additionally, since operators operate different types of aircraft into a wide variety or airport environments, the FNL formula would not even enable one to make meaningful comparisons of the noise exposure levels produced by different operators or to determine whether the noise exposure created by a given operator is actually changing from year to year or whether it can be reduced in a reasonable manner. But, more importantly, it would not enable one to determine how the FNL of a given fleet affects the public health and welfare.

3. As proposed, the FNL would not apply to certain aircraft which also contribute to community noise impact.

4. Because of the lack of a clear relationship between the proposed FNL concept and the actual noise impact of a fleet, the resulting FNL values and the conditions which they represent would be easily susceptible to misinterpretation or misapplication.

5. A substantial cost would be incurred in accomplishing the noise flight testing needed to derive, under Part 36, the noise levels of each airplane type that has not already been tested under that regulation.

III. PRIOR FNL PROPOSAL

The FAA previously proposed (Advance Notice 73-3, 38 FR 2769, January 30, 1973) a fleet noise level concept similar to the one in the EPA's current proposal. Like the EPA's the foundation of the FAA's FNL proposal was based upon the use of a logarithmic formula to determine an operator's FNL value.

The public comments in response to the FAA's proposed concept were almost unanimously opposed to the use of a logarithmic formula. After full review and analysis of these comments, the FAA decided that the formula could not be supported, so far as its validity was concerned. The FAA now believes that the objective of the FNL concept can best be attained by use of a required time schedule for noise reduction. Such a time schedule is embodied in the FAR 36 compliance rule to be issued by the FAA before the end of 1976. The FAA believes further that the use of an FNL concept based on a logarithmic equation, as first proposed by FAA and later by EPA, cannot be supported. FAA's reasons are discussed below.

IV. FACTORS CONSIDERED

FAA's decision not to prescribe regulations in response to the proposed FNL concept is based on consideration of the following issues, and review of numerous comments received from aviation trade associations, aircraft manufacturers, environmentalists, citizen groups, and state and local governments, and other interested persons.

A. FLEET NOISE LEVEL CALCULATION

Under the EPA's proposed regulation, an operator would use a logarithmic average formula to calculate his FNL in terms of effective perceived noise level (EPNL). The formula takes into account the noise levels of each airplane in the operator's fleet. The procedure for measuring the noise generated by each airplane is that specified in FAR Part 36 for type certification for turbojet and transport airplanes. The formula is:

$$FNL = 10 \log \frac{\sum_{j=1}^{n} Nj \text{ antilog } Lj/10}{\sum_{j=1}^{n} Nj}$$

Where FNL=Fleet Noise Level (EPNL—units of dB)
Nj: The number of operations of a given aircraft (type j) during a specified time period.
Lj: The noise level produced by aircraft type j.

It is FAA's judgment that a logarithmic formula is inferior to the use of a phased time schedule for reducing an operator's total noise impact. Several commentators offered similar statements to the effect that the logarithmic formula would be inappropriate for calculating the FNL. They generally emphasized (1) that the logarithmic formula fails to give the necessary credit to the quieter aircraft, and (2) that the formula does not adequately reflect the subsequent inclusion (after the initial computation of a fleet's FNL) of quieter airplanes within a fleet. The FAA agrees with these comments. This is more fully shown in Appendix A below.

It should be noted that Appendix A's calculations show that a progressive substitution of as much as a 50 percent mix of quieter airplanes results in only minor changes in the FNL. Thus, a meaningful incentive to acquire quieter aircraft would not result from the formula as submitted by EPA.

The EPA recognized in its proposed regulation that "the noisiest airplanes are given the most emphasis by the formula, clearly indicating which airplanes produce the greatest noise impact and which need the most noise control." However, no consideration appears to be given to the potentially negative effect the formula might have on an operator's consideration of whether he should later include quieter aircraft within his fleet.

One commentator stated that, based on the assumption that quieter airplanes result from new technological developments, and given the fact that quieter aircraft have only a minor effect on FNL, the proposed FNL regulation would not necessarily encourage the development of new noise reduction technology. On the other hand, an airplane manufacturer stated that noisier airplane domination of FNL would discourage the acquisition of the heavier, more efficient, airplanes. During his presentation at the public hearing, one commentator expressed the opinion that the proposed rule "does not recognize significant progress until virtually complete achievement is obtained." The FAA agrees with this comment. This can be shown mathematically, using the formula in Appendix A.

Another comment along similar lines pointed out that FNL is sensitive only to the relative mix of airplanes, and is not sensitive to the total number of operations. FAA's analysis of this assertion is also shown in Appendix A, where FNL values for two identical fleets but with grossly different numbers of operations are calculated. These calculations support the above comment.

B. NOISE IMPACT; HEALTH/WELFARE EFFECTS

One commentator noted that the FNL concept does not weigh human impact or measure real noise exposure in terms of people affected.

FAA agrees that the proposed FNL concept would not describe actual noise impact. A large number of factors affect noise impact. These include seasonal effects, equipment and airport operating characteristics, flight paths, altitude, takeoff and landing procedures, percentage of day/night operations, and size and demographic distribution of exposed populations. None of these factors are considered in the FNL formula.

Because of the insensitivity of the proposed FNL concept to these factors, and particularly in view of the inability of a single FNL number, of the kind proposed, to reflect the actual impact of a given fleet on human annoyance, the FAA believes that the proposed FNL concept is not reasonably related to public health or welfare effects. This lack of such a relationship severely limits the probable value of the proposed FNL concept in terms of its accuracy as an index of the noise reduction progress of a particular fleet and as an incentive on fleet operators to reduce noise. Furthermore, if the FNL values were later made enforceable by regulation, the resultant legal burden would not be reasonably related to public health or welfare effects.

C. COMPARISON OF FNL FOR DIFFERENT OPERATORS

The EPA proposed regulation computes the FNL according to Part 36 type certification procedures. This requires using type certification airplane weights and flight procedures or approved equivalent procedures. However, it should be noted that (1) only rarely, if ever, are aircraft in service operated at their certification weights and according to their certification flight procedures and (2) the noise that an airplane emits is dependent upon such variables as its actual operating weight and the number of operations, and patterns of flight over noise sensitive populations.

The variables even differ among operators with similar equipment. Operators with similar equipment could have the same value of FNL and yet generate different noise exposure in terms of actual impact on the public. For example, because of the insensitivity of the proposed FNL concept to the number of persons affected on the ground, two fleets with identical FNL values and similar equipment could have markedly different noise impacts. This is also true because of the above mentioned insensitivity of the proposed FNL concept to seasonal effects and the different impacts of day and night operations.

The inability to meaningfully compare operators on the basis of their respective FNL values can also be seen in the situation in which there are two operators with the same FNL values but one operator has 1000 operations of a given aircraft type while the other has only ten. The noise exposure generated by the operator with 1000 operations is significantly more notwithstanding the fact that both fleets have the same FNL values Appendix A also illustrates this situation.

D. FNL BASED ON LESS THAN MAXIMUM WEIGHTS

The proposed regulation specifies that an operator may use reduced noise levels in the computation of FNL if: (1) He operates his aircraft at reduced weights (2) He accepts such reduced weights as his operating maximum and (3) The noise levels based on the reduced weights are approved by the Administrator of the FAA.

One commentator stated that an operator whose activity is typically at weights less than maximum weight could accept the lesser weight limitation at some future point and actually reduce his approved FNL value (previously computed on the basis of maximum weights). Because of the operator's reduced FNL value, he would appear to be creating less noise when in fact there would be no reduction in actual noise impact on exposed populations.

It is FAA's viewpoint that the weight limitation and required corresponding noise data would lead to severe problems of interpretation and implementation. This is because there is no existing noise data for computing FNL values on the basis of reduced operating weights. Such data is not presently required under Part 36. Given the extremely wide range of types, series, models, and other industry-established subcategories of airplane types, and given the possible range of approved weight limits for each such subcategory, the burden of deriving accurate noise data under Part 36 for each airplane variant is potentially very large. And, because of the factors discussed above, the FAA has not discovered a means of deriving an FNL value, for a given fleet composed of many airplane types, models, and series, that is meaningful in its relationship to the actual noise impact of that fleet. Absent this clear relationship, the added burden of recertificating airplanes at weights less than maximum weight is not economically reasonable.

E. NOISE TESTING COSTS

In addition to recertification noise testing of airplanes already type certificated under Part 36, there would also be a burden of full noise testing, under Part 36, for airplane types that have never been tested under Part 36. This burden could be extremely great for individual fleets that include airplane types for which approved noise levels have not previously been established under Part 36.

To appreciate the magnitude of the potential economic impact of this aspect of the EPA's proposed regulation, consider the FAR 36 noise certification costs for a single family of airplanes—the 727 family. Approximately $3.5 million has been spent thus far to demonstrate (by means of FAA approved precedure equivalent to FAR Part 36, Appendix A) compliance with FAR Part 36 noise certification standards. Note that the EPA proposal would require FNL values for takeoff, for approach and for sideline. Based on the reasonable assumption that operators would request FNL values based upon a variety of reduced weights, it is conceivable that the FAR Part 36 noise certification program could be expected to increase at least three times for a single family of airplanes. Thus, a typical cost for obtaining the required noise data, using FAA approved equivalent procedures, would be approximately $10 million for a single family of airplanes. When considered in relation to the extremely limited value of the proposed FNL concept as a true index of fleet noise impact these costs cannot be justified.

F. REGULATION OF FOREIGN OPERATORS

Several commentators were opposed to unilateral action by the United States to propose FNL regulations on foreign operators without prior discussion of these regulations in the International Civil Aviation Organization (ICAO). The FAA believes that, where consistent with necessary domestic environmental objectives, every effort should be made to work through ICAO. In addition, international comments are fully considered by the FAA in its establishment of regulatory policies affecting international aviation. In this case, the objections to the proposed FNL discussed herein apply to foreign as well as domestic fleet operators. In addition, foreign fleets typically operate heavy aircraft types with intercontinental range. These aircraft would tend to generate high FNL values that, for reasons discussed above, would not be demonstrably related to the actual noise impact of the U.S. operations of those fleets. In view of the extremely tenuous relation between derived FNL values and actual noise impact, the burden of compliance is no more justified for foreign operators than it is for U.S. operators.

G. NOISE REDUCTION INCENTIVES

The preamble to Notice 75-6 contained EPA's assertion that issuance of FNL values, as proposed, would create incentives to develop and apply current and future technologies for reducing noise levels, and would encourage the phase-out of existing aircraft and their replacement with quieter aircraft. The FAA questions this conclusion. While there is a mathematical relation between the Part 36 noise levels of individual airplanes and the composite FNL value of a fleet, the responsiveness of computed FNL values to individual airplane noise levels is so slight that the application of even the most advanced noise reduction technology would have only minor effect on computed FNL values. Even a fleet management effort to reduce noise by acquiring quieter aircraft, combined with a reduction in total operations, would have little overall effect on the computed FNL value for the fleet. There is, thus, no basis for concluding that the FNL concept, as proposed, contains an inherent incentive to reduce noise.

The FAA believes that a stronger possibility exists that widespread use of the

FNL concept could actually stand in the way of other incentives to reduce noise. For example, air carrier management sensitivity to noise problems may be adversely affected because an FNL value, lower than that of competing carriers, is compiled for that air carrier. The air carrier with the lower FNL may, logically, conclude that the FAA has determined that less noise impact is caused by that carrier than one that had a higher FNL (but that has lower actual noise impact because of numbers of operations, distribution of operations, or other similar factors). Any incentive on this carrier in a competitive market would appear to support decisions not to reduce noise. In addition, the fleet with the higher FNL would have little incentive to reduce noise since, as stated above, further cutbacks on operations and introduction of new technology would have at best a minor impact on FNL.

H. EXCLUSION OF CERTAIN AIRPLANE CLASSES

The proposed FNL concept is limited to subsonic airplanes and future supersonic airplanes. Thus, in addition to the factors discussed above that severely limit the value of the proposed FNL concept itself as an accurate description of cumulative fleet noise impact for airplanes covered by it, the concept does not account for the possible impact of the current generation of supersonic aircraft. Furthermore, the proposed FNL concept, being limited to turbojet engine powered airplanes, contains no incentives to introduce turbopropeller engine powered airplanes, which, in some forms, may be markedly quieter than some types of turbojet engine powered airplanes.

The combined effect of these two exclusions is that a fleet currently operating subsonic turbojet engine powered airplanes could introduce any volume of current types of supersonic aircraft with no FNL accountability, and would receive no FNL credit for introducing quieter turbopropeller engine powered airplanes.

I. MISCELLANEOUS COMMENTS

The regulatory docket received several comments which addressed relevant matters not previously discussed under specific topics.

One commentator stated that the proposed regulations would provide an enforcement technique for use when FAR 36 levels are reduced. It is true that the FNL concept, as proposed, could be amended later to require the management of fleets so that specified FNL values are not exceeded. However, in view of the lack of a clear connection between computed FNL values and actual fleet noise impacts, it is not probable that the later addition of enforceable FNL limits would serve a useful purpose. This conclusion would not appear to be altered by altering Part 36 noise limits, since the chief defect in the proposed FNL concept is not that Part 36 noise levels are too high, but rather, that, regardless of individual airplane noise levels derived under Part 36, the relationship between the composite FNL values and the public health and welfare has not been established.

Another commentator who agreed with the theory of FNL suggested refinements which would (a) allow people to assess the impact of FNL on specific airports, (b) allow a weighted assessment of day and night noise impacts, and (c) enable assessment of the effect of changed flight procedures. The FAA agrees with these objectives. However, information received at the public hearing and otherwise submitted to the docket does not furnish a basis for formulating a regulatory proposal, at this time, that would accomplish these objectives. Another individual suggested that the FNL rule should be "coordinated" with FAR 36 requirements although no information was provided to show what form this "coordination" would take or how it would be accomplished.

One commentator stated that FNL would provide information needed by airlines to facilitate planning but made no suggestions as to how that could be achieved. The point was also made that airport operators need to know particular FNL values. Because of the above mentioned lack of a supportable correlation between computed FNL values and the actual noise created in given airport environments by a particular air carrier, the FAA believes that no constructive purpose would be served by generating FNL values, under the proposed regulation, and furnishing these values to airport or air carrier management.

In consideration of the foregoing, and under the authority of section 611(c)(1) of the Federal Aviation Act (49 U.S.C. 1431), the Federal Aviation Administration hereby gives notice that it is not prescribing any regulation at this time in response to the proposed fleet noise level amendments to Parts 121 and 129 as received from EPA on January 28, 1975, and published in the FEDERAL REGISTER, as Notice 75-6, on February 26, 1975 (40 FR 8222).

Issued in Washington, D.C., on November 15, 1976.

JOHN L. MCLUCAS,
Administrator.

APPENDIX A—FLEET NOISE LEVEL SAMPLE CALCULATIONS

$$FNL = 10 \log_{10} \frac{\sum_{j=1}^{n} (Nj) \text{ antilog } (Lj/10)}{\sum_{j=1}^{n} (Nj)}$$

For two hypothetical fleets with the same aircraft composition and FAR 36 takeoff noise levels of 110 EPNdB, one fleet having 1000 operations and the other having only 10 operations, their FNL value would be calculated as follows:

$$FNL_1 = 10 \log \left[\frac{(1000 \text{ antilog } 110/10)}{(1000)}\right]$$

$$FNL_1 = 10 \log \frac{(1000 \times 10^{11})}{1000} = 10 \log \frac{10^{14}}{10^{3}}$$

$$FNL_2 = 10 \log 10^{11} = 110$$

$$FNL_2 = 10 \log \left[\frac{(10 \text{ antilog } 110/10)}{10}\right]$$

$$FNL_2 = 10 \log \frac{(10 \times 10^{11})}{10} = \frac{10 \log 10^{11}}{10}$$

$$FNL_2 = 10 \log 10^{11} = 110$$

Note that both fleets have the same FNL value even though one operator had 100 times as many operations of the same aircraft type as the other. Similar results would be obtained for the assumption of the same mix of different types of aircraft by the two operators but with different numbers of operations.

If the above fleet with 1000 operations is modified so that 25 percent of its operations are flown by airplanes with levels 10 EPNdB quieter, the following FNL would be calculated as follows:

$$FNL = 10 \log \frac{(750 \text{ antilog } 110/10 + 250 \text{ antilog } 100/10)}{1000}$$

$$= 10 \log \frac{(750 \times 10^{11} + 250 \times 10^{10})}{1000}$$

$$= 10 \log (775 \times 10^{8})$$

$$= 108.9$$

Note that the fleet's FNL is reduced only 1.1 db.

Carrying these examples one step further so that 50 percent of the fleet's operations are with the quieter airplanes results in a FNL of 107.4.

$$FNL = 10 \log \frac{(500 \text{ antilog } 110/10 + 500 \text{ antilog } 100/10)}{100}$$

$$= 10 \log \frac{(500 \times 10^{11} + 500 \times 10^{10})}{1000}$$

$$= 107.4$$

Thus, replacing half of the fleet with 10 dB quieter airplanes results in a total reduction of 2.6 dB.

An even more extreme case is presented by assuming that half of the fleet operations are performed by airplanes with noise levels of 80 EPNdB, the approximate level of airframe noise with no engine noise present at all.

$$FNL = 10 \log \frac{(500 \times 10^{11} + 500 \times 10^{9})}{1000}$$

$$= 106.9$$

As shown, replacing half of a fleet with theoretical airplanes with no engine noise results here in a reduction in FNL of only 3.1 dB.

These examples illustrate (1) how FNL values are unaffected by relative numbers of

operations and (2) also how FNL values are dominated by noisier airplanes. As illustrated, substitution of large numbers of quieter operations has a minor impact on FNL. This brings into question the validity of the assertion that a FNL rule would encourage either new technology or the introduction of quieter airplanes.

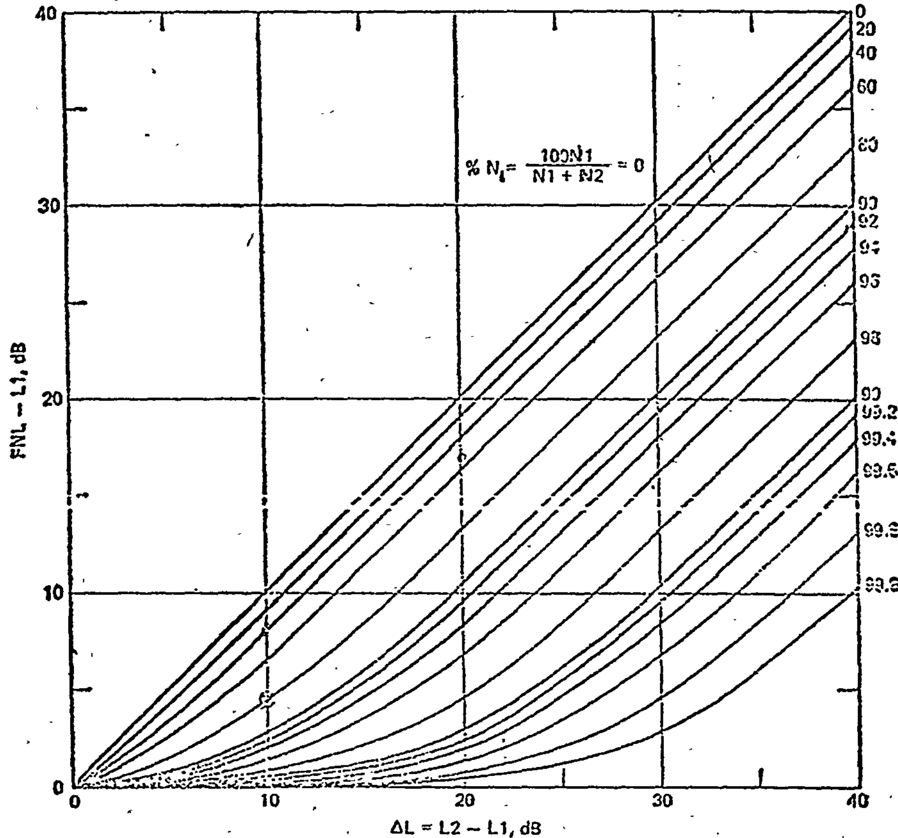

FIGURE 1. FLEET NOISE LEVELS FOR TWO AIRCRAFT.
(a) VERSUS ΔL FOR 0-40 dB RANGE.

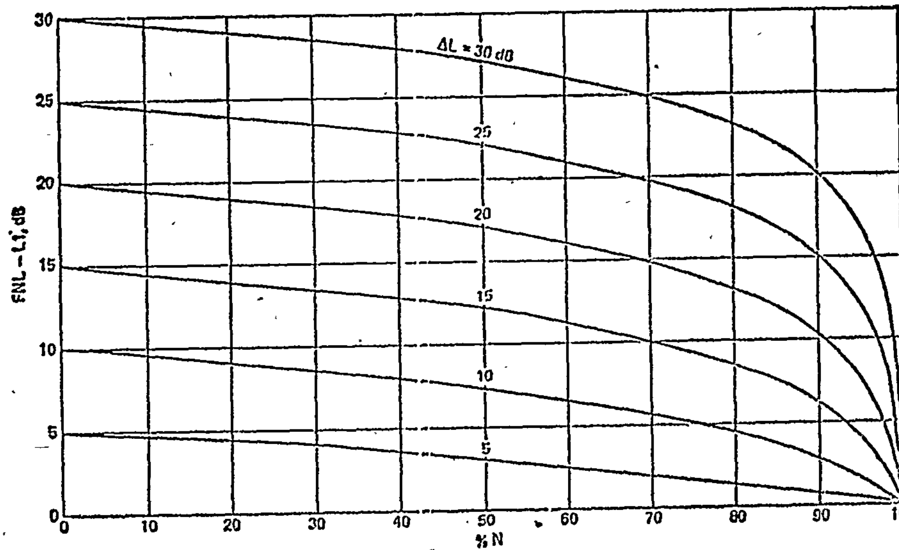

FIGURE 2 FLEET NOISE LEVELS FOR TWO AIRCRAFT.
(c) VERSUS % N

[FR Doc.76-34176 Filed 11-26-76;8:45 am]

federal register

MONDAY, NOVEMBER 29, 1976

PART III:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

EDUCATION OF HANDICAPPED CHILDREN

ASSISTANCE TO STATES

Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 121a]

ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

Notice of Proposed Rulemaking

Under section 5(b) of the Education for All Handicapped Children Act, Pub. L. 94-142 (20 U.S.C. 1411, note) which amends the Education of the Handicapped Act, notice is given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 121a of Title 45 of the Code of Federal Regulations by adding the regulation set forth below.

Pub. L. 94-142, enacted November 29, 1975, contains extensive amendments to the Education of the Handicapped Act (EHA), especially Part B, which provides for assistance to the States and outlying areas in initiating, expanding, and improving programs for the education of handicapped children. These amendments include provisions which are designed to assure that all handicapped children have available to them a free appropriate public education, to assure that the rights of handicapped children and their parents are protected, to assist States and localities in providing for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate these children.

An important part of the program is the definition of "handicapped children" contained in section 602(1) of the Education of the Handicapped Act, since the requirements of the Act are stated in terms of providing services to handicapped children. Starting in fiscal year 1978, allocations will be based in part on the number of handicapped children receiving special education and related services (section 611). One of the handicapping conditions listed in the definition of "handicapped children" in section 602(1) of the Education of the Handicapped Act, as amended by Pub. L. 94-142, is "children with specific learning disabilities."

The Congress established specific requirements relating to specific learning disabilities which require regulations to be published by November 29, 1976 (section 5(b)(1) of Pub. L. 94-142). This regulation is being published separately from regulations for the rest of Part B, which was substantially revised by Pub. L. 94-142. This regulation raises unique issues as well as having a separate statutorily imposed publication date. This regulation is proposed as a subpart to Part 121a and, when published in final, will be included in the regulations for Part B of the Education of the Handicapped Act.

The Congress has defined "children with specific learning disabilities" as follows:

> Those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or environmental, cultural, or economic disadvantage.

(Section 5(b)(4) of Pub. L. 94-142.)

The Congress provided that the Commissioner consider whether changes should be made in this definition as a result of the regulations described in section 5(b)(3). At the present time, the Office of Education does not intend to recommend legislative changes because there is still much research required to further delineate the components of specific learning disabilities. The existing definition will be incorporated in the definitions section of the general regulations document for Pub. L. 94-142.

Section 5(b)(1) requires the Commissioner to develop regulations which establish:

(1) Specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability for the purposes of designating children with specific learning disabilities;

(2) Diagnostic procedures to be used in determining whether a particular child has a disorder or condition which places such a child in the category of children with specific learning disabilities; and

(3) Monitoring procedures to be used in determining if State and local educational agencies are complying with the criteria in (1) and (2).

The criteria in (1) and (2) are important to insure that children are appropriately evaluated, that children will not be mislabeled, and so that there can be common standards for counting children who have specific learning disabilities.

The "count" is important because the Congress has established an allocation formula for funds under Part B of the Education of the Handicapped Act (starting in fiscal year 1978) which is based on a count of handicapped children receiving special education and related services. In counting children, the Congress has stated that children with specific learning disabilities may not constitute more than one-sixth of the children eligible to be counted as handicapped. Another limitation on the count is that a State may not count more than 12 percent of the number of children aged five through seventeen as handicapped. This means at most, only two percent of the children in those age ranges in a State may be counted as having specific learning disabilities for allocation purposes. This is not to say that there may not be a larger percentage of children who have specific learning disabilities which a State is required to serve under Part B.

The Congress has also provided, however, that this two percent "cap" would be removed when these final regulations are effective (section 5(c)).

LEGISLATIVE HISTORY

The legislative history points out the problem of defining a specific learning disability very clearly. As Congressman Lehman stated, "No one really knows what a learning disability is." Cong. Rec. daily ed. at H 7755 (July 29, 1975). Congressman Lehman further pointed out that research has identified 53 basic learning disabilities. At H 7755. He also points out that one person has identified 99 minimal brain dysfunctions. At H 7755.

LIMITATIONS ON ESTABLISHING SPECIFIC CRITERIA

The Congress contemplated specific criteria for each specific learning disability.

The Office of Education shares the cern of members of Congress that children not be mislabeled as having specific learning disabilities. In attempting to comply with the Congressional intent that detailed criteria be specified for determining what conditions constitute a specific learning disability, the Office of Education held several meetings to obtain input from experts in the fields of education, psychology, and medicine and from other interested parties. The experts indicated that there was little general agreement on what conditions could and could not be considered a specific learning disability. Among the points made were:

1. The state of the art in the field of specific learning disabilities and its associated fields is such that it is not presently possible to specify exactly all of the components of each specific learning disability. There remain strong opposing professional opinions as to the validity of certain behavioral manifestations as being indicative of a specific learning disability. At present, the only generally accepted manifestation of a specific learning disability is that there is a major discrepancy between expected achievement and ability which is not the result of other known and generally accepted handicapping conditions or circumstances.

2. There exists no hard research data collected on a large enough sample in order to state, with certainty, which are the common characteristics of all learning disabled children.

3. There are several theories as to what causes children to have specific learning disabilities.

4. There appear to be no generally accepted diagnostic instruments presently available which can be singly and appropriately utilized with all children with a specific learning disability.

5. There are several theories, none of which are universally accepted, as to how and why children with learning disabilities learn or do not learn. These theories require that inferences be made from tested and observed behavior. These

inferences must serve as the basis for the educational diagnosis and treatment of children with a specific learning disability. Based on the theory employed, the inferences may be quite different in nature.

6. It is not possible to list specific standardized diagnostic instruments to be used in the evaluation of every child suspected of having a specific learning disability because of the wide variety of conditions which may lead to a child having a specific learning disability.

7. When standardized tests are applied to populations not included in the standardization sample, the results obtained tend to discriminate against certain groups of children.

8. If the Office of Education would regulate the diagnostic process to insure that all or almost all of the variability to be found in children with specific learning disabilities would be evaluated and analyzed, it would require an extremely extensive and impractical diagnostic approach. If such an approach were required, State educational agencies and local educational agencies would have to either reassign currently employed diagnostic personnel to perform these tasks (and thus, of necessity, have to replace them) or they would have to employ significant numbers of additional diagnostic personnel. The costs in time and money would be extraordinary.

APPROACH

In considering how to best meet the legislative requirement, it was determined that the requirement could be met by setting out procedures which would lead both to the determination that a given condition was a specific learning disability and that a given child had such a disability.

In the proposed regulations, the requirements of section 5(b)(1) (A) and (B) have been combined. This procedure was selected for two reasons: (1) The specific data on which criteria for determining whether a particular disorder or condition may be considered a specific learning disability are not presently available in a practical, useable form; and (2) It is more appropriate at this time to determine whether children have a specific learning disability utilizing a procedure that provides for an appropriate diagnostic approach. This procedure requires the development of appropriate diagnostic criteria. The proposed regulations provide those criteria. The procedure stated will provide for the appropriate diagnosis of children with specific learning disabilities. A diagnostic procedure meets the intent of section 5 (b)(1)(A) and 5(b)(1)(B), while avoiding the pitfall of trying to isolate every condition, each with its multitude of symptomatic variables.

SUMMARY OF PROPOSED REGULATIONS

Section 1 states the requirement that any child to be identified as having a specific learning disability must be evaluated according to the procedures and criteria set out in this subpart.

Section 2 establishes a requirement that any evaluation be conducted by a team composed of appropriate professionals.

Section 3 states that a specific learning disability may be found if a child has a severe discrepancy between achievement and intellectual ability in one or more of several areas: oral expression, written expression, listening comprehension or reading comprehension, basic reading skills, mathematics calculation, mathematics reasoning, or spelling. A "severe discrepancy" is defined to exist when achievement in one or more of the areas falls at or below 50 percent of the child's expected achievement level, when age and previous educational experiences are taken into consideration. The 50 percent figure represents the level at which a child's educational performance is clearly impaired.

The criteria in this section also list the statutory requirements that a child may not be identified as having a specific learning disability where the learning problem is primarily the result of visual, hearing or motor handicaps, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage.

Section 4 sets out the evaluation techniques to be used.

Section 5 indicates the evaluation must include a medical examination where it is suspected that the child has an educationally relevant medical problem.

Section 6 specifies a requirement for observing the academic performance of the child in the classroom.

Section 7 requires that the results of the evaluation be documented in a written report which includes full information about the team's findings, decisions, and recommendations.

Sections 8 and 9 set out monitoring responsibilities of State educational agencies and the Office of Education.

ISSUES

Several issues were identified in developing these proposed regulations. Comments on these issues would be particularly helpful in developing the final regulations. The primary issue has already been discussed at length: whether it is possible to set out detailed criteria for determining whether a given condition is a specific learning disability. As discussed, this clearly seems impossible given the state or the science. It was determined that the better approach would be to attempt to meet the intent of the requirement by setting out specific diagnostic procedures and criteria for determining whether a given condition is a specific learning disability.

Another issue was whether to attempt to define a myriad of terms, including those set out in the existing definition of specific learning disabilities: dyslexia, minimal brain dysfunction, brain injury, among others. There are no commonly accepted educational definitions of these conditions; in fact, for some of the conditions, there are more than 20 definitions that are used. The Office of Education was unsure whether it would be better to propose an educational definition for each of these conditions or to leave them undefined. The latter approach is proposed.

There are several issues raised by the approach required in the proposed regulations for establishing whether a child has a specific learning disability. One of these concerns is how expected grade level achievement is established. The proposed regulations require the use of a formula that was initially designed for use in establishing the grade expectancy level in reading achievement. Because of the components of the formula, it is believed that this formula can be appropriately applied to all academic achievement that may be evaluated under these proposed regulations.

A related issue is based on the procedure to be used in the determination of a severe discrepancy between ability and achievement. The regulations require that a child be achieving at or below 50 percent of his expected achievement level in order for a severe discrepancy to exist.

In order to achieve this purpose, a formula was derived which incorporates the interrelationship between ability, chronological age, previous educational experience, and a level of discrepant achievement. These factors reflect how 50 percent of expected achievement is established.

The 50 percent of expected achievement level concept was selected because it should identify children who are having extreme problems with learning as demonstrated by their achievement. Children with extreme achievement problems in relation to their age, ability, and previous educational experience, whose learning problems are not primarily the result of other known handicapping conditions, are believed to have a specific learning disability. The application of such an approach has a critical effect in establishing the existence of a specific learning disability.

In addition to receiving comments on the discrepancy measure, we will continue to work with States to review the impact of the proposed measure as well as similar discrepancy measures now in effect in several States. The results of these comparisons as well as the responses to the comments received during the comment period will be presented in the preamble to the final regulations.

The use of the formula with children of kindergarten and pre-school ages may result in negative values representing academic achievement levels. It is assumed that other procedures allowed in the regulations will be utilized in such a circumstance. The discrepant achievement of some kindergarten and preschool children will necessarily have to be evaluated subjectively.

Another regulation issue is the team approach to evaluation. This requires the inclusion of a regular classroom teacher on the team. This requirement means that a regular classroom teacher has to participate. However, this re-

quirement may not be consistent with contractual requirements of teachers in some local educational agencies.

The proposed regulations provide for the team to decide if a child has a severe discrepancy between ability and achievement if there are no standardized tests that can be appropriately used which will yield the data required by the procedure involving the formula. If the team must make such a judgment in the absence of these data, the team is required to state specifically the basis on which the determination of the existance of the discrepancy is based. Given the due process safeguards that apply to evaluations the team will have to make such judgments very carefully. The opportunity to use such a judgment is necessary, however, to allow for the proper evaluation of children when appropriate standardized diagnostic instruments are not available.

This notice of proposed rulemaking is being published with a 120 day comment period in order to provide the public the opportunity to critically evaluate not only the specific requirements of the proposed regulations, but to examine the efficacy of this approach in determining the existence of specific learning disabilities as well.

PRIOR PUBLIC INPUT

In planning for the development of the specific learning disability regulations, the Office of Education elected to seek before-the-fact input from a variety of agencies and individuals from throughout the Nation. The information obtained through the use of this procedure proved to be quite useful in writing the proposed regulations. The basic procedure of public involvement was used prior to the actual drafting of the proposed rules. Citizens representing advocate groups, including parents and professionals, were invited to participate in a meeting where the primary issues regarding the development of these regulations were identified and discussed. Subsequent to this meeting, a conference was held which involved representatives of many additional advocate groups. At this conference, information concerning the specific regulation requirements, as well as major philosophical and practical issues, were sought. A meeting was also held with the professional advisory board of the National Association for Children with Learning Disabilities for additional information. (The membership of this organization is composed primarily of parents, although many professionals belong as well.)

Following the series of meetings, a draft concept paper was developed. The concepts contained in that paper were shared with State educational agency representatives from 34 States. The purpose of this activity was to attempt to ascertain if the concepts contained in the draft paper presented any major philosophical and implementation problems for States.

A second draft concept paper was developed and sent to all who had participated in the formal input sessions. Comments were specifically invited on the second concept paper. The responses were analyzed and, when appropriate, were incorporated in the proposed regulations.

PUBLIC HEARING AND WRITTEN COMMENTS

The Office of Education will hold five public hearings. The places and times for these hearings will be announced in a separate notice published in the FEDERAL REGISTER. Written comments, suggestions, or objections regarding the proposed regulations should be sent to the Bureau of Education for the Handicapped, Office of Education, Room 2015, Regional Office Building No. 3, 7th and D Streets, SW., Washington, D.C. 20202. Comments received in response to the Notice will be available for public inspection at the above office Monday through Friday between 8:00 a.m. and 4:00 p.m. All relevant material must be received on or before March 28, 1977, unless the 120th day is a Saturday, Sunday, or Federal holiday, in which case the material must be received by the next following business day.

Questions about this regulation may be addressed to Mr. Frank S. King at the above address or by phone at (202) 245-9815.

(Catalog of Federal Domestic Assistance Number 13.449, Handicapped Preschool and School Programs.)

It is hereby certified that this proposed rule has been screened pursuant to Executive Order No. 11821, and does not require an Inflationary Impact Evaluation.

Dated: November 12, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

Approved: November 16, 1976.

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

Title 45 of the Code of Federal Regulations is proposed to be amended by adding to Part 121a, a new subpart (to be numbered at a later date), reading as follows:

SPECIFIC LEARNING DISABILITIES

Sec.
1 Scope; evaluation requirement.
2 Evaluation team.
3 Criteria for determining the existence of ability.
4 Evaluation techniques.
5 Medical problem.
6 Observation.
7 Written report.
8 SEA monitoring responsibilities.
9 Monitoring responsibilities of the Commissioner.

AUTHORITY: Section 5(b) of the Education for All Handicapped Children Act, amending the Education of the Handicapped Act, 89 Stat. 791 (20 U.S.C. 1411 note), unless otherwise noted.

Sec. 1. Scope; evaluation requirement.

The State educational agency shall insure that the criteria and procedures in this subpart are used in any determination that a child has a specific learning disability.

(20 U.S.C. 1411 note)

Sec. 2. Evaluation team.

(a) Each public agency responsible for determining that a child has a specific learning disability shall use a team to evaluate the child.

(b) The official responsible for the administration of special education programs for handicapped children at the agency shall appoint the team members.

(c) The team must include:

(1) (i) The child's regular teacher; or

(ii) If the child does not have a regular teacher, a regular classroom teacher licensed or certified by the State educational agency to teach a child of his or her age; or

(iii) For a child of less than school age, an individual certified, licensed, or approved by the State educational agency to teach a child of his or her age;

(2) (i) A teacher with training in the area of specific learning disabilities, or, if not available;

(ii) A teacher or administrator, with knowledge in the area of specific learning disabilities; and

(3) At least one additional individual certified, licensed, or approved by the State educational agency to conduct individual diagnostic examinations of children, such as a school psychologist, speech clinician, or remedial reading teacher.

(d) (1) The agency official shall choose team members who have knowledge of the procedures to be used in the evaluation of children with a specific learning disability.

(2) Each individual team member must be qualified to perform the specific diagnostic tasks for which he or she is responsible.

(3) After the team has completed the evaluation, it shall meet at least once to:

(i) Discuss the evaluation; and

(ii) Reach a conclusion as to whether the child has a specific learning disability.

(20 U.S.C. 1411 note)

Sec. 3. Criteria for determining the existence of a specific learning disability.

(a) The team may not identify a child as having a specific learning disability if the severe academic discrepancy is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(20 U.S.C. 1411 note)

(b) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (b) (2) of this section, when provided with learning experiences appropriate for the child's age and ability levels.

(2) The team finds that a child has a severe discrepancy between academic achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;
(ii) Listening comprehension;
(iii) Written expression;
(iv) Basic reading skill;
(v) Reading comprehension;
(vi) Mathematics calculation;
(vii) Mathematics reasoning; or
(viii) Spelling.

(c) A severe discrepancy between achievement and intellectual ability means achievement in one or more of the areas listed in paragraph (b)(2) of this section which falls at or below 50 percent of the child's expected achievement level, when intellectual ability, age, and previous educational experiences are considered.

(d) The team shall use the following method to determine whether the severe discrepancy exists:

(1) The team determines the chronological age of the child and his or her intellectual ability stated in terms of an intelligence quotient.

(2) The intelligence quotient is divided by 300 and the result is added to seventeen one-hundredths.

(3) The result of this computation is multiplied by the chronological age of the child.

(4) From this figure is subtracted 2.5.

(5) The resultant figure is the academic achievement level at or below which the child must achieve in one or more of the eight areas listed in (b)(2) in order for a severe discrepancy to exist.

(6) The method of computation described above is expressed mathematically as:

$$C.A.\left(\frac{IQ}{300}+0.17\right)-2.5=\text{severe discrepancy level}$$

(e) If there are no State or national norms for the evaluation techniques used to determine achievement levels, the judgment of the team may be accepted as evidence that the child is functioning at or below 50 percent of the expected achievement level, provided:

(1) Each team member agrees that the child is functioning at or below 50 percent of expected achievement level; and

(2) The team members specify in the report, under section 7, the evidence that supports the conclusion that the child is functioning at or below 50 percent of expected achievement level.

(f) In the event that the team members all agree that a child has a specific learning disability, but a severe discrepancy between achievement and intellectual ability is not indicated when the procedure specified in Sec. 3 (c) and (d) is applied, the team may determine that a child has a specific learning disability provided that, in addition to the team requirements of Section 7 (a), (b), and (c), each team member states in writing:

(1) The specific factors presented in the evaluation of a child which lead the team member to the conclusion that the child has a specific learning disability;

(2) The extent of the deviation of academic achievement in one or more of the areas in Sec. 3(b)(2) from the severe discrepancy level established by the procedure stated in Sec. 3 (c) and (d).

Sec. 4. Evaluation techniques.

(a) The evaluation conducted by the team shall, to the extent appropriate to the problems being evaluated, include the use of:

(1) Individual standardized diagnostic techniques or, if these are not available, non-standardized evaluation techniques, or group evaluation techniques; and

(2) Other techniques specifically required because of the unique nature of the problem being evaluated.

(b) If non-standardized or group evaluation techniques or other specific techniques are utilized, the team shall state in writing:

(1) How these techniques are appropriate for use with the child being evaluated; and

(2) How the results of application of these techniques were used in determining whether the child has a specific learning disability.

(20 U.S.C. 1411 note)

Sec. 5. Medical problem.

(a) When a team believes that a child may have an educationally relevant medical problem, the team shall request that the parents seek a medical examination for the child.

(b) The medical examiner shall determine the extent and the type medical examination to be performed.

(c) The educationally relevant medical findings, if any, must be included in the team report.

(20 U.S.C. 1411 note)

Sec. 6. Observation.

(a) At least one team member shall observe the child's academic performance in the child's regular classroom setting.

(b) In the case of a child below school age or out of school, a team member shall observe the child in an educational environment recognized by the State as appropriate for a child of that age.

(20 U.S.C. 1411 note)

Sec. 7. Written report.

(a) The team shall report the result of the evaluation in writing.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child in the child's regular classroom setting;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any; and

(6) A statement that the severe discrepancy between academic achievement and ability is not correctable without special education and related services.

(c) Each team member shall certify in writing whether the report is accurate and whether it reflects his or her conclusion. If it does not represent his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

Sec. 8. SEA monitoring responsibilities.

(a) Each State educational agency is responsible for insuring that any child identified as having a specific learning disability under this part is evaluated using, at a minimum, the criteria and procedures included in this subpart.

(b) Each State educational agency shall require each administrator responsible for providing special education for handicapped children to maintain a copy of the report prepared by an evaluation team on every child within his or her agency determined to have a specific learning disability.

(c) Each State shall include the following information in its annual program plan:

(1) The number of children referred for evaluation of a specific learning disability;

(2) The number of children evaluated as a result of the referral; and

(3) The number of children determined to have a specific learning disability, by chronological age in whole year increments.

(20 U.S.C. 1411 note and 1414(2)(c))

Sec. 9. Monitoring responsibilities of the Commissioner.

(a) The Commissioner shall conduct periodic monitoring visits to insure compliance under this subpart.

(b) The Commissioner may, at his discretion, conduct a study to determine, on a sampling basis, the compliance by State and local educational agencies under this subpart.

(20 U.S.C. 1411 note)

[FR Doc.76-34804 Filed 11-26-76;8:45 am]

federal register

MONDAY, NOVEMBER 29, 1976

PART IV:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

EDUCATION AMENDMENTS OF 1976

Postsecondary Education; Intent to Issue Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

EDUCATION AMENDMENTS OF 1976: POSTSECONDARY EDUCATION

Intent to Issue Regulations

On October 12, 1976, the President signed the Education Amendments of 1976 (Pub. L. 94-482). The Amendments include five titles which amend and enact many education program statutes. Title I concerns higher education amendments; Title II covers vocational education; Title III extends, revises, and enacts other education programs; Title IV amends the General Education Provisions Act, including programs under that Act such as the National Institute of Education; and Title V includes technical and miscellaneous provisions.

The purpose of this Notice of Intent is to alert the public (1) to statutory provisions under Title I of the Education Amendments of 1976 and section 302 of Title III which appear to warrant major new regulations or amendments to existing regulations and (2) to problems in certain existing program regulations which may require change. This Notice provides a short explanation of these statutory provisions and issues which have been identified and may need to be addressed in regulations. It gives the public an opportunity to comment at an early stage on issues basic to the implementation of the Act and gives notice of public conferences which will permit interested persons to have an opportunity to offer their ideas and specific recommendations before the Office of Education prepares the regulations. It will assist the Office of Education in further considering what regulation changes, additions, or deletions are needed and how they should be made.

Specific issues are identified below on which public input is sought. The issues serve as a guide to the kinds of questions raised by the Amendments which may need to be treated in regulations. However, public comments are not limited to the issues identified in this notice. Any member of the public interested in commenting on what regulations are needed, what additional issues need to be addressed in regulations, and how they should be addressed is welcome to do so. Commenters should address only those issues which concern the implementation of these statutory provisions through regulations.

Advance public input in the development of regulations needed to implement programs under Titles II and III of the Education Amendments of 1976 is being solicited through the publication of other Notices of Intent. It is anticipated that Titles IV and V of the statute will not require any regulations for programs administered by the Office of Education, excepting possible minor, conforming, or procedural amendments.

This Notice concerns only those changes in the law which will require major regulations. Some of the provisions enacted by Pub. L. 94-482 will not require any regulations, and other changes will only require minor, conforming amendments to existing regulations. This Notice also does not include any program changes made in the Guaranteed Student Loan Program.

The Notice of Intent is issued under the authority of the Commissioner of Education. It does not reflect policies of the Office of Education or of the Department of Health, Education, and Welfare. Its purpose is to obtain early input in the development of regulations. It has not been reviewed by the Office of the Secretary.

This Notice also covers a number of new budget authorities enacted by Pub. L. 94-482, as follows:

Section 124(b)(4), Service Learning Centers.
Section 124(c), Personnel Training Authority.
Section 125, Educational Information Centers.
Section 131(b), Student Financial Assistance Training.
Section 162(i), Reconstruction and Renovation of Academic Facilities.
Sections 176-178, Extension and Revision of Community College Programs.
Section 302(b), Citizen Education (Grants to Promote Cultural Understanding).

It is not clear at this time whether funds will be sought for these authorizations by the President or appropriated for this fiscal year or for successive fiscal years by the Congress. The Office of Education is required to develop regulations without regard to funding status, and it is appropriate that these programs be covered in this advance notice of intent to regulate to meet the joint goals of (1) promulgating regulations within statutory time constraints and (2) providing for wider and earlier public participation in the development of regulations. The inclusion of a program in this notice should not be understood as a commitment on the part of either the Congress or the Executive Branch to fund the program.

Provisions in the Education Amendments of 1976 covered by this notice include

Section	Program	Responsible division
101 (Pt. A)	Community services and continuing education (extension and revision of program).	Division of Training and Facilities.
121	Basic educational opportunity grants	Division of Basic and State Student Grants.
121, 132, and 181	A. Administrative procedures and technical changes for the basic grant program.	Do.
121	B. Revision of definition of independent student.	Do.
121(c)	C. Family contribution schedules	Do.
121(i)	D. Experiment in processing of basic grant applications by State agencies.	Do.
124	Special services for disadvantaged students	Division of Student Services and Veterans Programs.
124(b)(4)	A. Service learning centers	Do.
124(b) and (c)	B. Talent search	Do.
Do	C. Provisions related to all programs in title IV-A subpt. 4.	Do.
124(c)	D. Personnel training authority	Do.
125	E. Educational information centers	Do.
127 and 181	Definition of programs which prepare persons for gainful employment in a recognized occupation.	Division of Eligibility and Agency Evaluation.
128	College work-study	Division of Student Financial Aid.
131(b)	Student consumer information: A. Institutional and financial assistance information for students. B. Student financial assistance assistance training program.	Division of Eligibility and Agency Evaluation.
133(a)	Appeal procedures for accrediting agencies and State approval agencies.	Do.
Do	Criteria for recognition of national accrediting agencies and State approval agencies.	Do.
Do	A. Fiscal audit of eligible institutions and standards of financial responsibility and institutional capability.	Do.
Do	B. Limitation, suspension, or termination of institutional eligibility.	Do.
162(i)	Reconstruction and renovation	Division of Training and Facilities.
176-178	Community colleges	Community College Unit.
179	Authorization for statewide planning	State Planning Commissions Unit.
1201, HEA	Determination of satisfactory assurance of accreditation.	Division of Eligibility and Agency Evaluation.
302(b)	Grant program to promote cultural understanding (citizen education).	Division of International Education.

INSTRUCTIONS FOR COMMENTS

1. Comments may be presented either at public conferences, as indicated below, or sent directly to the Bureau of Postsecondary Education, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. General comments concerning Title I of the Education Amendments of 1976 should be directed to:

Mrs. Sandy Martin, Room 4068, Regional Office Building 3, 7th & D Sts., S.W., Washington, D.C. 20202. Telephone 202-245-8165.

Comments or questions relating to particular programs which are affected by Title I or Section 302 of the Education Amendments should be directed as follows:

Program	*Direct comments to—*
Community Services and Continuing Education.	Mr. Richard J. Rowe, Room 3053, Regional Office Building 3. Telephone 202-245-2716.
Basic Educational Opportunity Grants.	Mr. Peter K. U. Voigt, Room 4717, Regional Office Building 3. Telephone 202-245-1835.
Eligibility and Agency Evaluation.	Mr. John Proffitt, Room 3030, Regional Office Building 3. Telephone 202-245-9873.

Program	*Direct comments to—*
College Work-Study.	Mr. James W. Moore, Room 4100, Regional Office Building 3. Telephone 202-245-2247.
Reconstruction and Renovation of Facilities.	Mr. Richard J. Rowe, Room 3053, Regional Office Building 3. Telephone 202-245-2715.
Community Colleges.	Dr. Marie Martin, Room 3044, Regional Office Building 3. Telephone 202-245-9756.
Statewide Planning.	Mr. Charles Griffith, Room 4052, Regional Office Building 3. Telephone 202-245-2671.
Grant Program to Promote Cultural Understanding (Citizen Education).	Mr. Edward Meador, Room 3907, Regional Office Building 3. Telephone 202-245-9691.

In order for comments to receive full consideration, they should be received by December 30, 1976. It would be most helpful if the comments are organized by program name (e.g., Basic Grants Program). The Commissioner will not acknowledge the comments individually, but they will be available for inspection in Room 4068, Regional Office Building 3, between 8:30 a.m. and 4:00 p.m., Monday-Friday, from December 7, 1976 through January 10, 1977, except for Federal holidays.

2. Public conferences will be held at the time, date, and location set forth below—

Dallas, Texas: 1200 Main Tower Building, December 13, 1976, 9:00 a.m.-4:00 p.m.
Contact person: Mr. Edward Baca, Regional Commissioner, 214-655-2634.

Atlanta, Georgia 30323: 50 Seventh St., NE, December 14, 1976, 9:00 a.m.-4:00 p.m.
Contact person: Dr. Cecil L. Yarbrough, Regional Commissioner, 404-526-5087.

Boston, Massachusetts 02203: John F. Kennedy Federal Building, December 15, 1976, 9:00 a.m.-4:00 p.m.
Contact person: Mr. William T. Logan, Jr., Regional Commissioner, 617-223-7205.

San Francisco, California 94102: 50 United Nations Plaza, December 16, 1976, 9:00 a.m.-4:00 p.m.
Contact person: Mr. Duan Bjerke, Acting Regional Commissioner, 415-556-4920.

Kansas City, Missouri 64106: Old Federal Building, 911 Walnut Street, December 17, 1976, 9:00 a.m.-4:00 p.m.
Contact person: Dr. W. Phillip Hefley, Regional Commissioner, 816-373-2276.

3. Persons desiring to comment during a particular conference should register before the meeting by writing or telephoning the contact person in the city where they wish to be heard. Preference will be given to those who register by December 10, 1976, but efforts will also be made to accommodate those who register on the day of the conference.

4. Persons who register or submit written comments should provide their name, address, telephone number, and, if appropriate, the name of the organization they represent. In order to permit the widest possible participation, organizations are requested to have a representative make comments at only one of the conferences. It would be appreciated if oral presentations were limited to 15 minutes.

5. Since the oral presentation by any person will be limited, written comments are encouraged. In the case of the new budget authorities indicated above, however, only written comments will be accepted at this time. Equal consideration will be given to oral and written comments.

6. Records of the conferences and materials submitted for each conference will be available for public inspection in the Bureau of Postsecondary Education, Room 4068, Regional Office Building 3, and in the respective Regional Offices, for two weeks beginning December 27, 1976.

The specific program issues and related administrative issues for which comment is solicited appear below. The arrangement of issues is keyed in general to the order in which these programs appear in the Education Amendments of 1976, the appropriate portions of which appear in Appendix A.

Dated: November 23, 1976.

EDWARD AGUIRRE,
Commissioner of Education.

COMMUNITY SERVICES AND CONTINUING EDUCATION

(Section 101, Part A, Extension and Revision of Program)

This program is designed to strengthen the community services and continuing education activities of colleges and universities and to promote community-wide sharing of educational resources. Under the major component of the program, Federal grants go to designated State agencies which, in turn, solicit, review, and approve institutional project proposals. In order to receive funding, the States annually submit their program plans and priorities to the U.S. Office of Education for approval.

The Education Amendments of 1976 made a number of changes in these State program requirements. For example, section 105 of the Higher Education Act of 1965 is amended to require that the State plan set forth procedures for developing continuing education and resource materials sharing programs as well as community services. Continuing education is defined under the amended section 102(b) as "postsecondary instruction designed to meet the educational needs and interests of adults, including the expansion of available learning opportunities for adults who are not adequately served by current educational offerings in their communities." Under the same section, resource materials sharing programs are defined as programs to make better use of educational resources already available in the community.

In developing regulations to implement these provisions, the Commissioner seeks public comment on issues such as the following:

(1) What types of programs can be offered to the public under the rubric of "continuing education" as it is defined in the law?

(2) By what standards should resource materials sharing proposals be evaluated at the State and Federal levels?

(3) Should there be a requirement that a resource materials sharing plan be incorporated into every community service and continuing educational program?

Section 105(a) of the Higher Education Act of 1965 is amended to require that the State provide assurances that all institutions of higher education in the State have been given an opportunity to participate in the development of the State plan. In developing regulations to implement this provision, the Commissioner seeks public comment on the following issue:

What should constitute an institution's "opportunity" to participate in the development of the State plan? How detailed should the State's assurance be that such an opportunity was provided?

Section 104 of the Higher Education Act of 1965 is amended to require that the limitation of financial support under the community service program to "new, expanded, or improved," programs be extended to continuing education programs, including resource materials sharing. In developing regulations to implement this provision, the Commissioner seeks comment on the following issue:

What regulations are needed to define the terms "new, expanded, and improved" as they will now apply to continuing education programs, including resource materials sharing?

In addition to the change in State plan requirements, section 111 of the Higher Education Act of 1965 was amended to permit the Commissioner to set aside up to ten percent of the Title I-A appropriation (in excess of $14,500,000) to provide technical assistance to the State and to institutions of higher education. This assistance shall include:

(a) Development of a diffusion network based on programs of demonstrated effectiveness;

(b) Assistance for the improvement of planning and evaluation procedures; and

(c) Information on changing enrollment patterns in postsecondary institutions, and assistance in understanding and planning for these changes.

Also under section 111, the Commissioner is directed to provide for greater coordination between the community services and continuing education programs administered by the Office of Education and all other related types of programs administered by other offices and agencies. In developing regulations to implement this provision, the Commissioner seeks public comment on the following issues:

How should priorities be established for technical assistance among the three program objectives established by law (community services, continuing education, resource materials sharing)? What should those priorities be?

BASIC EDUCATIONAL OPPORTUNITY GRANTS

A. Administrative Procedures and Technical Changes.
B. Revision of Definition of Independent Student.
C. Family Contribution Schedules.
D. Experiment in Processing Basic Grant Applications by State Agencies.

GENERAL DESCRIPTION OF PROGRAM

The basic Grant Program is a student financial aid program which provides grants to eligible undergraduate students to assist them in meeting their costs of postsecondary education. The size of a grant is primarily based on financial need determined on the basis of a formula assessment of the financial strength of applicants and their families. In order to have their grant amount determined, students file an annual application with the Basic Grant Program. In return, the student receives a "Student Eligibility Report," which serves as an application to be submitted to the institution the student is attending or planning to attend. In most cases, the school then calculates the amount of the Basic Grant award on the basis of a Payment Schedule issued annually by the Office of Education and disburses the funds to students, either directly or by crediting the student's account. The regulations for this program may be found in Part 190 of Title 45 of the Code of Federal Regulations (CFR). Since the inception of the Basic Grant Program, the Commissioner has contracted with a single organization to process the Basic Grant applications.

A. Administrative Procedures and Technical Changes for the Basic Grant Program (Sections 121, 132, and 181). Program experience as well as public and Congressional concerns has revealed a number of areas in which present regulations need to be strengthened, modified, or amended. In this context, a primary concern is to prevent and control program abuse both at the institutional and student level. In addition, the Education Amendments of 1976 contain a number of specific legislative changes in the Basic Grant Statute which are closely related to the objective of preventing program abuse. The regulations in question are primarily found in Title 45 CFR Part 190, Subparts B and G.

Specific issues for which public input is solicited are as follows:

(1) How should procedures governing the verification of student reported data on the application form be strengthened to assure that awards are made on the basis of accurate information reported on the application form? In this context, what safeguards should be provided to protect the rights of privacy and confidentiality of applicants?

(2) How should procedures governing the recovery of overpayments to students who have received payments in excess of their entitlement be strengthened?

(3) How should procedures governing the timing and control of payments by institutions to students be improved?

(4) Under what conditions should a student who has received award payments but discontinues his or her enrollment be required to repay all or a portion of a grant payment? In this context, what formula should be developed to calculate such overpayments?

(5) How can the present formula governing the allocation of institutional refunds to the student to appropriate program accounts be improved?

(6) How many procedures governing the calculation and payment of awards for students enrolled in programs of study by correspondence be improved?

(7) How many procedures designed to verify institutional certifications of student enrollment, enrollment status, etc., be strengthened for institutions which do not act as disbursement agents for Basic Grant funds?

(8) How can funding and reporting procedures for institutions who lose eligibility for program participation or who change ownership be strengthened to protect Federal and student interests? In this context, what liabilities and responsibilities should be assumed by the institution and current or previous owners for Federal funds advance to the institution?

(9) Should the execution or termination of agreements between the Commissioner and institutions to disburse program funds be limited to a specific date such as the end of a particular year? If so, what discretion should the Commissioner have to deal with unusual or problematic situations?

In addition to these program concerns which may require regulatory amendments, the Education Amendments of 1976 also require a number of new or amended regulatory provisions. Specifically, the Education Amendments of 1976 provide for payment of an institutional allowance of up to $10 for each Basic Grant recipient enrolled at that institution, depending on available appropriations for this purpose.

Specific issues on which public comment is solicited concern the administrative methods for making these payments to institutions. In this context, it should be noted that issues governing the uses of these funds for student information services are identified elsewhere in this Notice.

(1) What information or documentation should institutions provide in requesting funds under this part?

(2) What base data should be utilized in determining the actual per student allowance each year? Should the number of recipients from the prior academic year be considered for this purpose or should the number of recipients for the current academic year be considered?

(3) If the recipients for the current year are considered, should periodic payments be made throughout the year or should a lump-sum payment be based on actual end-of-year student recipient counts?

Section 132 of the Education Amendments of 1976 provides that financial aid payments, including Basic Grant awards, may not be made to students if:

(1) A student is not maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of the institution; or

(2) A student owes a refund on grants or is in default on an NDSL or GSL loan previously issued to the student for attendance at the institution.

The specific issue on which public comment is sought is whether any overpayment of a Basic Grant to a student should be considered a refund owed by the student for purposes of this part.

The Education Amendments of 1976 also provide, in Section 181, that public and private nonprofit institutions of higher education which meet the requirements of an eligible institution other than the requirement for admitting only high school graduates as regular students may be determined eligible if these institutions admit, as regular students, persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

This legislative change requires amended regulations regarding the definition of eligible institutions and raises additional questions and issues for which public comment is solicited.

How should the definition of an eligible program be revised to parallel more closely the requirements under which the institution offering such a program established its eligibility for program participation?

B. Revision of Definition of Independent Student (Section 121). Under the Basic Grant Program, the Commissioner is required to issue regulations to determine the family contribution for student applicants determined, on the basis of regulations issued by the Commissioner, to be independent of their parents or guardians. The definition of these independent students has always been, and continues to be, a highly controversial subject in the administration of financial aid.

The basic premise for all need-based financial aid programs is that parents should provide the financial resources necessary for the postsecondary education of their children to the extent of their financial capabilities, and that public support should provide the additional resources needed for those families who are unable to meet the full cost of educating their children. At the same time, there are students who have declared themselves to be financially independent of their parents, and no parental contribution can be expected.

Current program regulations define an independent student as one who:

(1) Has not and will not be claimed as an exemption for Federal income tax purposes by any person except his or her spouse for the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested;

(2) Has not and will not receive financial assistance of more than $600 from his or her parent(s) in the calendar year(s) in which aid is received or the calendar year prior to the academic

year for which aid is requested; and

(3) Has not lived or will not live for more than two consecutive weeks in the home of a parent during the calendar year in which aid is received or the calendar year prior to the academic year for which aid is requested. (45 CFR 190.42(a).)

However, based on experience and analysis of program trends the use of the current definition has resulted in a steady increase in the proportionate share of eligible applicants who claim to be financially independent of their parents. Current estimates indicate that between 35 to 40 percent of all eligible applicants will claim to be independent students during the curent and subsequent academic years. The significant increase in independent students has raised serious questions as to the adequacy of the current program definition of independent students. Specifically, the qualification of 30 to 40 percent of applicants as independent students appears to undermine the premise of parental responsibility for contributing toward the cost of education and will have the effect of shifting that cost to the Federal government for a significant portion of eligible students. In addition, program experience has indicated that the present definition is arbitrary and unfair to some students, and the accuracy of student-provided information on the application form regarding independent status is difficult, if not impossible to verify.

In light of these considerations, notice is hereby given that the Commissioner intends to revise the definition of independent student.

Based on previous discussions with representatives of the higher education community, there is a consensus that in defining an independent student, consideration should be given to a formula which:

(a) Maintains the concept that the responsibility for postsecondary education lies first and foremost with the student and his or her parents;

(b) Is based on objective and verifiable criteria;

(c) Keeps the collection of personal and private information to a minimum;

(d) Keeps inequities in the classification of applicants to an absolute minimum; and

(e) Can be readily incorporated in an application form and is easily understood by students filling out the application.

The Office of Education has been working on this question for the past several months and has identified several factors which it feels are relevant to this question. These factors include the following:

(1) *Tax exemptions*. Should being claimed as a tax exemption for Federal income tax purposes be used as an indication of dependency?

(2) *Marital Status or dependents*. Should consideration be given to those students who are married or have dependents for whom they provide at least one-half support?

(3) *Age*. Should age be a factor in determining dependency, and, if so, what age limit should be established?

(4) *Residence*. Is residence at a parent's home an indication of dependency? If so, what limit on the length of residence should be established?

(5) *Employment*. When determining a student's independent status, should prior employment history or other visible means of support be required?

(6) *Actual financial contribution by parents*. What amount of financial support should disqualify a student from being considered independent?

The public is invited to comment on these criteria and to suggest additional qualitative and quantitative factors.

It should be noted that, although a new definition is not to be implemented until the 1978-79 academic year, timing in development of new regulations is critical. In order to provide consistent treatment of students in all facets of student financial aid, it is desirable that the Basic Grant Program use the same definition of independent student as other Federal, State, and private financial aid programs and need analysis services. In the interest of making possible a more standard definition, the public comment process must be initiated at the earliest possible date. The need analysis services and financial aid programs finalize and begin printing their need analysis forms for the 1978-79 academic year by March 1977. If a standard definition is to be implemented for the 1978-79 academic year, agreement on a revised definition must be achieved by March 1977.

C. Family Contribution Schedules (Section 121(c)). The authorizing legislation for the Basic Educational Opportunity Grant Program requires the Office of Education to develop, and the Congress to review, a Family Contribution Schedule, which is a schedule for assessing the financial strength of the student's family on an annual basis. This schedule is used in determining the size of a Basic Grant award. If the schedule is not disapproved by Congress, it is in effect for the entire academic year and is applied consistently to all applicants. The Family Contribution Schedules for the 1977-78 academic year are effective on July 1, 1977, but the application processing based on the approved schedules begins in January 1977. The Family Contribution Schedules for 1977 were published in the FEDERAL REGISTER on August 11, 1976, as a notice of proposed rulemaking (NPRM) and were also submitted to Congress on that date.

The amendments proposed in the notice of proposed rulemaking were (1) to increase the family size offsets used during the 1976-77 academic year by the increase in the Consumer Price Index to take into account inflation of the basic cost of living during the current year, and (2) to require that the income and assets of a step-parent be reported as available to the applicant in cases where the student is residing with the parent and that parent's spouse.

Subsequent to the issuance of the NPRM, the Education Amendments of 1976 required some additional changes in the Family Contribution Schedules. The most significant change requires that any educational expense of other dependent children in the applicant's family be considered in determining the Family Contribution.

In addition, the Commissioner proposed a provision to exclude any funds or property received by Indiana or Native American students as a result of judgment claims in the determination of the Family Contribution for those students. The Office of Education has already received written agreement on these amendments to the Family Contribution Schedules from the House Committee and Senate action is expected in the near future.

In view of the need to print and distribute application forms during January 1977, the solicitation of additional public comment on the amendments to the Family Contribution Schedules effective for the 1977-78 academic year at this time would seriously disrupt the student financial aid cycle for all institutions and for many students. Consequently, the Office of Education intends to publish the amendments to the Family Contribution Schedules as final regulations effective for the 1977-78 academic year.

The purpose of the Notice of Intent is to request public comment on the amendments to the Family Contribution Schedules for 1977-78 in order to provide the Commissioner with additional information to be used on the preparation of the Family Contribution Schedules for the 1978-79 academic year. In this context, the Office of Education expects to publish a NPRM prior to July 1, 1977, which will propose amendments to the Family Contribution Schedule and, as appropriate, revision to the existing provisions for implementation during the 1978-79 academic year.

(1) The Education Amendments of 1976 require that educational expenses of other dependent children be considered in determining the expected Family Contribution for that family. Major questions which need to be addressed in the implementation of this provision are:

(a) What constitutes an educational expense which should be considered in determining the expected Family Contribution?

(b) How should these expenses be treated in the formula for calculating the expected family contribution?

(2) What special exceptions in the calculation of the family contribution should be made for income and property received by Indians and American Natives as a result of judgment claims?

(3) Under what circumstances should the income and assets of step-parents be reported as available to the applicant (e.g., in cases where the student is residing with the parent and that parent's spouse)?

Public comment is solicited on the above issues, including any suggestions as to how possible apprаches might be implemented in regulations.

D. Experiment In Processing Basic Grant Applications By State Agencies (Section 121(i)). Section 121(i) of the Education Amendments of 1976 requires the Commissioner to enter into agreements with not less than two nor more than five States for the processing of student applications under the Basic Grant Program for the 1977-78 academic year. The new requirement also specifies that the States entering into agreements to perform these functions must produce processing services of a type and quality equivalent to those produced through the primary processing contractor, and that the per unit processing fee paid to the States cannot exceed the per unit fee paid to the primary contractor. Further, the legislation provides that the States shall conduct the application processing for grants made for use during the academic year beginning July 1, 1977. The primary processor will begin these activities in January 1977.

Because the terms of the agreements between the Commissioner and the two to five States participating in the experiment are dependent on the application processing activities of the primary processor, the required legislative provisions will be included in the interim final regulations which will be promulgated without the previous issuance of a NPRM, after consultation and negotiation with the Office of Education, the primary processor, and the selected States.

The specific issues on which public comments are solicited relate to the criteria to be used to determine the two to five States selected to process student applications. Factors to be considered include, but are not limited to, the following:

(1) The compatibility of the State's existing student aid application processing system with that of the primary Basic Grant processing system;

(2) The administrative capability of the State in terms of required resources;

(3) The ability of the State to meet the requirement for producing services of an equivalent type and quality within a very short time-frame;

(4) The comparability of the State's application forms and eligibility notification documents with that of the Basic Grant Program; and

(5) The "portability" of the State's own grants.

Public comments are solicited on the selective criteria to be used as well as the weight each criterion should have in objectively selecting the States to participate.

SPECIAL SERVICES FOR DISADVANTAGED STUDENTS

A. Service Learning Centers.
B. Talent search.
C. Provisions relating to all programs under Title IV-A, Subpart 4.
D. Personnel training authority.
E. Educational information centers.

Introductory Note: As indicated in the introduction to this Notice, these amendments include new budget authorizations (Subsections A, D, and E, above) on which no funding decisions have been made.

A. Service Learning Centers (Section 124(b)(4)). Section 124(b)(4) of the Education Amendments of 1976 authorizes a new program called Service Learning Centers under section 417B(b) of the Higher Education Act of 1965, as amended.

The introductory note immediately above is applicable to the Service Learning Centers Program. This program provides Federal support for the establishment and operation of Service Learning Centers (SLC) at institutions of higher education and other postsecondary educational institutions serving substantial numbers of disadvantaged students. Federal support is limited to 90 percent of the cost of the Centers. The Centers will provide remedial and other special services to students enrolled or accepted for enrollment at the institution and will act as a focal point to coordinate and supplement the ability of the institution to provide those services.

The Service Learning Centers Programs may be funded only if the appropriation for Subpart 4 of Title IV of the Higher Education Act exceeds $70,331,000 in a fiscal year.

Section 417B(e) indicates that the Commissioner "may permit students or youths from other than low-income families, not to exceed one-third of the total served, to benefit by (Service Learning Centers)."

The issue to be addressed is under what circumstances should the Commissioner permit the participation of non-low-income students.

Section 417B(b)(5) specifies that projects should be located "at institutions serving a substantial number of disadvantaged students."

The issues to be addressed are:

(1) How should "disadvantaged" be defined?

(2) What is "a substantial number" of these students?

(3) How should an institution demonstrate in its application that it is serving a substantial number?

Section 417B(b)(5)(B) specifies that projects will serve, "as a concentrated effort, to coordinate and supplement the ability of (the) institution to furnish (remedial and other special) services to (eligible) students."

The issue to be addressed is to what extent, if any, regulations should provide guidance as to particular activities which are authorized, but not specified, in the statute.

Section 417B(b)(5) indicates that an institution may either establish and operate or expand service learning centers already in existence at the institution.

The issues to be addressed are:

(1) Should a priority be given to either (a) establishment and operation of new SLCs or (b) expansion activities?

(2) What services should be required in any expansion activities?

(3) What funding criteria should the Commissioner use to evaluate proposals submitted by eligible applicants?

B. Talent Search (Sections 124 (b) and (c)). Sections 124 (b) and (c) of the Education Amendments of 1976 amend the Talent Search Program under section 417B(b) of the Higher Education Act of 1965, as amended.

Talent Search is a discretionary grant program designed to identify qualified youths "of financial or cultural need" who have an exceptional potential for postsecondary education training and to encourage them to complete secondary school and to undertake postsecondary educational training. The program publicizes existing forms of student financial aid and encourages qualified secondary school or college dropouts of demonstrated aptitude to reenter educational programs, including postsecondary school programs.

Section 124(b)(3) amends section 417B(b)(1)(A) by stating that program services shall be designed to serve "especially such youths who have delayed pursuing postsecondary educational training."

Specific issues on which public comment is sought include the following:

(1) Should the phrase "youths who have delayed pursuing postsecondary educational training" be defined? If so, how?

(2) What regulatory action should the Commissioner take to provide an emphasis on serving these youths?

Section 124(c) of the Amendments states that the Commissioner may permit up to one-third of the participants in Talent Search projects to come from other than low-income families.

The specific issue to be addressed is under what conditions should the Commissioner allow projects to serve youths, up to one-third, who come from other than low-income families.

Section 124(b)(2), as discussed below, amends section 417B(b) to require that special programs be designed to serve youths "who may be disadvantaged because of severe rural isolation."

The specific issue to be addressed is whether and under what conditions the Commissioner should revise the requirement in the current regulations which states that all projects must "serve a minimum of 1,000 youths, except that projects serving sparsely populated or geographically isolated areas must serve at least 500 youths."

C. Provisions Relating to All Programs Under Title IV-A, Subpart 4 (Sections 124 (b) and (c)). Sections 124 (b) and (c) of the Education Amendments of 1976 amend the Special Programs for Students from Disadvantaged Backgrounds legislation under section 417 of the Higher Education Act of 1965, as amended.

The Special Programs are designed to identify qualified students from low-income families, to prepare them for a program of postsecondary education, and to provide special services for those students who are pursuing programs of postsecondary education. These youths from low-income families have academic potential, but may lack an adequate secondary school preparation or, may be physically handicapped. The programs

assist these youths "to enter, continue, or resume programs of postsecondary education."

Section 124(b)(2) amends section 417 B(b) to include within the category of youths for whom programs should be specially designed, those youths "who may be disadvantaged because of severe rural isolation."

Specific issues on which public comment is sought include the following:

(1) How should the Commissioner define the term "severe rural isolation?"

(2) How does the term "severe rural isolation" apply to the design of, eligibility for, and funding priority of these programs?

Section 124(c) of the amendments further amends all Special Programs. It states that it is the intention of Congress "to encourage, whenever feasible, the development of individualized programs for disadvantaged students" assisted through the Talent Search, Upward Bound, Special Services, Educational Opportunity Centers, and Service Learning Centers Programs.

In order to assist in the development of individualized approaches to the provision of services under these programs, the Commissioner is seeking public comment on this matter.

D. Personal Training Authority (Section 124(c)). Section 124(c) of the Education Amendments of 1976 amends section 417B of the Higher Education Act of 1965 to authorize the Commissioner to provide personnel training. It authorizes him to "enter into contracts with institutions of higher education and other appropriate public agencies and nonprofit private organizations to provide training."

The introductory note at the beginning of this section of the Notice, indicating that no funding decisions have been reached with regard to the new budget authorities contained in the Education Amendments, is applicable to this personnel training authority.

Training authorized by the Amendments is for staff and leadership personnel who will specialize in improving the delivery of services to students assisted by the Special Programs. Funds may be used for:

(1) The operation of short-term training institutes designed to improve the skills of personnel in those institutions, and

(2) The development of in-service training programs for those personnel.

Issues to be addressed include the following:

(1) Should the phrase "other appropriate public agencies and nonprofit private organizations" in section 417B (f)(1) be defined?

(2) What criteria should be used to select institutions of higher education, public agencies and nonprofit private organizations to provide training?

(3) Should allowable costs be specified for those institutions, agencies, and organizations providing training?

Section 124(c) authorizes the Commissioner to "provide training for staff and leadership personnel who will specialize in improving the delivery of services to students assisted under this subpart."

Issues to be addressed include the following:

(1) Should the terms "staff and leadership personnel" apply to:

(a) The Special Programs project staff who deliver services to students;

(b) All of the staff in the grantee institutions or agencies who are involved in the educational process of students served in Special Programs projects;

(c) Other individuals who are not associated with grantee organizations but are directly involved in the education of students in Special Programs projects; or

(d) All of the above categories.

(2) What criteria should be used to select the staff and leadership personnel for participation in these training activities?

(3) What allowable costs should be provided to persons selected for training?

E. Educational Information Centers (Section 125). Section 125 of the Education Amendments of 1976 amends the Higher Education Act of 1965, as amended, to add new sections 418A and 418B, which create the Educational Information Centers Program.

The introductory note at the beginning of this section of the Notice, indicating that no funding decisions have been reached with regard to the new budget authorities contained in the Education Amendments, is applicable to Education Information Centers.

This formula grant program authorizes the Commissioner to award a minimum of $50,000 to any State submitting an approved plan to provide educational information, guidance, counseling, and referral services to individuals within the State, including individuals who reside in rural areas. The program consists of outreach activity designed to seek out these individuals and encourage their participation in full or part-time postsecondary education training, and information and referral services for a variety of educational opportunities. The Federal share shall be 66⅔ percent of a Center's costs.

The State plan must include a comprehensive strategy for the establishment or expansion of Centers to achieve the goal of making these services available within reasonable distance of all residents of the State, for assurances concerning the provisions of the required one-third non-Federal share, and for other provisions essential to carry out the program.

For planning, establishing, and operating Centers in accordance with their approved plans, States may make grants to or contracts with the following kinds of organizations:

(1) Institutions of higher education,

(2) Public and private agencies and organizations, and

(3) Local education agencies in combination with an institution of higher education.

Section 418A(d) specifies that Centers will serve a geographic area no greater than that which will afford all persons within the area "reasonable access" to the services of the Center.

The issue to be addressed is what constitutes "reasonable access".

Section 418A(d)(2) specifies a variety of information and referral services that Centers must provide to residents of the area which the Centers will serve.

The issue to be addressed is whether the Commissioner may wish to specify other information and referral services within the terms of the statute.

Section 418A(d)(2)(A) specifies that a Center will provide information and referral services about postsecondary education and training programs in the region.

The issue to be addressed is how the Commissioner should interpret the term "region".

Section 418A(b)(2) states that any State desiring to receive a grant under this program must submit a State plan for the approval of the Commissioner.

The issues to be addressed are:

(1) What information does the Commissioner need from a State in order to approve a State plan?

(2) What criteria should be used to evaluate a State plan?

Section 418B(b)(1) requires that the State plan include a comprehensive strategy for establishing or expanding Education Information Centers to serve all residents to the State within a "reasonable period of time".

The issue to be addressed is what factors should the Commissioner consider in evaluating the "reasonableness" of a State's proposed time period for serving all residents.

The statute gives no guidance on allowable costs of operating an Educational Information Center.

The issue to be addressed is what are reasonable allowable costs.

DEFINITION OF PROGRAMS WHICH PREPARE PERSONS FOR GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION (SECTIONS 127 AND 181)

Sections 127 and 181 of the Education Amendments of 1976 amend sections 435 (a) and (b), 491(b), and 1201(a) of the Higher Education Act of 1965, as amended related to the statutory provision regarding admissions in defining eligible institutions. In addition, one of the statutory elements of institutional eligibility stated in the above sections requires that an institution offer programs "to prepare students for gainful employment in a recognized occupation" (in defining an institution of higher education or a proprietary institution of higher education), and (for a vocational school), "designed to fit individuals for useful employment in recognized occupations."

Issues on which public comment is sought include, but are not limited to, the following:

(1) Are the two phrases "to prepare students for gainful employment in a recognized occupation" and "to fit individuals for useful employment in recognized occupations" identical in meaning and application?

(2) Should the Office of Education define more precisely "gainful employment" or "useful employment"? If so, how?

(3) Should the Office of Education define more precisely "recognized occupation"? If so, how?

(4) Should the Office of Education expect occupational schools to be able to provide evidence that their graduates have been gainfully employed in the occupations for which they were prepared?

COLLEGE WORK STUDY (SECTION 128)

This notice covers the following amendments enacted by Pub. L. 94-482 to the College Work-Study Program, which is a program to stimulate and promote part-time employment of students who are in need of earnings to meet their costs of postsecondary education.

A. Section 128(b) amends section 491 (a) of the Act and revises the definition of the term "eligible institution" to provide that a combination of eligible institutions, or a public or nonprofit agency acting on behalf of a group of eligible institutions, may itself be considered an eligible institution for purposes of participating in the College Work-Study Program.

Specific issues on which public comments are sought include the following:

(1) How would the combination's application for Federal funding be handled, compared to the applications from the individual institutions?

(2) Who would receive the 4 percent administrative allowance and comply with the provisions of section 493A concerning student information services?

B. Section 128(c)(3) of the Act provides that a student will not be required to terminate Work-Study employment during a semester (or other regular enrollment period) when income from Work-Study employment combined with income from any other employment exceeds the student's need for that enrollment period. The statute further provides that when the student's earning exceed his or her need by $200, his or her employment may no longer be subsidized from the institution's Federal College Work-Study allocation.

Specific issues on which public comment are sought include the following:

(1) If the student's need is exceeded by more than $200, should the institution adjust the award: (a) By a reduction in the current enrollment period; (b) By a reduction in the ensuing enrollment period; or (c) By some other method?

(2) What procedure should be established for identifying "any additional employment" which together with such Work-Study income is in excess of need and under what circumstances should an institution be held responsible for obtaining this knowledge?

C. Section 128(c)(3) of the Act also affects the regulations for the National Direct Student Loan and Supplemental Educational Opportunity Grants programs, (CFR, Parts 144 and 176, respectively), which were published in the FEDERAL REGISTER as Interim Final Regulations on November 24, 1976. Those Interim Final Regulations contain the "overaward" language set forth in section 128(c)(3), but without interpretation. This provision is contained in §§ 144.14 and 176.14, respectively, of those two sets of regulations.

The amendment affects the NDSL and SEOG programs only when the package of aid awarded to the student includes a job under the College Work-Study Program as well as aid under either or both of the former two programs.

The issues on which public comment is sought are:

(1) How should the student's award be adjusted, either in the same or a succeeding semester, if his or her earnings exceed his or her need by more than $200?

(2) Should a student's need be determined for each enrollment period regardless of this $200 overaward provision in order to treat all students uniformly?

(3) If a student receives an overaward of less than $200 for one enrollment period (semester, trimester, or quarter) should the amount of that award be considered a resource in determining his or her need for the following academic period?

D. Section 128(d) added a new section 447 to the Act to provide for the establishment and expansion of a program to locate and develop jobs for enrolled students.

Comment is invited on the scope, direction, and effect in general of the requirements made on institutions for the location and development of employment opportunities. Also comment is invited as to the ordering of priorities in job location as between financially needy versus non-needy students enrolled at the college or university.

STUDENT CONSUMER INFORMATION

A. Institutional and Financial Assistance Information for Students.
B. Student Financial Assistance Training Program.

A. Institutional and Financial Assistance Information for Students (Section 131(b)). Section 131 of the Education Amendments of 1976 provides that institutions of higher education and other eligible institutions which participate in Basic Educational Opportunity Grants, College Work-Study, National Direct Student Loan, Supplemental Educational Opportunity Grants, and the Guaranteed Student Loan programs must carry out information dissemination activities for prospective and enrolled students who request information under the above mentioned programs. The type of information to be disseminated includes student financial assistance available at the institution, the school's academic program and educational costs, and its refund policy.

Some of the issues relevant to this section are:

(1) The statute requires that this information be made readily available through appropriate publications and mailings to all current and prospective students upon request. What constitute "appropriate publications and mailings"?

(2) The statute requires the institution to describe accurately the student retention rate at the institution. Over what time period should the retention rate be applied?

(3) Generally, the law requires that an employee or group of employees be available on a full-time basis to assist students or potential students in obtaining information. The Commissioner, however, by regulation, may waive the requirement where the institutional enrollment in participating programs under this title is too small to necessitate the employee's being available on a full-time basis. In order to implement this waiver, what criteria should the Commissioner use?

B. Student Financial Assistance Training Program (Section 131(b)). Section 493, as amended by Pub. L. 94-482, authorizes matching incentive grants to States for the design and development of Statewide training programs for financial aid administrators. Funds are from two sources: (a) Approximately $5,000 per State from an authorized $280,000 appropriation, and (b) The lesser of .05 percent of that State's total allotment for all campus-based SFA programs or $10,000.

For this new program, comment is invited from the public on the criteria, including scope, methods, and sources of matching funds, which will enable the Commissioner to review and approve the adequacy of State applications for training programs to increase the proficiency of institutional and State financial aid administrators.

APPEAL PROCEDURES FOR ACCREDITING AGENCIES AND STATE APPROVAL AGENCIES (SECTION 133(a))

The Criteria for Recognition by the Commissioner of Education of accrediting agencies or associations provide that "no adverse decision on recognition will become final without affording opportunity for a hearing." A similar provision is contained in the Criteria for Recognition of State Agencies for the Approval of Public Postsecondary Vocational Education. The Criteria for Recognition of accrediting agencies and for State approval agencies for public vocational education relate to sections 435 (b), 435(c), 438(b), 491(b), and 1201(a) of the Higher Education Act of 1965, as amended, and to the eligibility provisions in section 133(a) of the Education Amendments of 1976.

The Office of Education currently is applying informal appeal procedures in regard to adverse decisions by the Commissioner on the recognition of the accrediting agencies and State approval agencies. The Commissioner proposes to formalize the appellate procedures and seeks public comment regarding the content of such regulations.

The specific issue on which public comment is sought is the following:

What procedures should be adopted to facilitate an appeal by an accrediting or State aproval agency from an adverse determination by the Commissioner?

CRITERIA FOR RECOGNITION OF NATIONAL ACCREDITING AGENCIES AND STATE APPROVAL AGENCIES; (SECTION 133(a))

Under sections 435(b), 435(c), 491(b) and 1201(a) of the Higher Education Act of 1965, as amended, the Commissioner of Education periodically publishes, for purposes of determining institutional eligibility for certain Federal financial assistance programs, a list of nationally recognized accrediting agencies or associations which he has determined to be reliable authorities as to the quality of training offered by educational institutions or programs which they accredit. Similarly, under section 438(b) of the above act, the Commissioner publishes a list of State agencies which he has determined to be reliable authority as to the quality of public postsecondary vocational education in their respective States, for the purpose of determining eligibility for all Federal student assistance programs. Section 133(a) of the Education Amendments of 1976 refers to eligibility in the context of the above lists.

For purposes of aiding the Commissioner in determining inclusion on these lists, two sets of Criteria have been published: One for review of nationally recognized accrediting agencies or associations and the other for the review of State approval agencies for public postsecondary vocational education. These Criteria were last revised and published on August 20, 1974. At that time, the Secretary of HEW directed the Office of Education to provide a comprehensive review of these criteria and to propose further revisions within a year. Subsequently, both sets of criteria were revised in a process that included considerable public input.

The Commissioner is seeking further public input into revision of these criteria prior to final approval and issuance. Specific issues on which public comments are sought include, but are not limited to, the following:

(A) Criteria for Recognition of Nationally Recognized Accrediting Agencies and Associations:

(1) Under the current criteria, an accrediting agency or association must demonstrate its functionality, responsibility, reliability, and autonomy.

(a) Are these valid criteria for a determination by the Commissioner that an accrediting agency or association is a reliable authority as to the quality of training offered by educational institutions and programs?

(b) If so, what elements consistent with the Commissioner's mandate should appropriately be required under each of these criteria?

(2) Under the present criteria, agencies seeking recognition must be regional or national in their scope of operations, with regional being defined as the conduct of institutional accreditation in three or more States. Should there be restrictions on the eligibility of an accrediting agency to seek recognition?

For example, should the agency's geographical coverage be a factor in its eligibility to apply for recognition? Are there other factors, such as the scope of the agency's activities or the effect of its determinations on eligibility of institutions and programs for Federal funding, that should be considered?

(3) Is there any language in the current criteria that should be better defined or clarified?

(B) Criteria for Recognition of State Agencies for the Approval of Public Postsecondary Education:

(1) Should there be a difference in the criteria for the recognition of State agencies from criteria for national accrediting bodies?

(2) Should State agencies cooperate with local jurisdictions, the private sector, and Federal agencies in information sharing, program administration (including enforcement of Federal regulations) and educational consumer protection? If so, to what extent?

(3) Should State agencies which are responsible for approvals under section 133(a) of Pub. L. 94-482 always be distinct from the State licensing and approval agencies?

(4) Is there language in the current criteria that should be better defined or clarified?

ELIGIBILITY AND AGENCY EVALUATION

A. Fiscal Audit of Eligible Institutions; Standards of Financial Responsibility and Institutional Capability.

B. Limitation, Suspension, and Termination of Institutional Eligibility.

Section 133(a) of the Amendments adds a new section 497A which authorizes the Commissioner to prescribe regulations relating to the ability of otherwise eligible institutions of higher education to participate in the various programs authorized by Title IV of the Higher Education Act.

A. Fiscal Audit of Eligible Institutions; Standards of Financial Responsibility and Institutional Capacity (section 133(a)).—Section 497(a)(1) authorizes the Commissioner to prescribe such regulations as may be necessary to provide for a fiscal audit of an eligible institution with regard to any funds obtained by it under Title IV. The issues that need to be addressed in implementing this provision include, but are not limited to, the following:

(1) How comprehensive should the audit be?

(2) What should be the frequency of the audit?

(3) Should the audit be conducted during the fiscal year being audited or after the close of the fiscal year being audited?

(4) Should there be a provision for a special fiscal audit of an institution? If so, under what conditions?

(5) What standards should be used in conducting the audit?

(6) How long a period should the audit cover?

Section 497A(a)(2) authorizes the Commissioner to establish reasonable standards of financial responsibility and institutional capability for the administration of a program of student financial aid under Title IV. The issues to be addressed in relation to this provision include, but are not limited to, the following:

(1) What methodology and criteria should the Commissioner consider in establishing reasonable standards of financial responsibility and institutional capability that institutions must meet in order to continue participation in Title IV programs?

(2) What standards relative to financial responsibility and institutional capability are needed to assure equitable treatment of all levels and types of postsecondary institutions?

Section 497A(b) authorizes the Commissioner, in order to carry out the provisions of section 497A(a), to enter into agreements with institutions participating in the Basic Grant Program and to amend existing agreements with institutions participating in the Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs. An issue to be resolved in this regard is what provisions these agreements should contain.

B. Limitation, Suspension, and Termination of Institutional Eligibility (section 133(a)).

Section 497A(a)(4) provides for the limitation, suspension, and termination of the eligibility of an institution to participate in Title IV programs if the institution violates or fails to carry out any provision of the program statute or regulations.

The issues which need to be discussed in relation to this provision include, but are not limited to, the following:

(1) What modifications are necessary under Subpart G of Part 177 of the Code of Federal Regulations, pertaining to the Guaranteed Student Loan Program, in order to make these procedures for the limitation, suspension, or termination of eligibility applicable to institutions participating in any of the student financial assistance programs created by Title IV of the Higher Education Act of 1965, as amended?

(2) If modifications are necessary, what type of violation should trigger the initiation of actions?

(3) Should informal procedures be developed for use if such an action is instituted? If so, what should they be?

(4) Should the provisions requiring the disclosure of information to prospective students about the institution, its faculty, facilities, and courses offered at the school be retained?

Section 497A(c) provides the Commissioner with new authority to suspend or terminate the eligibility status, for any or all programs under Title IV, of any otherwise eligible institution if he determines (using the procedures established under section 497A(a)(4)) that the institution has engaged in "substantial misrepresentation" of the "nature of its educational programs, its financial charges, or the employability of its graduates."

The issues that need to be resolved in this regard include, but are not limited to, the following:

(1) Should the Office of Education define the term "substantial misrepresentation"? If so, how?

(2) Should the Office of Education define the terms "nature of its educational program" and "employability of its graduates"? If so, how?

(3) Should the suspension or termination procedures apply to the student consumer information provisions of the new section 493A? If so, how?

RECONSTRUCTION AND RENOVATION (SECTION 162)

INTRODUCTORY NOTE: As indicated in the introduction of this Notice, these amendments include new budget authorizations on which no funding decision has been made.

Title VII of the Higher Education Act of 1965 authorizes grants and loans for the construction of higher education academic facilities. The Amendments of 1976 created a new Part E under Title VII, which authorizes grants and loans for reconstruction and renovation from funds appropriated under the existing Parts A, B, and C if the primary purpose of these activities is to:

(1) Economize on the use of energy,

(2) Bring facilities into conformance with the Architectural Barriers Act of 1968 (making facilities accessible to the handicapped), and

(3) Bring facilities into conformance with health, safety, or environmental protection requirements mandated by Federal, State, or local law.

Because the new Part E is a new program under Title VII, there are several areas in which regulations may be required:

(1) Should the Commissioner establish minimum or maximum loans or grants per project?

(2) Among the three categories of projects authorized by Part E, should State Commissions set priorities?

(3) In determining whether a proposed project under any category of Part E is designed primarily to meet specified standards, the Commissioner is required to consult with other Federal, State, or local agencies which have expertise or authority in those areas. After consultation with the appropriate agencies, should the Commissioner develop regulations to establish minimum technical standards for project eligibility?

COMMUNITY COLLEGES (SECTIONS 176–178)

INTRODUCTORY NOTE: As indicated in the introduction of this Notice, these amendments include a new budget authorization on which no funding decision has been made.

Title X of the Higher Education Act of 1965, as amended, authorizes grants to States for the State Commissions to develop Statewide plans for the expansion or improvement of postsecondary education programs in community colleges. The Title further provides a program of grants to assist States and localities in establishing and expanding community college systems. The authority includes: (1) Establishment grants to new community colleges; (2) Expansion grants to existing community colleges; and (3) grants to enable institutions to lease facilities. The Education Amendments of 1976 broaden the scope of expansion grants to include grants to existing community colleges to provide programs for persons whose educational needs have been inadequately served. Priority is given applications for such programs by a requirement that they be funded before applications for grants to increase enrollments or establish new sites.

The Amendments further provide that the Commissioner may not disapprove a State plan unless he determines, after opportunity for public hearing and comment, that it is inconsistent with the requirements of such plans as found in Title X.

In addition, the definition of community college is amended to include institutions which admit as regular students persons beyond the compulsory school age. The requirement that the institution's postsecondary educational program be of two years' duration is deleted along with the requirement that the community colleges must also provide programs of postsecondary vocational technical, occupational, and specialized education.

Subsections 1018 (2) and (3) of the Higher Education Act are amended to read as follows:

(2) admits as regular students, persons who are high school graduates or the equivalent, or beyond the age of compulsory attendance;

(3) provides a postsecondary education program leading to an associated degree or acceptable for credit toward a bachelor's degree.

The Commissioner desires to develop regulations for the programs under Title X. Some of the issues on which public comment is desired are as follows:

(1) The new definition of community colleges appears to broaden the scope of institutions which can be defined as community colleges. Should regulations be developed to specify the kinds of institutions or specific types of programs which could qualify for funding under Title X?

(2) Related to the above issue is the matter of representation on State Advisory Councils as described in section 1001(a). In the context of the new definition of community colleges, should criteria be developed to ensure substantial representation of two-year postsecondary institutions? If so, what should they be?

(3) The definition of community college also contains a reference to "regular students." How should we define "regular students"?

(4) With respect to funding provisions for establishment and expansion of community colleges (sections 1013 and 1014), what criteria are needed to determine which institutions should receive funds when they are in competition for limited funds?

AUTHORIZATION FOR STATEWIDE PLANNING (SECTION 179)

Section 1203(a) of the Higher Education Act, as amended, authorizes a program of grants to State Postsecondary Education Commissions established by section 1202(a) of the Act. These grants enable States to conduct comprehensive Statewide planning for postsecondary education. The program is operated as a formula grant program, with funds being allotted to each State which has established a State Commission. The formula and program guidelines are published annually in the FEDERAL REGISTER.

Section 179 of Title I of Public Law 94–482 added a new section 1203(c), which authorizes joint grants to State Commissions and interstate postsecondary education compact agencies approved by the Commissioner to conduct interstate planning for postsecondary education. Grants are to be used to plan, develop, and carry out interstate cooperative postsecondary education projects designed to increase the accessibility of postsecondary educational opportunities for the residents of the participating States and to assist such States in carrying out postsecondary education programs in a more effective and economical manner.

The Commissioner recognizes that there may be issues on which public input is desirable for both the on-going program under section 1203(a) and the newly authorized program under section 1203(c). These include:

(1) For the section 1203(a) program, should existing program guidelines be expanded, or should new guidelines be developed for FY 1977 operations?

(2) For the section 1203(c) program, what criteria shall the Commissioner use in approving interstate compact postsecondary educational agencies for participation in the program?

DETERMINATION OF SATISFACTORY ASSURANCE OF ACCREDITATION (SECTION 1201, HEA)

Section 1201a(5)(A) of the Higher Education Act of 1965 provides an alternative procedure for an unaccredited public or private nonprofit institution to satisfy the statutory eligibility element of accreditation.

The alternative procedure is for use by an unaccredited 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 accrediting agency or association within a reasonable time."

In order for him to make a systematic and consistent application of this alternative procedure, the Commissioner is seeking public comment regarding the issues involved in the proposed issuance

of these regulations, which include, but are not limited to, the following:

(1) What factors should the Commissioner consider in establishing procedures to carry out this mandate so as to avoid excessive Federal intervention into either the accrediting process or the internal affairs and administration of institutions of higher education?

(2) What factors should the Commissioner consider and what procedures should he establish to assure that a determination regarding satisfactory assurance does not conflict with or contradict the decision of a nationally recognized accrediting agency or association respecting a particular institution?

GRANT PROGRAM TO PROMOTE CULTURAL UNDERSTANDING (SECTION 302(B); CITIZEN EDUCATION)

INTRODUCTORY NOTE: As indicated in the introduction to this Notice, these amendments include new budget authorizations on which no funding decisions have been made.

Section 302(b) of the Education Amendments of 1976 enacted a new section 603 for the National Defense Education Act of 1958. Under the caption of Grant Program to Promote Cultural Understanding, the new section provided for a program initiated and known in the higher education community as Citizen Education.

The purpose of the new section is to increase the availability of information about the international policies and actions of the United States and of other nations and areas because of their effect on personal and national well-being. In order to help citizens judge these policies and actions, section 603 authorizes awards for locally designed programs at all levels of education, including community, adult, and continuing education. The programs are to increase student "understanding of the cultures and actions of other nations" and to improve evaluation of the "international and domestic impact of major national policies."

Section 603 provides grants and contracts for in-service training for teachers and other educational personnel, the compilation of existing information and resources about other nations in forms useful to educational programs, and the dissemination of information and resources to educators and educational officials upon their request.

Awards may be made to any public or private agency or organization, including, but not limited to, institutions of higher education, state and local educational agencies, professional associations, educational consortia, and organizations of teachers. The statute authorizes appropriations for this program in Fiscal Year 1977, but only after at least $15 million have been made available in the fiscal year to carry out sections 601 and 602 of the National Defense Education Act.

Specific issues on which public comments are sought include the following:

(1) Is there a need for regulations to define more precisely the nature or the content of activities which increase the understanding "about the cultures and actions of other nations in order to better evaluate the international and domestic impact of major national policies"?

(a) Should a regulation either set limits or provide guidance on the scope of these activities?

(b) If so, what limits or guidance should be given in the regulation?

(c) How is the program to avoid overlapping or duplicating other activities funded by the Office of Education, including activities under other NDEA Title VI programs?

(2) How should the program as a whole be designed to promote cultural understanding with regard to a variety of nations, areas, or peoples?

(a) Should each project award focus on a specific nation, area, or people?

(b) Should priority be given to specific nations, areas, or peoples?

(c) Should criteria be designed to ensure that the program covers a wide range of nations, areas, and peoples?

(3) Particularly if funds for the program are limited, how can the program be designed to fit the various ages and levels of sophistication of students throughout the United States?

(a) Should there be a preliminary and continuing survey of needs with respect to the adequacy of present programs in meeting them?

(b) Should geographic distribution of projects be a consideration in selecting award recipients?

(c) Should training and information activities be considered for funding if they are designed to have an impact that is nationwide, regional, State-wide, or more limited?

(4) As a Federal program of limited duration and funds, how can the program attain the maxmum long-term impact?

(a) Should it fund many small seed grants?

(b) Should it fund only a few projects which provide for training or information services, or both, either nationwide or region-wide?

(5) From the standpoints of both quality and national impact, should the program focus on helping the developers of specific resources or packages of information to disseminate that information and train educational personnel in how to use it, or alternatively, should the emphasis be upon the funding of agencies best skilled as trainers and disseminators without regard to the question of who developed the resources?

(6) Should the program ensure that all levels of education are addressed?

(a) If so, should this be done for every nation, area, or people?

(b) Also, for training and information services provided to every part of this country?

(c) Should projects focus on specific levels of education?

(d) Should priority be given to specific levels of education in reviewing competing applications?

(7) With regard to the compilation and dissemination of information on other nations, how can the program ensure that the information and resources are accurate and of high quality?

(a) Does the Office of Education have a role to play as a quality control mechanism for the information and resources?

(b) If so, what is that role and how should it be performed?

(8) Should the compilation and dissemination of resources and information be allowed to include resources and information developed and disseminated by commercial institutions?

(a) Should Federal funds be used to promote commercial products and activities?

(b) If so, should there be special safeguards to ensure fairness and to avoid any appearance of Federal control of these resources?

Public comments are solicited on the above and other issues that may be proposed, as well as suggestions as to how possible approaches might be implemented in regulations. In addition, the public is asked for advice on evaluation criteria.

APPENDIX A

EXCERPTS FROM PUB. L. 94-482, THE EDUCATION AMENDMENTS OF 1976

Printed below are excerpt copies of Title I and section 302, Pub. L. 94-482, The Education Amendments of 1976, to assist the public in responding to the issues as stated in this Notice.

TITLE I—HIGHER EDUCATION

PART A—COMMUNITY SERVICES AND CONTINUING EDUCATION

EXTENSION AND REVISION OF PROGRAM

SEC. 101. (a) Section 101 of the Higher Education Act of 1965 (hereafter in this title referred to as "the Act") is amended to read as follows:

APPROPRIATIONS AUTHORIZED

"SEC. 101. (a) For the purpose of (1) assisting the people of the United States in the solution of community problems such as housing, poverty, government, recreation, employment, youth opportunities, transportation, health, and land use by enabling the Commissioner to make grants under this title to strengthen community service programs of colleges and universities, (2) supporting the expansion of continuing education in colleges and universities and (3) supporting resource materials sharing programs, there are authorized to be appropriated $40,000,000 for the fiscal years 1977, 1978, and 1979.

(b) For the purpose of carrying out a program for the promotion of lifelong learning in accordance with the provisions of part B, there are authorized to be appropriated, $20,000,000 for fiscal year 1977, $30,000,000 for fiscal year 1978, and $40,000,000 for fiscal year 1979.".

(b) Title I of such Act is amended—

(1)(A) by amending the heading of section 102 to read as follows:

DEFINITION OF COMMUNITY SERVICE PROGRAM AND CONTINUING EDUCATION PROGRAM

(B) by inserting "(a)" after the section designation of such section 102; and

(C) by inserting at the end thereof the following new subsections:

"(b) For purposes of this title the term 'continuing education program' means postsecondary instruction designed to meet the educational needs and interests of adults, including the expansion of available learning opportunities for adults who are not adequately served by current educational offerings in their communities.

"(c) For purposes of this title, the term 'resource materials sharing programs' means planning for the improved use of existing community learning resources by finding ways that combinations of agencies, institutions, and organizations can make better use of existing educational materials, communications technology, local facilities, and such human resources as will expand learning opportunities for adults in the area being served.";

(2) by amending section 103(a) to read as follows:

"Sec. 103. (a) From the sums appropriated pursuant to section 101 for any fiscal year which are not reserved under section 106(a), the Commissioner shall allot to each State an amount which bears the same ratio to such sums as the population of such State bears to the population of the States, except that, for any fiscal year beginning on or after October 1, 1976, no State shall be allotted from such sums less than the amount which such State received during the fiscal year beginning July 1, 1975.

(3) by striking out "community service programs" in section 104 and inserting in lieu thereof "community service and continuing education programs, including resource material sharing programs,";

(4) by striking out so much of section 105(a) as precedes paragraph (1) and inserting in lieu thereof the following:

"Sec. 105. (a) Any State desiring to receive its allotment of funds under this part for use in community service and continuing education programs, including resource material sharing programs, shall designate or create a State agency or institution which has special qualifications with respect to solving community problems and which is broadly representative of institutions of higher education in the State which are competent to offer community service and continuing education programs, including resource material sharing programs, and shall submit to the Commissioner a State plan. If a State desires to designate for the purpose of this section an existing State agency or institution which does not meet these requirements, it may do so if the agency or institution takes such action as may be necessary to acquire such qualifications and assure participation of such institutions, or if it designates or creates a State advisory council which meets the requirements not met by the designated agency or institution to consult with the designated agency or institution in the preparation of the State plan. A State plan submitted under this part shall—".

(5) (A) by inserting "or combination" after "and institution" in section 105(a)(2); and

(B) by striking out "community service programs" each place it appears in such section and inserting in lieu thereof "community service and continuing education programs, including resource materials sharing programs,";

(6) (A) by inserting "and combinations thereof" immediately after "institution of higher education" each place it appears in section 105(a)(3);

(B) by striking out "community service programs" each place it appears in such section and inserting in lieu thereof "community service and continuing education programs, including resource materials sharing programs,"; and

(C) by striking out "in the light of information regarding current and anticipated community problems in the State" in subparagraph (C) of such section;

(7) by striking out "community service programs" in section 105(a)(4) and inserting in lieu thereof "community service and continuing education programs, including resource materials sharing programs,";

(8) by inserting "or combinations thereof" after "institutions of higher education" in section 105(a)(5);

(9) by striking section 105(a)(6) and inserting in lieu thereof the following:

"(6) assurances that all institutions of higher education in the State have been given the opportunity to participate in the development of the State plan."; and

(10) by inserting immediately after section 105(b) the following new subsection;

"(c) The Commissioner shall not by standard, rule, regulation, guideline, or any other means, either formal or informal, require a State to make any agreement or submit any data which is not specifically required by this part."

(c) Section 107(a) of the Act is amended by striking out "$25,000" and inserting in lieu thereof "$40,000".

(d) Section 109 of the Act is amended to read as follows:

"JUDICIAL REVIEW

"Sec. 109. If a State's plan is not approved under section 105(b) or a State's eligibility to participate in the program is suspended as a result of the Commissioner's action under section 108(b), the State may within sixty days after notice of the Commissioner's decision institute a civil action in an appropriate United States district court. In such an action, the court shall determine the matter de novo.".

(e) Title I of the Act is further amended by redesignating sections 111, 112, and 113, and any references thereto, as sections 112, 113, and 114, respectively, and inserting immediately after section 110 the following new section:

"TECHNICAL ASSISTANCE AND ADMINISTRATION

"Sec. 111. (a) The Commissioner is authorized to reserve not to exceed 10 per centum of the amount appropriated for any fiscal year pursuant to section 101(a) in excess of $14,500,000 for the purpose of this section.

"(b) From funds reserved under subsection (a) of this section, the Commissioner shall provide technical assistance to the States and to institutions of higher education. Such technical assistance shall—

"(1) provide a national diffusion network to help assure that effective programs are known among such States and institutions;

"(2) assist with the improvement of planning and evaluation procedures; and

"(3) provide information about the changing enrollment patterns in postsecondary institutions, and provide assistance to such States and institutions in their efforts to understand these changing patterns and to accommodate them.".

"(c) The Commissioner shall provide for coordination between community service and continuing education programs (including resource materials sharing programs) conducted by him with all other appropriate offices and agencies, including such offices and agencies which administer vocational education programs, adult education programs, career education programs, and student and institutional assistance programs.".

(f) (1) Section 112 of the Act (as redesignated by subsection (e)) is amended—

(A) by striking out "the Commissioner, who shall be Chairman," in subsection (a); and

(B) by striking out "through June 30, 1975" in subsection (f) and inserting in lieu thereof "until the programs authorized by this part are terminated".

(2) The text of section 113 of the Act (as redesignated by subsection (e)) is amended to read as follows: "Nothing in this section shall modify any authority under the Act of May 8, 1914 (Smith-Lever Act), as amended (7 U.S.C. 341-349).".

(g) Title I of the Act is further amended—

(1) by inserting before the section heading of section 101 the following:

"PART A—COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS";

(2) by striking out "this title" each time it appears in section 102 through section 112 of such title, and inserting in lieu thereof "this part"; and

PART D—STUDENT ASSISTANCE

BASIC EDUCATIONAL OPPORTUNITY GRANTS

Sec. 121. (a) Section 411(a)(1) of the Act is amended by striking out "June 30, 1975" and inserting in lieu thereof "September 30, 1979".

(b) (1) Section 411(a)(2)(A)(i) of the Act is amended by striking out "$1,400" and inserting in lieu thereof "$1,800".

(2) The amendment made by paragraph (1) of this subsection shall be effective for academic year 1978–1979 and thereafter.

(c) Division (i) and (ii) of section 411(a)(3)(A) of the Act are amended to read as follows:

"(3) (A) (i) Not later than July 1 of each calendar year, the Commissioner shall publish in the Federal Register a schedule of expected family contributions for the academic year which begins after July 1 of the calendar year which succeeds such calendar year for various levels of family income, which except as is otherwise provided in division (ii), together with any amendments thereto, shall become effective July 1 of the calendar year which succeeds such calendar year. During the thirty-day period following such publication the Commissioner shall provide interested parties with an opportunity to present their views and make recommendations with respect to such schedule.

"(ii) The schedule of expected family contributions required by division (i) for each academic year shall be submitted to the President of the Senate and the Speaker of the House of Representatives not later than the time of its publication in the Federal Register. If either the Senate or the House of Representatives adopts, prior to the first day of October next following the submission of said schedule as required by this division, a resolution of disapproval of such schedule, the Commissioner shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval. Such new schedule shall take into consideration such recommendations as may be made in either House in connection with such resolution and shall become effective, together with any amendments thereto, with respect to grants to be made on or after the first day of July next following. The Commissioner shall publish together with such new schedule, a statement identifying the recommendations made in either House in connection with such resolution of disapproval and explaining his reasons for the new schedule.".

(d) Section 411(a)(3)(B) of the Act is amended—

(1) by inserting at the end of division (ii) the following new subdivision:

"(VI) Any educational expenses of other dependent children in the family.".

(2) by inserting immediately after "student)" in division (iii) the following: ", and including any amount paid under the Social Security Act to, or on account of, the student which would not be paid if he were not a student and one-half any amount paid the student under chapters 34 and 35 of title 38, United States Code,"; and

(3) by striking out division (iv).

(e) Section 411(b) of the Act is amended by striking division (ii) of paragraph (3)(B) and redesignating subsequent divisions accordingly, and by redesignating paragraph (4) and any reference thereto as paragraph (5) and inserting after paragraph (3) a new paragraph as follows:

"(4)(A) If the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by 15 per centum or less, then all of excess funds shall remain available for making payments under this subpart during the next succeeding fiscal year.

"(B) If the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by more than 15 per centum, then all of such funds shall remain available for making such payments but payments may be made under this division only with respect to entitlements for that fiscal year.".

(f) Section 411(b)(3)(C) of the Act is repealed.

(g) Section 411(b)(5) of the Act (as redesignated by subsection (e)) is amended by striking out "July 1, 1975" and inserting in lieu thereof "October 1, 1979".

(h) Section 411 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) In addition to payments made with respect to entitlements under this subpart, each institution of higher education shall be eligible to receive from the Commissioner the payment of $10 per academic year for each student enrolled in that institution who is receiving a basic grant under this subpart for that year. Payment received by an institution under this subsection shall be used first to carry out the provisions of section 493A of this Act and then for such additional administrative costs as the institution of higher education determines necessary.

"(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection. If the sums appropriated for any fiscal year for making payments under this subsection are not sufficient to pay in full the amounts provided for in paragraph (1), then such amount will be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence has been applied, such reduced amounts shall be increased on the same basis as they were reduced."

(i) Section 411 of the Act is further amended by adding at the end thereof the following additional subsection:

"(e)(1) The Commissioner shall enter into agreements with not less than two nor more than five States for the processing by such States of all applications of their residents (through an instrumentality or agent selected by such State) for grants made under this subpart for the academic year beginning after July 1, 1977, on condition that any State grants which are subsidized in part by Federal funds, during the period for which State processing of basic education opportunity grant applications is carried out by the State, will be available to eligible State residents for use at the majority of educational institutions outside that State which are eligible institutions under subpart 1 of this part. No later than ninety days after termination of the agreements, the Commissioner shall report to the Congress on the experience with multiple State processing, including its impact on the delivery of student aid to students, and including recommendations concerning whether the option of processing applications for grants under this subpart should be made available to all States having the capacity to do so.

"(2) Any State entering into an agreement with the Commissioner shall—

"(A) not be required, without the State's consent, to perform services in excess of those required of any private agency or organization with whom the Commissioner has a contract to perform similar application processing, except such additional services as may be necessary to produce processing services of a type and quality equivalent to those produced, through the same or other means; and

"(B) be required to determine student eligibility for awards under this subpart solely on the basis of criteria set forth in this subpart and regulations promulgated by the Commissioner pursuant thereto.

"(3) The Commissioner shall promulgate such regulations as may be necessary—

"(A) to determine a fair per unit fee for application processing which, if the Commissioner has a contract with an agency or organization to perform similar application processing, shall be no more than the amount paid by the Commissioner per application for the same academic year to any such agency or organization; and

"(B) to otherwise carry out the purposes of this subsection.

"(4) Nothing contained in this section or other enactments of law shall be construed to prohibit any eligible State under subsection (c) of this section from—

"(A) employing student application forms that solicit information required for both the determination of eligibility under this subpart and for the determination of eligibility under the postsecondary educational grant programs of such State; and

"(B) coordinating the eligibility announcements of State postsecondary educational grants and grants under this subpart.

"(5) No State which enters into an agreement with the Commissioner may impose any fee or other charge upon a student for processing of the student's application for a grant under this subpart.".

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

SEC. 122. (a) Section 413A(b)(1) of the Act is amended by striking out "July 1, 1975" and inserting in lieu thereof "October 1, 1979".

(b) Section 413C(b)(4) of the Act is amended by striking out "464" and inserting in lieu thereof "494".

STATE STUDENT INCENTIVE GRANTS

SEC. 123. (a) Section 415A(b) of the Act is amended by striking out "July 1, 1975" and inserting in lieu thereof "October 1, 1979", and by adding at the end thereof the following new paragraph:

"(3) Sums appropriated pursuant to paragraphs (1) and (2) for any fiscal year shall remain available for payments to States for the award of student grants under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.".

(b) Section 415C(b) of the Act is amended by redesignating clauses (4) and (5) of such section, and all references thereto, as clauses (5) and (6), respectively, and by inserting after clause (3) thereof the following new clause:

"(4) provides that, effective with respect to any academic year beginning on or after July 1, 1977, all nonprofit institutions of higher education in the State are eligible to participate in the State program;".

(c)(1) Section 415A(b)(2) of the Act is amended by inserting before the period a comma and the following: "and to make bonus allotments to States pursuant to section 415E".

(2) Section 415B(b) is amended by striking out the word "Sums" and inserting in lieu thereof the following: "Subject to the provisions of section 415E, sums".

(3) Subpart 3 of part A of title IV of the Act is amended by inserting at the end thereof the following new section:

"BONUS ALLOTMENTS FOR STATE STUDENT INCENTIVE GRANT PROGRAMS

"SEC. 415E. Whenever the sum appropriated pursuant to this subpart for any fiscal year is in excess of $75,000,000 the Commissioner shall allot, from 33⅓ per centum of such excess sums, to each State having an agreement under section 428(b) an amount which bears the same ratio to such sum as the number of students in attendance at institutions of higher education in such State bears to the total number of students in such attendance in all such States.".

SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS

SEC. 124. (a) Section 417A(b) of the Act is amended by inserting before the period a comma and the following: "and $200,000,000 for each of the fiscal years ending prior to October 1, 1979".

(b)(1) Section 417B(a) of the Act is amended by striking out "section 417A(a)" and inserting in lieu thereof "subsection (b) of this section".

(2) The matter preceding paragraph (1) of section 417B(b) of the Act is amended to read as follows:

"(b) Services provided through grants and contracts under this subpart shall be specifically designed to assist in enabling youths from low-income families who have academic potential, but who may lack adequate secondary school preparation, who may be physically handicapped, or who may be disadvantaged because of severe rural isolation, to enter, continue, or resume programs of postsecondary education, including—".

(3) Section 417(B)(b)(1)(A) of the Act is amended by inserting after the comma the following: "especially such youths who have delayed pursuing postsecondary educational training,".

(4) The first sentence of section 417B(b) of the Act is amended by—

(A) striking out "and" at the end of clause (3) of such sentence,

(B) striking out the period at the end of clause (4) of such sentence and inserting in lieu thereof a semicolon and the word "and", and

(C) adding at the end thereof the following new clause:

"(5) a program of paying up to 90 per centum of the cost of establishing and operating or expanding service learning centers at institutions of higher education and other postsecondary educational institutions serving a substantial number of disadvantaged students which—

"(A) will provide remedial and other special services for students who are enrolled or accepted for enrollment at that institution, and

"(B) will serve, as a concentrated effort, to coordinate and supplement the ability of that institution to furnish such services to such students.".

(5) Section 417B(b) of the Act is amended by adding at the end thereof the following new sentence: "Before making a grant or entering into a contract under clause (5) of the first sentence of this subsection the Commissioner may require any institution subject to such a contract or grant to submit an application containing or accompanied by such information, including the ability of that institution to pay the non-Federal share of the costs of the project to be assisted, as is essential to carry out the requirements of that clause.".

(c) Section 417B of the Act is amended by adding at the end thereof the following new subsections:

"(e) In making grants or entering into contracts under clause (1) or (5) of subsection (b) of this section the Commissioner may permit students or youths from other than low-income families, not to exceed one-third of the total served, to benefit by the projects to be assisted pursuant to that grant or contract.

"(f) (1) The Commissioner is authorized to enter into contracts with institutions of higher education and other appropriate public agencies and nonprofit private organizations to provide training for staff and leadership personnel who will specialize in improving the delivery of services to students assisted under this subpart.

"(2) Financial assistance under this subsection may be used for (A) the operation of short-term training institutes designed to improve the skills of participants in such institutes, and (B) the development of in-service training programs for such personnel."

"(g) The Commissioner shall not make grants to programs authorized under clause (5) of subsection (b) of this section in any fiscal year in which the amount appropriated for carrying out this subpart is less than $70,331,000."

"(h) It is the intention of the Congress to encourage, whenever feasible, the development of individualized programs for disadvantaged students assisted under this subpart.".

EDUCATIONAL INFORMATION PROGRAM

SEC. 125. Part A of title IV of the Act is amended by redesignating subpart 5, and all references thereto, as subpart 6, and by inserting immediately after subpart 4 the following new subpart:

"SUBPART 5—EDUCATIONAL INFORMATION

"PROGRAM AUTHORIZATION

"SEC. 418A. (a) The Commissioner shall, in accordance with the provisions of this subpart, make grants to States to pay the Federal share of the cost of planning, establishing, and operating Educational Information Centers to provide educational information, guidance, counseling, and referral services for all individuals, including individuals residing in rural areas.

"(b) (1) For the purpose of enabling the Commissioner to carry out this subpart, there are authorized to be appropriated $20,000,000 for fiscal year 1977, $30,000,000 for fiscal year 1978, and $40,000,000 for fiscal year 1979.

"(2) The Commissioner shall allocate funds appropriated in each year under this subpart to each State submitting a plan approved under section 418B an amount which bears the same ratio to such funds as the population of such State bears to the population of all the States, except that for each fiscal year no State which submitted on approved plan shall receive from such funds less than $50,000 for that year. In making allocations under this paragraph, the Commissioner shall use the latest available actual data, including data on previous participation, which is satisfactory to him.

"(c) The Federal share of the cost of planning, establishing, and operating Educational Information Centers for any fiscal year under this subpart shall be 66⅔ per centum, and the non-Federal share may be in cash or in kind.

"(d) For the purposes of this subpart, the term 'Educational Information Center' means an institution or agency, or combination of institutions or agencies, organized to provide services to a population in a geographical area no greater than that which will afford all persons within the area reasonable access to the services of the Center. Such services shall include—

"(1) information and talent search services designed to seek out and encourage participation in full-time and part-time postsecondary education or training of persons who could benefit from such education or training if it were not for cultural or financial barriers, physical handicap, deficiencies in secondary education, or lack of information about available programs or financial assistance;

"(2) information and referral services to persons within the area served by the Center, including such services with regard to—

"(A) postsecondary education and training programs in the region and procedures and requirements for applying and gaining acceptance to such programs;

"(B) available Federal, State, and other financial assistance, including information on procedures to be followed in applying for such assistance;

"(C) available assistance for job placement or gaining admission to postsecondary education institutions including, but not limited to, such institutions offering professional, occupational, technical, vocational, work-study, cooperative education, or other education programs designed to prepare persons for careers, or for retraining, continuing education, or upgrading of skills;

"(D) competency-based learning opportunities, including opportunities for testing of existing competencies for the purpose of certification, awarding of credit, or advance placement in postsecondary education programs;

"(E) guidance and counseling services designed to assist persons from the area served by the Center to identify postsecondary education or training opportunities, including part-time opportunities for individuals who are employed, appropriate to their needs and in relationship to each individual's career plans; and

"(F) remedial or tutorial services designed to prepare persons for postsecondary education opportunities or training programs, including such services provided to persons enrolled in postsecondary education institutions within the area served by the Center. Services may be provided by a Center either directly or by way of contract or other agreement with agencies and institutions within the area to be served by the Center.

"(e) Nothing in this subpart shall be construed to affect funds allocated to the establishment and operation of Educational Opportunity Centers for the disadvantaged pursuant to section 417B(b) (4) of this part.

"ADMINISTRATION OF STATE PROGRAMS

"SEC. 418B. (a) Each State receiving a grant under this part is authorized in accordance with its State plan submitted pursuant to subsection (b) of this section, to make grants to, and contracts with, institutions of higher education, including institutions with vocational and career education programs, and combinations of such institutions, public and private agencies and organizations, and local education agencies in combination with any institution of higher education, for planning, establishing, and operating Educational Information Centers within the State.

"(b) Any State desiring to receive a grant under this subpart shall submit for the approval of the Commissioner a State plan, which shall include—

"(1) a comprehensive strategy for establishment or expansion of Educational Information Centers, designed to achieve the goal, within a reasonable period of time, of making available within reasonable distance to all residents of the State the services of an Educational Information Center;

"(2) assurances concerning the source and availability of State, local, and private funds to meet the non-Federal share of the cost of the State plan required by section 418A (c); and

"(3) such other provisions as are essential to carry out the provisions of this subpart.".

WORK-STUDY PROGRAM

SEC. 128. (a) Section 441(b) of the Act is amended—

(1) by striking out the word "and" after "1974,", and

(2) by inserting before the period a common and the following: "$420,000,000 for the fiscal year ending June 30, 1976, and the transitional period beginning July 1, 1976, and ending September 30, 1976, $450,000,000 for the fiscal year ending September 30, 1977, $570,000,000 for the fiscal year ending September 30, 1978, $600,000,000 for the fiscal year ending September 30, 1979, $630,000,000 for the fiscal year ending September 30, 1980, $670,000,000 for the fiscal year ending September 30, 1981, and $720,000,000 for the fiscal year ending September 30, 1982.

(b) Section 443(b) of the Act is amended by striking "461" and inserting in lieu thereof "491", and by inserting before the period at the end thereof the following: ", and includes a combination of such institutions which have entered into a cooperative arrangement, or have designated or created a public or private nonprofit agency, institution, or organization to act on their behalf.".

(c) (1) Section 444(a) (1) of the Act is amended by striking out the word "public" the second time it appears and by inserting in lieu thereof "Federal, State, or local public agency", and by inserting "agency or" before the word "organization" the second time it appears in such section.

(2) Section 444(a) (2) of the Act is amended to read as follows:

"(2) provide that funds granted an institution of higher education, pursuant to section 443, may be used only to make payments to students participating in work-study programs, except that an institution may use a portion of the sums granted to it to meet administrative expenses in accordance with section 493 of this Act, may use a portion of the sums granted to it to meet the cost of a job location and development program in accordance with section 447 of this part, and may transfer funds in accordance with the provisions of section 496 of this Act;".

(3) Section 444(a) (4) of the Act is amended to read as follows:

"(4) provide that no student in a work-study program under this part shall be required to terminate that employment during a semester (or other regular enrollment period) at the time income derived from any additional employment together with such work-study income is in excess of the determination of the amount of such student's need for that semester under clause (3) of this subsection, but when such excess income equals $200 or more, continued employment under a work-study program shall not be subsidized with funds appropriated under this part;".

(4) Section 444(a) (7) of the Act is amended to read as follows:

"(7) include provisions to make employment under such work-study program reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof, and to make equivalent employment offered or arranged by the institution reasonably available (to the extent of available funds) to all students in the institution who desire such employment; and".

(d) Section 447 of the Act is amended to read as follows:

"JOB LOCATION AND DEVELOPMENT PROGRAMS

"SEC. 447. (a) The Commissioner is authorized to enter into agreements with eligible institutions under which such institution may use not more than 10 per centum or $15,000 of its allotment under section 446, whichever is less, to establish or expand a program under which such institution, separately, in combination with other eligible institutions, or through a contract with a nonprofit organization, locates and develops jobs for currently enrolled students which are suitable to the scheduling and other needs of such students.

"(b) Agreements under subsection (a) shall—

"(1) provide that the Federal share of the cost of any program under this section will not exceed 80 per centum of such cost;

"(2) provide satisfactory assurance that funds available under this section will not be used to locate or develop jobs at an eligible institution;

"(3) provide satisfactory assurance that the institution will continue to spend in its own job location and development programs, from sources other than funds received under this section, not less than the average expenditures per year made during the most recent three fiscal years preceding the effective date of the agreement;

"(4) provide satisfactory assurance that funds available under this section will not be used for the location or development of jobs for students to obtain upon graduation, but rather for the location and development of jobs available to students during and between periods of attendance at such institution;

"(5) provide satisfactory assurance that the location or development of jobs pursuant to programs assisted under this section will not result in the displacement of employed workers or impair existing contracts for services;

"(6) provide satisfactory assurance that Federal funds used for the purposes of this section can realistically be expected to help generate student wages exceeding in the aggregate the amount of such funds and that if such funds are used to contract with another organization, appropriate performance standards are part of such contract; and

"(7) provide that the institution will submit to the Commissioner an annual report on the uses made of funds provided under this section and an evaluation of the effectiveness of such program in benefiting the students of such institution.".

STUDENT CONSUMER INFORMATION

SEC. 131. (a) Section 493 of the Act is amended—

(1) by striking out "3 per centum" in subsection (a) and inserting in lieu thereof "4 per centum";

(2) by inserting "(1)" following "1958," and by inserting before the period a comma and the following: "and (2) shall be used by such institution to carry out the provisions of section 493A of this Act";

(3) by striking "$125,000" in subsection (b) and inserting in lieu thereof, "$325,000"; and

(4) by adding at the end of said section, the following new subsection:

"(c) Payment received by an institution under this section shall be used first to carry out the provisions of section 493A of this Act and then for such additional administrative costs as the institution of higher education determines necessary.".

(b) Subpart 1 of part F of title IV of the Act is further amended by inserting immediately after section 493 the following new sections:

"INSTITUTIONAL AND FINANCIAL ASSISTANCE INFORMATION FOR STUDENTS

"SEC. 493A. (a)(1) Effective July 1, 1977, each institution of higher education and each eligible institution which receives payments under sections 411(d), 428(e) or 493 of this title, as the case may be, shall carry out information dissemination activities to prospective students and to enrolled students who request information regarding financial assistance under this title. The information required by this section shall be produced and be made readily available, through appropriate publications and mailings, to all current students and to any prospective student upon request. The information required by this section shall accurately describe—

"(A) the student financial assistance programs available to students who enroll at such institution,

"(B) the method by which such assistance is distributed among student recipients who enroll at such institution,

"(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such applications and the review standards employed to make awards for student financial assistance,

"(D) the rights and responsibilities of students receiving financial assistance under this title.

"(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical community costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest,

"(F) the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of cost, as described in clause (E) of this subsection,

"(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, (iii) the faculty and other instructional personnel, and (iv) data regarding student retention at the institution and, when available, the number and percentage of students completing the programs in which the student is enrolled or expresses interest, and

"(H) each person designated under subsection (b) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection.

"(2) For purposes of this section, the term 'prospective student' means any individual who has contacted an institution of higher education or an eligible institution requesting information for the purpose of enrolling in that institution.

"(b) Effective July 1, 1977, each institution of higher education or eligible institution, as the case may be, which receives payments authorized under section 411(d), 428(e), or section 493 of this title shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in the preceding subsection. The Commissioner may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution of higher education or eligible institution, as the case may be, in which the total enrollment, or the portion of the enrollment participating in programs under this title at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

"(c) Within 120 days after the date of enactment of the Eeducation Amendments of 1976, the Commissioner shall begin to make available to institutions of higher education and eligible institutions descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (1) assist students in gaining information through institutional sources, and (2) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs.

"STUDENT AID INFORMATION SERVICES

"SEC. 493B. In order to assist in the expansion and improvement of campus student aid information services, the Commissioner shall—

"(1) survey institutional practices of providing students with complete and accurate information about student financial aid, including the employment of part-time procial aid counselors under work-study programs, hiring other part-time persons from the community, using campus or community volunteers, and communicating through use of publications or technology; collect institutional evaluations of such practices; and disseminate the information described in this clause;

"(2) convene meetings of financial aid administrators, students, and other appropriate representatives to explore means of expanding campus financial aid information services and improving the training of part-time individuals involved in such services;

"(3) whenever possible, include student peer counselors and other part-time financial aid personnel in training programs sponsored by the Office of Education; and

"(4) make recommendations to Congress not later than October 1, 1977, concerning his findings and legislative proposals for improving the use and quality of services of part-time campus financial aid personnel.

"STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

"SEC. 493C. (a) It is the purpose of this section to make incentive grants available to the States to be administered, in consultation with statewide financial aid administrator organizations, for the purpose of designing and developing programs to increase the proficiency of institutional and State financial aid administrators in all aspects of student financial aid.

"(b) There are hereby authorized to be appropriated $280,000 for each year ending prior to October 1, 1978, for equal division among the States.

"(c) To receive a grant under this section a State must provide appropriate assurance to the Commissioner that the grant will be matched from State funds by an amount at least equal to the amount of the grant.

"(d) From the funds otherwise allotted to the States for subpart 2 of part A, and for part C and part E of this title for States which have obtained a grant under this section, the Commissioner shall transfer to such State an amount equal to .05 per centum of such funds or $10,000, whichever is less, and shall reduce such State allotment by that amount.

"(e) A State which desires to obtain a grant under this subsection for any fiscal

year shall submit an application therefor through or by the State agency administerings its program of student grants, or if such agency does not exist, through or by any agency or organization designated for such purpose by the State, at such time or times, and containing such information as may be required by such regulations as the Commissioner may prescribe for the purpose of enabling the Commissioner to disburse the funds.".

ELIGIBILITY FOR STUDENT ASSISTANCE

SEC. 132. Section 497 of the Act is amended by adding at the end thereof the following new subsection:

"(e) Any student assistance received by a student under this title shall entitle the student receiving it to payments only if—

"(1) that student is maintaining satisfactory progress in the course of study he is pursuing, according to the standards and practices of the institution at which the student is in attendance, and

"(2) that student does not owe a refund on grants previously received at such institution under this title, or is not in default on any loan from a student loan fund at such institution provided for in part E, or a loan made, insured, or guaranteed by the Commissioner under this title for attendance at such institution.".

FISCAL RESPONSIBILITY

SEC. 133. (a) Title IV of the Act is further amended by adding after section 497 the following new sections:

"FISCAL ELIGIBILITY OF INSTITUTIONS

"SEC. 497A. (a) Notwithstanding any other provisions of this title, or of section 434(c) of the General Education Provisions Act, the Commissioner is authorized to prescribe such regulations as may be necessary to provide for—

"(1) a fiscal audit of an eligible institution with regard to any funds obtained by it under this title or obtained from a student who has a loan insured or guaranteed by the Commissioner under this title;

"(2) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title;

"(3) the establishment by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than sixty days after such termination or failure to re-enroll; and

"(4) the limitation, suspension or termination of the eligibility for any program under this title of any otherwise eligible institution, whenever the Commissioner has determined, after reasonable notice and opportunity for hearing on the record, that such institution has violated or failed to carry out any provision of this titl or any regulation prescribed under this title, except that no period of suspension under this section shall exceed sixty days unless the institution and the Commissioner agree to an extension or unless limitation or termination proceedings are initiated by the Commissioner within that period of time.

"(b) The Commissioner shall, for the purpose of carrying out the provisions of this section with respect to subpart 1 of part A of this title, enter into special arrangements with institutions of higher education at which students receiving basic grants under that subpart are enrolled. The Commissioner shall include special provisions designed to carry out the provisions of this section in agreements with institutions of higher education under section 413C, in agreements with eligible institutions under section 443, and in agreements with institutions of higher education under section 463.

"(c) Upon determination that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Commissioner may suspend or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, in accordance with procedures specified in paragraph (a)(3), until he finds that such practices have been corrected.

"(d) The Commissioner shall publish a list of State agencies which he determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

"(e) For the purpose of this section the term 'eligible institution' means any such institution described in section 435(a) of this Act.".

(b)(1) Any regulations for the carrying out of section 438, as in effect on the date immediately prior to the effective date of this subsection shall be deemed to remain in force until amended or superseded by new regulations of the Commissioner.

(2) Within 120 days of the effective date of this subsection, the Commissioner is directed to issue a comprehensive revision of the regulations heretofore prescribed for the carrying out of section 438, for the purpose of modifying such regulations, to the extent possible, to make them applicable to all programs under title IV of the Act.

PART G—CONSTRUCTON OF ACADEMIC FACILITIES

EXTENSION OF PROGRAM

SEC. 161. (a) Section 701(b) is amended by striking out "June 30, 1974, and June 30, 1975" and inserting in lieu thereof "prior to October 1, 1979".

(b) Section 721(b) is amended by striking out "for the fiscal year ending June 30, 1975" and inserting in lieu thereof "for each of the fiscal years ending prior to October 1, 1979".

(c) Section 741(b) is amended by striking out "for the fiscal year ending June 30, 1975" and inserting in lieu thereof "for each of the fiscal years ending prior to October 1, 1979".

(d) Section 745(c)(2) is amended by striking out "July 1 of each of the four succeeding years" and inserting in lieu thereof, "the first day of each fiscal year during the period ending September 30, 1979".

(e) Section 762(a) is amended by striking out "July 1, 1975" and inserting in lieu thereof "October 1, 1979".

REVISION OF PROGRAM

SEC. 162. (a) Title VII of the Act is amended—

(1) by inserting ", RECONSTRUCTION AND RENOVATION" immediately after "CONSTRUCTION" in the heading of such title;

(2) by inserting ", RECONSTRUCTION, AND RENOVATION" immediately after "CONSTRUCTION" each place it appears in the headings of Parts A, B and C of such title;

(3) by inserting ", reconstruction, or renovation" immediately after "construction each place it appears in sections 701(a), 702(c)(1), 703(c)(1), 704(a)(2)(A), 705(a), 705(b), 706(a)(1), 707(a)(2), 707(c)(1), 741(a)(2), 742(a)(3), 745(a), 745(c)(3), 746(a)(1), 781(a), 781(b), 782(3), and 782(5);

(4) by inserting "reconstructed or renovated" after "constructed," in section 705(b), section 781, and section 782(1);

(5) by striking out "construction" in section 707(a)(2)(F) and inserting in lieu thereof, "project"; and

(6) by inserting "reconstruct or renovate" after the word "construct" in section 742(a)(4).

(b) Section 701(c) of the Act is amended by inserting "an appropriate amount, but in no case less than" immediately before "24 per centum".

(c) Section 704(b) of the Act is amended to read as follows:

"(b) The Commissioner shall not disapprove any State plan submitted under this section unless he determines after reasonable notice and opportunity for hearing and comment, that the plan is inconsistent with a specific provision of this section or other relevant sections of this title."

(d) Section 705(a) of the Act is amended by striking out "on the campus of such institution".

(e) Section 721(a) of the Act is amended by inserting "(1)" immediately after "(a)" and by adding at the end thereof the following new paragraph:

"(2) The Commissioner is authorized to make grants to or enter into contracts with institutions of higher education for the construction of facilities for model intercultural programs designed to integrate the educational requirements of substantive knowledge and language proficiency.".

(f) Section 743(b)(5) of the Act is amended by inserting before the semicolon the following: "including (A) the granting of a temporary moratorium on the repayment of principal or interest or both to any institution of higher education or higher education building agency the Commissioner finds to be temporarily unable to make such repayment without undue financial hardship, if such institution or agency presents, and the Commissioner approves, a specific plan to make such repayment including a schedule for such repayment, and (B) the granting to any such institution or agency for which he has authorized a loan under this part prior to January 1, 1976, of the option to pay into the fund established under section 744 an amount equal to 75 per centum of the total current obligation of the institution or agency under this part, in full accord and satisfaction of such total current obligation, if such institution or agency desiring to exercise such an option makes payment from non-Federal sources prior to October 1, 1979.".

(g)(1) Section 745(b) of the Act is amended by striking out "section 744(b)(2)" and inserting in lieu thereof "section 742(b)".

(2) Section 745(c)(2) of the Act is amended by striking out "four" and inserting in lieu thereof "six", and by inserting before the period at the end thereof a comma and the following: "and October 1, 1977 and on October 1 of each of the succeeding fiscal years".

(h) Section 762(a) of the Act is amended by striking out "Office of Emergency Planning" and inserting in lieu thereof "Office of Emergency Preparedness".

(i) Title VII of the Act is further amended by redesignating Part E and all references thereto as Part F and by inserting immediately after Part D the following new part:

"PART E—RECONSTRUCTION AND RENOVATION

"SEC. 771. (a) The Commissioner is authorized to make grants from funds appropriated under section 701(b), grants from funds appropriated under section 721(b), loans from

funds appropriated under section 741(b), or loans, to the extent provided in advance by appropriations Act, from any unused amounts in the fund established under section 744, notwithstanding any prior restrictions on the use of such unused amounts, to institutions of higher education and to higher education building agencies for the reconstruction or renovation of academic facilities if the primary purpose of such reconstruction or renovations is—

"(1) to enable such institutions to economize on the use of energy resources, or

"(2) to enable such institutions to bring their academic facilities into conformity with the requirements of—

"(A) the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, or

"(B) environmental protection or health and safety programs mandated by Federal, State or local law, if such requirements were not in effect at the time such facilities were constructed.

"(b)(1) In determining whether the primary purpose of a proposed reconstruction or renovation is to conserve energy, the Commissioner shall consult with other Federal agencies which have specific expertise in energy conservation.

"(2) In determining whether the primary purpose of a proposed reconstruction or renovation is to enable such facility to meet environmental protection standards or health or safety requirements imposed under law, the Commissioner shall consult with the appropriate Federal, State or local agency responsible for the administration of such law.

"(3) In determining whether the primary purpose of a proposed reconstruction or renovation is to enable such facility to comply with the Act of August 12, 1968, the Commissioner shall consult with the Architectural and Transportation Barriers Compliance Board and the Administrator of General Services.

"(c) A loan pursuant to this section shall be repaid within such period not exceeding twenty years as may be determined by the Commissioner."

(j) Section 782 of the Act is amended—

(1) by inserting immediately before the period at the end of paragraph (1)(B) in section 782 the following: ", except that the term 'academic facilities' may include any facility described in clause (v) to the degree that such facility is owned, operated, and maintained by the institution of higher education requesting the approval of a project; and that funds available for such facility under such project shall be used solely for the purpose of conversion of modernization of energy utilization techniques to economize on the use of energy resources; and that such project is not limited to facilities described in clause (v) of this subsection"; and

(2) by striking out paragraph (2) of such section and inserting in lieu thereof the following:

"(2)(A) The term 'construction' means (i) erection of new or expansion of existing structures, and the acquisition and installation of initial equipment therefore; or (ii) acquisition of existing structures not owned by the institution involved; or (iii) a combination of either or the foregoing. For the purposes of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, except books, curicular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed in connection with construction; and the terms 'equipment', 'initial equipment', and 'built-in equipment' shall be more particularly defined by the Commissioner by regulation.

"(B) The term 'reconstruction or renovation' means rehabilitation, alteration, conversion, or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of such equipment) or existing structures. For the purposes of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, except books, curicular and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed either in connection with construction as defined in paragraph (2)(A), or as part of the rehabilitation, alteration, conversion, or improvement of an existing structure, which structure would otherwise not be adequate for use as an academic facility; the terms 'equipment', 'initial equipment', and 'built-in equipment' shall be more particularly defined by the Commissioner by regulation; and the term 'rehabilitation, alteration, conversion, or improvement' includes such action as may be necessary to provide for the architectural needs of, or to remove architectural barriers to, handicapped persons with a view toward increasing the accessability to, and use of, academic facilities by such persons.".

PART I—COMMUNITY COLLEGES AND STATE POSTSECONDARY PLANNING

EXTENSION AND REVISION OF TITLE X

SEC. 176. (a)(1) The heading of title X of the Act is amended to read as follows:

"TITLE X—ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLEGES"

(2) Such title is amended by striking out

"PART A—ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLEGES

"Subpart 1—Statewide Plans"

and inserting in lieu thereof:

"PARTS A—STATEWIDE PLANS"

(3) Section 1001(a) of the Act is amended by striking out "subpart" and inserting in lieu thereof "part".

(4) Section 1001(b)(1) of the Act is amended to read as follows:

"(b)(1) There are authorized to be appropriated $15,700,000 for each of the fiscal years ending prior to October 1, 1979, to carry out the provisions of this section.".

(5) Section 1001 of the Act is further amended by striking the last sentence of subsection (c) and inserting in lieu thereof: "The Commissioner shall not disapprove any plan unless he determines, after reasonable notice and opportunity for hearing and comment, that it is inconsistent with the requirements set forth in this section.".

(b)(1) Such title is further amended by striking out "Subpart 2" in the heading following section 1001 and inserting in lieu thereof "Part B".

(2)(A) Section 1011(a) of the Act is amended by striking out "subpart" and inserting in lieu thereof "part".

(B) Section 1011(b) of the Act is amended to read as follows:

"(b) For the purpose of carrying out this part, there are authorized to be appropriated $150,000,000 for each of the fiscal years ending prior to October 1, 1979.".

(3) Section 1012(b) of the Act is amended by striking out "subpart" and inserting in lieu thereof "part".

(c) Part B of title X of the Act as in effect prior to the amendments made by subsection (b) of this section is repealed.

(d) The amendments made by paragraphs (1), (2), (3) of subsection (a), paragraphs (1), 2(A), (3) of subsection (b), and subsection (c) shall take effect on September 30, 1977.

EXPANSION GRANTS

SEC. 177. Section 1014 of the Act is amended to read as follows:

"EXPANSION GRANTS

"SEC. 1014. (a) The Commissioner is authorized to make grants, consistent with the terms of the appropriate State plan approved under section 1001, to existing community colleges to enable them to carry out the provisions of subsections (b) and (c) of this section. Of the funds appropriated for subpart 2 of this part, the Commissioner shall make grants pursuant to subsection (b), before making grants under any other subsection or section of this subpart, until such time as he determines all approved requests relating to subsection (b) have been funded.

"(b) The Commissioner is authorized to make grants to eligible institutions to assist them in modifying their educational programs and instructional delivery systems to provide educational programs especially suited to those persons whose educational needs have been inadequately served, especially those among the handicapped, older persons, persons who can attend only part-time, and persons who otherwise would be unlikely to continue their education beyond the high school. Such programs may include, but are not limited to methods designed to eliminate such barriers to student access as inflexible course schedules, location of instructional programs, and inadequate transportation.

"(c) The Commissioner is also authorized to make grants to eligible institutions to assist them in expanding their enrollment capacity or in establishing new educational sites as documented in the State plan. Any grants relating to facilities may only be made to institutions which have provided the Commissioner with such assurances as he requires that they have first explored the possibilities of using existing facilities on the campus of the applying institution, existing facilities in the community which are suitable and available for educational programs without unreasonable cost to the institution, and explored the willingness of other institutions within a reasonable commuting distance to provide educational programs, or space or other components of an educational delivery system, through contract or other agreement with the institution.".

REVISION OF DEFINITION OF COMMUNITY COLLEGE

SEC. 178. Paragraphs (2) and (3) of section 1018 of the Act are amended to read as follows:

"(2) admits as regular students persons who are high school graduates or the equivalent, or beyond the age of compulsory school attendance;

"(3) provides a postsecondary education program leading to an associate degree or acceptable for credit toward a bachelor's degree;.

AUTHORIZATION FOR STATEWIDE PLANNING

SEC. 179. (a) Section 1203 of the Act is amended by redesignating subsection (c) as subsection (d) and by inserting immediately

after subsection (b) the following new subsection:

"(c) The Commissioner is authorized to make grants to State commissions established pursuant to section 1202(a), and to interstate compact postsecondary educational agencies approved by the Commissioner for the purpose of this subsection, applying jointly for the purpose of this subsection, to enable the participating commissions to plan, develop, and carry out interstate cooperative postsecondary education projects designed to increase the accessibility of postsecondary educational opportunities for the residents of the participating States and to assist such States to carry out postsecondary education programs in a more effective and economical manner.".

(b) Section 1203(d) of the Act (as redesignated by this section) is amended to read as follows:

"(d)(1) There are authorized to be appropriated such sums for each fiscal year ending prior to October 1, 1979, to carry out the provisions of this section other than subsection (c) of this section.

"(2) There are authorized to be appropriated $2,000,000 for each fiscal year ending prior to October 1, 1979, to carry out the provisions of subsection (c) of this section.".

PART J—GENERAL PROVISIONS

DEFINITIONS

SEC. 181. Section 1201(a) of the Act is amended by inserting immediately after the second sentence the following new sentence: "Such terms also includes a public or nonprofit private, educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.)".

TITLE III—EXTENSIONS AND REVISIONS OF OTHER EDUCATION PROGRAMS

PART A—EXTENSION AND REVISION OF RELATED PROGRAMS

EXTENSION OF TITLE III OF THE NATIONAL DEFENSE EDUCATION ACT OF 1958

SEC. 301. (a) The first sentence of section 301 of the National Defense Education Act of 1958 is amended by striking out "June 30, 1977" and inserting in lieu thereof "September 30, 1978".

(b) The second sentence of such section is amended by striking out "July 1, 1977" and inserting in lieu thereof "October 1, 1978".

EXTENSION AND REVISION OF TITLE VI OF THE NATIONAL DEFENSE EDUCATION ACT OF 1958

SEC. 302. (a) The heading of title VI of the National Defense Education Act of 1958 is amended to read as follows: "TITLE VI—FOREIGN STUDIES AND LANGUAGE DEVELOPMENT".

(b) Title VI of the National Defense Education Act of 1958 is amended by redesignating section 603 as section 604 and by inserting after section 602 the following new section:

"GRANT PROGRAM TO PROMOTE CULTURAL UNDERSTANDING

"SEC. 603. (a) The Congress finds that—

"(1) the well-being of the United States and its citizens is affected by policies adopted and actions taken by, or with respect to, other nations and areas; and

"(2) the United States must afford its citizens adequate access to the information which will enable them to make informed judgments with respect to the international policies and actions of the United States.

It is, therefore, the purpose of this section to support educational programs which will increase the availability of such information to students in the United States.

"(b) The Commissioner is authorized, by grant or contract, to stimulate locally designed educational programs to increase the understanding of students in the United States about the cultures and actions of other nations in order to better evaluate the international and domesic impact of major national policies.

"(c) Grants or contracts under this section—

"(1) may be made to any public or private agency or organization, including, but not limited to, institutions of higher education, State and local educational agencies, professional associations, educational consortia, and organizations of teachers;

"(2) may include assistance for in-service training of teachers and other education personnel, the compilation of existing information and resources about other nations in forms useful to various types of educational programs, and the dissemination of information and resources to educators and educational officials upon their request, but shall not be used for the development of new curriculums or the acquisition of equipment or remodeling of facilities; and

"(3) may be made for projects and programs at all levels of education, and may include projects and programs carried on as part of community, adult, and continuing education programs.".

(c) Section 604 of such Act (as so redesignated by subsection (b) of this section) is amended by striking out everything after "$75,000,000" and inserting in lieu thereof the following: "for each fiscal year ending prior to October 1, 1977, to carry out the provisions of this title, except that no funds shall be made available in any fiscal year for carrying out programs under section 603 until at least $15,000,000 has been made available in such fiscal year for carrying out the provisions of sections 601 and 602.".

(d) Section 602 of such Act is amended by adding in the first sentence, after "directly or by", the following: "grant or".

EXTENSION OF THE INTERNATIONAL EDUCATION ACT OF 1966

SEC. 303. Section 105(a) of the International Education Act of 1966 is amended to read as follows:

"SEC. 105. (a) There are authorized to be appropriated $10,000,000 for fiscal year 1977, for the purpose of carrying out the provisions of this title.".

[FR Doc.76-34994 Filed 11-26-76;8:45 am]